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IV. Country Summaries

Asia Pacific

India

The Union Budget for the year 2018-2019 was released on 1 February 2018, including customs law announcements, but no announcements with respect to GST.

In its meeting on 18 January 2018, the GST Council the GST Council made a number of recommendations regarding rates and exemptions, and issued some clarifications.

There has been a case on whether there is a service tax liability (under 'Manpower Recruitment and Supply Agency' services) for employees deputed by foreign associated company to its Indian entity

Malaysia

The Royal Malaysian Customs Department has launched a new initiative known as the Malaysia GST Compliance Assurance Programme (MyGCAP).

Amendments have been made to GST Orders relating to exempt and zero-rated supplies.

There have been a number of GST public rulings and technical updates issued.

Singapore

The Government has announced that from 1 January 2020, GST will apply on Business-to-Business and Business-to-Consumer imported services.

EMEA

European Union

The European Commission has issued legislative proposals to allow EU Member States more flexibility when defining their national reduced or zero VAT rates and to simplify VAT compliance for small and medium-sized companies.

The European Commission has published a report on the VAT split payment mechanism.

The European Commission has published a report on the implementation of the Union Customs Code.

EU-Norway

Norway became the first non-EU country to sign an agreement with the EU to provide a legal framework for administrative cooperation in the field of VAT.

Belarus

From 1 January 2018, VAT at 20% applies on digital services provided by nonresidents to private individuals in Belarus.

Denmark

There is new draft guidance on the VAT treatment of the import of goods from countries outside EU to individuals or legal entities when the goods are imported through another country.

Finland

There has been a reference to the CJEU in relation to Insurance Premium Tax.

France

The Administrative Supreme Court (*Conseil d'Etat*) has issued a decision regarding the right to carry forward VAT credits where the tax authorities have previously rejected the corresponding VAT refund claim.

Guidelines have been updated with respect to the digitalization of paper invoices.

Greece

The VAT exemption for the supply and importation of vessels for navigation on the high seas has been amended with effect from 1 April 2018.

Hungary

The updated version of the legislation for real-time invoice data reporting has been issued.

Ireland

Irish Revenue has issued eBrief No. 007/18 to remind taxpayers to apply before 30 March 2018 for a renewal of rulings issued during 2012 should they wish to continue to rely on same.

Italy

The Customs Agency has clarified an issue regarding post-release customs clearance requested by an operator.

The Customs Agency has provided additional instructions regarding the EU Customs Decisions System.

The Customs Agency has listed the rates of 'harbor taxes'.

The Customs Agency has clarified the authorization for the presentation of goods at a place other than the designated customs office.

The Customs Agency has provided guidelines regarding the drafting and filing of Intrastat declarations.

Malta

There has been a criminal law case based on misappropriation of VAT.

Netherlands

The CJEU has ruled that one VAT rate was applicable to a single supply of services comprised of two distinct elements.

Poland

The Supreme Administrative Court has turned to the CJEU on the issue of the input VAT recovery restriction for accommodation and catering services.

The Ministry of Finance is apparently considering issuing a general binding ruling regards fixed establishment for VAT purposes.

The Ministry of Finance has published on its website two new registers of taxpayers.

Amendments have been introduced to allow taxpayers to verify the status of the tax settlements of their contractors.

Portugal

The Arbitration Court has released a decision on the VAT treatment of mixed use goods and services.

On 1 March 2018 the reverse charge mechanism for the VAT due on the import of all goods will be fully implemented.

Russia

The Ministry of Industry and Trade has issued a draft procedure for inclusion in the list of VAT tax-free participants.

The Ministry of Finance has issued a draft law to specify the confirmation procedure for application of the 0% VAT rate upon export/re-export of goods.

The Ministry of Finance has clarified the application of VAT with respect to aircraft maintenance services taking place in territory of airports and airspace.

Slovakia

A new VAT return has been published.

South Africa

The Budget, delivered on 21 February 2018, included an increase in the rate of VAT from 14% to 15% from 1 April 2018, and increases to the ad-valorem excise duty on luxury goods and motor vehicles.

Anti-dumping duty on clear float glass originating in or imported from Indonesia has been continued.

There are amendments to the rebate provisions for diapers.

Spain

ECSLs will be now submitted through an online platform.

Intrastat obligations are being simplified.

There are a number of proposed amendments to the SII (Immediate Information Supply).

Switzerland

The revised Swiss VAT Law is effective from 1 January 2018, and brings about important changes, notably for foreign domiciled entities generating turnover in Switzerland.

There were decreases to the VAT rates on 1 January 2018.

New quarterly VAT forms have been published.

E-invoicing practices were codified.

The stricter rules that previously applied to VAT e-invoicing were abolished from 1 January 2018.

Paper-based Import Electronic Assessment Decisions will be phased out by 1 March 2018.

Ukraine

Ukraine has become a member of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin.

United Kingdom

There have been changes to the tax authorities' guidance on End Use relief.

Eurasian Economic Union

A zero customs duty rate will apply to certain types of compressors for refrigeration equipment.

There has been an extension of anti-dumping duty on graphite electrodes originating from India and on metal products with polymer coating originating from China.

Trigger protection measure have been applied to certain clothes originating from Vietnam.

I. Normativa

1. Propuesta de Directiva del Consejo por la que se modifica la Directiva 2006/112/CE, en lo que respecta a los tipos del IVA.

Esta propuesta de Directiva contempla que, una vez se aplique el régimen definitivo del IVA, además de un tipo normal del IVA igual o superior al 15% los Estados miembros podrán establecer:

- dos tipos reducidos distintos comprendidos entre el 5% y el tipo normal elegido.

- una exención del IVA («tipo cero»).

- un tipo reducido comprendido entre el 0% y los dos tipos reducidos.

Asimismo, dicha propuesta propone que la lista actual de bienes y servicios a los que pueden aplicarse tipos reducidos (Anexo III de la Directiva 2006/112/CE, del IVA), se derogaría y sería sustituida por una nueva lista de bienes y servicios (tales como armas, bebidas alcohólicas, electrodomésticos, metales preciosos, juegos de azar y tabaco) a los que siempre se aplicaría el tipo normal, igual o superior al 15%.

Por otro lado, se establece que, con el fin de preservar los ingresos públicos, los Estados miembros también deberán garantizar que el tipo medio ponderado del IVA sea de como mínimo el 12%.

Por último, se prevé en la propuesta de Directiva que todos los bienes y servicios a los que actualmente se aplican tipos diferentes del tipo normal podrán conservarse por los Estados miembros.

2. Propuesta de Directiva del Consejo por la que se modifica la Directiva 2006/112/CE, en lo que respecta al régimen especial de las pequeñas empresas (PYMES).

Esta propuesta de Directiva contempla determinadas modificaciones en la Directiva 2006/112/CE, del IVA, en lo relativo al régimen especial de las pequeñas empresas (PYMES).

Las principales disposiciones de la propuesta son:

- apertura de la franquicia para las PYMES a todas las empresas elegibles de la UE, estén o no establecidas en el Estado miembro en el que vaya a aplicarse el IVA y vaya a otorgarse dicha franquicia. A tal efecto, toda PYME susceptible de acogerse a la franquicia en un Estado miembro en el que no esté establecida, debe cumplir dos condiciones: i) su volumen de negocios anual en ese Estado

miembro debe ser inferior al umbral para la franquicia aplicable en él; y ii) su volumen de negocios global en el mercado único no debe ser superior a 100.000 euros.

- fijación de un valor actualizado en relación con el límite máximo correspondiente a los umbrales nacionales previstos para la franquicia.

- introducción de un período transitorio durante el cual las PYMES que superen temporalmente en un año determinado el umbral previsto para la franquicia puedan seguir acogiéndose a ella en relación a ese año, a condición de que su volumen de negocios ese año no supere el umbral aplicable a las PYMES en más del 50%.

- introducción de obligaciones simplificadas en materia de IVA (registro, facturación, contabilidad y declaraciones del IVA) para las PYMES (volumen de negocios inferior a 2.000.000 euros), se beneficien o no de la franquicia.

Estas modificaciones, una vez aprobadas, surtirán efecto únicamente cuando se haya pasado efectivamente al régimen definitivo del IVA, en principio, el 1 de julio de 2022.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 14 de diciembre de 2017. Asunto C-305/16 Avon Cosmetics Ltd.

