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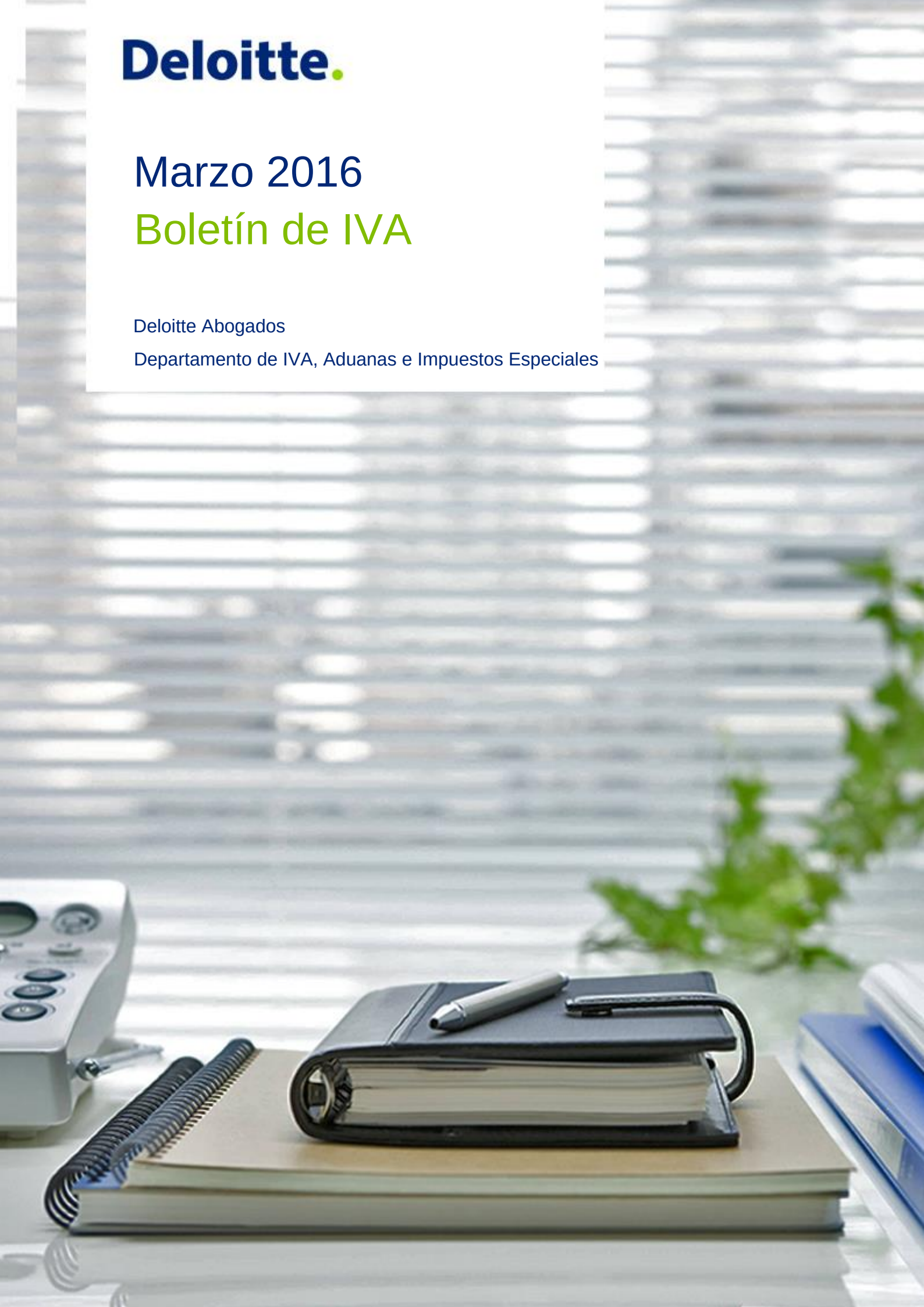

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III. Country Summaries

OECD

The OECD has launched a survey on the cost of irrecoverable VAT/GST incurred in foreign jurisdictions.

Americas

Argentina

In December 2015, the new Ministry of Economy announced the long-awaited lifting of most of the foreign exchange restrictions that had impacted inbound and outbound investments, as well as Argentine foreign trade.

Canada

The Government of New Brunswick announced an increase to the provincial component of the Harmonized Sales Tax.

Costa Rica

A new Central American Technical Regulation for dairy products (cream and cream prepared) has entered into force.

Panama

There are new regulations under which additional VAT withholding agents are designated.

United States

Alabama has issued guidance on the new ‘economic presence’ rule for certain out-of-state sellers making threshold ‘significant sales’ into Alabama.

Michigan has issued a notice regarding a new cloud computing policy and related refund procedures.

Asia Pacific

Australia

A Bill has been introduced to the House of Representatives on 10 February 2016 including provisions relating to GST relief for B2B cross-border transactions and extending GST to digital products and other services imported by consumers.

China

There is an update on the VAT Reform timeline.

A Bulletin setting out the implementation guidance for Circular 118 (on the application of VAT zero-rated treatment for an expanded group of services provided offshore) has been released.

There is an update on general VAT electronic invoices.

China's tariff policy for 2016 was released in December 2015.

Guidance has been released on the catalogues of goods prohibited/ restricted from processing trade relief.

The trial for cross-border e-Commerce has been expanded to include 13 cities in total.

India

There has been an increase in VAT rates in the States of Bihar and Rajasthan.

An amnesty scheme has been introduced in Rajasthan for VAT and sales tax.

The Central Board of Excise and Customs has issued instructions for the examination of transactions involving related parties and those involving payment of royalties, license fees, etc.

Kazakhstan

There have been amendments to the customs administration law.

Excise tax rates on gasoline have been amended.

Rules on the import and export of pharmaceuticals, medical products and medical equipment have been approved.

Rules for issuing permits for the transit of goods have been approved.

Legislative amendments have been made to improve the administration of special economic zones.

Malaysia

Budget 2016, as delivered to the Malaysian Parliament in October 2015, included a number of issues relevant to the oil and gas industry.

Trade Preferences

Trans-Pacific Partnership

Implementation of the customs provisions of the World Trade Organization's Trade Facilitation Agreement and Trans-Pacific Partnership (TPP).

EMEA

Finland

The Supreme Administrative Court has ruled on the VAT deductibility of costs in relation to the acquisition and financing of subsidiaries.

The Central Board of Taxes has ruled on the VAT treatment of private equity funds.

The CBT has ruled on the VAT treatment of services in relation to the settlement and processing of payment transactions.

The CBT has ruled on the VAT treatment of services in relation to business restructurings.

The CBT has ruled on the VAT treatment of a work welfare promoting project.

France

A recent case considered the EU VAT refund procedure and VAT grouping. The Conseil d'Etat held, inter alia, that this type of repayment claim can only be made by the company heading a VAT group (in the absence of proof of an agency agreement with the company's legal representative).

Germany

There have been a number of court judgments on the issue of VAT grouping.

There has been an opinion from the Advocate General of the Court of Justice of the European Union that import VAT should be due on goods exported without compliance with Customs formalities.

Italy

The new forms for the FY2015 VAT return and VAT communication have been approved.

Assonime has clarified the VAT treatment of intra-Community movements of goods subject to processing operations/ usual forms of handling.

The Supreme Court has ruled on VAT grouping.

There is a CJEU Advocate General opinion that VAT may not be a priority in a liquidation case.

Customs has issued an overview of import fulfilments.

Customs has issue a note on the excise rates for the combined production of electricity and heat.

Customs has issued a note summarizing sea taxes and duties amounts.

Customs has issue a decision on the operative guidelines for ruling requests.

Netherlands

The Netherlands lowered the Intrastat thresholds.

Poland

A Retail Sales Tax is to be implemented.

The CJEU is to rule on VAT tax free schemes in Poland.

Portugal

The state budget law proposal includes changes to VAT and excise duties, including changes to the application of the intermediate and reduced rates.

Russia

There has been further discussion on subjecting e-services to taxation.

Work is being undertaken on allowing companies that apply the simplified tax regime an option to account for VAT.

Supreme Court has declined to consider Oriflame Cosmetics, LLC’s appeal to the lower court decision on the deduction of licensing payments

The Russian Federal Tax Service has published a review of the tax disputes considered by the Constitutional Court and the Supreme Court.

The eligibility criteria for the accelerated VAT refund procedure has changed.

The Russian Ministry of Finance has issued a Letter regarding the application of VAT to bonuses received by customers for the execution of certain conditions of a supply agreement.

Software is now available allowing completion of registers in electronic form to confirm application of 0% VAT.

There may be an increase to the excise tax rates with respect to petrol and diesel oil.

There is a prohibition on the importation of certain agricultural goods originating from Ukraine.

There is a suspension of the exemption from import customs duty for goods originating from Ukraine.

The Federal Service for Fiscal and Budgetary Supervision (Rosfinnadzor) has been dissolved.

Spain

The Immediate Supply of Information System (SII) project is currently on ‘stand-by’.

The Customs authorities have recently published resolutions regarding the ‘Single (one-stop shop) Customs Window’ project.

Ukraine

With effect from 1 January 2016, the importation of plants and plant products subject to phytosanitary control no longer requires an import or transit permit.

The introduction of a special duty of 39.2%, which was to apply from 20 January 2016 to certain goods originating from the Republic of Belarus, has been suspended to 1 May 2016.

Agricultural machinery has been removed from the list of products subject to compulsory certification.

United Kingdom

A domestic reverse charge VAT on wholesale telecoms came into force on 1 February 2016.

There will be a consultation in the spring on amending the UK VAT grouping rules.

There has been a technical consultation on the ‘use and enjoyment’ of insured repair work.

Trade Preferences

Ukraine-Uzbekistan

On 27 January 2016, the Ukrainian Parliament ratified the Protocol on application of the CIS Free Trade Area Agreement dated 18 October 2011 between the parties thereto and Uzbekistan.

Eurasian Economic Union

Eurasian Economic Union

There is an update on issues related to Kazakhstan's Accession to the World Trade Organization.

There have been amendments regarding the control of the customs value of imported goods.

The Order for filing and registration of the transit declaration and the completion of the customs transit procedure has been amended.

A draft Protocol has been approved on the exchange of electronic information between the tax authorities of EEU states for the implementation of tax administration.

Mandatory preliminary information will be required about goods imported by air.

There has been an extension to the application of the 0% import customs duty on certain phosphates.

Antidumping duties have been imposed on certain goods imported into the EEU customs territory.

I. Jurisprudencia

1. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 19 de febrero de 2016. Nº recurso 67/2015

Impugnación parcial del artículo primero, apartado diecinueve del Real Decreto 1073/2014, de 19 de diciembre por el que se modifica el Reglamento del IVA.

Una Cámara Oficial de Comercio, al considerar que el artículo primero, apartado diecinueve del Real Decreto 1073/2014, de 19 de diciembre por el que se modifica el Reglamento del IVA incurre en vicio de nulidad, presenta el correspondiente recurso contencioso-administrativo para que su texto se ajuste a Derecho.

En este sentido, la entidad recurrente, entiende que, con motivo de la entrada en vigor del mencionado Real Decreto 1073/2014, se ve menoscabado el derecho de los sujetos pasivos que tributan únicamente en territorio Foral a la hora de la aplicar el conocido como régimen de diferimiento del IVA a la importación.

El literal del artículo señala tal régimen de diferimiento será aplicable: "cuando el importador sea un empresario o profesional que actúe como tal, y siempre que tribute en la Administración del Estado y que tenga un periodo de liquidación que coincida con el mes natural de acuerdo con lo dispuesto en el artículo 71.3 del presente Reglamento…".

A este respecto el Tribunal Supremo viene a considerar que el mecanismo previsto en el Real Decreto impugnado no sólo es una opción que se otorga a determinados sujetos, sino que puede constituir un «diferimiento en el pago del impuesto diferido» con la clara ventaja financiera que de ello puede derivarse.

Así pues, del literal del artículo, entiende el Tribunal Supremo que de esa eventual ventaja financiera quedan excluidos quienes no tributan en el territorio del Estado como consecuencia de las importaciones que efectúen, si bien, considera el Alto Tribunal que la norma con rango de ley que da cobertura al mencionado real decreto (artículo 167.2 de la Ley del IVA), no contiene regulación alguna que permita ese distinto tratamiento que este último otorga a quienes tributan en el territorio del Estado y fuera de él; discriminación que carece de justificación, no siendo pretexto la referencia a la exclusiva competencia estatal en materia del IVA, propugnada por el artículo 5.1 del Concierto Económico entre el Estado y la Comunidad Autónoma del País Vasco, ya que ello no sería obstáculo para que se habiliten los procedimientos necesarios para evitar la discriminación legal que se produce y que carece de cobertura legal.

Por todo ello, el Tribunal Supremo concluye que es procedente estimar el recurso, procediendo a anular del artículo primero, apartado diecinueve del Real Decreto 1073/2014 el inciso "…y siempre que tribute en la Administración del Estado".

2. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 16 de febrero de 2016. Nº recurso 1615/2014

Deducibilidad del IVA soportado en materia de investigación básica por parte de una universidad – Sectores diferenciados de actividad.

El presente recurso de casación promovido por parte de la Administración del Estado tiene como objeto la determinación de qué porcentaje de las cuotas del IVA soportadas en los proyectos de investigación básica llevados a cabo por una universidad son asignables o no a un determinado sector diferenciado de actividad.

En este sentido, con carácter preliminar cabe destacar que ha quedado probado a lo largo del procedimiento que la universidad realiza fundamentalmente dos actividades básicas, la de enseñanza superior y la de investigación (que incluye la básica y la aplicada) dando dichas actividades lugar, de acuerdo con lo dispuesto en los artículo 9.1º.c) y 101 de la Ley del IVA a la aplicación del régimen de sectores diferenciados con regímenes de deducción diferenciados.

En este punto, la Administración del Estado recurrente considera que existen determinadas cuotas de IVA soportadas por parte de la Universidad cuyo origen son gastos vinculados a la actividad investigación básica, los cuales deberían excluirse del sector diferenciado de investigación en la medida que dichos gastos se destinan conjunta y simultáneamente con la actividad de enseñanza.

Sin embargo, el Tribunal Supremo viene a señalar que la sentencia de instancia no niega la tesis defendida por parte del recurrente sino que trasciende la dimensión fáctica de determinar la correcta o no deducción del IVA soportado, analizando una cuestión estrictamente jurídica que afecta a la propia naturaleza de los distintos servicios prestados por la universidad, para concluir que respecto de la investigación básica no puede establecerse automáticamente, ni presumirse una vinculación entre la misma y la enseñanza.

Ahora bien, considera el Tribunal Supremo que tampoco se desprende de la tesis mantenida en la sentencia recurrida que dicha vinculación tenga un alcance que vaya más allá de dicha declaración, esto es, que el análisis estrictamente jurídico que realiza lo es para negar dicha vinculación automática, no para afirmar lo contrario, esto es, la exclusión total de dicha vinculación.

Así pues, entiende el Tribunal Supremo que en el caso que nos ocupa la liquidación practicada por la Administración Tributaria parecía descansar sobre un sustrato fáctico previamente determinado (es decir, la existencia de dos sectores diferenciados) el cual no ha sido puesto en tela de juicio por parte de las partes para centrarse en una cuestión estrictamente jurídica como es la deducibilidad o no de las cuotas de IVA soportadas como consecuencia de los gastos comunes.

De acuerdo con todo lo anterior, concluye el Tribunal Supremo que no debe ir más allá de los límites entre los que las partes han definido la controversia, por lo que, teniendo en cuenta que el objeto de litigio no es respecto a dichos puntos, desestima el recurso de casación interpuesto.

3. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 16 de febrero de 2016. Nº recurso 2248/2014

Solicitud de devolución del IVA por el procedimiento de entidades no establecidas – Rectificación vs. ampliación de la solicitud inicial – Plazo de caducidad – Enriquecimiento injusto de la Administración Tributaria – Vulneración del principio de neutralidad del impuesto.

Una entidad presentó en tiempo y forma un modelo 361 de solicitud de devolución del IVA soportado por empresarios no establecidos en el TAI cuya devolución fue aprobada por la AEAT.

Posteriormente, dicha entidad se percató de que había dejado fuera de su solicitud determinadas cuotas del IVA a la importación que, habiendo sido ingresadas, deberían haberse incluido en la misma, por lo que solicitó la rectificación de la misma. Sin embargo, la AEAT se la denegó pues consideró que la misma no se trataba de una rectificación como tal, sino de una ampliación de la solicitud inicial que habría sido presentada extemporáneamente, una vez caducado el procedimiento por el trascurso del plazo de seis meses previsto en el artículo 119 de la Ley del IVA.

La entidad actora defendía la validez de su solicitud de rectificación en atención a lo previsto por el artículo 126.2 del RGIT, entendiendo que no había prescrito el derecho de la Administración Tributaria para determinar la deuda tributaria mediante la liquidación o el derecho a solicitar la devolución correspondiente.