Directiva 77/388 CEE – Artículo 11, parte A, apartado 1, letra a) — Base imponible — Artículo 17 — Derecho a deducción — Artículo 27 — Medidas especiales de inaplicación — Decisión 89/534/CEE — Sistema de comercialización basado en la entrega de bienes por mediación de personas no sujetas al impuesto — Imposición sobre el valor normal de los bienes fijado en la última fase de comercialización — Inclusión de los costes soportados por dichas personas.

Se plantea al TJUE si los artículos 17 y 27 de la Sexta Directiva se oponen a una medida, objeto del litigio principal, autorizada por la Decisión 89/534 del Consejo, relativa a las prácticas a seguir por el Reino Unido, en virtud de la cual la base imponible a efectos del IVA de las entregas de bienes de una sociedad de venta directa será el valor normal de dichos bienes vendidos en la fase del consumo final, cuando éstos se comercialicen a través de distribuidores no sujetos al IVA, sin que se tenga en cuenta de ningún modo el IVA soportado en relación con los artículos de muestra adquiridos por los distribuidores a esa sociedad.

Responde de forma negativa el Tribunal, señalando que la mencionada Decisión no se refiere a las reglas que regulan el derecho a deducción de los bienes en cuestión. Señala el Tribunal que, el impuesto relativo a los artículos de muestra o a otros bienes y servicios adquiridos por distribuidores, con independencia de que estén o no sujetos al IVA, no puede deducirse del impuesto devengado por una sociedad de venta directa, como Avon en el litigio principal, que no ha adquirido ningún bien o servicio a terceros, sino que, por el contrario, en lo que respecta a los artículos de muestra, los ha vendido a esos distribuidores.

Considera asimismo el TJUE que la medida excepcional establecida en la citada Decisión permite evitar la pérdida de ingresos fiscales que resulta de este sistema de comercialización y que, por consiguiente, dicha medida resulta adecuada para alcanzar el objetivo perseguido de lucha contra la evasión fiscal.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 20 de diciembre de 2017. Asunto C-462/16, Boehringer Ingelheim Pharma GmbH & Co. KG.

Directiva 2006/112/CE — Artículo 90, apartado 1 — Reducción de precios en las condiciones determinadas por los Estados miembros — Reducción de la base imponible — Principios definidos en la sentencia de 24 de octubre de 1996, Elida Gibbs (C-317/94) — Descuentos concedidos a las entidades del seguro privado de enfermedad.

Se plantea al TJUE si, a la luz de los principios definidos por el Tribunal en la sentencia de 24 de octubre de 1996, Elida Gibbs, Asunto C-134/94, y habida cuenta del principio de igualdad de trato del Derecho de la Unión, debe interpretarse el artículo 90, apartado 1, de la Directiva IVA, de forma que el descuento que una empresa farmacéutica concede, en virtud de una ley nacional, a una entidad del seguro privado de enfermedad, conlleva una reducción de la base imponible en favor de dicha empresa farmacéutica, cuando el suministro de productos farmacéuticos se efectúa por medio de mayoristas a farmacias, que efectúan esas entregas a personas cubiertas por un seguro privado de enfermedad y quien reembolsa a sus afiliados el precio de compra de los productos farmacéuticos.

El Tribunal responde afirmativamente, señalando que los pagos efectuados en el momento de compra de los productos farmacéuticos deben considerarse una contraprestación de un tercero conforme al artículo 73 de la Directiva del IVA, cuando dichos terceros, a saber, los afiliados, solicitan el reembolso de las entidades del seguro privado de enfermedad y éstas han obtenido, de conformidad con la normativa nacional, el descuento que la empresa farmacéutica está obligada a

concederles. De este modo, a la luz de las circunstancias del litigio principal, las entidades del seguro privado de enfermedad deben considerarse consumidores finales de una entrega efectuada por una empresa farmacéutica sujeta a IVA de modo que el importe que percibe la Administración tributaria no puede ser superior al pagado por el consumidor final.

Así y habida cuenta de que el sujeto pasivo no percibe una parte de la contraprestación debido al descuento que concede a las entidades del seguro privado de enfermedad, considera el TJUE que se ha producido efectivamente una reducción del precio de la entrega realizada por la empresa farmacéutica después del momento en que la operación quedó formalizada, conforme a lo establecido en el artículo 90, apartado 1, de la Directiva IVA.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 18 de enero de 2018. Asunto C-463/16 Stadion Amsterdam CV.

Directiva 77/388 CEE – Artículo 12, apartado 3, letra a), párrafo tercero — Tipo reducido de IVA — Anexo H, categoría 7 — Prestación única compuesta de dos elementos diferenciados — Aplicación selectiva de un tipo reducido de IVA a uno de esos elementos — Visita turística denominada "World of Ajax" — Visita del museo del AFC Ajax.

Se plantea al TJUE si debe interpretarse el artículo 12, apartado 3, letra a), de la Sexta Directiva en el sentido de que, en el caso de que un servicio que a efectos de la percepción del IVA constituye una prestación única y está compuesto por dos o más elementos concretos y específicos a los que, si se prestaran como servicios separados, se les aplicarían tipos del IVA distintos, el IVA por este servicio compuesto debe percibirse a los tipos distintos aplicables a dichos elementos cuando la remuneración del servicio puede desglosarse conforme a una correcta proporción entre los elementos. En el presente asunto, el servicio principal consistía en la visita guiada al estadio; mientras que el servicio accesorio era la visita al museo de dicho recinto, que no se podía realizar a menos que fuera en el marco de la visita al estadio.

A este respecto, la propia jurisprudencia del TJUE ha venido señalando que, procede considerar que existe una prestación única cuando dos o varios elementos o actos que el sujeto pasivo realiza en beneficio del cliente se encuentran tan estrechamente ligados que objetivamente forman una sola prestación económica indisociable cuyo desglose resultaría artificial. En particular, una prestación debe considerarse accesoria de una prestación principal cuando no constituye para la clientela un fin en sí, sino el medio de disfrutar en las mejores condiciones del servicio principal del prestador.

Concluye el TJUE que, de conformidad con lo dispuesto en la normativa expuesta así como en reiterada jurisprudencia, una prestación única, como la controvertida en el litigio principal, compuesta de dos elementos diferenciados, uno principal y el otro accesorio, que, si se prestaran de forma separada, estarían sujetos a tipos de IVA diferentes, debe quedar sujeta únicamente al tipo de IVA aplicable a esta prestación única determinado en función del elemento principal, y ello aunque pueda identificarse el precio de cada elemento que compone el precio total pagado por un consumidor para poder disfrutar de la mencionada prestación.

4. Tribunal Supremo. Sala de lo Civil. Sentencia de 11 de enero de 2018. Nº recurso 2033/2015.

Compensación de créditos – Declaración de concurso de acreedores – IVA a devolver ejercicios posteriores al concurso.

El Tribunal Supremo rechaza en esta sentencia el criterio mantenido por el Juzgado de lo Mercantil nº 2 de Murcia y la Audiencia Provincial de Murcia en cuanto a la posibilidad por parte de la AEAT de compensar el IVA a devolver a la concursada, que se correspondía con liquidaciones posteriores a la declaración del concurso, con el IVA proveniente de facturas rectificativas correspondientes a operaciones anteriores a la declaración de concurso.

En virtud de la doctrina fijada en las sentencias 590/2009, 140/2011, 701/2011, 968/2011 y 46/2013 el TS falla a favor del recurrente, en base a los siguientes argumentos:

- La deducción global del montante total de las cuotas del IVA soportadas en un determinado periodo debería realizarse sobre las cuotas del IVA devengadas durante el mismo periodo de liquidación (apartado 1 del art. 99 LIVA).

- La regla del apartado 3 del art. 99 LIVA que permite al sujeto pasivo aplicar la deducción del IVA soportado en las liquidaciones posteriores, y siempre dentro de un plazo máximo de cuatro años, sin que sea necesario retrotraer los efectos de la deducción al periodo en que se soportó el IVA que se pretende deducir, no deja de ser una solución práctica que facilita las liquidaciones sin necesidad de realizar continuas rectificaciones de las anteriores.

- Cuando se da una situación de concurso del sujeto pasivo, tiene gran relevancia que la deducción del IVA soportado se realice con anterioridad a la declaración de concurso, o incluso en el mismo trimestre de la misma, pues ello puede determinar que se aplique a créditos concursales o contra la masa.

- Al margen del momento en que se haga valer la deducción del IVA soportado, el que surgió con anterioridad a la declaración de concurso debe deducirse con cargo al IVA devengado en aquel mismo periodo de liquidación, sin perjuicio de que, si sobrara, la deducción pudiese aplicarse en los siguientes periodos de liquidación.

Por ello, el IVA que correspondía ingresar a la recurrente, que constituía un crédito concursal, se hubiera podido compensar con el IVA a devolver de ejercicios anteriores a la declaración de concurso, pero no con el IVA a devolver de ejercicios posteriores al concurso. De esta manera, la compensación practicada por la AEAT no estaría justificada y contradice la prohibición de compensación del art. 58 LC.

En consecuencia, el TS estima el recurso de casación y condena a la AEAT a reintegrar a la masa del concurso el IVA soportado con posterioridad a la declaración del concurso.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución 4423/2014, de 25 de enero de 2018.

Exenciones en operaciones interiores. Arrendamiento de vivienda para su explotación como apartamento turístico.

La cuestión planteada en el presente caso se centra en determinar si procede reconocer el derecho a la deducción a la entidad recurrente en relación con las cuotas de IVA soportadas en la adquisición de determinados inmuebles formados por viviendas.

En un primer momento, la Inspección denegó el referido derecho en la medida en que "el posible destino de los inmuebles es su transmisión o arrendamiento como vivienda, operaciones sujetas y exentas del impuesto".

No obstante, la entidad recurrente había aportado un contrato de arrendamiento con otra sociedad en virtud del cual se pactaba la cesión en arrendamiento de las viviendas para su explotación como apartamentos turísticos.

En este sentido, el TEAC, después de valorar la justificación y posterior acreditación de la realización de una actividad sujeta y no exenta del IVA (i.e. arrendamiento de vivienda para su explotación como apartamento turístico) y, en consecuencia, generadora del derecho a la deducción, concluye que la recurrente tiene derecho a la deducción de las cuotas del IVA soportadas en la adquisición del inmueble.

Lo anterior por cuanto:

"El supuesto de exención regulado en el art. 20.Uno.23º.b) de la Ley 37/1992 (Ley IVA) no tiene carácter objetivo, es decir, no atiende al bien que se arrienda para determinar la procedencia o no de su aplicación, sino que se trata de una exención de carácter finalista que hace depender del uso de la edificación su posible aplicación, siendo preceptiva cuando el destino efectivo del objeto del contrato es el de vivienda, pero no en otro caso. Lo que se pretende con la exención es que la finalidad del contrato de arrendamiento debe únicamente servir de vivienda a una persona concreta, es decir, que cuando se acredita que no existe un negocio jurídico posterior al contrato de arrendamiento por el que se cede el uso de la vivienda -porque se concreta la persona o personas físicas que van a ocupar el inmueble destinado a vivienda- y que por ello no puede destinarse a residencia de otra persona, cualquiera que sea su título o el motivo de la cesión, debe incluirse la operación dentro de la exención examinada. Dicho esto, considerando el carácter finalista de la exención citada, en caso de que la reclamante acredite que el destino efectivamente dado a los inmuebles adquiridos queda excluido del ámbito de la referida exención de acuerdo con la letra e') del art. 20.Uno.23º.b) de la Ley 37/1992 (Ley IVA), quedará asimismo sujeto y no exento del Impuesto el arrendamiento formalizado entre la entidad propietaria de los inmuebles y la entidad explotadora de los mismos como apartamentos turísticos. Pues bien, en este caso, puede considerarse suficientemente acreditado el arrendamiento efectivo de los apartamentos adquiridos por la entidad en agosto de 2011 como apartamentos turísticos, actividad sujeta y no exenta del Impuesto. Por tanto, el arrendamiento de inmuebles formalizado entre la inmobiliaria y la entidad debe asimismo considerarse como una actividad sujeta y no exenta del Impuesto, por la que efectivamente se repercute el mismo, por lo que debe admitirse la deducibilidad de las cuotas soportadas en la adquisición de los inmuebles que fue denegada por la Inspección".

2. Tribunal Económico-Administrativo Central. Resolución 312/2015, de 22 de febrero de 2018.

Regularización de una entidad disuelta – Requerimiento de pago a los socios.

Las cuestiones planteadas en este caso son principalmente dos:

- Si procede regularizar la deducción de las cuotas soportadas durante determinados ejercicios como consecuencia de la realización de una única operación no generadora del derecho a deducir.

- Si se puede requerir a los socios sucesores de la entidad una deuda tributaria superior a su cuota de liquidación.

Una sociedad adquirió una participación indivisa sobre varias fincas. Durante los ejercicios siguientes, la entidad practicó sendas deducciones de cuotas de IVA soportadas sin realizar ninguna entrega de bienes o prestación de servicios hasta el momento de su disolución que se procedió al reparto patrimonial a los socios de la entidad (al 50%).

La inspección considera que la sociedad liquidada no llegó a adquirir de forma efectiva la condición de empresario por lo que rectifica las deducciones llevadas a cabo. Asimismo, impone sanción a la sociedad.

El TEAC, después de valorar varias sentencias del TJUE como las recaídas en los casos C-37/95 (Ghent Coal) o C-400/98 (Finanzamt Goslar) concluye que la Sociedad debió regularizar las cuotas soportadas ya que la única operación que ha realizado es la entrega de terrenos resultante de su liquidación, que es una operación que no origina el derecho a la deducción de las cuotas soportadas.

En cuanto a la segunda cuestión, el TEAC confirma que no es correcto exigir a los sucesores del obligado tributario una responsabilidad por cuota y sanción superior a la cuota de liquidación.

3. Tribunal Económico-Administrativo Central. Resolución 3028/2014, de 22 de febrero de 2018.

Rectificación de repercusión.

Una entidad vendió un inmueble a otra aplicando el tipo reducido del IVA.

A raíz de una actuación inspectora, se determinó que el tipo reducido no resultaba de aplicación a la compraventa del inmueble, sino que era el general.

Con motivo de dicha actuación, la sociedad vendedora expidió una factura rectificativa repercutiendo el tipo de IVA general al comprador.

La sociedad compradora considera que no procede la rectificación al entender que la entidad emisora ha participado en un fraude.

Tras examinar el caso, el TEAC concluye que, aunque la conducta de la sociedad fuera objeto de sanción, no queda probada la existencia de fraude.

Por consiguiente, no cabe excluir la posibilidad de rectificar el IVA al amparo del artículo 89 de la Ley del Impuesto.

4. Dirección General de Tributos. Contestación nº V2846-17, de 3 de noviembre de 2017.

Devoluciones del IVA a viajeros. Exención en la mediación en las operaciones financieras. Concepto de "negociación" en la normativa comunitaria y "mediación" en el Derecho español.

En la presente contestación, la DGT se ha pronunciado sobre si el pago de las comisiones descritas en el siguiente supuesto de hecho estarían sujetas y exentas del IVA:

El consultante es una entidad colaboradora en las devoluciones del IVA a viajeros. En el curso de su actividad abona comisiones a los comercios minoristas por su afiliación al sistema y que se calculan en función cantidades devueltas, volúmenes ofrecidos, puntos acumulativos, etc.).

En lo que respecta a la exención aplicable a los servicios de mediación establecidos en la letra m) del artículo 20.Uno.18º de la Ley del IVA, transposición de lo dispuesto por el artículo 135 de la Directiva del IVA, debe considerarse que dicha Directiva no establece exención alguna para servicios de intermediación relativos a operaciones financieras calificados como tales.

Por tanto, se hace necesario conciliar los conceptos de "negociación" en la normativa comunitaria y "mediación" en el Derecho español para delimitar con precisión el ámbito de la exención contenida en la letra m) del citado artículo.

A estos efectos, el TJUE se ha pronunciado sobre esta cuestión en sentencia de 13 de diciembre de 2001, asunto CSC Financial Services, Ltd, C-235/00, estimando necesario, para la exención de las operaciones financieras a los servicios de negociación de las mismas, la concurrencia de dos requisitos:

1º. Que el prestador del servicio de negociación o, en este caso, de intermediación, sea un tercero, distinto del comprador y del vendedor en la operación principal.

2º. Que las funciones que realiza vayan más allá del suministro de información y la recepción de solicitudes, y que se plasmen en la indicación de las ocasiones en las que se puede realizar la operación y, una vez existen dichas ocasiones, haciendo lo necesario para que ésta se efectúe.

Asimismo, en la citada sentencia señala el Tribunal que, la finalidad de la actividad de "negociación" es hacer lo necesario para que dos partes celebren un contrato, sin que el negociador tenga un interés propio respecto a su contenido.