Por el contrario, el Tribunal Supremo, confirmando la tesis de la Audiencia Nacional, considera, en primer lugar, que dicha nueva solicitud no podía calificarse de rectificación, dado que la misma no implicaba un simple error material o aritmético respecto de los datos ya aportados, sino una ampliación de la solicitud de devolución inicial referida a unas cuotas de las que la Administración Tributaria debía revisar y determinar si cumplían o no con los requisitos legales. El Tribunal recuerda en este punto que la devolución no tiene carácter automático, sino que queda sujeta al cumplimiento de determinados requisitos, entre otros, al del plazo de seis meses contemplado por el artículo 119 de la Ley del IVA.

Es por lo expuesto hasta el momento que la Audiencia Nacional estimó (y ahora lo confirma el Tribunal Supremo) la decisión de la Administración tributaria que denegaba la ampliación de la solicitud de devolución, por considerarla extemporánea. Sin embargo, y en segundo lugar, el Alto Tribunal admite que debe

determinarse, siguiendo el procedimiento legalmente establecido, la procedencia, en su caso, del derecho de la entidad a la devolución, ya sea como ingreso indebido o como crédito a su favor, previa comprobación de todos los requisitos legales y reglamentarios, a fin de evitar el enriquecimiento injusto para la Administración.

4. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 17 de febrero de 2016. Nº recurso 3655/2014

Sujeción al Impuesto de las prestaciones de servicios de limpieza, recogida de basuras y depuración de aguas residuales realizadas por una empresa de capital íntegramente municipal – Subvenciones de capital vs subvenciones vinculadas al precio de la operación – Deducciones.

Una entidad, participada íntegramente por un Ayuntamiento, presentó sus autoliquidaciones del IVA relativas al ejercicio 2006 declarando las prestaciones de servicios de recogida de basuras, limpieza y depuración de aguas a favor del Ayuntamiento como operaciones sujetas por las que había repercutido IVA. Consecuentemente, se dedujo las cuotas del IVA soportadas en el ejercicio de su actividad.

Con posterioridad, esta entidad decidió impugnar dichas autoliquidaciones y solicitar devolución de ingresos indebidos de las cuotas del IVA ingresadas a la Hacienda Pública por aquellos servicios, fundamentando su postura en la jurisprudencia consolidada del Tribunal Supremo que señalaba:

(i) que las prestaciones de servicios de limpieza, etc… similares a la del caso en cuestión prestadas por empresas de capital íntegramente municipal a dichos órganos estaban sujetas al IVA,

(ii) que las subvenciones de explotación entregadas por los Ayuntamientos a estas empresas no habían de formar parte de la base imponible del IVA y que

(iii) tales empresas podían deducirse la totalidad del IVA soportado, sin aplicar regla de prorrata alguna.

Transcurridos seis meses desde la solicitud de rectificación de las autoliquidaciones y sin haber obtenido resolución por parte de la Administración Tributaria, la entidad consideró su solicitud denegada, por silencio negativo, e interpuso reclamación económico-administrativa ante el TEAC.

Posteriormente, habiendo transcurrido más de un año desde la interposición ante el TEAC, entendió también desestimada dicha reclamación, por silencio negativo, e interpuso contra dicha desestimación, reclamación ante la Audiencia Nacional quien decidió estimar la solicitud de ingresos indebidos presentada por la entidad.

Dicha estimación es ahora confirmada en casación por el Tribunal Supremo, quien analiza si las cantidades que recibe dicha entidad municipal del ayuntamiento constituyen retribución de un servicio (subvenciones ligadas al precio) y, por ende, habrían de incluirse en la base imponible o si, por el contrario, constituyen subvenciones de capital que habrían de quedar excluidas de la misma.

Analizadas las características de lo que constituye una subvención ligada al precio de la operación (a la luz de la jurisprudencia el TJUE en su sentencia de 15 de julio de 2004, CE/Finlandia, C-495/01), el Tribunal Supremo concluye que las sumas recibidas por la empresa en cuestión del Ayuntamiento no cabe reputarlas ni como subvenciones ligadas al precio de los servicios que la empresa le presta, ni como contraprestación del conjunto de operaciones que realiza y, por tanto, no han de integrar la base imponible para calcular las cuotas del IVA que dicha entidad debe repercutir al ayuntamiento por los servicios que le presta y que estarían sujetos al Impuesto.

Bajo estas circunstancias, el Tribunal Supremo señala que la entidad municipal es un "sujeto pasivo total" a los efectos del Impuesto y que, por tanto, las cantidades recibidas por parte del Ayuntamiento no habrían de afectar al cálculo de la prorrata general ni a su derecho a la deducción del IVA.

5. Tribunal Superior de Justicia de Andalucía. Resolución nº 120/2016, de 25 de enero de 2016.

Devolución de ingresos indebidos – Modificación de la base imponible por resolución de las operaciones.

En la presente sentencia el TSJ de Andalucía se pronuncia sobre la procedencia de la devolución del IVA cuando concurren las causas de resolución de las operaciones.

Según la descripción de los hechos, en documento privado de 2 de noviembre de 2006 se enajenó una finca por el precio de 1.021.071 euros de base imponible y 163.475,2 euros de IVA. Como forma de pago se pactó que el 10 de noviembre de 2006 la parte compradora abonaría 237.239,04 euros de los que 204.344 euros correspondían a base imponible y 32.695,04 euros a IVA.

La cláusula sexta del documento privado firmado en noviembre de 2006, estipulaba que el otorgamiento del oportuno título público de dominio se llevaría a cabo el 10 de julio de 2007, una vez se hubieran cumplido una serie de condiciones urbanísticas.

En noviembre de 2007 ambas partes acordaron la resolución del contrato porque, habiendo transcurrido el plazo fijado en el contrato para el otorgamiento de las escrituras, los vendedores no habían podido efectuar el contrato en los términos pactados. Como consecuencia de lo anterior, ambas partes acordaron la

devolución de 237.039,00 euros, más los gastos del proyecto y determinados gastos financieros.

A la resolución del contrato acompañaba un informe de fecha posterior, de marzo de 2008, del Arquitecto Municipal.

En consecuencia, la parte vendedora emitió una factura rectificativa por los mismos importes en cuanto la base imponible e IVA que la emitida con ocasión de la venta, pero de signo negativo y solicitó a la Administración la devolución de la cantidad de 32.695,04 euros pagada en concepto de IVA por entender que se trataba de un ingreso indebido.

La Administración y el TEAR negaron esa petición al considerar que lo que había ocurrido era una reventa del comprador al vendedor

El TSJ considera que el artículo 80 de la Ley del IVA faculta a las partes a la modificación de la base imponible, cuando por resolución firme, judicial o administrativa o con arreglo a Derecho o a los usos de comercio queden sin efecto total o parcialmente las operaciones gravadas.

Por tanto, habiendo quedado acreditada la circunstancia de que el contrato firmado quedaba supeditado a la observancia de que el bien transmitido se le reconocieran una serie de condiciones que iban a influir en su aprovechamiento urbanístico y la existencia de ingresos indebidos, el TSJ procede a estimar el recurso.

II. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución nº 3758/2013, de 21 de enero de 2016

Devolución de IVA a no establecidos – Solicitud de devolución por importe inferior a 400 euros referida a un solo trimestre.

La interesada presentó una solicitud de devolución de IVA, por importe de 351,90 euros, en la que se hacía constar como periodo de la solicitud de julio a septiembre y que comprendía únicamente una factura.

Esta solicitud fue desestimada por considerar que no alcanzaba el límite cuantitativo mínimo, dado que estaba referida a un periodo trimestral, por lo que resultaba de aplicación el límite de 400 euros.

La recurrente interpuso recurso de reposición donde alegaba que la solicitud se corresponde con una única operación, que constituye el total de las cuotas soportadas en el año. Asimismo, alega la existencia de dificultades técnicas en la presentación telemática de la solicitud, porque intentando consignar como periodo de solicitud el anual, la página sólo le permitía recoger el trimestral. La Oficina de devolución de IVA a no establecidos desestimó el citado recurso por no considerar acreditada la pretensión de la recurrente.

La cuestión analizada por el TEAC consiste en determinar si procede denegar la devolución del IVA en base a un defecto formal.

En cuanto a la existencia de una cuota mínima a devolver, el TEAC recuerda que en la redacción actual del reglamento se distingue entre la presentación trimestral (400 euros) y las demás solicitudes que se refieran *"al conjunto de operaciones realizadas durante el año natural"*, que incluye tanto el supuesto de solicitudes por periodos superiores al trimestre, o inferiores a éste pero, en ambos casos, que sean comprensivas del conjunto de las operaciones realizadas en el año natural.

El TEAC considera que la existencia del error técnico es irrelevante dado que el propio literal de la norma no se opone a que las solicitudes que se refieran al conjunto de las operaciones del año natural puedan ser compatibles con la presentación de una solicitud en forma trimestral, siempre que ésta recoja el conjunto de las operaciones realizadas en el año natural.

Por tanto, dado que la solicitud de la recurrente está referida al total de las operaciones del año y que lo que ha sido irregular es la identificación del periodo, resulta desproporcionada la pérdida del derecho a la devolución.

La presente resolución viene a confirmar, una vez más, la prevalencia del derecho a la devolución/deducción del IVA sobre los defectos formales.

2. Dirección General de Tributos. Contestación nº V0001-16, de 5 de enero de 2016.

Régimen Especial del Grupo de Entidades – Servicio de cesión de inmueble a filial – Costes por los que se soporta el impuesto que no ha sido deducible –Cálculo de la base imponible

En la presente consulta, la DGT analiza el cálculo de la base imponible de la prestación de servicio de cesión de un inmueble por parte de la consultante a su filial, en el siguiente supuesto de hecho:

"La mercantil consultante ha promovido la construcción de un centro educativo que fue cedido mediante precio a otra mercantil filial de la anterior que va prestar la actividad educativa, a la que también presta servicios de limpieza y mantenimiento.

La consultante repercutió el Impuesto correspondiente a sus servicios y la cesión procediendo a deducir el IVA correspondiente a la construcción del centro educativo que ha sido declarado no deducible por la Administración tributaria, y cuyo acuerdo se encuentra recurrido en vía económica-administrativa.

En la actualidad ambas entidades aplican al régimen especial de grupo de entidades del Impuesto en su modalidad avanzada."

La DGT, tras realizar un análisis de los artículos 163 sexies y octies de la Ley del IVA, recuerda que no deberán tenerse en cuenta para la determinación de la base imponible de las operaciones intragrupo los costes soportados por la compañía en la medida en que no se soportó el Impuesto.

Pues bien, lo anterior lleva a concluir a la DGT que, en la modalidad avanzada del citado régimen, no se incluirán en la base imponible los costes derivados de las adquisiciones de bienes o servicios por los que la consultante hubiera soportado el Impuesto, no habiendo sido deducible para la consultante.

3. Dirección General de Tributos. Contestación nº V0008-16, de 5 de enero de 2016.

Inversión del sujeto pasivo – Teléfonos móviles, consolas, portátiles y tabletas digitales – Certificado del adquirente-revendedor.

A partir del siguiente supuesto de hecho, la DGT ha analizado la aplicación del mecanismo de inversión del sujeto pasivo en las entregas de teléfonos móviles, consolas, ordenadores portátiles, tabletas digitales realizadas por la consultante:

"Entidad que presta servicios de arrendamiento financiero de teléfonos móviles, consolas, ordenadores portátiles, tabletas digitales que se ceden juntamente con otros componentes como fundas, cargadores, bases para ordenadores, etc.

previamente adquiridos por ésta. Suscritos los contratos de arrendamiento, éstos son cedidos junto con la propiedad de los bienes a entidades financieras con el compromiso de la recompra futura, por la consultante, de los mismos bienes antes de la finalización de dichos contratos de arrendamiento.

Finalmente, estos bienes son transmitidos por la consultante bien a los arrendatarios de los mismos, previo ejercicio de la opción de compra por parte de éstos, bien a otros empresarios o profesionales no revendedores o bien a empresarios o profesionales revendedores de dichos productos."

Tras analizar las condiciones en el que el mecanismo de inversión del sujeto pasivo previsto en la letra g) del artículo 84.Uno.2º de la Ley del IVA es de aplicación en relación con las entregas de teléfonos móviles, consolas de videojuegos, ordenadores portátiles y tabletas digitales, la DGT, basándose en la doctrina sentada en consultas vinculantes anteriores, concluye que en el caso en el que los bienes objeto de las operaciones efectuadas por la consultante, y a las que fuera de aplicación el supuesto de inversión del sujeto pasivo en cuestión, se adquirieran y transmitieran conjuntamente con otros bienes con los que formen una unidad funcional indivisible, la regla de inversión del sujeto pasivo también sería de aplicación a éstos últimos.

Adicionalmente, la DGT subraya la obligación de las empresas revendedoras de dichos bienes (i.e. entidad consultante y las entidades financieras cesionarias de los contratos de arrendamiento financiero) de comunicar expresa y fehacientemente a sus respectivos proveedores su condición de empresario o profesional revendedor.

En este sentido, la DGT entiende que en el supuesto que la entidad consultante tenga la certeza de que, en las operaciones en las que sea transmitente, el adquirente actúa en su condición de revendedor, sería de aplicación la regla de inversión del sujeto pasivo y la factura habrá de ser expedida sin repercusión del IVA, a pesar de que el adquirente no le haya acreditado su condición de revendedor mediante el certificado expedido a tal efecto.

4. Dirección General de Tributos. Contestación nº V0056-16, de 8 de enero de 2016.

Exención servicios médicos – Emisión y venta de bono-médico.

En la presente consulta, la DGT analiza la tributación del producto descrito por la consultante, así como la posible aplicación a dicho producto de la exención de los servicios sanitarios recogida en el artículo 20 de la Ley del IVA, en el siguiente supuesto de hecho:

"*Entidad establecida que tiene por objeto la intermediación en la prestación de servicios médicos mediante la emisión y venta de "bonos" que son adquiridos por sus clientes y posteriormente redimidos por servicios médicos prestados por los*

profesionales o clínicas u hospitales que integran el "cuadro médico" formado por la consultante. Posteriormente, por cada bono redimido, la entidad consultante satisface un importe determinado, inferior a aquél por el que se ha vendido previamente el "bono" al usuario del servicio médico."

En primer lugar la DGT, reitera el criterio expuesto a lo largo de diversas consultas vinculantes en relación al alcance de la exención contemplada en el artículo 20.Uno.3º de la Ley del IVA.

En segundo lugar, tras fijar el alcance de la exención de dichos servicios, señala la DGT que de acuerdo con el contenido de la consulta el producto en cuestión ("*bono-médico*") otorga al tenedor del mismo el derecho a recibir servicios médicos exentos en el TIVA-ES. Estando identificados dichos servicios en el momento de su emisión.

En este sentido, trae a colación la DGT la consulta vinculante número V1246-14 de 7 de mayo de 2014 a través de la cual se analizaba la tributación de los denominados bonos univalentes.

Respecto a la emisión y comercialización del bono, se deduce del texto de la consulta de referencia que la entidad actuaría en nombre propio. Por consiguiente, la venta del "*bono-médico*" a los usuarios del servicio médico determinará la prestación de un servicio médico sujeto pero exento del IVA; siendo la base imponible de la operación el importe de la contraprestación convenida.

Por otro lado, recuerda la DGT que la prestación de servicios realizada por el médico, se tratará igualmente de una operación sujeta pero exenta del IVA, cuya base imponible será, asimismo, la contraprestación convenida.

5. Dirección General de Tributos. Contestación nº V0072-16, de 13 de enero de 2016.

Exposiciones y ferias comerciales - Tipo impositivo

Por medio de esta contestación, la DGT se ha pronunciado en relación al tipo impositivo aplicable a determinados gastos facturados por el organizador de ferias y exposiciones comerciales a los expositores, sobre la base del siguiente supuesto de hecho:

"La entidad consultante organiza ferias y exposiciones comerciales. A tal efecto, factura a los expositores por distintos conceptos según sus necesidades: alquiler de stands, instalación y decoración de stands, electricidad, agua, teléfono, limpieza y parking."

De acuerdo con la redacción del número 9º del artículo 91.Uno.2 de la Ley del IVA, el tipo impositivo aplicable a las prestaciones de servicios propias de exposiciones y ferias de carácter comercial será el tipo reducido del 10 por ciento, tanto los prestados a los participantes de la feria o exposición como a los visitantes.

En este sentido, los servicios prestados por la entidad consultante a las empresas participantes en la feria o exposición, cuando la primera actúe como organizadora y titular de la misma, tributarán por el IVA al tipo impositivo del 10 por ciento.

Cabe destacar que la DGT entiende como prestaciones de servicios propias de exposiciones y ferias de carácter comercial no sólo el alquiler o cesión del espacio necesario dentro de la feria o exposición o la instalación y decoración de stands, sino que también la refacturación de luz, agua, teléfono, limpieza, parking y otros gastos similares al considerarlos necesarios para el normal desarrollo de la citada feria o exposición comercial.

6. Dirección General de Tributos. Contestación nº V0076-16, de 13 de enero de 2016.

Inversión del sujeto pasivo – Entrega de inmuebles en ejecución de garantía

En la presente consulta, la DGT analiza si procede la aplicación del mecanismo de inversión del sujeto pasivo en relación con el siguiente supuesto de hecho:

"Transmisión de un terreno en curso de urbanización por ejercicio de una opción de compra por persona distinta al promotor.".