En consecuencia con lo anterior, la DGT concluye que, los servicios prestados por los comercios minoristas no pueden ser calificados como servicios financieros de mediación sujetos y exentos del IVA sino que deben calificarse como servicios de naturaleza administrativa por lo que su prestación quedará, en todo caso, sujeta y no exenta del IVA.

5. Dirección General de Tributos. Contestación nº V2848-17, de 3 de noviembre de 2017.

Sujeción y exención al IVA de la actividad subcontratada por la entidad consultante.

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

La entidad consultante ha celebrado un contrato de prestación de servicios con una entidad aseguradora mediante el cual se obliga a la prestación de un servicio de captación de clientes a cambio de un precio. Adicionalmente, la consultante subcontrata con dos sociedades parte de su actividad de captación de clientes.

La exención aplicable a las operaciones de seguro, reaseguro y capitalización se encuentra recogida en el artículo 20. Uno. Apartado 16º de la Ley del IVA, que a su vez supone la trasposición al derecho interno del artículo 135.1, letra a), de la Directiva del IVA, donde en particular y a estos efectos, se dispone que quedaran eximidas de tributación "*las operaciones de seguro y reaseguro, incluidas las prestaciones de servicios relativas a las mismas efectuadas por corredores y agentes de seguros*."

De conformidad con lo anterior, procede examinar si la actividad realizada por las entidades subcontratadas por la consultante consiste en la realización de operaciones de seguro, o si puede considerarse que se trata de prestaciones de servicios relativas a las mismas efectuadas por corredores y agentes de seguro.

En cuanto a la consideración de operación de seguro se ha manifestado el TJUE, estableciendo que la misma se caracteriza por el hecho de que el asegurador se obliga, mediante el pago previo de una prima, a proporcionar al asegurado, en caso de materialización del riesgo cubierto, la prestación convenida en el momento de la celebración del contrato. En este sentido, se matiza que tales operaciones implican, por

su propia naturaleza, la existencia de una relación contractual entre el prestador del servicio de seguro y la persona cuyos riesgos cubre el seguro, es decir, el asegurado.

Por otro lado, y en lo que respecta al concepto de prestación de servicio relativa a una operación de seguro, exige el mismo TJUE el cumplimiento de dos requisitos; por un lado, determina que el prestador del servicio debe mantener una relación con el asegurador y con el asegurado, pudiendo ser dicha relación indirecta si dicho prestador es un subcontratista del corredor o del agente de seguros, y por otro, que su actividad cubra aspectos esenciales de la función del agente de seguros, como buscar clientes o poner a estos en relación con el asegurador.

Así, concluye la DGT que, al cumplirse los requisitos mencionados, la actuación de las entidades subcontratadas por la consultante se encuentra incluida dentro de las prestaciones de servicios relativas a operaciones de seguro efectuadas por corredores y agentes de seguro, y por tanto las mismas estarán sujetas y exentas al IVA español.

6. Dirección General de Tributos. Contestación nº V2849-17, de 3 de noviembre de 2017.

Deducibilidad de las cuotas de IVA soportadas por la entidad consultante.

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

Con motivo de un incendio una compañía aseguradora se obliga a resarcir el daño causado por el siniestro en las instalaciones de la entidad consultante, reponiendo los daños sufridos mediante la adquisición de bienes de inversión.

El artículo 92.Uno de la Ley del IVA recoge los requisitos y limitaciones al ejercicio del derecho a la deducción de las cuotas soportadas del IVA, condicionando dicho derecho a la acreditación por el sujeto pasivo de ser el destinatario por repercusión de dichos servicios.

En línea con lo anterior, matiza la DGT que el punto esencial a analizar en relación con esta consulta es la condición de destinatario de los servicios de reposición de las instalaciones del consultante, cuando su coste es sufragado por una compañía aseguradora.

Así, y de conformidad con el criterio establecido en diversas contestaciones vinculantes a consultas emitidas por este órgano, aclarar, en primer lugar, que se debe considerar destinatario de las

operaciones aquél para quien el empresario o profesional realiza la entrega de bienes o prestación de servicios gravada por el Impuesto, y que ocupa la posición de acreedor en la obligación (relación jurídica), en la que el referido empresario o profesional es deudor, y de la que la citada entrega o servicio constituye la prestación.

En relación la condición de destinatario de los servicios de reposición, debemos remitirnos al artículo 18 de la Ley 50/1980, de 8 de octubre, de Contrato de seguro, donde se establecen dos sistemas de resarcimiento en caso de un siniestro. El primero de ellos consiste en el pago de una indemnización por parte de las aseguradoras una vez realizadas las peritaciones oportunas, mientras que el segundo prevé la posibilidad de que el asegurado sustituya la citada indemnización por la reparación del objeto siniestrado.

Teniendo en cuenta estas posibilidades, y conforme al criterio mantenido a estos efectos por la AN en su sentencia de 24 de febrero de 2014, se puede concluir que cuando el asegurador opte por realizar los servicios de reparación habrá de ser destinatario de los mismos, mientras que, si el asegurador se limita a indemnizar al asegurado en los gastos que este incurre por reparar habrá de entenderse que el destinatario de los servicios es el asegurado y no el asegurador.

7. Dirección General de Tributos. Contestación nº V2943-17, de 15 de noviembre de 2017.

Lugar de realización de las operaciones de venta de plazas hoteleras efectuadas.

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

La consultante es una sociedad mercantil que tributa en el régimen especial de agencias de viajes (REAV) del Impuesto General Indirecto Canario con domicilio social y sede de actividad económica en las Islas Canarias que adquiere plazas hoteleras en nombre propio y las transmite a agencias minoristas a través de una página web. La consultante forma parte de un grupo empresarial dedicado al sector turístico con filiales en distintos territorios y cuya matriz se encuentra establecida en el territorio de aplicación del impuesto (TAI).

La consultante desarrolla su actividad empleando fundamentalmente los recursos técnicos y humanos que se encuentran en las Islas Canarias si bien las tareas de facturación, contabilidad, gestión financiera, diseño y marketing así como el soporte informático necesario son realizadas centralizadamente por otra entidad del grupo de entidades y que se encuentra establecida en el territorio de aplicación del impuesto.

Las operaciones realizadas por la consultante, a las que sea de aplicación el REAV, regulado en los artículos 141 a 147 de la Ley del IVA, no estarán sujetas al impuesto al ser realizadas por una entidad cuya sede de actividad económica no se encuentra situada en el TAI. No obstante lo anterior, si las operaciones fueran realizadas desde un establecimiento permanente de la consultante situado en el TAI, quedarían sujetas al IVA.

En cuanto a la interpretación del concepto de sede de actividad económica y establecimiento permanente definido en el artículo 69.Tres de la Ley del IVA, debe de interpretarse a la luz de la jurisprudencia del TJUE, entre otros, el asunto DFDS.

De conformidad con esta jurisprudencia, para que exista establecimiento permanente es necesario que el mismo se caracterice por una estructura adecuada en términos de medios humanos y técnicos, propios o subcontratados, con un grado suficiente de permanencia.

De acuerdo con la información de la consulta, en el lugar donde ha establecido su sede de actividad económica se centralizan las funciones de dirección, el desarrollo de producto, con la selección de proveedores y contratación con las agencias y seguimiento de operaciones, si bien, la operativa se realiza fundamentalmente a través de un sistema informático que es controlado y supervisado por el personal de la consultante. Adicionalmente, el personal de la consultante realiza aquellos procesos que exigen intervención humana directa como el seguimiento de las reservas vendidas, cancelaciones, desvío de clientes y gestión de reservas especiales que no son ofrecidas a través del sistema informático. También se realiza la renegociación de tarifas y condiciones con los proveedores y la atención e información tanto a las agencias como al cliente final en destino.

Asimismo, algunas de sus entidades establecidas en el TAI prestan a la consultante servicios "de soporte" tales como servicios de administración contable y expedición de facturas en nombre y por cuenta de la consultante; gestión de finanzas y tesorería por la entidad del grupo que gestiona toda la posición del grupo; soporte y desarrollo de los sistemas informáticos y servicios de ayuda en el diseño y marketing.

Considera la DGT que, si bien los servicios prestados a la consultante son necesarios y se encuadran dentro de las tareas propia de su actividad empresarial, cuando los medios de un eventual establecimiento permanente realizan únicamente tareas administrativas o auxiliares, no puede considerarse que intervenga en la prestación de los servicios efectuados por la entidad.