Con respecto al sujeto pasivo de las entregas de bienes inmuebles dados en garantía del cumplimiento de una obligación principal, de acuerdo con el artículo 84.Uno.2º.e) de la Ley del IVA, resultará de aplicación el mecanismo de inversión del sujeto pasivo cuando se reúnan los siguientes requisitos:

a) El destinatario de las operaciones sujetas al IVA debe actuar con la condición de empresario o profesional.

b) Las operaciones realizadas deben tener la naturaleza jurídica de entregas y tener por objeto un bien inmueble que esté afectado en garantía del cumplimiento de una obligación principal.

c) Tales operaciones deben tratarse de entregas de bienes distintas de aquellas a las que se refieren los dos primeros supuestos contemplados en el propio artículo 84.Uno.2º.e) de la Ley del IVA.

d) Las entregas realizadas deben ser consecuencia de la ejecución de la garantía constituida sobre los bienes inmuebles, si bien, la inversión del sujeto pasivo también se producirá en los casos de transmisión de inmuebles otorgados en garantía a cambio de la extinción total o parcial de la deuda garantizada o de la obligación de extinguir tal deuda por el adquirente.

De acuerdo con el supuesto de hecho, se ha constituido una opción de compra sobre un terreno en curso de urbanización, de tal forma que el pago de las cuotas de urbanización será asumido por los transmitentes en proporción a su participación en la propiedad del inmueble aun cuando este haya sido transmitido a la sociedad optante.

Sobre la base de la doctrina de la DGT contenida en la consulta vinculante de 20 de octubre de 2015, número V3177-15, dicho Centro Directivo entiende que no sería de aplicación al supuesto de hecho de referencia el mecanismo de inversión del sujeto pasivo establecido en el artículo 84.Uno.2 de la Ley del IVA, puesto que la transmisión del terreno en curso de urbanización se realiza sin incluir los gastos de urbanización que corresponden a los transmitentes y que van a ser satisfechos por los mismos.

7. Dirección General de Tributos. Contestación nº V0184-16, V0185-16, V0186-16 y V0187-16, de 20 de enero de 2016.

Régimen especial de agencias de las Agencias de Viajes.

La consultante es una asociación empresarial de agencias de viajes cuyas empresas asociadas prestan servicios de viajes sometidos al régimen especial de agencias de viajes a otros empresarios o profesionales.

En la presente contestación, la DGT se ha pronunciado sobre la aplicación del régimen especial de las Agencias de Viajes en determinados supuestos en relación con una cadena de distribución de servicios de viajes entre empresarios y profesionales revendedores en la que todos ellos actúan en nombre propio.

a) Una agencia de viajes o mayorista (revendedor 1) cuya actividad es la reventa de plazas hoteleras adquiridas directamente a hoteles (actividad de banco de camas, en los términos del sector), revende en nombre propio los servicios de alojamiento hotelero, a una agencia de viajes o mayorista (revendedor 2) que, a su vez los revende también en nombre propio, a otra agencia de viajes (revendedor 3) o a un cliente final que puede tener la condición de consumidor final o de empresario o profesional.

   Ante el supuesto de hecho planteado, señala la DGT que, estando todos los intervinientes establecidos en territorio de aplicación del Impuesto y pudiendo estar los hoteles a los que se refieren las plazas hoteleras ubicados en cualquier

otro lugar del mundo, la reventa de las plazas hoteleras quedará sujeta al Impuesto sobre el Valor Añadido y será de aplicación el régimen especial de agencias de viajes.

No obstante, matiza el Centro consultivo, será posible que el revendedor 1, el revendedor 2 y, en su caso, si se dan los requisitos para ello, el revendedor 3, opten por la aplicación del régimen general del Impuesto en las condiciones establecidas en el artículo 147 de la Ley del IVA.

En este último caso, las operaciones derivadas del servicio de viajes tributarán de forma independiente según las normas aplicables. Por consiguiente, si los hoteles estuvieran radicados en el territorio de aplicación del Impuesto, los servicios descritos se entenderán prestados en el territorio de aplicación del Impuesto en virtud del artículo 70.Uno.1º h) de la Ley del Impuesto.

Por otra parte, el tipo aplicable a estos servicios sería el tipo reducido del 10% según establece el artículo 91.Uno.2.2º de la Ley del IVA para los servicios de hostelería, acampamento y balneario, entre otros.

b) Se plantea el mismo supuesto de hecho que en la letra a) anterior pero teniendo en cuenta que el revendedor 1 se encuentra establecido en las Islas Canarias o Ceuta y Melilla y los hoteles se encuentran situados en el territorio de aplicación del Impuesto.

Contesta la DGT que en este nuevo supuesto, los servicios de viajes prestados por el revendedor 1 no estarán sujetos al Impuesto el Valor Añadido.

Por otra parte, los servicios de viajes prestados por el revendedor 2 y, en su caso, por el revendedor 3, quedarán sujetos al Impuesto sobre el Valor Añadido en dicho territorio y será de aplicación el régimen especial de agencias de viajes, sin perjuicio de que puedan optar a la aplicación del régimen especial del Impuesto en las condiciones previstas.

Si se optara por tal circunstancia, el revendedor 2 y, en su caso, el revendedor 3, deberán repercutir al destinatario en factura el IVA al tipo reducido al tratarse de la reventa de servicios de alojamiento de hoteles situados en el territorio de aplicación del Impuesto.

c) Finalmente, se plantea un tercer supuesto donde se parte igualmente de las condiciones descritas en el supuesto a), pero teniendo en cuenta que el revendedor 3) o, en su caso, el cliente final no se encuentran establecidos en territorio de aplicación del Impuesto y los hoteles se encuentran situados en dicho territorio.

En este caso, señala la DGT que, como ya se ha indicado, la reventa de las plazas hoteleras realizadas por el revendedor 1 y el revendedor 2 quedará sujeta al IVA en el territorio de aplicación del Impuesto y será de aplicación el régimen especial de agencias de viaje.

De igual modo, será posible que tanto uno como otro puedan optar por la aplicación del régimen general del Impuesto en las condiciones previstas en el ya citado artículo 147 de la Ley del IVA debiendo, en este caso, repercutir el IVA en sus facturas al tipo reducido del 10 % por tratarse de servicios de alojamiento en hoteles ubicados en el territorio de aplicación del Impuesto.

Sin embargo, los servicios de viaje prestados por el revendedor 3 no estarán sujetos al IVA.

8. Dirección General de Tributos. Contestación nº V0214-16, de 21 de enero de 2016.

Supuestos de no sujeción – Sujeción al IVA del canon pagado por la empresa adjudicataria.

En la presente contestación, la DGT se ha pronunciado sobre el siguiente supuesto de hecho:

La entidad consultante ha resultado adjudicataria del servicio público de gestión de residencia y centro de día.

En primer lugar, comienza la DGT señalando que en virtud del número 9 del artículo 7 de la LIVA se declaran no sujetas, entre otras, las autorizaciones para la prestación de servicios al público y para el desarrollo de actividades comerciales o industriales en el ámbito portuario.

En este sentido, matiza la DGT que en virtud de lo establecido en el Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público, la definición del contrato de gestión de servicios públicos es aquel por el cual una Administración Publica o una Mutua de Accidentes de Trabajo y Enfermedades Profesionales de la Seguridad Social, encomienda a una persona, natural o jurídica, la gestión de un servicio cuya prestación ha sido asumida como propia de su competencia por la Administración o Muta encomendante. Del mismo modo, en el artículo 277, letra a) de la citada norma se establece que la contratación de la gestión de los servicios públicos podrá adoptar la modalidad de concesión, por la que el empresario gestionará el servicio a su propio riesgo y ventura.

De conformidad con lo anterior, entiende la DGT que son servicios públicos de titularidad municipal todos aquellos que pudiendo ser prestados efectivamente por la entidad local, vengan a satisfacer las necesidades y aspiraciones de la comunidad vecinal.

Por su parte, señala este Centro Directivo que en el Informe de la Secretaria de la Junta Consultiva de Contratación Administrativa del Ministerio de Hacienda de fecha 13 de diciembre de 2006, donde se analizó una operación idéntica a la que es objeto de consulta, se indicó que conforme a su denominación y contenido, el contrato para la explotación de una residencia para la tercera edad es un típico contrato de gestión de servicio público, sin que pueda equipararse a los contratos para la explotación de los servicios de cafetería y comedor en edificios públicos que se califican como contratos administrativos especiales.

En base a lo anterior, entiende la DGT y concluye en consecuencia que cabe calificar como concesión administrativa el contrato de gestión de servicio público consistente en la explotación de una residencia y un centro de día para la tercera edad objeto de consulta, puesto que se trata de un centro dotacional que una Administración Publica ofrece de forma genérica a sus propios administrados, sin que esta característica quede desvirtuada por el hecho de que sus beneficiarios potenciales pertenezcan al colectivo de las personas discapacitadas o ancianas del municipio.

Por lo tanto, no estará sujeta al IVA la concesión administrativa objeto de consulta para la explotación del referido centro dotacional, no debiendo repercutirse el Impuesto sobre la cantidad que deba abonar la consultante en concepto de canon.

9. Dirección General de Tributos. Contestación nº V0217-16, de 21 de enero de 2016.

Naturaleza de la indemnización por clientela a efectos de su inclusión en la base imponible del Impuesto.

En la presente contestación, la DGT se ha pronunciado sobre el siguiente supuesto de hecho:

El consultante recibió indemnización por clientela derivada de un cese de contrato como agente comercial.

En la presenta consulta, la DGT analiza la naturaleza de la indemnización por clientela recibida por la entidad consultante, con el objeto de determinar, a efectos de lo dispuesto en el artículo 78.Tres de la LIVA, si debe ser incluida o por el contrario excluida de la base imponible del Impuesto.

En este sentido, establece este Centro Directivo que con carácter general, para determinar si existe una indemnización a los efectos del Impuesto, es preciso

examinar en cada caso si la cantidad abonada tiene por objeto resarcir al perceptor por la pérdida de bienes o derechos de su patrimonio, o, por el contrario, si su objetivo es retribuir operaciones realizadas que constituyen algún hecho imponible del Impuesto. Así, habrá que analizar si el importe recibido por la entidad consultante se corresponde con un acto de consumo, esto es, con la prestación de un servicio autónomo e individualizable, o con una indemnización que tiene por objeto la reparación de ciertos daños o perjuicios.

En particular y en relación con la indemnización por clientela, hace referencia la DGT al artículo 28.1 de la Ley 12/1992, de 27 de mayo sobre Contrato y Agencia, donde se establece que cuando se extinga el referido contrato, sea por tiempo determinado o indefinido, el agente que hubiese aportado nuevos clientes al empresario o incrementado sensiblemente las operaciones con la clientela preexistente, tendrá derecho a una indemnización si su actividad anterior puede continuar produciendo ventajas sustanciales al empresario y resulta equitativamente procedente por la existencia de pactos de limitación de competencia, por las comisiones que pierda, o por las demás circunstancias que concurran.

Además, el artículo 1 de la citada norma, según el cual por el contrato de agencia una persona natural o jurídica, denominada agente, se obliga frente a otra de manera continuada o estable a cambio de una remuneración, a promover actos u operaciones de comercio por cuenta ajena, o a promoverlos y concluirlos por cuenta y en nombre ajenos como intermediario independiente, sin asumir, salvo pacto en contrario, el riesgo y ventura de tales operaciones, se deduce que la indemnización objeto de consulta se satisface en contraprestación por los servicios prestados por el agente que suponen beneficios para el empresario una vez concluido el citado contrato de agencia.

De este modo, concluye este Centro Directivo que la indemnización por clientela tiene la naturaleza de una contraprestación o compensación por prestación de servicios, y por tanto deberá formar parte de la base imponible del IVA, a efectos de lo dispuesto en el artículo 78 de la Ley.

10. Dirección General de Tributos. Contestación nº V0225-16, de 21 de enero de 2016.

Naturaleza del concepto portes y transporte y bienes que tributan a distintos tipos impositivos a efectos de su inclusión en la base imponible del Impuesto.

En la presente contestación, la DGT se ha pronunciado sobre el siguiente supuesto de hecho:

La entidad consultante elabora y vende cestas para regalo que contienen distintos productos que tributan por el Impuesto sobre el Valor Añadido a diferentes tipos impositivos.

En primer lugar, la DGT analiza la inclusión en la base imponible del concepto portes y transportes, a efectos de lo dispuesto en el artículo 78.Uno de la LIVA, según el cual dicha base estará constituida por el importe total de la contraprestación de las operaciones sujetas al mismo procedente del destinatario o de terceras personas.

En este sentido, la DGT señala que tal y como establece el citado artículo en el apartado dos, 1º se incluyen en el concepto de contraprestación los gastos de portes y transportes.

Asimismo, la DGT señala que en virtud del artículo 79.Dos cuando por un precio único se entreguen bienes que tributan a distintos tipos impositivos, como es el supuesto de entregas de cestas para regalo, la base imponible correspondiente a cada entrega de bienes se determinará repartiendo el precio único cobrado, entre los distintos bienes, en proporción al valor de mercado de cada uno de ellos.

Por último, en el supuesto de gastos de transporte cargados a los clientes que afectaren conjuntamente a la totalidad de los bienes entregados en las cestas objeto de consulta, la distribución de los referidos importes deberá efectuarse aplicando criterios racionales de imputación.

11. Dirección General de Tributos. Contestación nº V0335-16, de 27 de enero de 2016.

Lugar de realización – Ventas de derechos de utilización de campos de golf – Servicios de mediación.

En la presente contestación, la DGT se ha pronunciado sobre el siguiente supuesto de hecho:

La entidad consultante es propietaria de un campo de golf. Sus ingresos proceden de la venta de "Green fees" o derechos de utilización del campo de golf, tanto a los miembros del club (cuota anual) como a otros jugadores (cuota de acceso). La consultante vende "Green fees" a empresarios, generalmente tour operadores que se encuentran establecidos en otros países comunitarios o no.

La DGT comienza su análisis señalando las reglas de localización para determinar cuando los derechos de utilización de campos de golf se deben considerar localizados en el territorio de aplicación del IVA.

En este sentido, para determinar el lugar de realización de las prestaciones de servicios, el artículo 70 de LIVA, como trasposición de la norma contenida en el

artículo 47 de la Directiva, establece que el lugar de prestación de servicios relacionados con bienes inmuebles, será el lugar en el que radiquen los bienes inmuebles.

Una vez establecido lo anterior, la DGT así como el TJUE anuncia, tiene en consideración el reglamento 282/2011 a pesar que los artículos reproducidos en el mismo producirán efectos únicamente a partir del 1 de enero de 2017, para establecer que las prestaciones de servicios que guarden una relación lo suficientemente directa con el inmueble, siendo este el elemento central e indispensable para la determina prestación, debe entenderse realizado en el territorio donde radique el bien inmueble.

Una vez determinado donde se entiende realizada la prestación de servicios, la DGT concluye que los derechos de uso o utilización de un campo de golf, tiene la consideración de servicios relacionados con bienes inmuebles y estarán sujetos al IVA cuando el campo se encuentre situado en el TAI y quedarán gravados al tipo impositivo general.

Por otro lado, la consultante también va a vender los referidos derechos de utilización de campos de golf a otros empresarios o profesionales, no establecidos en TAI. En este sentido, la DGT pone de manifiesto que, el empresario revendedor que actúe en nombre propio de la operación constituirá igualmente un servicio relacionado con bienes inmuebles que estará sujeta al IVA en el TAI cuando el campo de golf se encuentre en dicho territorio con independencia de donde se encuentre establecido y la naturaleza, empresarial o profesional, o de consumidor final de su cliente.

En relación con el servicio de mediación, el reglamento 282/2011, excluye la consideración de un servicio relacionado con un bien inmueble la mediación por cuenta ajena en los servicios que establece la ley del IVA de hostelería, servicios de alojamiento, acampamento y balneario, pero no la mediación en la venta arrendamiento o cesión de derechos de uso o utilización de otros bienes inmuebles.

En este sentido, establece la DGT del escrito de consulta que la mediación en la prestación de servicios de derecho de uso de un campo de golf cuando el mediador actúa en nombre y por cuenta del cliente, constituye un servicio relacionado con bienes inmuebles.

Por todo lo anterior concluye la DGT, que la mediación en nombre ajeno de los referidos derechos de acceso a campos de golf, cuando el cliente no sea un empresario o profesional actuando como tal, también estará sujeto a IVA cuando el campo se encuentre situado en el TAI, al tratarse de intermediación sobre una operación relacionada con bienes inmuebles.

12. Dirección General de Tributos. Contestación nº V0336-16, V0337-16 y V0338-16, de 27 de enero de 2016.

Régimen especial de las agencias de viajes – Organización de reuniones y eventos – Sujeción de las operaciones al Impuesto sobre el Valor Añadido.

La consultante es una asociación empresarial de agencias de viajes cuyas empresas asociadas prestan servicios en el segmento "MICE" (mítines-reuniones, incentivos, conferencias y eventos), por lo que suministran en nombre en propio a sus clientes servicios relativos a la organización de reuniones, conferencias, seminarios, simposios, convenciones, congresos, presentaciones de productos, programas de incentivo y cualquier otra clase de evento de naturaleza similar.