A estos efectos, el hecho de que una de las entidades del grupo realice el desarrollo y soporte de los sistemas informáticos que son fundamentales para el desarrollo de la actividad, según la DGT, no es suficiente para considerar que la contratación y venta de habitaciones de hotel efectuadas por la consultante utilizando dicho sistema informático, haya de ser imputado a la entidad del grupo que lo ha desarrollado.

De conformidad con lo anterior, concluye la DGT que los servicios de venta de camas prestados por la consultante a los que sea de aplicación el REAV, no estarán sujetos al IVA, al no disponer la consultante su sede de actividad económica, o un establecimiento permanente en el TAI desde el que preste dichos servicios.

8. Dirección General de Tributos. Contestación nº V3128-17, de 4 de diciembre de 2017.

Sujeción al Impuesto sobre el Valor Añadido de la adquisición de los servicios de licencia de software, hosting y servidor por las sucursales.

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

Las entidades consultantes son sucursales de casas centrales establecidas en Francia. Con el objetivo de centralizar la infraestructura y las actividades de tecnologías de la información del grupo se ha creado una gran plataforma para la prestación de los servicios tecnológicos por parte de cada una de las sucursales españolas al resto de filiales y sucursales de su línea de negocio. Para la prestación de tales servicios adquirirán a sus casas centrales las licencias de software y el "hosting" mientras que el servicio de servidor será adquirido a otra empresa del grupo.

La DGT resuelve la cuestión planteada a la luz de la doctrina establecida por el TJUE en su sentencia dictada en el Asunto C-210/04 FCE Bank, donde se analizan las relaciones entre una sucursal y su casa central.

En concreto, la DGT se remite en primer lugar al artículo 2, punto 1, de la Sexta Directiva del IVA, donde se establece que estarán sujetas al IVA las prestaciones de servicios realizadas a título oneroso en el interior del país por un sujeto pasivo que actúe como tal.

Por otro lado se alude al artículo 4 de la citada norma, donde se define el concepto de "sujeto pasivo" del Impuesto como aquellas personas que realicen una actividad económica "con carácter independiente", aclarándose de igual forma que dicho termino excluye del gravamen a las personas vinculadas a su empresario por cualquier relación jurídica

que cree lazos de subordinación, especialmente en lo que concierne a las condiciones laborales y retributivas, y a la responsabilidad del empresario.

En conclusión, aclara la DGT que una prestación solo es imponible si existe entre quien la efectúa y su destinatario una relación jurídica en cuyo marco se intercambian prestaciones reciprocas, siendo por tanto necesario verificar en un caso como el planteado si la sucursal en cuestión desarrolla una actividad económica independiente, en particular por ser ella misma quien asuma el riesgo económico derivado de su actividad.

En estas condiciones y por lo que al objeto de consulta se refiere, no existirá, en el caso de los servicios de licencia de software y hosting prestados por las casas centrales establecidas en Francia a las sucursales consultantes establecidas en el territorio español de aplicación del Impuesto, una prestación de servicios imponible cuando no asuma el riesgo económico de su actividad sino que este sea asumido por la casa central, por cuanto no existen dos empresarios o profesionales independientes entre los que se establezca una relación jurídica en cuyo marco se intercambian prestaciones recíprocas. En consecuencia, dichas operaciones no estarían sujetas al IVA español.

IV. Country summaries

Asia Pacific

India

Highlights of Union Budget – Customs

The Union Budget for the year 2018-2019 was released by the Government of India on 1 February 2018. This is the first budget after the roll out of the GST. The budget proposals dealt with customs law and there were no announcements with respect to GST. The highlights of the budget with respect to customs law are as follows:

- Education cess and secondary and higher education cess have been abolished and a new levy in the form of a social welfare surcharge at the standard rate of 10% on the aggregate of customs duties (except on the Integrated GST (IGST) and compensation cess) has been introduced effective immediately.

- The Government is now empowered to exempt goods:

  - Imported for repair, further processing, or manufacture

  - Re-imported for repair, further processing, or manufacture after export.

- The scope of advance rulings has been broadened to include applications in respect of any goods prior to importation or exportation, and the requirement that the application be in respect of proposed activity has been removed.

- Applications for advance rulings are to be made to the Customs Authority for Advance Rulings (CAAR) and appeals against orders of the CAAR can be made before the Authority for Advance Rulings, which is constituted under the Income Tax Act.

- As a measure to reduce litigation, a pre-notice consultation is to be made with the person chargeable with duty before the issuance of a show cause notice (SCN) in cases not involving fraud, misrepresentation, etc.

- Adjudication proceedings are to be completed within the defined timeframe subject to certain exceptions. If the proceedings are not completed within the timeframe, it shall be deemed as if no notice was issued.

GST updates

The GST Council, in its meeting on 18 January 2018, recommended a reduction in rates for certain goods and services and exemption for certain goods and services. These changes have been subsequently notified by respective governments. Several clarifications issued by the GST Council have also been subsequently notified by the Government.

Revision to GST rates

The GST Council has reconsidered and reduced the applicable tax rates on:

- Various goods such as diamonds and precious stones, the sale of LPG for domestic use by private distributors, products used for launch vehicles, and satellites and payloads.

- Types of services such as works contract services provided by subcontractors to main contractors providing work contract services to Government entities, transportation of petroleum products, admission to theme/water parks, and mining and exploration services for petroleum crude and natural gas, and for drilling services in respect of the same.

Exemption

Exemption is to be granted, *inter alia*, to the following services:

- Legal services provided to Government, local authorities, governmental authorities, and government entities.

- Transportation of goods, by air or by sea, from India to a place outside India (exemption to be granted up to 30 September 2018). Further, the value of such services provided by vessel is to be excluded from the value of exempted services for the purpose of input tax credit (ITC) reversal.

- IGST on royalties and license fees payable on temporary transfer or permitting the use or enjoyment of any intellectual property right to the extent included for the purposes of customs valuation.

- A composite supply provided to government entities, provided the value of goods involved in such a composite supply does not exceed 25% of the total value of the supply (such composite supply to receive the same benefit as 'pure' services provided to government entities, for the purpose of exemption).

- The government share of profit petroleum (profit generated on account of the production of crude oil and natural gas).

- Admission to or the conduct of examinations, including entrance examinations conducted for the receipt of entrance fees.

- Admission to theatrical performances, as well as to planetariums, where the consideration for admission is not more than INR 500 per person (increased from the previous threshold limit of INR 250 per person).

- Subscription to online educational journals/periodicals provided by educational institutions granting degrees recognized by any law.

- Renting of transport vehicles provided to persons providing services to educational institutions (providing education up to higher secondary or equivalent) pertaining to the transportation of students, faculty and staff.

Taxation on sale of old and used motor vehicles

There have been changes to taxation on the sale of old and used vehicles:

- GST on the margin of the supplier upon the supply of old and used medium and large cars and SUVs has been reduced to 18% (from 28%), subject to non-availment of ITC of excise, VAT or GST.

- GST on the margin of the supplier upon the supply of all other old and used motor vehicles has been reduced to 12% (from 28%), subject to non-availment of ITC of excise, VAT or GST.

- Compensation cess will no longer apply on the margin of a supplier supplying old and used motor vehicles, subject to non-availment of ITC of excise, VAT or GST.

Clarifications

The following clarifications have been provided:

- Interest/discount earned on deposits, loans, or advances will not be included in the value of exempt supplies except in the case of financial institutions providing similar services.

- The renting of immovable property by Government or local authorities to registered persons will be taxable under the reverse charge (under the forward charge when such services are provided by Government or local authorities to nonregistered persons).

- Only goods under Chapter 86 (belonging to the rail coach industry) will attract GST at the rate of 5% without ITC, while any other goods (even if supplied to Indian Railways) will attract GST as prescribed under the specific chapter heading.

- GST on the transfer of development rights for consideration in the form of construction services and on construction services for consideration in the form of the transfer of development rights will be levied when possession or a right in the immovable property has been transferred to the land owner by conveyance deed or similar instrument.

- The exemption for hotel accommodation with declared tariffs of INR 1,000 or less will be extended to hostels providing accommodation services for declared tariffs of INR 1,000 or less.

Compliance

There have been the following relaxations in compliance requirements:

- The late fee with respect to failure to furnish Forms GSTR – 1, GSTR – 5, GSTR – 5A, and GSTR – 6 has been reduced to INR 50 per day and to INR 20 per day for assesses required to file nil returns.

- The option to cancel voluntary registration will be permitted before expiry of one year from the effective date of registration.

E-way bills

With respect to the e-way bills system:

- The facility for generation, modification, and cancellation of e–way bills is provided on a trial basis on the portal ewaybill.nic.in. Once fully operational, the e–way bill system is scheduled to commence on the portal ewaybillgst.gov.in.

- Timelines for the applicability of e-way are:

  - For inter-State transactions – Currently the e-way bill for interstate transactions is not applicable and the date is to be notified by Central Government.

  - For intra–State movements – With effect from a date to be announced separately by each State.

Case law on whether there is a service tax liability (under 'Manpower Recruitment and Supply Agency' services) for employees deputed by foreign associated company to its Indian entity

An Indian entity had paid certain amounts in foreign currency to its foreign associated company on account of deputation/transfer of certain personnel to the Indian entity's unit.

A demand for service tax under the heading of 'Manpower Recruitment and Supply Agency' service was raised by the tax authorities on the basis that the personnel on the payroll of the foreign associated company located abroad were expected to work under overall supervision of the Indian entity.

The assessee submitted that the personnel deputed are in its employment. Further, the salary paid to the employees deputed in India is assessed to income tax in India. The money was paid to the foreign associates only on account and for the convenience of the foreign employees, and neither considered nor accounted as business income by the foreign companies; thus the said payment cannot be considered as consideration for any service.

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT) – Mumbai held that the employees deputed to the appellant continue to be employees of the foreign associated company, though suspended for this duration.

This was apparent from the fact that the duration of such deputation is decided in consultation with the foreign associated company and the employees are not free to decide on their own. The employees deputed to the Indian entity continue to lien with the foreign associated company and on termination with the Indian entity automatically take up positions in the foreign associated company.

Further, the personnel deputed to the Indian entity remain in the control of the foreign associated company and they continue to receive the insurance, retirement benefits, and protection in the shape of determination of salary and appointment on return. The terms of vacation and hours of work are also decided by the foreign company.

All these facts show that a deputed person is not an employee of the Indian entity but continues to be an employee of the foreign associated company, and the foreign associated company is engaged in the regular practice of supplying manpower.

Malaysia

MyGCAP

The Royal Malaysian Customs Department (RMCD) has launched a new initiative known as the Malaysia GST Compliance Assurance Programme or MyGCAP. MyGCAP is a self-compliance program aimed to encourage businesses to voluntarily register for GST, manage GST risk, and improve compliance within an effective and robust control framework.

GST registrants with MyGCAP status will be eligible for concessions such as quick refunds and automatic approvals for renewals of special schemes without verification. MyGCAP is expected to commence in the second quarter of the year.

Amendments to Goods and Services Tax Orders Amendments have been made to the following GST Orders.

- Goods and Services Tax (Exempt Supply) (Amendment) (No.2) Order 2017

  Effective 1 January 2018, the provision of management and maintenance services (including the recovery of group insurance cost, assessment tax, and quit rent) by a developer to the owners of strata-titled residential buildings is exempted from GST.

- Goods and Services Tax (Zero-Rated Supply) (Amendment) (No.3) Order 2017

  Amendments have been made to the zero-rated treatment of certain reading materials, including online services.

For details and Deloitte Malaysia's comments, see GST Chat: January 2018.

GST public rulings

The RMCD has issued:

- Public Ruling No. 03/2017 to provide further clarity on the RMCD's views on the application of the gift rules.

- Public Ruling No. 04/2017 on the issuance and holding of securities.

For further information on these rulings and Deloitte Malaysia's comment, see GST Chat: January 2018.

GST technical updates

The following GST technical updates have been released.

- The Concession by the Minister of Finance on the GST treatment for Recovery of Repair Cost in relation to Goods under Warranty from Overseas Manufacturers was revised on 22 December 2017.
- The RMCD Guide on Fund Management was updated as at 20 December 2017.
- The RMCD Guide on Commercial Banking was updated as at 19 December 2017.

For further information and Deloitte Malaysia's comment, see GST Chat: January 2018.

Singapore

GST on imported services

The Singapore Budget was held on 19 February 2018, and the Government announced that from 1 January 2020, GST will apply to Business-to-Business (B2B) and Business-to-Consumer (B2C) imported services.

B2B services will be taxed via a reverse charge mechanism. The reverse charge will apply to partly exempt businesses and non-GST registered businesses that receive non-business receipts. Fully taxable businesses can opt in to the reverse charge if they wish to do so.

The Inland Revenue Authority of Singapore (IRAS) has released a draft guide, detailing the requirements and processes that businesses will need to follow in order to fully comply with the reverse charge. The guide is part of a further public consultation, with responses required by 20 March 2018. See IRAS e-Tax Guide (Draft): GST: Taxing imported services by way of reverse charge.

For B2C services, the Government has announced that it will put in place an overseas vendor registration scheme for digital services providers and electronic platform operators that are not established in Singapore but supply services to Singapore consumers.

The scheme will take effect on 1 January 2020 and will require providers and operators with more than SGD 1m turnover globally and more than SGD 100,000 of sales in Singapore to register for GST and to collect the tax on their sales and remit it to the IRAS via periodical GST filings.

The IRAS has released a draft e-tax guide on the proposals for public consultation, which is also open until 20 March 2018, see: IRAS e-Tax Guide (Draft): GST: Taxing imported services by way of an overseas vendor registration.

EMEA

European Union

European Commission proposal on more flexible VAT rates

On 18 January 2018, the European Commission published a legislative proposal to allow EU Member States more flexibility when defining their national reduced or zero VAT rates, see VAT: More flexibility on VAT rates, less red tape for small businesses. It is planned that these changes will enter into force in 2022, in connection with the implementation of the definitive VAT regime for B2B cross-border supplies (see the October 2017 edition of GITN).

Current legislation

The EU Principal VAT Directive contains an annex (Annex III) listing the products and services that can benefit from a reduced rate (i.e. not lower than 5%). In principle, Member States can only apply reduced VAT rates to products and services covered in this list. However, in addition to this list, a series of individual derogations and stand still measures exist, allowing Member States to apply rates below 5% or even zero rates on specific products.

Commission proposal

Given the trend to increasingly apply VAT in the Member State of consumption (the 'destination principle'), the European Commission announced in its 2016 VAT Action Plan that it would grant Member States more flexibility in setting VAT rates. Under a destination principle, VAT rate shopping is very much excluded given the VAT rate is not influenced by the supplier's country

The current proposal mainly provides for two important changes:

- Member States would be allowed to introduce an extra reduced rate between 5% and zero, in addition to the two currently allowed reduced rates of at least 5%. Member States would also be able to set zero rates for specific products.

- Member States themselves could define the products and services subject to a reduced or zero rate, whereby EU law would only provide for a limitative (short) list of goods or services that would be excluded from reduced rates. The current proposal lists excise products such as oil and gas, alcohol and tobacco, but also financial services, as well as computers and electronic products. The Principal VAT Directive's current Annex III would be replaced

by a negative list of products to which reduced or zero rate cannot be applied by Member States.

To maintain a degree of rate harmonization, under the new rules, Member States would be required to ensure that the reduced rates "are for the benefit of the final consumer and that the setting of these rates pursue an objective of general interest". Moreover, they will need to ensure that the weighted average VAT rate on a country basis exceeds 12%, taking into account all VAT rates in force. This provision should tackle Member States' aggressive policies in order to attract cross-border purchases.

Timeline

The entry into force of the new provisions on VAT rates has been linked to the introduction of the definitive VAT regime, which is intended for 2022. However, this will still need to be confirmed in the detailed proposals for that regime, which are expected in the course of 2018.

This link is rather surprising. The destination principle is, to a large extent, already realised for cross-border services, and will be achieved for cross-border B2C goods supplies through the recently approved e-commerce VAT changes, with effect from 1 January 2021.

Considering the much-awaited modernization of the reduced VAT rate product list (such as e-books), the delayed entry into force is somewhat disappointing. In its proposal however, the Commission also commits to conducting a review of Annex III before the new rules enter into force, to take account of specific requests by Member States. A legislative proposal by the Commission to adapt Annex III can therefore be expected in future.

European Commission proposal regarding new simplification measure for SMEs

On 18 January 2018, the European Commission also published a legislative proposal to simplify VAT compliance for small- and medium-sized companies (SMEs), see VAT: More flexibility on VAT rates, less red tape for small businesses. It aims to create a modern, simplified SME scheme, introducing a new EU-wide category of SMEs benefiting from administrative simplifications, and a broader and more flexible VAT exemption scheme, which remains based on national thresholds. The new legislation's entry into force is intended for July 2022.