En la presente contestación, la DGT se ha pronunciado sobre el tratamiento a efectos del IVA que deben recibir los siguientes supuestos de hecho descritos por la entidad consultante:

a) Una entidad bancaria con sede en Canadá solicita a una entidad organizadora de eventos con sede asimismo en tal país que organice la reunión del consejo ejecutivo de la entidad bancaria en Barcelona. La entidad organizadora de eventos canadiense a su vez subcontrata la organización de tal evento a una de las entidades asociadas. El evento tendrá lugar durante dos días con reuniones durante las mañanas.

   La entidad asociada plantea una propuesta de evento que requiere de los siguientes servicios: localización, examen y reserva del espacio adecuado para la realización de las jornadas de trabajo de acondicionamiento de las salas así como suministro de material de trabajo, incluyendo carpetas, documentación técnica, etc.; contratación de servicios de restauración durante las jornadas, contratación de otros servicios de restauración durante el evento, organización de diferentes visitas guiadas por la ciudad, organización de una actividad de "team building", así como todos los traslados.

   En este supuesto, explica el Centro Directivo, el servicio que presta la agencia de viajes a la entidad organizadora de eventos con sede en Canadá tendrá la consideración de un servicio único de organización de un evento empresarial que estará no sujeto al IVA en la medida que su destinatario tiene la consideración de empresario o profesional no establecido en el territorio de aplicación del Impuesto.

   Lo anterior es así porque, según aclara la propia DGT en su contestación, cuando el empresario o profesional que presta un servicio de organización del congreso o evento empresarial al promotor, tenga o no la consideración de agencia de viajes, incluya entre sus prestaciones algún servicio de alojamiento o transporte, parecería artificial excluir de este servicio único compuesto por una

pluralidad de elementos íntimamente ligados aquellas prestaciones de servicios de transporte o alojamiento que sean accesorias, pero complementarias, del propio servicio único de organización del congreso o del evento empresarial.

No obstante lo anterior, cuando la agencia de viajes se limite a prestar, de forma aislada e independiente, uno o varios de los servicios descritos en el escrito de consulta como servicios complejos de organización de congresos y eventos y, en general, cuando los servicios no puedan calificarse por sí solos como servicios complejos de organización de congresos y eventos, cada prestación de servicio quedará sujeta al IVA de manera independiente, según las normas que en cada caso le sean aplicables.

b) Un particular con domicilio en la India solicita a una de las entidades asociadas que organice en Barcelona la ceremonia nupcial de su hija según el rito tradicional del país que tendrá una duración de tres días.

   La entidad asociada va a prestar los siguientes servicios: organización de una cena de bienvenida con visita guiada y espectáculo; localización, examen y reserva y adecuación de los espacios para la celebración de la ceremonia nupcial; organización del servicio de restauración de la ceremonia; organización de diversos espectáculos durante la ceremonia; organización de una fiesta de despedida que incluye servicios de restauración y espectáculos; todos los traslados; servicios de alojamiento en los hoteles seleccionados y asistencia a los invitados durante el evento.

   En este supuesto, la DGT concluye que el servicio prestado por la agencia de viajes al particular estará sujeto al régimen especial de agencias de viaje y tendrá la consideración de una prestación de servicios única que estará sujeta al IVA cuando la agencia de viajes tenga establecida la sede de su actividad económica o posea un establecimiento permanente desde donde se efectúe la operación en territorio de aplicación del Impuesto.

c) Una entidad aseguradora con sede en Estados Unidos solicita a una agencia de viajes británica la celebración de un evento en Madrid cuya organización subcontrata con la entidad asociada. El evento consiste en la celebración de un programa de motivación para los mejores vendedores de la compañía en el año.

   La entidad asociada plantea una propuesta de evento que requiere de los siguientes servicios: localización, examen, reserva del espacio adecuado para la realización de la jornada de presentación de los resultados del concurso de ventas; acondicionamiento de las salas así como suministro de material de trabajo; contratación de servicios de restauración durante la jornada, organización de una cena de gala para la entrega de los premios a los mejores vendedores; organización de la actividad de “team building” y diversas visitas guiadas por la ciudad y todos los traslados.

El servicio que presta la agencia de viajes a la entidad británica quedará sujeta al régimen especial de las agencias de viajes, cuando como se ha señalado, comprenda alojamiento en hoteles, transportes, restaurantes, alquiler de vehículos, guías turísticos y actividades recreativas en el marco del cual de forma, accesoria o complementaria se vaya a realizar alguna actividad relacionada con la empresa que lo contrata, que estará sujeto al Impuesto sobre el Valor Añadido en el territorio de aplicación del Impuesto.

Lo anterior deberá entenderse sin perjuicio de la opción a la aplicación del régimen general del impuesto en las condiciones señaladas en el artículo 147 de la Ley del IVA, en cuyo caso, cada prestación de servicios quedará sujeta al Impuesto sobre el Valor Añadido de manera independiente, según las normas que le sean aplicables.

d) Una empresa patrocinadora de un equipo de fútbol nacional con sede en el territorio de aplicación del Impuesto solicita a la entidad asociada la organización de un evento en Berlín con motivo de la celebración de la final de la Champions League de futbol. Al mismo asistirán tanto los principales directivos de la empresa como ciertos directivos de clientes de relevancia.

   La entidad asociada plantea una propuesta de evento que requiere de los siguientes servicios: localización, examen y reserva del espacio adecuado para la realización de una jornada de trabajo en la que se discutirán los aspectos fundamentales de los contratos de patrocinio en los clubs de futbol; acondicionamiento de las salas así como suministro de material de trabajo; contratación de servicios de restauración durante la jornada; entradas al estadio donde se celebra la final de la Champions League; visita guiada y cena el día de llegada; todos los traslados; servicios de alojamiento y transporte desde/a las ciudades de origen.

   El servicio prestado por la agencia de viajes a la empresa de referencia estará sujeto al régimen especial de agencias de viajes, y tendrá la consideración de prestación de servicios única que estará sujeta al Impuesto sobre el Valor Añadido cuando la agencia de viajes tenga establecida la sede de su actividad económica o posea un establecimiento permanente desde donde efectúe la operación en el territorio de aplicación del Impuesto.

   Lo anterior deberá entenderse sin perjuicio de la opción a la aplicación del régimen general del impuesto en cuyo caso, cada prestación de servicios quedará sujeta al Impuesto sobre el Valor Añadido de manera independiente, según las normas que le sean aplicables.

e) Una peña futbolística solicita a una entidad asociada la organización de la asistencia a la final de la Champions League de futbol en Berlín.

   La entidad asociada plantea la siguiente propuesta: visita guiada de la ciudad y cena el día de llegada; entradas al estadio donde se celebra la final de la Champions League; todos los traslados; servicios de alojamiento y transporte desde/a las ciudades de origen.

Finalmente concluye la DGT que, el servicio prestado por la agencia de viajes a la peña futbolística estará sujeto al régimen especial de agencias de viajes, y tendrá la consideración de prestación de servicios única que estará sujeta al Impuesto sobre el Valor Añadido cuando la agencia de viajes tenga establecida la sede de su actividad económica o posea un establecimiento permanente desde donde efectúe la operación en el territorio de aplicación del Impuesto.

III. Country Summaries

OECD

OECD survey on cost of irrecoverable VAT/GST incurred in foreign jurisdictions

The OECD has launched a **survey to assess the scope and magnitude of costs of irrecoverable VAT/GST incurred by businesses in jurisdictions where they are not established**. This is part of an ongoing OECD project, *Measuring Total Business Taxes*, to estimate total business taxes across countries by accounting for business taxes paid in addition to corporate income taxes, including VAT/GST. This survey is intended to update the 2010 business survey on foreign VAT/GST relief for foreign businesses, summarized in the report ***VAT/GST Relief for Foreign Businesses: The State of Play***.

The work is closely linked to the recently released ***International VAT/GST Guidelines***, a set of internationally agreed standards for governments on the application of VAT/GST to cross-border trade that confirm the core principle of VAT neutrality. The survey seeks to gather quantitative data in the area of VAT/GST relief as well as some important qualitative information.

Responses are sought by 15 March 2016.

Americas

Argentina

End of foreign exchange restrictions

On 16 December 2015, the new Ministry of Economy announced the long-awaited lifting of most of the foreign exchange restrictions that had impacted inbound and outbound investments, as well as Argentine foreign trade.

Whilst certain measures are still pending clarification regarding implementation, outlined below are the main aspects to be considered.

Acquisition of foreign currency for local and foreign investment and tourism: Previously, it was not possible for companies to acquire foreign currency for treasury or investment purposes, and individuals had a limit of USD 2,000 per month (and lower for small salaries). Also, residents that were allowed to acquire foreign currency, and any application of foreign currency to tourism and travel, were subject to income tax withholdings of 20% and 35% respectively. As of 16 December 2015, acquisitions are still limited, but to USD 2,000,000 per month, and income tax withholdings are eliminated.

Payments for imports of goods to foreign suppliers: There was an unwritten (and unofficial) limit of USD 50,000 per day. For imports with shipments made as from 16 December 2015, importers can freely access the foreign exchange market to pay foreign suppliers. Furthermore, the previously mentioned limit has generated an accumulation of outstanding debt that should be paid in the near future. In December, importers with debt were allowed to pay up to USD 2,000,000. Between January and May 2016 they will have access to USD 4,500,000 per month, and will be able to pay any remaining balance as from June 2016. It is speculated that the Government will introduce an alternative scheme by the offer of some bonds to be sold in Argentine Pesos.

Payments for imports of services to non-residents (this could also include royalties and potentially dividends, but this is not yet certain): The previously mentioned limit of USD 50,000 per day applied jointly to goods and services. Now, for services rendered or accrued as from 16 December 2015, local residents can freely access the foreign exchange market to pay foreign service providers. Furthermore, the previously mentioned limit has generated an accumulation of outstanding debt that should be paid in the near future. In February 2016 residents with debt with non-residents for services, were allowed to pay up to USD 2,000,000. Between March and May 2016 they will have access to USD 4,000,000 per month, and will be able to pay any remaining balance as from June 2016. It is speculated that the Government will introduce an alternative scheme by the offer of some bonds to be sold in Argentine Pesos.

Foreign debt: Any foreign debt payable in USD had a mandatory sale of foreign currency, a minimum medium term of a year, and in many cases was subject to a non-remunerated deposit (block) of 30% of its amount for a year term. As from 16 December 2015, it is not necessary for any new debt to have a connected sale of the foreign currency, the minimum term is reduced to 120 days, and the non-remunerated deposit is eliminated. However, the access to foreign currency for cancelling debt and related interest still has the requirement that the original indebtedness should have generated a sale of foreign currency, so if there was no original sale of foreign currency, there will be no access to acquire foreign currency at maturity of capital and/ or interest.

Portfolio investment: Portfolio investments of non-residents that generated a sale of foreign currency will have access to the foreign exchange market when repatriated, without authorization of the Central Bank, provided the minimum investment term is complied with.

New exports: Regulations connected with exports did not change, and therefore the obligation for the sale of foreign currency at the applicable due dates was maintained.

New imports of goods: Following a decision of the WTO, Argentina removed the Previous Authorization for Imports (DJAIs) from 1 January 2016. However, it is expected that for some industrialized products (approximately 1,000 tariff headings) the Government will reinstate the application of non-automatic licenses. Based on this, appropriate filing and presentations will be crucial in order to maintain normal trade.

New imports of services: The Government removed the requirement for prior Central Bank authorization to proceed with payment. However, commercial banks handling foreign remittances must still check that the service was actually rendered, that it was connected with the company's business and that the amount to be paid is fair. Based on this, proper documentation of the transaction and its pricing will still remain as a very important element, where transfer pricing studies play an important role.

New foreign exchange rate: The Government has stated that it will allow a controlled flotation of the foreign exchange rate, estimated at the levels that had the blue-chip-swap (alternative methodology to acquire foreign currency in a legal way by the arbitration of investments in financial instruments), which were around Argentine Pesos 15 per USD. This will reduce the use of this methodology, which was increasingly applied in recent times and was very used in connection with inbound investments/ capital contributions (as it provided for approximately a 50% increase in the amount of Argentine Pesos obtained) and payments to foreign suppliers of goods and services, as well as shareholders in connection with dividends.

Canada

HST rate change in New Brunswick

The Government of New Brunswick announced an increase to the provincial component of the Harmonized Sales Tax (HST) of 2 percentage points commencing 1 July 2016, raising the combined GST/HST rate from 13% to 15%. This will affect any GST/HST registrant making supplies into the province of New Brunswick.

Costa Rica

New regulation for dairy products (cream and cream prepared)

The new Costa Rican technical regulation "Central American Technical Regulation RTCA 67.04.71: 14 Dairy products. Cream and cream prepared. Specifications" entered into force through Executive Decree No. 39431-COMEX-MEIC-MAG-S, published in Section no. 9 of the Official Gazette on 29 January 2016.

The technical regulation applies to: cream; whipping cream and whipped cream; high-fat whipping cream and high-fat whipped cream; and double cream.

The regulation establishes the requirements to be met for the production of cream and prepared cream intended for direct human consumption or further processing in the territory of the Central American countries. It includes provisions on the classification; composition; pollutants; hygiene; labeling; packaging, storage and distribution; sampling and analysis; as well as monitoring and verification.

This new technical regulation is in force from its publication in the Official Gazette and repeals Executive Decree No. 35406-MEIC-MAG-S that refers to “RTCR 412: 2008 Cream and Sour Cream”, with effect from 21 April 2009.

Central American companies that produce, for the local market and/ or Central American markets, cream and cream prepared intended for direct human consumption or further processing, must adapt their products or methods of production, to comply with the provisions of this new technical regulation.

Panama

Additional VAT withholding agents designated

The Government has enacted regulations, based on paragraph 4 of Article 1057-V of the Tax Code, extending VAT withholding mechanisms to enterprises explicitly appointed by the Revenue Office as withholding agents that meet the criteria of making annual purchases of USD 10,000,000 or greater. This mechanism also applies to entities that administer processing and payments through credit and debit card platforms.

VAT withholding obligations for entities listed above were intended to come into effect on 1 November 2015. However, in response to proposals submitted by the Panama Chamber of Commerce and taxpayers who experienced difficulties in adjusting their ERP systems to comply with these obligations, the Revenue Office postponed its implementation until 1 February 2016. Under exceptional circumstances, and if related to sustained technology difficulties, withholding agents can request a deferment of two months to comply with this process.

Under the VAT withholding mechanisms, VAT withholding agents must withhold a portion of the VAT charged to them in respect of supplies of goods and services, and remit it to the Revenue Office instead of paying the total VAT applicable to the supplier or service provider. The amount to be withheld will be equivalent to 50% of the tax rate applicable to the transaction.

Administrators or issuers of credit and debit cards that manage the processing of payments are also required to act as withholding agents of the VAT triggered by the sale of taxable goods and services paid by way of a credit or debit card. During a transitional period, which will run from 1 February to 31 December 2016, the amount to

be withheld will correspond to 2% of the total sales transaction (or 1% for food and pharmacy retail activity). Starting 1 January 2017, VAT withholding will be equivalent to 50% of the tax rate applicable to the transaction.

Suppliers and service providers will be entitled to deduct from their output VAT the percentage of tax withheld by their customers under the withholding mechanism. A withholding voucher must be delivered by the withholding agent in order to claim tax credits/ VAT withholdings through the VAT monthly return.

United States

Alabama: Guidance on new 'economic presence' rule for out-of-state sellers making threshold 'significant sales' into Alabama

The Alabama Department of Revenue recently issued a notice reminding out-of-state sellers with 'a substantial economic presence in Alabama' to collect and remit Alabama tax on their sales into the State for all transactions occurring on or after 1 January 2016, regardless of whether they have an Alabama physical presence, pursuant to the Department's new administrative rule (Amended Rule 810-6-.90.03), which establishes dollar threshold conditions under which certain out-of-state sellers must collect and remit Alabama sellers use tax.

The Department explains that this administrative rule imposes a collection obligation on out-of-state sellers who engage in one or more activities subjecting out-of-state sellers to Alabama's seller use tax levy, and who had USD 250,000 or more in retail sales sold into Alabama in the previous year. The Department additionally explains that such out-of-state sellers may satisfy the rule's requirements by collecting, reporting and remitting tax on sales made into Alabama pursuant to the provisions of Article 2, Chapter 23 of Title 40, Code of Alabama 1975, or by participating in Alabama's 'Simplified Seller Use Tax Remittance Program'.

Michigan: New cloud computing policy and related refund procedures

The Michigan Department of Treasury has issued a notice discussing a recent Michigan Court of Appeals decision on whether certain products were subject to the imposition of state use tax on prewritten computer software delivered in any manner. The Department explains that those portions of its previously issued revenue administrative bulletin on this related issue [RAB 1999-5] that are inconsistent with this recent Michigan Court of Appeal ruling "no longer represent the Department's policy". Accordingly, under this case law and new Department policy, if only a portion of a software program is electronically delivered to a customer, Michigan's 'incidental to service' test will be applied to determine whether the transaction constitutes the rendition of a nontaxable service rather than the sale of tangible personal property. However, if a software program is electronically downloaded in its entirety, it will be taxable.

The Department additionally explains that Michigan taxpayers seeking a refund of taxes paid for a product falling within this new policy must file a written refund request with the Department within the applicable statute of limitations. The request should include any necessary documentation to support the refund. If the refund is for a prior year, the taxpayer must include amended annual returns for the years involved with the refund request. The Department notes that if the underlying tax was paid to a vendor, the taxpayer must request a refund from the vendor.