Background

The current initiative is part of the 2016 VAT Action Plan, which aims to improve the European VAT system. The current SME scheme burdens small businesses with disproportionate compliance costs due to the SME VAT exemption's design, and has distortive effects on competition in both domestic and EU markets.

The EU Principal VAT Directive provisions with respect to the SME scheme have become obsolete, as evidenced by the many derogations for Member States. The SME scheme, which only applies in the Member State of establishment, is also incompatible with the VAT system's shift towards destination based taxation.

Commission proposal

The proposal includes several fundamental changes to the current SME scheme.

Firstly, the European Commission is proposing to introduce a European Union threshold of EUR 2 million (EU annual turnover) for the qualification of a company as a 'small enterprise'. The introduction of this definition allows VAT simplification measures targeted at enterprises which in economic terms are considered 'small', even though their turnover exceeds the VAT exemption threshold. Member States will be requested to introduce VAT simplification measures for these 'small enterprises'; measures related to simplified registration, simplified invoicing rules, simplified record keeping of accounts and VAT returns, etc.

Furthermore, the SME exemption scheme, which relieves SMEs from VAT and its administrative obligations, will remain optional for Member States with an updated maximum threshold of EUR 85,000.

The national SME exemption's application will not only be open to enterprises established in that Member state, but for all eligible EU businesses. Consequently, for example, a Belgian small business making supplies abroad, such as maintenance or repair works, would not require VAT registration abroad if its supplies in the other Member State do not exceed the national threshold.

However, to manage this cross-border provision's effect, an EU wide exemption threshold of EUR 100,000 will be introduced for SMEs, so that they can apply the SME exemption in both their own country and abroad. This will prevent larger enterprises from taking advantage of the SME exemption scheme in specific Member States where their turnover remains below the national threshold. In order to ensure effective control of how the exemption's conditions are applied, an enhanced cooperation between Member States will be necessary.

Finally, the proposal would also introduce enhanced flexibility for scenarios in which a small enterprise exceeds the exemption threshold in a given year. The small enterprise will be able to continue applying the exemption provided its annual turnover in that Member State during that year does not exceed the threshold by more than 50%.

Next steps

This legislative proposal will be submitted to the European Parliament for consultation and discussion, and, at a later stage, forwarded to the European Council for adoption.

As unanimity is required to adopt the proposal, it is at this stage uncertain how this proposal will progress, given Member State's views; as noted by the European Commission.

European Commission report on VAT split payment mechanism

The European Commission has published a report, written by Deloitte, on the impact of the split payment mechanism as an alternative method for collecting VAT, see Analysis of the impact of the split payment mechanism as an alternative VAT collection method and the Executive Summary.

The study sets out the benefits as well as the challenges related to the split payment mechanism. Although it has great potential to reduce the VAT gap, if it is taken up and used widely across the EU, it will create significant additional costs through an increased complexity of the VAT system, a high administrative burden, and a potentially significant impact on cash flow for business. There is a concern that these costs could easily outweigh the benefits. Therefore, the general use of split payments is unlikely to be an attractive policy tool. However, it has characteristics that are very effective in reducing certain types of fraud and therefore may be suited as a targeted measure.

European Commission publishes report on implementation of Union Customs Code

The European Commission has published a report on the implementation of the Union Customs Code (UCC) since it came into force on 1 May 2016, see Commission publishes a report on the implementation of the Union Customs Code.

According to the report, the UCC has not yet encountered any major legislative problems, and any technical errors have swiftly been resolved through consultation with EU Member States, trade, the European Parliament, and all other stakeholders. Work to implement the 17 systems envisaged under the UCC continues, and once they are in place electronic communication between businesses and tax authorities will speed up and streamline customs clearance. Transitional rules may have to be extended to 2025 to allow full deployment of the systems.

European Union-Norway

Norway and EU sign agreement to cooperate in tackling VAT fraud

On 6 February 2018, Norway became the first non-EU country to sign an agreement with the EU that provides a legal framework for administrative cooperation in the field of VAT. As a member of the European Economic Area (EEA), it has a similar VAT system to the EU.

Background

Norway and the EU have been negotiating the new bilateral agreement since 2014, as the existing legal framework was deemed insufficient by the EU for effective cooperation.

The EU-Norway agreement will provide the tax authorities of the EU Member States and the Norwegian tax authorities with more legal tools for cooperation in relation to:

- Exchanging information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, and combat VAT fraud; and
- Assisting each other in the recovery of VAT claims.

The agreement follows the same structure that is currently used for cooperation between EU Member States and regards the same instruments, such as electronic platforms and electronic services. Fraud schemes often exploit weaknesses in the way VAT transaction chains are controlled when they include counterparts located in third countries.

Administrative cooperation and recovery assistance

The agreement's main objective is to establish a framework of rules and procedures for administrative cooperation that would allow competent authorities to assist each other in the implementation of the VAT legislation. The document envisages the exchange of information on VAT to be on request, spontaneous, and automatic.

Noteworthy is the provision that administrative cooperation does also include providing the dates and values of any relevant imports of negligible value, services connected with immovable property, and telecommunication services, radio and television broadcasting services and electronically supplied services over the previous two years, even if the requested tax authorities refuse an administrative enquiry into the amounts declared by a taxable person in connection with these supplies.

The document also intends for Norway to participate in the Eurofisc network without having direct access to the databases of the individual EU Member States. As a result of the new agreement, the authorities of the contracting states will exchange information and set up a communication system to do so, with the exception of information that is accessible through the VIES system.

Another objective of the agreement is to provide rules and procedures for assistance concerning the recovery of VAT claims (including administrative penalties, fines, fees, and surcharges, and the interest and costs relating to such claims). Furthermore, the notification of documents and imposition of precautionary measures relating to claims is part of the agreement. The statute of limitation restricts the time in respect to claims to a period 10 years.

Joint Committee

For the purpose of its implementation and ensuring the proper functioning, a Joint Committee with representatives from the EU and Norway will be set up. The Committee will meet at least once every two years. By 30 June of each year the Committee will receive statistical data on both the administrative cooperation and recovery assistance.

Timeline

Now the agreement has been signed, the agreement must be approved by the EU and Norway in accordance with their own internal legal procedures. It will enter into force on the first day of the second month following the date that the parties notify each other of the completion of the relevant procedures.

The agreement is set to be in effect for an indefinite period and to be complemented by technical arrangements.

Practical consequences

The EU-Norway agreement will not mean that Norway will be more bound by the EU's VAT policy than previously. However, the agreement may be a blueprint for future negotiations and agreements with other non-EU countries.

Belarus

New VAT rules apply for digital services supplied by nonresidents

From 1 January 2018, VAT at 20% applies on digital services provided by nonresidents to private individuals in Belarus. The obligation to register and account for VAT applies to both:

- A nonresident supplier that provides digital services to Belarusian private customers and is involved in 'direct' payments with private customers; and
- A nonresident entity that acts as an agent (intermediary) for a nonresident foreign supplier of digital services to Belarusian private customers, and is involved directly in payments with those customers.

If a Belarusian intermediary is involved in the provision of the services and collects the associated payments, the intermediary must calculate and remit the VAT due and submit the necessary VAT returns within the required deadlines. The nonresident supplier or selling agent then is not required to register for VAT.

Scope of digital services

The definition of digital services for these purposes is broad and includes:

- Providing rights to use software (including computer games) and databases, as well as updates and additional functionality via the internet, including by granting remote access, and providing electronic books and other electronic publications, information, educational materials, graphic images, musical works, audio and visual works via the internet, including by granting remote access for watching or listening via the internet;

- Rendering automated internet-based services when a customer enters data, automated services on a data search, its selection and sorting upon request, providing the specified data to the users via information and telecommunications networks (in particular, online stock quotes and automated translations);

- Maintaining a commercial or personal presence through the internet, supporting users' electronic resources (websites and (or) web pages), ensuring access of other web users, etc.;

- Providing advertising services over the internet, including the use of web-based computer software and databases, and providing advertising space on the internet;

- Providing domain names and hosting services;

- Storing and processing of data if the person who provided the data has online access to that data;

- Granting access to internet search systems;

- Rendering services with respect to offers to purchase (sell) goods, work, services or property rights on the internet;

- Providing services to search and/or provide the customer with information about potential buyers;

- Rendering services relating to the provision of web-based platforms for establishing contacts and concluding contracts between sellers and buyers (including provision of an online trading platform where potential buyers offer their price using an automated procedure and automatic notifications on the sale are sent to the parties);

- Providing online computing capacity for placing information in an information system; and

- Web-based statistics management.