Asia Pacific

Australia

GST relief for B2B cross-border transactions

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 (the Bill) was introduced to the House of Representatives on 10 February 2016. Proposed amendments to the GST legislation relating to B2B cross-border transactions will reduce the number of non- residents in the GST system by:

- Expanding the GST-free treatment for non-residents acquiring services and other intangibles from Australian businesses;
- Reducing the number of non-residents that need to register for
- GST to recover GST paid on business expenses; and
- Reducing the circumstances that require a non-resident to register for GST in Australia when supplying certain services to Australian businesses.

The changes will affect Australian businesses transacting with non- residents (requiring a review of the current GST treatment and required systems and administrative changes to comply). Non-residents currently within the Australian GST system should review their future GST obligations.

Importantly, the commencement date of this change will occur at the start of the second quarter following Royal assent, which may mean the change becomes effective as early as 1 July 2016.

For a detailed summary prepared at the release of exposure draft legislation, please refer to **GST and B2B cross-border transactions: Reducing non-residents in GST system**.

Extending GST to digital products and other services imported by consumers

Amendments in the Bill also impact non-resident businesses supplying digital products and services to Australian consumers.

Non-resident suppliers and intermediaries transacting with Australian consumers should review their Australian GST obligations as a result of the proposed amendments.

It is anticipated by Treasury that approximately 100 non-resident entities will register for and remit GST, through either a simplified or full GST registration as a result of this amendment. According to Government documents, the Australian Tax Office will be provided with AUD 1.7 million over the forward estimates to administer these changes, and plan to encourage compliance through international collaboration with other revenue authorities and activating international treaties that cover exchange of information and debt collection with foreign jurisdictions in the area of GST.

The commencement date of this change is 1 July 2017.

For a detailed summary of the changes, please refer to **GST and B2C digital imports: Revised exposure draft bill released**.

China

VAT Reform timeline update

China's commitment to complete the VAT Reform by the end of 2015 did not happen, due to the complexity of the Reform coupled with the Chinese economic situation in 2015.

On 22 January 2016, Premier Li Keqiang held a discussion forum. At the conference, it was indicated that the Reform shall be expanded to all industries in 2016. However, there is no official timeline to confirm the timetable for the Reform for each of the remaining sectors. This news is of no surprise. However, in recent days, there has been mounting speculation that the date of the VAT Reform implementation could be as soon as 1 May 2016. This speculation is partly supported by a Circular issued by the Ministry of Residential Property, City and Rural Construction on 19 February 2016, requesting construction companies to adjust their pricing formula by adding VAT before the end of April 2016.

Implementation rule for Circular 118 released

On 14 December 2015, China's State Administration of Taxation (SAT) issued Bulletin 88, setting out the implementation guidance for Circular 118 on the application of VAT zero-rated treatment, applicable to an expanded group of services provided offshore, including:

- Software services, circuit design and testing services, information system services, business process management services and offshore outsourcing services;

- Production and distribution of radio, film and television programs (works); and

- Technology transfer services.

A more flexible procedure is introduced under Bulletin 88 which allows a taxpayer to apply for VAT-exempt treatment for the relevant supplies if the refund request was not made in a timely manner. Input tax can be refunded if it is used for zero-rated supplies, whilst with a VAT exemption filing, no VAT will be charged, but the taxpayer will not be able to recover the relevant input VAT.

Bulletin 88 has a retrospective effect from 1 December 2015.

Impacted taxpayers are recommended to take immediate action to explore possibilities to enjoy the preferential tax treatment to reduce supply chain costs. Bulletin 88 is a clear signal that China is aiming to expand the scope of zero-rated services which, in the past, were limited to the services of R&D and international transportation.

Update on general VAT electronic invoices

With effect from December 2015, the general VAT electronic invoice pilot trial was rolled out nationwide. Taxpayers wishing to issue VAT general invoices (which are often issued to individuals and cannot be used to support an input VAT credit claim) in electronic format must apply to their in-charge tax bureau to set up the system and controls for electronic invoice issuance purposes.

2016 tariff policy announcement

China's tariff policy for 2016, which sets out revisions to the tariff codes, as well as export, interim and conventional duty rate policies, was released in December 2015 with additions and adjustments to the annotations on certain tariff codes dated February 2016, which would be effective from March 2016. The 2016 tariff policy reflects the Government's intention to balance the economy, which brings both opportunities and challenges for affected industries.

Expansion of products eligible for processing trade relief

China's Ministry of Commerce (MOFCOM) and the General Administration of Customs (GAC) jointly issued two sets of guidance (Bulletins 59 and 63) that revise the catalogues of goods that are prohibited/ restricted from processing trade relief (PTR) (the Catalogues). The issuance of both bulletins is welcome, as they remove certain goods from the original Catalogues, thus expanding the product groups eligible for PTR.

Similar to inward processing relief, PTR allows goods to enter into China under a bonded status (which means that no duty/ import taxes are due) provided the finished goods are exported after processing. Although China encourages the development and use of PTR, certain goods (most of which are high energy consumption and pollution causing) are prohibited or restricted from import or export for PTR purposes.

Expansion of cross-border e-Commerce zones

Since October 2013, the Chinese Government authority has authorized a large trial in seven pilot cities for cross-border e-Commerce (CBEC) that establishes specialized CBEC zones in the cities of Hangzhou, Shanghai, Guangzhou, Shenzhen, Chongqing, Ningbo and Zhengzhou. On 16 January 2016, the State Council expanded the list to include Tianjin, Hefei, Chengdu, Dalian, Qingdao and Suzhou – expanding it to 13 cities in all.

Cross-border e-Commerce has been a grey area in the past. More rules are expected to be released in future to promote this new business model and, at the same time, strengthen regulatory controls from the supervision perspective.

India

Increase in VAT rates in States of Bihar and Rajasthan

With effect from 28 January 2016, the residuary VAT rate under the Bihar VAT Act, 2005 has been increased from 13.5% to 14.5%.

With effect from 2 February 2016, the rate of VAT under the Rajasthan VAT Act, 2003 has been increased from 5% to 5.5% on the goods specified in Schedule IV of the Act.

Amnesty scheme for waiver of interest and penalties under Rajasthan VAT and sales tax law

Amnesty Scheme, 2016 has been introduced by the Rajasthan State Government for taxpayers with total outstanding sales tax, VAT or central sales tax demands up to 30 June 2015 of less than INR 150 million.

The scheme provides for the waiver of interest and penalties to the applicant on the basis of the category of the tax demand and on fulfilling the conditions set out in the scheme.

The scheme was effective from 21 January 2016 and will remain in force up to 15 March 2016.

Procedure for renewal of Special Valuation Branch of Customs (SVB) orders and ongoing SVB inquiries

The Central Board of Excise and Customs (CBEC), vide Circulars No. 4/2016-Customs and No. 5/2016-Customs dated 9 February 2016, has issued instructions for the examination of transactions involving related parties and those involving payment of royalties, license fees, etc.

Some of the highlights of the Circulars are as follows:

- A system of one-time declaration is being provided in order to facilitate quick disposal of cases currently pending with SVBs for renewal.

- The SVBs shall promptly scrutinize the declarations and shall immediately inform the Customs stations where provisional assessments have restarted due to the process of renewal to immediately discontinue obtaining Extra Duty Deposit (EDD) and finalize the related provisional assessments.

- All pending SVB investigations (other than renewal cases) where EDD is being collected, are required to be reviewed in terms of para 3.2 of the Circular No. 5/2016-Customs, dated 9 February 2016. If the importer has provided information and documents as required by the SVB, EDD shall be discontinued forthwith.

- For new cases, no security in the form of EDD shall be obtained from importers. However, if an importer fails to provide documents and information required for SVB inquiries within 60 days of requisition by the SVB, a security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months.

- The present practice of issuing an appealable SVB order is being dispensed with. SVB shall convey its investigative findings by way of an investigation report to the referring Customs formation for finalizing the provisional assessment.

- Circular No. 5/2016-Customs also prescribes the detailed procedure to be followed by the Customs Commissioner for referring the matter to SVB, the procedure to be followed by SVB for investigation, and the procedure to be followed for final assessment.

The said Circulars have been overdue on account of the difficulties faced by related party importers and the matters pending at the SVB. The revised procedures prescribed are expected to facilitate the ease of doing business in India.

Kazakhstan

Amendments to customs administration law

Republic of Kazakhstan Law № 432-V of 3 December 2015 amended:

- Code of the Republic of Kazakhstan dated 10 December 2008 “On taxes and other obligatory payments to the budget” (the Tax Code);

- Code of the Republic of Kazakhstan dated 30 June 2010 “On Customs Affairs in the Republic of Kazakhstan” (the Customs Code).

The Law was officially published on 5 December 2015.

Below are the most significant changes to the customs regulations.

- Article 142 of the Customs Code has been amended to allow taxpayers to obtain information on their customs payments and debts via a web portal. The information must be provided by the Customs authority as specified in Article 598 of the Tax Code.

- Article 157 of the Customs Code has been amended with regards to the ability of the Customs authorities to carry out inspections where the taxpayer is absent from the location. If postage or other communication is returned due to the absence of the taxpayer at an address, the Customs authority can inspect the taxpayer’s location within ten days.

- Article 159 of the Customs Code has been amended to provide that notice of the recovery of customs payments, taxes and penalties can be sent by electronic means with the written consent of the taxpayer.

- There are also amendments regarding the complaint process.

- There are amendments to Article 220 and 220-1 of the Customs Code regarding in-house control in connection with the unification of the order of cameral customs inspections, in accordance with the provisions of the tax law.

Excise taxes on petrol and diesel fuel

Government Resolution № 887 of 6 November 2015 amended the excise tax rates on gasoline, except for aviation (2710 12 411 – 0 2710 12590 CN FEA code). The Resolution came into effect on 25 November 2015.

Rules for import and export of pharmaceuticals, medical products and medical equipment

Order of the Minister of Health and Social Development of the Republic of Kazakhstan № 668 of 17 August 2015 approved the rules of entry into the territory of the Republic of Kazakhstan of medicines, medical products and medical equipment and the export from the territory of the Republic of Kazakhstan of medicines, medical products and medical equipment. The Order entered into force on 14 October 2015.

Thus, the import of medicines from countries that are not Eurasian Economic Union Member States shall be in accordance with the regulation on the importation into the customs territory of the Customs Union of medicines and pharmaceutical substances approved by Eurasian Economic Commission Board Resolution № 134 of 16 August 2012.

A decision on the importation of drugs into the territory of the Republic of Kazakhstan is made by the authorized body or its territorial divisions.

The movement of drugs under customs procedures (including release for domestic consumption, processing for domestic consumption, re- importation, and refusal in favor of the state) is carried out under the proviso that the drugs are included in the state register of medicines, medical products and medical equipment of the Republic of Kazakhstan.

Rules for issuing permits for transit

Order of the Minister for Investment and Development of the Republic of Kazakhstan № 384 dated 31 March 2015 in accordance with the Law of the Republic of Kazakhstan of 21 July 2007 “On export control” approved the rules for issuing permits for the transit of goods. The Order came into force on 4 December 2015.

The issuance of permits for the transit of goods subject to export control shall be made by the authorized bodies responsible for state regulation in the field of export control in the prescribed form. These rules apply to individuals and legal entities.

Also, the Order defines the list of documents required to obtain a permit.

Improvement of special economic zones

Republic of Kazakhstan Law № 362-V of 27 October 2015 made amendments and additions to some legislative acts of the Republic of Kazakhstan on the improvement of special economic zones (SEZ), including:

- Code of the Republic of Kazakhstan dated 10 December 2008 “On taxes and other obligatory payments to the budget”;

- The Law of the Republic of Kazakhstan dated 21 July 2011 “On special economic zones in the Republic of Kazakhstan”.

The Law entered into force ten calendar days after its first official publication, except for certain paragraphs that came into effect on 1 January 2015 and 1 January 2016. The Law was officially published on 29 October 2015.

In addition, the new Law amends Articles 151-1 to 151-10 of the Tax Code, which set out the priority activities and the list of facilities, construction of which is intended for the implementation of these activities, as well as the procedure for the inclusion of priority activities and facilities.

Malaysia

GST impact of Budget 2016 on oil and gas industry

Budget 2016, as delivered to the Malaysian Parliament in October 2015, included a number of issues relevant to the oil and gas industry, although a number of issues remain unresolved. The below sets out some of the issues for the industry.

2015 saw the well-anticipated introduction of GST on 1 April 2015, but also a plummeting oil price, which took some by surprise, and impacted on many operations.

The Government had a number of challenges to address in the Budget, one of which was to replace the revenue lost as a result of the oil price. GST has assisted the Government in raising that revenue. However, the oil price has also limited the Government’s options for addressing some of the concerns around the treatment of GST in practice when applied to industries such as oil and gas.

While the Budget was able to give a concession around the treatment on the reimportation into Malaysia of equipment that had been exported temporarily for the purpose of rental or lease outside Malaysia, it also provided for new penalties for late GST returns, as well as late, or non- payment of outstanding GST.

Since the Budget, oil prices have reduced from an average of approximately USD 50 per barrel to close to USD 30 per barrel currently. This could see a significant reduction in revenue for the budget unless additional revenue is found elsewhere. In a recent mini- Budget, it appears that this has been found almost exclusively from the collection of GST as, since the implementation of GST, over MYR 51 billion (approx. USD 1.2 billion) in revenue has been collected, compared to MYR 32.7 billion (approx. USD 775 million) in 2014, without GST.

Many of the actions and decisions by Royal Malaysian Customs (the tax authority responsible for GST) on the application of GST impact on VAT refund claims, with particular consequences for the oil and gas industry, as set out below.

GST refunds requested in the first GST returns filed often resulted in a review by Customs and lengthy delays before being paid out, in some cases, highlighting issues where the treatment applied was not necessarily what taxpayers had anticipated, including the following.

Businesses requesting a GST refund because, for example, they were making zero-rated export supplies, ultimately received the refunds claimed. For others, however, the issue became more complex. Those most affected included those in the exploration and production sector and the services sector involving construction, refurbishment or repair of significant plant and equipment required by the oil and gas industry. Most had registered for GST in the expectation that they were entitled to do so, as they were engaged in a business with the intention of making taxable supplies. However, Customs has taken a different view. Businesses are required to GST register if they make in excess of MYR 500,000 (approx. USD 118,000) in any 12 month period. If they do not, then they may apply to register voluntarily. If registering voluntarily, the acceptance of the registration request is at the discretion of the Director General of Customs, and may be subject to certain requirements. The current position of Customs is that if a business (however legitimate) is not able to evidence that it will make taxable supplies within 12 months of applying for voluntary registration, it will not be allowed to register. This impacts on the business's ability to claim refunds of GST incurred prior to when it is first able to register, adding GST to the costs of any such projects. Where the exploration and production process through to when an entity is able to register for GST purposes can easily last more than five years, this could result in significant additional cost.

Similar issues arise for oil and gas service providers tendering internationally for work to be undertaken in Malaysia. To register an SPV to undertake significant oil and gas infrastructure work over a number of years, providers are faced with a choice:

- If they are not able to progress bill, they may not be able to register voluntarily and claim input tax credits.

- If, contractually, they can progress bill, they may be required to charge GST at 6% to overseas clients, as they may not fulfil the requirements for zero-rating (because the time of supply for GST purposes will occur when the goods that are the subject of the services are in Malaysia), and the overseas recipients of the services may not be entitled to GST register, meaning that either GST is an additional cost to the customer or affects the service provider's profitability.

There is a further issue in relation to the import of goods subject to GST paid by the importer of record. Under the previous sales tax regime, there was no import duty and no sales tax where the Master Exemption List (MEL) applied. However, with very limited exceptions, the MEL does not generally apply to GST. Also, the general commercial practice is that, although goods are brought into Malaysia by the importer of record,

supplies of imports are made via a local ‘agent’ with ownership transferred to the actual importer after the goods are in Malaysia. As a consequence, GST is in effect levied twice, i.e., upon importation (as the importers would still want to enjoy the MEL import duty exemption) and on local supply made by the local ‘agent’.

Where the local importing entity is able to GST register, this will be a cashflow issue. However, where the importer of record is not able to voluntarily register for GST, the goods being imported will be subject to GST twice, without any relief by way of input tax credit.

The above issues have a potentially significant effect on the oil and gas industry and may have a negative impact on investments and cost competitiveness, in some cases making the difference between whether or not a project is considered to be viable.

This is a particular concern where the treatment appears to be contrary to the principle of neutrality (that VAT/GST should not be a burden on businesses making taxable supplies), which is widely accepted as a foundation of VAT/GST regimes around the world, and included in the OECD VAT/GST guidelines. These issues will need to be resolved for the medium- and long-term, and options for resolution have been raised with the Government.

Trade Preferences

Trans-Pacific Partnership

Implementing the customs provisions of WTO’s Trade Facilitation Agreement and Trans-Pacific Partnership

Assuming that both the World Trade Organization’s (WTO) Trade Facilitation Agreement (TFA) and Trans-Pacific Partnership (TPP) are ratified, customs administrations in the 12 TPP member states, all of which are also members of the WTO, will be faced with implementing similar but slightly different provisions. The TPP member states are: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam.

As detailed in the table below, it is clear that many of the provisions in Chapter 5 of the TPP (Customs Administration and Trade Facilitation) mirror the provisions of the WTO Trade Facilitation Agreement (TFA). (In December 2013, WTO members concluded negotiations on a Trade Facilitation Agreement at the Bali Ministerial Conference, as part of a wider ‘Bali Package’. Since then, WTO members have undertaken a legal review of the text. In line with the decision adopted in Bali, WTO members adopted on 27 November 2014 a Protocol of Amendment to insert the new Agreement into Annex 1A of the WTO Agreement. The Trade Facilitation Agreement will enter into force once two-thirds of members have completed their domestic ratification process.)

WTO TFA	TPP, Chapter 5
Art.1 Publication and availability of information	Article 5.1: Customs Procedures and Facilitation of Trade
Art.2 Consultation	Article 5.2: Customs Cooperation
Art.3 Advance ruling	Article 5.3: Advance Rulings
Art.4 Appeal/Review procedures	Article 5.4: Response to Requests for Advice or Information
Art.5 Other measures for transparency, etc.	Article 5.5: Review and Appeal
Art.6 Fee and Charges	Article 5.6: Automation
Art.7 Release and Clearance of goods	Article 5.7: Express Shipments
Art.8 Border Agency Cooperation	Article 5.8: Penalties
Art.9 Movement of goods intended for import	Article 5.9: Risk Management
Art.10 Formalities	Article 5.10: Release of Goods
Art.11 Transit	Article 5.11: Publication
Art.12 Customs cooperation	Article 5.12: Confidentiality

Both the WTO TFA and TPP contain provisions for expediting the movement, release and clearance of goods. Both agreements set out measures for effective cooperation between Customs on trade facilitation and customs compliance issues. Both agreements also make provision for *inter alia* Advance Rulings.

Comparison between the WTO TFA and TPP: Advance Rulings

The articles covering Advance Rulings from the respective agreements are set out side-by-side in the table below.

WTO TFA Article 3: Advance Rulings	TPP Article 5.3: Advance Rulings
1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party,[1] with regard to:[2] (a) **tariff classification**; (b) the application of **customs valuation** criteria for a particular case in accordance with the Customs Valuation Agreement; (c) whether a good is **originating** in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and (d) such **other matters** as the Parties may decide. 2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than **150 days** after it receives a request, provided that the requester has submitted all the	1. Each Member shall issue an advance ruling in a **reasonable, time-bound manner** to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision. 2. A Member may **decline to issue an advance ruling** to the applicant where the question raised in the application: (a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or (b) has already been decided by any appellate tribunal or court. 3. The advance ruling shall be **valid for a reasonable period of time** after its issuance unless the law, facts, or circumstances supporting that ruling have changed.

WTO TFA Article 3: Advance Rulings	TPP Article 5.3: Advance Rulings

information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the requester is seeking an advance ruling if requested by the receiving Party. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the requester has provided. For greater certainty, a Party **may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review**. A Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect **for at least three years**, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged.

4. After issuing an advance ruling, the Party may **modify or revoke** the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on **inaccurate or false information, or if the ruling was in error**.

5. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides **notice of the modification or revocation** and the reasons for it.

6. No Party shall apply a **revocation or modification retroactively to the detriment of the requester** unless the ruling was based on inaccurate or false information provided by the requester.

7. Each Party shall ensure that requesters have access to administrative **review of advance rulings.**

4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on **incomplete, incorrect, false, or misleading information**.

5. An advance ruling issued by a Member shall be **binding on that Member** in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.

6. Each Member **shall publish, at a minimum**:

   (a) the requirements for the application for an advance ruling, including the information to be provided and the format;

   (b) the time period by which it will issue an advance ruling; and

   (c) the length of time for which the advance ruling is valid.

7. Each Member shall provide, upon written request of an applicant, a **review of the advance ruling** or the decision to revoke, modify, or invalidate the advance ruling.[3]

8. Each Member shall endeavour to make **publicly available any information on advance rulings** which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

9. Definitions and scope:

   (a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to: (i) **the good's tariff classification; and (ii) the origin of the good**.[4]

   (b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on: (i) the appropriate method or criteria, and the application thereof, to be used for **determining the customs value** under a particular set of facts; (ii) the applicability of the Member's requirements for relief or **exemption from customs duties**; (iii) the application of the Member's requirements for

WTO TFA Article 3: Advance Rulings	TPP Article 5.3: Advance Rulings
8. Subject to any confidentiality requirements in its law, each Party shall endeavour to make its **advance rulings publicly available** including online.	**quotas, including tariff quotas**; and (iv) **any additional matters** for which a Member considers it appropriate to issue an advance ruling. (c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof. (d) A Member **may require that the applicant have legal representation or registration in its territory**. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

1. For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorized representative.

2. For greater certainty, a Party is not required to provide an advance ruling when it does not maintain measures of the type subject to the ruling request.

3. Under this paragraph: (a) a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and (b) a Member is not required to provide the applicant with recourse to paragraph 1 of Article 4.

4. It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Agreement on Rules of Origin in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

This commentary does not propose to make a comprehensive comparison between both agreements. Clearly, there are some similarities but also some differences between the requirements of the two agreements in respect of advance rulings. In general, the WTO TFA appears to be more prescriptive whilst the TPP tends to be a little vaguer, for instance:

- The WTO TFA specifically mentions that rulings should cover the application of **customs valuation** criteria, whilst TPP encourages members to provide advance rulings on the appropriate method or criteria, and the application thereof, to be used for **determining the customs value.**

- The WTO TFA states that each party shall issue an advance ruling as expeditiously as possible and in no case later than **150 days** after it receives a request, whilst TPP states that each Member shall issue an advance ruling in a **reasonable, time-bound manner.**

- The WTO TFA states that each advance rulings shall remain in effect **for at least three years, whilst the TPP states that** the advance ruling shall be **valid for a reasonable period of time** after its issuance.

Conclusion

The impact of the TPP on the WTO multilateral approach is not yet fully known. However, from the perspective of businesses trading in the Asia Pacific region, both the WTO TFA and the TPP agreements further enhance trade facilitation and customs modernization. Governments, trade associations and businesses should encourage the customs authorities to implement the most progressive aspects of each agreement in order to ensure uniformity of best practice across the region.

EMEA

Finland

VAT deductibility of costs in relation to acquisition and financing of subsidiaries

On 30 December 2015, the Supreme Administrative Court (SAC) gave a ruling KHO:2015:188 concerning Company A which was a parent company of a group of companies. The subsidiaries of Company A were mostly rendering VAT exempt health and medical care services. Company A supplied taxable management and other similar services to its subsidiaries. Company A also derived dividends and interests from its subsidiaries.

Company A had requested a refund of the input VAT on costs which related to the acquisition and financing of its subsidiary, Company B. According to the SAC, it should be decided separately for each purchase whether the purchase was deemed to be made for the purposes of taxable business activities. The SAC considered that part of the costs related directly to the financing of Company B or other group companies and, therefore, Company A did not have a right to recover the input VAT on the costs. The costs in relation to the acquisition of Company B were deemed to be overhead costs of Company A. Thus, Company A was entitled to recover the input VAT on these costs. The fact that company A had derived significant interest income from its subsidiaries did not have an effect on Company A's right to recover the input VAT on the costs. Further, the SAC concluded that the fact that only a minor part of the group companies' business activities were taxable did not affect the VAT recovery right of Company A.

Central Board of Taxes ruling on VAT treatment of private equity funds

The Central Board of Taxes (CBT) considered the VAT treatment of a private equity fund's Management Company A in ruling KVL:036/2015. Management Company A supplied management services to another Management Company B. The private equity fund managed by Management Company B was regarded as a special investment fund in accordance with the Principal VAT Directive.

The CBT considered that the outsourced services formed a distinct whole fulfilling the specific and essential functions of a special investment fund's VAT exempt activities and, further, the outsourced services are VAT exempt if they fulfill the requirements for VAT exemption which apply to the own management company of the fund.

Thus, the services supplied by Management Company A were deemed to be VAT exempt management services of a special investment fund.

VAT treatment of services in relation to the settlement and processing of payment transactions

On 30 October 2015, the CBT gave a ruling KVL:038/2015 concerning the VAT treatment of the settlement and processing services of payment transactions. The VAT group purchased a service entity in relation to the settlement and processing of payment transactions from a company established in France. The service entity included, e.g., approval of the payment transaction file, calculating the net position of a bank, sending the payment transaction file included in the funds' transfer request to the Central Bank and delivering the payment transaction file concerning the transfer of funds to banks. The transfers of funds took place in the system of the Central Bank.

The CBT considered that the settlement of receivables did not concern payment transfer services. Further, the supplier was not deemed to participate in the transfer of funds in order to manage the payment transaction but to only deliver the payment transaction file concerning the transfer of funds. According to the CBT, the service could not be regarded as a bank transfer and, therefore, the service did not include VAT exempt financial services within the meaning the Principal VAT Directive. Thus, the services were not considered to fulfill the specific and essential functions of a financial service, but were regarded as mere technical services outside the scope of the VAT exemption for financial services. The VAT group was required to account for VAT on the services under the reverse charge mechanism.

CBT ruling on the VAT treatment of services in relation to business restructurings

In ruling KVL:043/2015 the CBT considered the VAT treatment of services in relation to business restructurings. The company had both engagements related to the sale of shares or assets and engagements related to the purchase of shares or assets. In the engagements related to the sale of shares or assets the company acted as an financial advisor and its services included, among others, searching and contacting potential

buyers, evaluation of offers, planning and coordinating of the due diligence process, assisting in the negotiations, and preparing presentations and materials. In the engagements related to the purchase of shares or assets the company acted as a financial advisor with respect to the planning and executing of the restructuring.

The company represented the purchaser in an engagement concerning the acquisition of the shares or assets of a certain target company. The company was also responsible for the effective execution of the possible restructuring together with the client. The engagement included, among others, the coordination of specialists' work, evaluation and analysis of the target company, preparing offers, commenting and amending documents, planning of the process, coordinating of the due diligence process, and assisting in the preparation of the materials.

The company received a success fee if the restructuring succeeded. Further, a monthly fee or a retainer fee was usually charged, regardless of whether the restructuring succeeded or not. The monthly fee or the retainer fee was usually rather minor compared to the success fee. According to the CBT, the services in relation to business restructurings the company supplied fulfilled the specific and essential functions of negotiation in securities. Both the service entity related to the sale of shares and the service entity related to the purchase of shares were regarded as VAT exempt transactions in shares within the meaning of the Principal VAT Directive if the restructuring was executed in the form of a share deal. The company was required to correct the retainer fee if the fee had been charged inclusive of VAT in case the restructuring was executed as a share deal as the business transaction in question was deemed to be VAT exempt negotiation in shares. Further, if the purpose of the agreement was solely a share deal which was not executed, the retainer fee of the company was still considered negotiating in shares and, therefore, it was regarded as a supply of a VAT exempt financial service within the meaning of the Finnish VAT Act.

VAT treatment of work welfare promoting project

On 11 December 2015 the CBT gave a ruling KVL:049/2015 concerning the VAT treatment of a work welfare promoting project. The project purchased by a federation of municipalities consisted of a service entity which aimed to develop the profitability of the management of health and capacity to work. The main purpose of the service entity was reducing the sick leave of employees. The service entity included, among others, mapping the starting point, a training program for managers, assessing the mental and physical capacity for work of the employees, and measures of support for improving the employees' health and capacity for work. The federation of municipalities was charged with a fixed fee based on the number of employees and a bonus payment based on the attainment of set goals.

According to the CBT, the fixed fee and the bonus payment could be deemed as remuneration for a supply of services for the purposes of the federation of municipalities' activities and, therefore, the federation of municipalities had the right to deduct the input VAT on the purchases of services. The CBT stated also that the benefit employees gained from the service was secondary compared to the needs of the federation of municipalities.

France

EU VAT refund procedure and VAT grouping

In a recent case, two UK companies, both members of a UK VAT group, the representative member of which was Last Minute Network Ltd, operated a website allowing their customers to compare car rental rates, to make reservations for these vehicles from French car hire companies, and to benefit from a permanent telephone service. (*Last Minute Network Ltd and Holiday Autos UK and Ireland*, Conseil d'Etat, 7 December 2015, decisions nº 371406 and 371403.)

The company Holiday Autos UK and Ireland requested reimbursement of the VAT invoiced by French car hire companies under the EU VAT refund procedure.

The Conseil d'Etat held that this type of repayment claim can only be made by the company heading the VAT group (in the absence of proof of an agency agreement with the company's legal representative). Moreover, rental services, when accompanied by advice and information services, constitute a travel agency business subject to the VAT margin scheme. Finally, in accordance with settled case law, the Conseil d'Etat held that the refusal of a VAT repayment claim from the French tax authorities does not constitute a 'tax assessment' within the meaning of Article L80 A of the Tax Procedure Code.

The recognition by the Conseil d'Etat of the effects of a foreign VAT group on French domestic rules is unprecedented, even though those rules concern the EU VAT refund procedure.

Germany

VAT grouping judgments

As proposed by the XI. Senate of the Federal Fiscal Court, the Court of Justice of the European Union responded in its decision *Larentia + Minerva* to certain questions regarding VAT groups. The V. Senate of the Federal Fiscal Court has now attempted to incorporate into national law the requirements of the CJEU by means of four decisions of 2 December 2015. In this newsletter, we set out the three most important decisions.

VAT groups with partnerships (V R 25/13)

The case in dispute addressed the issue of whether forming a VAT group is also possible with a partnership as a controlled entity. According to Art. 2 para. 2 no. 2 the German VAT Act only recognizes legal entities as potential controlled entities within a VAT group. However, according to Art. 11 of the Principal VAT Directive, persons who are closely bound to one another by financial, economic and organizational links may form a VAT group.

Contrary to previous case law, the Federal Fiscal Court now accepts VAT groups with partnerships as controlled entities. The Federal Fiscal Court reached this conclusion by extending the phrase 'legal entity'. The prerequisite is that the shareholders of the partnerships must be the controlling companies or other financially controlled companies dominated by the controlling company. By means of this ruling, the Federal Fiscal Court has expanded the scope of VAT groups. Provided a partnership is financially integrated, i.e., the controlling entity holds all the shares in the partnership, the partnership may be involved in the VAT group as a controlled entity.

No VAT group with sister company (V R 15/14)

The second case addressed the question of whether VAT groups are possible with affiliated 'sister' companies. The Federal Fiscal Court has rejected a change to the case law, although European Union law only requires a close connection.

The Federal Fiscal Court maintains that VAT groups require a majority stake by the controlling company in the sister company and this requires personal ties between the two companies via the management of the companies. Integration exists only when there is a right to intervene. The Federal Fiscal Court explained that an "institutionally ensured possibility of intervention to the core area of the management" usually exists in the case of personal ties via the management of the legal entity as the controlled company. The right to issue directives, reporting obligations or compulsory subjects for approval in the general meeting are not sufficient. **No VAT group with non-taxable persons (V R 67/14)**

The third case in dispute addressed the question of whether VAT groups may be formed with non-taxable persons. In this case, the non- taxable person was an exclusively statutory public law legal entity.

The Federal Fiscal Court rejected this case, with reference to tax evasion. The national legislator made a deliberate decision that the controlling company needs to be a taxable person. VAT groups serve as administrative simplification.

Import VAT due on goods exported without compliance with Customs formalities

Advocate General Manuel Campos Sánchez Bordona has delivered his opinion in the joined cases of *Eurogate Distribution GmbH* and *DHL Hub Leipzig GmbH*, about whether import VAT was due on goods placed in a Customs warehouse and then re-exported without the necessary Customs formalities being completed. In both cases, it appears that there was no doubt that the goods had left the EU, albeit without the appropriate Customs formalities being complied with. Unsurprisingly, perhaps, the opinion suggests that the CJEU should follow previous case law in this area and confirm that the liability for import VAT follows the liability for duty, crystallized by the failure to follow the appropriate Customs procedures when the goods were removed from the warehouse. It also suggests that the CJEU should confirm that the warehouse keeper or carrier can be held liable for the import VAT, despite the fact that he had no right to dispose of the goods.

Italy

Approval of new forms for annual VAT return and VAT communication

With Act n. 7772/2016 dated 15 January 2016, the Director of the Italian Tax Authorities has approved the new forms for the FY2015 VAT return and VAT communication.

With respect to deadlines, as usual, the annual VAT communication must be submitted by 29 February 2016, and the annual VAT return by 30 September 2016.

This will be the last year with an **option** for the taxpayer to submit the annual VAT return within the deadline for the annual VAT communication, by 29 February 2016 (thus avoiding the submission of the annual VAT communication). From 2017 onwards, taxpayers will be **required** to submit the annual VAT return within the new mandatory deadline that will fall at the end of February. On the other hand, the annual VAT communication will be abolished.

With respect to the content of the new forms:

- The annual VAT return form mirrors the changes recently introduced into the VAT law provisions. In particular, some further boxes have been included in line with the new rules about: (a) the new reverse charge mechanism in the building and energy sector; (b) split payment; (c) the new procedure of submission of letter of intent;

- The annual VAT Communication form is similar to the previous one; no significant changes have been introduced.

Assonime clarifies VAT treatment of intra-Community movements of goods subject to processing operations/ usual forms of handling

In circular letter n° 2/2016, Assonime (the Italian Association of Joint Stock Companies) clarified recent changes in the Italian VAT rules on intra-Community movements of goods subject to processing operations/ usual forms of handling, introduced by art. 13 of the Law n° 115 dated 29 July 2015 (the so-called 'European Law for 2014').

Assonime explained that the above changes have been necessary in order to close the infringement procedure started by the European Commission against Italy, because of the contrast between the domestic rules and the Principal VAT Directive (refer to Court of Justice of the European Union cases *Dresser Rand* and *Dresser Rand SA*).

Now, in line with Article 17(2)(f) of the Principal VAT Directive, the Italian VAT law provisions also state that transfers of goods in another Member State for the purpose of processing operations or usual forms of handling are not considered as intra-Community transactions, provided that the goods, after being worked upon, are returned to that taxable person in the Member State from which they were initially dispatched or transported.

Regarding the effective date of these new rules, Assonime stated that they are applicable to transactions carried out from 1 January 2016, based on Article 3 of Law n° 212/2000 dated 27 July 2000 on the rights of taxpayers, which states that law changes shall apply starting from the fiscal year following the one in which the changes take place.

Supreme Court rules on VAT grouping

In decision n° 1915 (dated 2 February 2016), the Supreme Court focused on Italian VAT grouping regime and, in contrast with the restricted position taken by the tax authorities so far, proposed a broad interpretation of Article 73(3) of the Italian VAT Code (DPR n°633/1972).

Based on the conclusions of the Supreme Court, in order to avoid discrimination on the grounds of the legal form of companies taking part in a VAT group, partnerships may also act as controlling companies. This decision is, in particular, supported by the fact that Article 73(3) of the VAT Code does not expressly provide any subjective restriction on controlling companies, with reference to which, incorporation in the form of joint stock companies, partnerships limited by shares or limited liability companies is not mandatory (as, on the contrary, is expressly required for controlled companies).

For the sake of clarity, based on the current VAT rules, a VAT group is not a new and autonomous (VAT) taxpayer; each company remains autonomous from a VAT perspective, and the transactions carried out with third parties and each other are relevant for VAT purposes.

Advocate General opinion that VAT may not be a priority in liquidation case

Court of Justice of the European Union Advocate General Sharpston has delivered her opinion in the Italian case of *Degano Trasporti S.a.s. di Ferruccio Degano & C., in liquidazione*. The case concerns a liquidation process where the national court had doubts about whether an Italian liquidation process that, if adopted, would result in only a partial recovery of the taxpayer's VAT debt, complied with EU law.

Advocate General Sharpston roundly rejected the Commission's contention that the VAT debt should take precedence over all others. She suggested that the CJEU should find that EU law permits national rules that allow an undertaking in financial difficulties to enter into an arrangement with creditors involving liquidation of its assets without offering full payment of the State's claim in respect of VAT.

Overview by Customs of import fulfilments

On 11 January 2016, the Customs and Monopoly Agency issued Note No 144636/RU, which summarized the new procedures to be met, based on current EU legislation, for importing goods transported by air or sea and included in an arrival manifest, where the import is not carried out under a local clearance procedure.

The importer will have to transmit electronically to Customs not only the import declaration, but also the relevant import documents (previously paper versions were to be submitted).

Combined production of electricity and heat

In Note No 1896/RU of 12 January 2016, the Customs and Monopoly Agency advised that, under the Italian legislation, the coefficients stated in 1998 by the Italian authority for gas and electricity shall continue to apply until 31 December 2016 in order to quantify, in the case of the combined production of electricity and heat, the fuels subject to the excise rates provided for electricity production.

Sea taxes and duties

The Customs and Monopoly Agency issued note No 5910/RU on 21 January 2016 to summarize the sea taxes and duties amounts to be applied in Italy till 31 January 2017.

Ruling requests

In January 2016, the Director of the Customs and Monopoly Agency issued a decision on the operative guidelines for ruling requests (i.e., competent offices, filing procedure, ruling management and subsequent issuance). This decision has now been integrated into further guidance issued by the Agency.

Netherlands

Netherlands decrease Intrastat threshold

The Netherlands lowered the Intrastat declaration threshold for intra-Community acquisitions from EUR 1,500,000 to EUR 1,000,000, and the Intrastat threshold for intra-Community supplies from EUR 1,500,000 to EUR 1,200,000 as from 1 January 2016.

Poland

Retail Sales Tax to be implemented

A new tax, Retail Sales Tax, is to be implemented in Poland. The respective bill has recently been published on the Polish Government Legislation Centre website and is currently subject to consultations with other Ministries. The bill has not yet entered the legislative procedure but it shall be expected that the process will be launched shortly.

Further to the draft, the sale of goods to consumers on the premises, beyond the premises, and by way of distant sales (including sales over the Internet) are to be subject to the new tax. The provision of services will not be considered a retail sale, even if connected with selling goods. Taxpayers would be chain stores (franchise) and retail stores (which are not part of chain stores). The draft also imposes additional obligations on carriers of goods shipped from a retailer outside the territory of Poland to a consumer in Poland.

The tax base would be retail sales revenue determined by records of the taxpayer's turnover from cash registers after deducting the value of returned goods and VAT applied. The tax rate would depend on the day of a week on which revenue is generated and the amount of such revenue:

- If revenue is received from Monday to Friday and does not exceed PLN 300,000,000, the tax rate will be 0.7%. Additional revenue that exceeds PLN 300,000,000 will be taxed at 1.3 %;

- If revenue is received on a Saturday, Sunday or public holiday, the tax rate would be 1.3% up to PLN 300,000,000 PLN and 1.9% over PLN 300,000,000.

- There is an exemption if revenue generated on a monthly basis does not exceed PLN 1,500,000. This exemption does not apply to tax remitted by carriers.

Retail Sales Tax is to be calculated and collected by the taxpayer and settled by the 25th of the month following the reporting period. For chain stores, the obligations are placed on the franchisor. In general, chain stores will bear joint liability for tax obligations, but the liability borne by every retail vendor that is not simultaneously a franchisor will be limited to the part of output tax arising sales by the vendor. For distant

sales, the carrier is obliged to receive from the foreign supplier a statement on the tax settlements; otherwise the carrier is obliged to collect tax from the foreign supplier. The new tax will also trigger new filing obligations. The new tax will not be considered as a tax deductible cost.

The new tax shall be differentiated from VAT, and although there are a number of question marks as regards its technical details, it seems that it will affect a number of entities operating in Poland, including foreign- based taxpayers operating under a distant sales scheme in Poland. It is estimated that the new provisions will come into force in April 2016, with some exceptions concerning freight forwarders.

CJEU to rule on VAT tax free schemes in Poland

The Polish Supreme Administrative Court has referred a question for preliminary ruling to the Court of Justice of the European Union regarding VAT tax free schemes in Poland.

Under Polish VAT law, local taxpayers supplying goods to travelers must refund travelers the VAT incurred under certain procedures, i.e., either a direct refund to the traveler (if their annual turnover exceeds PLN 400,000) or via specialized entities (if the threshold condition is not met). Otherwise, suppliers are not allowed to apply the 0% VAT rate and need to report local sales at standard VAT rates.

The EU Principal VAT Directive does not provide for such conditions, leaving this to the discretion of Member States. As the requirements laid down in the Polish VAT Act are far more stringent than the regulations laid down in the Principal VAT Directive, the SAC decided to refer the case for a CJEU preliminary ruling to conclude whether these are in line with the Principal VAT Directive.

Portugal

State budget law proposal includes VAT changes

The State budget law proposal was presented to Parliament for approval on 5 February 2016, and includes the following proposed changes to the VAT legislation.

Option to tax medical services (private entities)

According to the proposal, private entities may opt to tax (waive the VAT exemption) on healthcare services as well as closely related transactions, provided they do not result from agreements entered into with the Portuguese State (within the national health system). This amendment is intended to clarify the option that already exists in this area.

Changes in the tax rates

It is proposed that, from 1 July 2016, the intermediate VAT rate (13% in Portugal Mainland, 12% in Madeira and 9% in Azores) will apply to the following goods (that are currently taxed at the standard rate, currently 23%, 22% and 18% respectively):

- Meals, ready to eat, take away with or without home delivery; and
- The supply of services of meals and beverages, except for alcoholic drinks, soft drinks, juices, nectars and sparkling waters or added with carbon dioxide or other substances.

The following VAT rate changes are also proposed, which will enter into force after the publication of the State Budget law in the Official Journal, which is expected to happen on 1 April 2016:

- Bread substitutes and similar products will be excluded from the reduced rate and will be subject to the standard VAT rate (only bread will remain subject to the VAT reduced rate – 6% in Portugal Mainland, 5% in Madeira and 4% in Azores);
- Live, dried or fresh 'algae' (seaweed) (food products) will be subject to the reduced VAT rate (currently subject to the standard VAT rate);
- Juices and nectars of fruits, 'algae' and vegetables, as well as oatmeal rice or almond drinks (without alcohol) will also be taxed at the reduced rate (currently only juices and nectars of fruits and vegetables are subject to the reduced VAT rate);
- It is also proposed that 'algae' will be added to the list of live plants to which the reduced VAT rate applies;
- Canned meat will be taxed at the standard VAT rate (currently subject to the intermediate VAT rate).

Authorization for Government to amend rules regarding VAT deductions

The proposal Budget Law also provides that the Government may amend the rules so that VAT can only be deducted in the period in which the supplier's invoice is received or in the next period.

State budget law proposal includes excise duty changes

The State budget law proposal presented to Parliament for approval on 5 February 2016 also includes the following proposed changes to excise duties.

For tax changes on petroleum and energy products, Administrative Order (Portaria) no. 24-A/2016 from the Government, that increases the excise rate applicable to gasoline and diesel, was published on 11 February 2016, and these changes entered into force on 12 February 2016.

The other measures will enter into force after the publication of the State Budget law in the Official Journal, which is expected to happen on 1 April 2016.

Tax on petroleum and energy products

The application of the exemption to products with combined Nomenclature code 2711 (petroleum gas and other hydrocarbons gaseous) will cease to apply to all public transport, and will be limited to passenger transportation.

With respect to fuel oil, the maximum tax limit will increase by about 30%. For the Autonomous Regions of Madeira and the Azores, the minimum and maximum excise duty limits for fuel oil will be aligned with the limits that apply to the Continent.

Tax on alcohol and alcoholic drinks

The Budget proposes an increase of generally around 3% in the tax on alcohol and alcoholic drinks, applicable to beer, intermediate products and white spirits drinks.

Tobacco tax

The tax rate applicable to cigarettes will increase from EUR 88.20/ thousand units to EUR 98.85/ thousand units, which represents an increase of 3%.

The tax rate applicable to smoking tobacco, snuff, chewing tobacco and heated tobacco increases 4%, from EUR 0.075/ gram to EUR 0.078/ gram.

The minimum amount of tax on fine-cut tobacco, will increase from EUR 0.135/ gram to EUR 0.169/ gram, which corresponds to an increase of approximately 25%.

Circulation tax

The circulation tax shall increase approximately 1%.

Entities which undertake leasing transactions will no longer be required to provide the tax authorities with the identification of the users of the vehicles.

Vehicle tax

Changes to the tax class which defines the vehicle tax applicable are proposed. The applicable tax rates will also increase by between 3% and 20%.

Incentive for vehicle renovation

The incentive for vehicle renovation will be maintained until 31 December 2017; specific conditions apply.

Russia

Further discussion on subjecting e-services to taxation

The President of Russia has asked the Federal Antimonopoly Service, the Ministry of Economic Development, the Ministry of Finance, the Federal Tax Service, the Ministry of Industry and Trade, related federal executive authorities, and the nonprofit Institute of Internet Development to offer suggestions on changes to the law that stipulates equal conditions for businesses delivering e-services in Russia. The introduction of VAT on e-services provided by foreign companies in Russia is one of the possible changes.

The Russian State Duma has already received for its review Draft Law No. 962487-6, which envisions VAT on services delivered by foreign companies through the Internet.

Possible option for companies applying simplified tax regime to pay VAT on voluntary basis

It is reported that the Russian Government requested the Russian Ministry of Economic Development, the Russian Ministry of Finance, and the Federal Tax Service to work on the possibility to provide companies applying the simplified tax regime (i.e. non-payers of VAT) with the option to account for VAT.

The provision of such an option will allow small business to conclude contracts with large customers that prefer to do business with VAT taxpayers (as in this case, the customers have the right to claim input VAT for recovery).

Supreme Court declines to consider Oriflame Cosmetics, LLC's appeal of lower court decision on deduction of licensing payments

The Russian Supreme Court ruling in the case of *Oriflame Cosmetics, LLC* has been published. The ruling, No. 305-KG15-11546 of 14 January 2016 on case No. A40-138879/2014, resolved a dispute between Oriflame Cosmetics, LLC and the tax authorities concerning the legality of the deduction of license payments and the corresponding recovery of VAT for the use of trademarks and other intellectual property items according to a franchise agreement with a foreign affiliate.

The tax authorities disputed the deduction of license payments on the basis that the taxpayer's activities on Russian territory cannot be considered independent and are in fact the activities of the foreign affiliate's permanent establishment for which the obligation to make license payments does not arise.

The Supreme Court declined to pass the appeal to the Court's Chamber for Commercial Disputes for consideration. However, the wording of the Court's Ruling adopts a less strict approach than those of the lower courts. According to the Russian Supreme Court, the court rulings were consistent with the approaches set out in the Plenum of the Russian Supreme Commercial Court Resolution No. 53 "On the Evaluation of the Grounds for Taxpayers' Receipt of Preferential Tax Terms by Commercial Courts" of 12 December 2006, which gave the taxpayer the burden of demonstrating sound economic reasons for concluding a franchise agreement, as well as explaining the reasons the license payments were established at the particular amount. In this case, the Court ruled, the taxpayer did not submit the necessary and sufficient explanations and proof. The Court's Ruling does not contain any direct indication that the activities of the Russian daughter company of the foreign organization constitute the formation of a permanent establishment of the foreign organization in Russia.

The Supreme Court also effectively recognized the right of a tax agent to recover overpaid VAT, declining to satisfy the claim regarding additional VAT charges paid by the company as a tax agent because a mechanism exists in the legislation on taxes and levies that allows a tax agent to recover tax overpaid to the tax authorities.

The total amount of additional charges exceeded RUB 580 million.

Review of tax disputes revised by the Constitutional Court and the Supreme Court in 2H2015

On 19 January 2016, the Russian Federal Tax Service published a review of tax disputes considered by the Constitutional Court and the Supreme Court in the second half of 2015.

The review covers a number of tax cases related to VAT, profit tax, transport tax and land tax.

Below are the most interesting cases relating to VAT:

- Calculation of VAT on an insurance indemnity received under a business risk insurance agreement.

  The Russian Constitutional Court (CC) acknowledged subclause 4 item 1 art. 162 of the Russian Tax Code as failing to conform to the Russian Constitution. The CC ruled that the receipt of an insurance indemnity under a business risk insurance agreement should not be subject to VAT, provided the taxpayer has paid VAT on the sale of goods and/ or services.

  The relevant amendments are expected to be introduced to the Tax Code in the near future that will regulate calculation of VAT on an insurance indemnity obtained under a business risk insurance agreement. Draft Law No. 968427-6, which suggests

amending art. 162 of the Tax Code, has already been submitted to the Russian State Duma. In particular, the Draft Law suggests that the amount of the received insurance indemnities under a business risk insurance agreement in case of the buyer's failure to perform its contractual obligations will only be included in the VAT base if the taxpayer has not calculated VAT on the sale of these goods/ services at the date of their shipment/ rendering.

- Application of 0% VAT to the provision of passenger seats under codeshare agreements with foreign airline companies.

  The Supreme Court has put an end to multiple disputes between airline carriers regarding the application of VAT to the transfer of seats to partner airline companies under codeshare agreements. By acknowledging that chartering an airline with the crew was the formal subject of such agreements, the Court recognized that it is the airline passenger who is the end recipient of the service, and regardless of which airline processes his tickets, the passenger is entitled to equal rights, including the right to present claims against the actual carrier. Based on the substance of the transaction, the Court concluded that the carriage of both one's own and partner passengers by an international airline should have equal tax consequences, which in this case is the application of 0% VAT.

- Application of 0% VAT to the sale of goods placed under the export customs procedure after crossing the border of the Russian Federation.

  The Supreme Court stressed that the determination of the place of sale related to the beginning of the movement of the goods out of Russia is not violated when goods are placed under the export customs procedure after their transportation from Russia and consequently, the sale transaction should be taxed at 0% VAT.

- Claiming VAT for recovery for the purchase of energy by network companies to compensate for losses.

  Since energy transfer services are VATable transactions, and the purchase of energy to compensate for excess losses in the network is directly related to the business of electric distribution companies and is carried out under the direct provision of the law, the Supreme Court ruled that electric distribution companies should be entitled to claim for recovery VAT charged by the power supplier.

- Restoring VAT previously claimed for recovery when receiving subsidies from regional budgets.

  The Supreme Court ruled that the receipt of a subsidy from the regional budget does not lead to tax consequences stipulated by the obligation for VAT restoration to the tax authority stipulated by subitem 6 item 3 art. 170 of the Tax Code, since such subsidy cannot be acknowledged as a subsidy from the federal government.

- Claiming VAT for refund beyond the three-year period.

  The Constitutional Court ruled that VAT may still be refunded beyond the three-year period envisioned by item 2 art. 173 of the Tax Code if the taxpayer could not have executed this right due to objective and sufficient reasons, including the failure of the tax authority to perform its obligations or the inability to receive the refund despite timely measures taken by the taxpayer.

Eligibility criteria for accelerated VAT refund procedure changed

The Russian President has signed a Federal Law amending Article 176.1 of part two of the Russian Tax Code. The new law reduces the aggregate amount of taxes paid to make an entity eligible for the accelerated VAT refund procedure from RUB 10 billion over three years to RUB 7 billion.

Application of VAT to bonuses received by customers for execution of certain conditions of supply agreement

Letter of the Russian Ministry of Finance No. 03-07-11/74049 of 17 December 2015 reports that premiums (bonuses) should be included in the customer's tax base for VAT in the situation when, the supply agreement contains the features of other agreements envisaging rendering services by the customer to the seller for which the seller pays premiums (bonuses).

Software allowing completion of registers to confirm application of 0% VAT in electronic form

It is reported that the upgraded version of the free-of-charge software 'Taxpayer legal entity' has been made available on the official website of the Russian Federal Tax Service. The software allows the completion of the electronic registers to confirm application of 0% VAT and to prepare the file to transfer the information to the tax authority.

Possible increase to rates of excise tax with respect to petrol and diesel oil

It is reported that the Ministry of Finance of the Russian Federation has suggested increasing the rates of excise tax with respect to petrol and diesel oil. The draft Law has not been officially published yet.

Prohibition on import of certain agricultural goods originating from Ukraine

Resolution of the Russian Government No. 1397 of 21 December 2015 introduced a prohibition on the importation of several agricultural goods (certain types of meat, fish, milk, fruits and vegetables, etc.) originating from Ukraine from 1 January 2016 until 5 August 2016 inclusive.

The import of prohibited goods is subject to destruction as introduced by Russian President Decree No. 391 of 29 July 2015 and Russian Federation Government Resolution No. 774 of 31 July 2015.

Resolution No. 1397 is effective from 30 December 2015. Russian President Decree No. 391 came into effect on 29 July 2015. Resolution No. 774 came into effect on 6 August 2015.

Suspension of exemption of import customs duty for goods originating from Ukraine

Decree of the Russian President No. 628 of 16 December 2015 suspended the application of the Agreement on the Free Trade Zone between the CIS countries with regard to Ukraine from 1 January 2016. This means that the exemption from customs duties on import to Russia of goods originating from Ukraine on the provision of a ST-1 certificate of origin no longer applies. The general import customs duty rates of the Unified Customs Tariff of the Eurasian Economic Union are now applied to goods originating from Ukraine.

Decree of the Russian President No. 681 of 30 December 2015 partially resumes application of the Agreement with regards to Ukraine with respect to customs duty applied by Russia on the export of natural gas in a gaseous state.

Russian President Decree No. 628 came into effect on 16 December 2015 and Russian President Decree No. 681 came into effect on 30 December 2015.

Dissolution of Federal Service for Fiscal and Budgetary Supervision (Rosfinnadzor) and transfer of functions to Federal Treasury, Russian Federal Customs Service and Russian Federal Tax Service

The Decree of the President of Russia No. 41 of 2 February 2016 dissolved the Federal Service for Fiscal and Budgetary Supervision (Rosfinnadzor). In particular, authority on the control and supervision in the financial and budgetary area and the external quality control of organizations rendering audit services is transferred to the Federal Treasury. The functions of Rosfinnadzor as the currency control authority are transferred to the Federal Customs Service and the Federal Tax Service.

Spain

Immediate Supply of Information System project currently on ‘stand-by’

Due to the current politician situation in Spain, it is not expected that the Immediate Supply of Information System (SII) (discussed in the September 2015 edition of this newsletter) will be approved by the interim Government. It will be necessary to await the

formation of a new Government before further details are available regarding approval of the SII. Given this, it is now unlikely that the SII will be finally approved for effect from January 2017. Updates will be included in future editions of this newsletter as they become available.

‘Single (one-stop shop) Customs Window’ project

The Customs authorities recently published the Resolution of 14 January 2016 regarding the guidelines to fulfill the single administrative document (SAD) and the Resolution of 18 January 2016 in connection with the rules regarding requests for pre-clearance proceedings.

The entry into force of these both Resolutions intends to allow the practical application of some measures to be implemented by the so- called ‘Single (one-stop shop) Customs Window” (SCW), with regards to the fulfillment of the SAD, its admission, and the clearance and release proceedings and, also, in connection with the system regarding requests for pre-clearance proceedings.

With respect to the resolution regarding the SAD, in addition to making some technical improvements and code updates, it also provides for:

i) The ability to file the SAD before the arrival of goods, in the so- called new ‘pre-SAD’;

ii) Filing and admission of the SAD before receiving certificates from the Border Inspection Services (BIF);

iii) The establishment of a new ‘yellow circuit’ for the verification of certificates from BIF; and

iv) The ability to add the reference to such certificates in the SAD after its admission.

By way of background, the Commission for the Reform of Public Administration (created for improving the efficiency and effectiveness of public activity) agreed, in order to achieve greater administrative simplification, to implement a Single Window Customs to centralize the information and documentation to be submitted by economic operators to the different authorities involved in foreign trade (with non-EU countries), such as pharmaceutical, veterinary authorities, etc, also known as ‘border (non-customs) authorities’.

Thus, the SCW project intends to become an important administrative and operational simplification for operators, which will be able to group all the paperwork, allowing shortened processing times; to reduce paper documentation related to the goods that

are subject to foreign trade; and to speed up the clearance of the goods, by coordinating physical checks which allow them to be carried out at one time by all the regulatory authorities involved.

Therefore, in summary, the implementation of these two resolutions should involve substantial changes in the international trade in goods subject to border (non-customs) controls.

Ukraine

Import/ transit quarantine permit no longer required

With effect from 1 January 2016, the importation of plants and plant products subject to phytosanitary control no longer requires an import or transit permit. Accordingly, importers are no longer required to submit their import contracts to the State Veterinary and Phytosanitary Service of Ukraine and to obtain quarantine permits prior to arrival of goods in Ukraine. This measure is aimed at reducing administrative costs borne by business and simplifying customs clearance procedures.

However, each consignment of plants and plant products arriving in Ukraine is still subject to phytosanitary examination and should be accompanied with a phytosanitary certificate issued in the exporting country. The importer of such goods should be registered with the Veterinary and Phytosanitary Service of Ukraine.

Special duties on Belarussian goods suspended

The introduction of a special duty of 39.2%, which was to apply from 20 January 2016 to certain goods originating from the Republic of Belarus, has been suspended to 1 May 2016.

This decision was taken after consultations between the Ministry of Economic Development and Trade of Ukraine and relevant authorities of the Republic of Belarus, with due consideration given to the standpoint of companies operating in the confectionary and brewing industries.

The decision entered into force on 15 January 2016.

Cancellation of compulsory certification of agricultural machinery

The Ministry of Economic Development and Trade of Ukraine removed agricultural machinery from the list of products subject to compulsory certification. The relevant changes came into effect on 21 January 2016.

Currently, agricultural machinery must meet the requirements set by two technical regulations (i) on approval of the type of agricultural and forestry tractors, their trailers and replacement trailed machines, and (ii) on component parts and characteristics of wheeled agricultural and forestry tractors. Starting from 2016, the application of the above regulations is compulsory.

Compulsory certification has been cancelled as a part of the technical regulation system reform in Ukraine. The reform is aimed at shifting from the post-Soviet standardization system (which was based on GOST) to the European system, which is based on technical regulations.

United Kingdom

Domestic reverse charge VAT on wholesale telecoms from 1 February 2016

'Reverse charge' VAT accounting for wholesale supplies of certain electronic communications services has been introduced from 1 February 2016. The reverse charge will apply to wholesale telecommunications services and associated data (text, images, etc.) over landlines, mobile networks or the internet. It does not apply to non-wholesale supplies or to businesses not registered or not liable to be registered for UK VAT.

The introduction of the reverse charge on wholesale telecoms has been under discussion for some time, and it is understood that the tax authorities (HMRC) have expedited the introduction of it in response to a perceived heightened risk of revenue losses through Missing Trader Intra-Community (MTIC) fraud based on supplies of this kind. The reverse charge regime removes the opportunity for fraudsters to collect VAT and fail to pay it over to HMRC.

The HMRC Brief about the reverse charge regime indicates that HMRC will operate a 'light touch' in connection with penalties relating to the new rules for six months, recognizing that businesses faced difficulties over implementing them by 1 February.

Consultation on amending UK VAT grouping rules

HMRC have announced that they will be meeting with business representative bodies to explore and develop new ideas on VAT grouping in the light of the CJEU judgments in the case of *Skandia America Corporation* and in the joined cases of *Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG* and *Marenave Schiffahrts AG*. The intention is to develop policy options during February and March, which will form the basis for a 12-week consultation to be launched in the spring.

HMRC expect that changes to UK VAT grouping provisions are likely to include extending VAT grouping to non-corporate bodies and identifying new rules to determine 'close economic, financial and organisational' links for corporate and non-corporate bodies, replacing the current 'control' test based on the company law definition of a subsidiary. The proposed timetable suggests that any law changes will not be made before 2017.

Technical consultation on 'use and enjoyment' of insured repair work

Following the announcement in the Summer Budget, HMRC announced a short technical consultation on legislation to introduce a 'use and enjoyment' provision relating to insurance repair services. The measure is intended to counter avoidance where insurance repair services relating to insurance for UK customers are supplied to an offshore insurer, and are treated as outside the scope of VAT, whereas identical work for a UK insurer would be standard-rated (and would result in irrecoverable input tax). The consultation was based on a draft Statutory Instrument and the related Explanatory memorandum. Comments on both were invited by 29 February 2016.

Trade Preferences

Ukraine-Uzbekistan

Ratification of Protocol on application of CIS FTA to Uzbekistan

On 27 January 2016, the Ukrainian Parliament ratified the Protocol on application of the CIS Free Trade Area Agreement dated 18 October 2011 between the parties thereto and Uzbekistan. Ukraine signed the Protocol on 31 May 2013 in Minsk.

The free trade area between Uzbekistan and Ukraine will commence after 30 days from the date the depository of the CIS FTA Agreement receives Ukraine's notification of completion of all domestic procedures required for the Protocol to become effective.

Eurasian Economic Union

Kazakhstan's accession to World Trade Organization

For the settlement of certain issues related to the accession of Kazakhstan to the World Trade Organization, Eurasian Economic Commission Board Resolution № 57 dated October 2015 approved the draft Protocol on certain issues of import and circulation of goods in the customs territory of the Eurasian Economic Union (EEU) and the draft Resolution of the Supreme Eurasian Economic Council "On certain issues related to the accession of Kazakhstan to the World Trade Organization". The resolution entered into force on 14 October 2015.

The Protocol entered into force on 11 January 2016.

Resolution of the Eurasian Economic Commission (EEC) Council № 166 dated 15 December 2015 amended the Instruction on filing the declaration on goods (DG). Thus, inter alia, in Kazakhstan where one consignment includes goods in respect of which the CCT (Common Customs Tariff) EEU duty rates apply and goods in respect of which reduced rates of import customs duties apply, such goods must be declared in different DGs. The Resolution entered into force on 14 January 2016.

Control of customs value of imported goods

EEC Council Resolution № 139 of 3 November 2015 amended the following:

- Instructions on how to fill in the declaration on goods, approved by the Resolution of the Commission of the Customs Union (CCU) № 257 dated 20 May 2010;
- The Order of the control of customs value of goods approved by CCU Resolution № 376 of 20 September 2010;
- The classifier of documents approved by the CCU Resolution № 378 of 20 September 2010.

The Resolution entered into force on 3 December 2015.

Amendments are associated with the ability to compare the customs value of the declared goods to the value of identical goods imported earlier under the same foreign trade agreement.

The amendments will contribute to a reduction in the completion time for customs operations upon the declaration of goods within the risk management system.

Order for filing and registration of transit declaration and completion of customs transit procedure

EEC Council Resolution № 147 of 10 November 2015 amended the Order for the performance of customs operations by the customs authorities connected with the filing and registration of the transit declaration and completion of the customs procedure for customs transit. The Resolution enters into force on 10 May 2016.

Among other things, the Order provides for the list of documents that remain in the customs authority of destination, when transporting consignments of goods by a group of rail cars (containers), directed by a single transport document, in the case of uncoupling on the route of one or more rail cars (containers). It was determined that the document confirming that the rail cars were uncoupled must be submitted to the customs authorities with a set of documents for the goods transferred.

The full text of the document can be found on the official EEC website and EEU legal portal.

Protocol on exchange of electronic information between tax authorities of EEU states for implementation of tax administration

EEC Council Resolution № 142 dated 3 November 2015 approved the draft Protocol on the exchange of electronic information between the tax authorities of EEU states – members for tax administration. The Resolution entered into force on 9 December 2015.

In order to ensure the proper execution of the tax legislation, the Protocol provided for the exchange of information:

- On certain types of income of legal entities of EEU Member States in accordance with the requirements for the composition and structure of the information (application № 1 of the Protocol);
- On certain types of income of individuals of EEU Member States in accordance with the requirements for the composition and structure of the information (application № 2 of the Protocol);
- On certain types of property registered (located) in the territory of a Member State, and the owner(s) in accordance with the requirements for the composition and structure of the information (application № 3 of the Protocol);
- On the receipt of information in accordance with the format of the notification (application № 4 of the Protocol).

The full text of the document can be found on the official EEC website and EEU legal portal.

Mandatory preliminary information about goods imported by air

EEC Council Resolution № 158 dated 1 December 2015 established that, starting from 1 April 2017, mandatory preliminary information about goods imported into the EEU customs territory by air will be introduced. The Resolution entered into force on 31 December 2015 In particular, the preliminary information shall be submitted to the customs authority of destination by the carrier or other entity acting in the name and on behalf of the carrier.

The information includes information about the aircraft and the route of flight, and about imported goods specified in the transport documents (information shall be provided for each document).

The EEU state authorities authorized in the field of customs affairs must finalize the information systems of the customs authorities of their countries prior to 1 October 2016.

The full text of the document can be found on the official EEC website and EEU legal portal.

Extension of 0% import customs duty on grinded natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk

Decision of the Board of the EEC № 7 of 26 January 2016 extends the import customs duty rate of 0%, instead of 5%, at import on grinded natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk classified under the classification code 2510 20 000 0 of the Unified Commodity Nomenclature of the EEU. The 0% import customs duty rate will be applied from 5 January 2016 to 4 January 2019 inclusively. Decision № 7 came into effect on 26 February 2016.

Introduction of antidumping duty on certain bulldozers and tires

EEC Council Resolutions № 148 dated 10 November 2015 and № 154 of 17 November 2015 imposed antidumping duties on the following goods imported into the EEU customs territory:

- Non-rotatable tracked bulldozers with angel and straight dozer up to 250 horse power originating in China and classified under 8429 11 009 0 CN FEA EEU code, for a period of five years;

- Tires designed for use on various axes of trucks, cars, buses, trolley buses, tip-trucks, trailers and semi-pneumatic tires and pneumatic tires with new bore diameter of 17.5 to 24.5 inches, inclusive, originating in China and classified under 4011 20 100 0 and 4011 20 900 0 CN FEA EEU codes, for a period of five years.

The full text of the document can be found on the official EEC website and EEU legal portal.

Resolution № 148 entered into force on 12 December 2015. Resolution № 154 entered into force on 18 December 2015.

Introduction of antidumping duty on rolled-steel wheels and weldless corrosion-resistant stainless steel tubes originating from Ukraine

Decision of the Board of the EEC № 170 of 22 December 2015 introduces antidumping duty on rolled-steel wheels with a diameter of 710 mm or more, for the manufacture and repair of wheel pairs for freight carts and passenger cars of locomotive traction; passenger, freight and shunting locomotives; motorized and non-motorized car wheel pairs of electric and diesel trains; and special rolling stock, originating from Ukraine and classified under the classification code 8607 19 100 9 of the Unified Commodity Nomenclature of the EEU. The antidumping duty is established for five years and applied from 22 January 2016. The rate of the antidumping duty will be 4.75% of the customs value of imported rolled-steel wheels non-dependent from the manufacturer.

Decision of the Board of the EEC № 6 of 26 January 2016 introduces antidumping duty on weldless corrosion-resistant stainless steel tubes with a diameter up to 426 mm inclusively, originating from Ukraine and classified under the classification codes 7304 41 000 1, 7304 41 000 5, 7304 41 000 8, 7304 49 100 0, 7304 49 930 1, 7304 49 930 9, 7304 49 950 1, 7304 49 950 9, 7304 49 990 0, 7304 90 000 1, 7304 90 000 9 of the Unified Commodity Nomenclature of the EEU. The antidumping duty is established for five years and applied from 26 February 2016. The rates of the antidumping duty vary depending on the manufacturer of the steel tubes from 4.32% to 18.96% of the customs value. Decision № 170 came into effect on 22 January 2016 and Decision № 6 came into effect on 26 February 2016.

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

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