Place of supply

The place of supply of digital services will be Belarus if any of the following conditions are fulfilled:

- The 'place of stay' of the customer is Belarus. Whilst this could be construed to include a person visiting or travelling through Belarus, generally it is interpreted as meaning that the individual customer is resident in Belarus;
- The customer pays for the services via a bank/digital payment operator located in Belarus;
- The network address of the customer at the time the services were purchased is in Belarus; or
- The international country code of the phone number used to purchase or pay for the services is assigned to Belarus.

The place of supply should be confirmed by the data evidencing that the digital services are supplied in Belarus according to one of the above conditions and disclosing the service fees charged.

Reporting obligations

Nonresident entities providing digital services in Belarus must account for the revenue received. This includes maintaining records of:

- Data used to determine the place of supply, such as the individual's surname, name, middle name (if provided by the individual); IP address; domain name; international phone code; postal code; bank identification code used by the individual when purchasing the services; etc.; and
- Data necessary to determine the taxable base, such as the cost of the digital services, the currency of payment, the date the services were provided, the payments received (including any advance payments), and the amount and date of any refunds.

The tax authorities are entitled to request both the information confirming that the place of supply of the digital services is deemed to be Belarus and the information necessary for assessing the revenue received from digital services.

VAT registration and administration

A nonresident entity providing digital services in Belarus will be required to register for VAT with the tax authorities, calculate and remit VAT, and prepare and submit a quarterly VAT return in Belarus.

Registration is via an online application form that must be submitted before the end of the quarter in which the liability to register for VAT arises (for example, if digital services are provided in Belarus as from 1 January 2018, the registration form must be submitted by 31 March 2018).

VAT returns are submitted electronically via the taxpayers' portal. Returns are due on the 20th of the month following the reporting quarter. The VAT due is calculated as 20% of the fees received for the services provided and is payable to the tax authorities in Belarusian rubles. The tax point is the last day of the calendar quarter in which the full/partial payment is received. The due date of payment for VAT is the 22nd of the month following the reporting quarter.

Comment

Nonresidents supplying digital services in Belarus should assess the potential impact of the new VAT rules on their existing businesses and may wish to consider adjusting their business models to mitigate potential tax risks. They should prepare to register with the tax authorities, unless the registration obligation falls on a nonresident intermediary within the supply chain.

Denmark

VAT treatment of supply of goods to individuals from third countries

New guidance has been drafted by the tax authorities to specify the VAT rules on the import of goods from countries outside EU to individuals or legal entities when the goods are imported through another country than Denmark. The draft is expected to be finalized shortly and embedded in the tax authorities' official legal guide version 2018-2.

A situation covered by the guidance is, for instance, a clothing company from the USA supplying goods to an end customer in Denmark. The goods are initially delivered to Belgium, where the supplier declares the goods for customs duty for free circulation in the EU. The obligation to pay customs duties occurs in Belgium. When the goods are redelivered to Denmark, this is considered a distance sale if the customer is an individual or a non-VAT registered legal entity, which is not required to settle acquisition VAT.

The tax authorities have found that from an indirect tax point of view, in a situation as described above, there are two transactions taking place:

1. Import of goods to the primary EU country (importing country);

2. Delivery of goods from the importing country to the customer in the other EU country, in which the transaction is completed (country of arrival)

Regardless of what is agreed between the supplier and the end-customer, the supplier from the country outside the EU is considered an importer.

Likewise, the importing country is considered the country of dispatch when the goods are redelivered to Denmark, which means that VAT must be settled according to the rules of distance selling for individuals and non-VAT registered companies.

VAT-registered companies must settle acquisition VAT.

A number of industry associations have taken issue with this interpretation, especially as small consignments, for example from China, are not subject to VAT, thus providing an advantage to foreign webshops compared to Danish companies.

The Danish authorities are increasingly paying attention to B2C sales to Denmark.

Finland

Reference to CJEU regarding Insurance Premium Tax

A reference has been made to the Court of Justice of the European Union by the Supreme Administrative Court (SAC) for a preliminary ruling relating to the supply of insurance policies where the insurance product covers the purchaser's or the seller's risks relating to cross-border restructuring transactions.

A Ltd is a UK-established insurance company which provides, *inter alia*, insurance policies relating to business restructuring transactions where the policy holder can be a company established in Finland and the target of the restructuring a Finnish entity, the policy holder can be a company established in Finland and the target a non-Finnish entity, or the policy holder can be a foreign entity and the target a company established in Finland. A Ltd does not have a fixed place of business in Finland. According to the Insurance Premium Tax Act, an insurance policy is subject to Finnish Insurance Premium Tax, *inter alia*, when the covered property or business activity is located in Finland.

After the preliminary ruling issued by the Central Tax Board to the applicant was appealed to the SAC, the SAC decided to refer the case to the CJEU. The questions referred to the CJEU are:

1. Whether the Member State entitled to the collection of the Insurance Premium Tax is the Member State of establishment of the policy holder or the Member State of establishment of the company which is the target of the restructuring proceedings, where the insurance provider domiciled in the UK and not established in Finland supplies an insurance policy covering risks relating to restructuring transactions when the policy holder:

    - Is the buyer in the restructuring proceedings and is not established in Finland, and the target company is established in Finland

    - Is the buyer in the restructuring proceedings and is established in Finland, and the target company is not established in Finland

- Is the seller in the restructuring proceedings and is not established in Finland, and the target company is established in Finland

- Is the seller in the restructuring proceedings and is established in Finland, and the target company is not established in Finland.

2. Is the fact that the insurance policy covers only the target company's tax liabilities prior to the restructuring transaction relevant?

3. Is it relevant whether the target company's shares or its business are transferred?

4. Where the shares are transferred, is it relevant that the indemnity given to the purchaser by the seller covers only the fact that the seller has the ownership of the shares to be transferred and third parties do not have any claims to them?

France

Managing rejection of VAT refund claims

On 4 December 2017, the Administrative Supreme Court (*Conseil d'Etat*) issued a decision denying the right to carry forward a VAT credit in a future VAT return where the tax authorities have previously rejected the corresponding VAT refund claim (Case No. 395947, *SARL Cedreloup*).

It should be noted that the same Court issued a different solution in the *Sodinel* case (28 December, 2005, No 263982). In this case, the VAT refund had been rejected because of a formal condition which was not fulfilled.

Accordingly, each case should be carefully considered to determine whether or not it is possible to carry forward the VAT credit on to VAT returns where the VAT refund claim has been rejected.

Digitalization of paper invoices

Until 1 January 2017 incoming 'paper' invoices had to be kept and stored only in their original form (i.e. paper) to support the input VAT recovery right. The amending finance law for 2016, completed with a Decree dated 22 March 2017, set out conditions and processes that must be followed for digitalization of invoices originally created in paper form. If the process fulfills the requirements set out in the Decree, a taxpayer may rely on the sole digital invoice for VAT purposes.

On 7 February 2018, the guidelines were updated to integrate and detail this new digitalization opportunity for businesses.

The guidelines notably specify: (i) the temporal application of this new digitalization opportunity; and (ii) the place of storage of digitalized invoices (i.e. digital invoices do not have to be stored in French territory but can be stored on a server located in any EU Member State or any country linked to France by a convention offering mutual assistance or the right to online access to download and use the data).

These guidelines provide useful information on how to proceed with the digitalization of invoices.

Greece

VAT exemption for supply and importation of vessels for navigation on the high seas

The VAT law has been amended with respect to the VAT exemption for the supply and importation of vessels, with a view to it being fully harmonized with the respective provision of the EU Principal VAT Directive.

Under the amendment, the special conditions that must be met from 1 April 2018 for vessels used for navigation on the high seas to qualify for VAT exemption are as follows:

a) Vessels that are destined to be used for navigation on the high seas and operate for the transportation of passengers for a fee or are used for commercial, industrial or fishing activities;

b) Vessels used for inshore fishing;

c) Vessels that are destined for destruction/disintegration;

d) War vessels and vessels owned by the State;

e) Lifeguard vessels and vessels for marine salvage.

The supply and importation of goods that are destined to be incorporated or used in the above vessels are also VAT exempt.

Vessels for private use that are destined to be used for leisure or sports are excluded from the scope of the VAT exemption.

For the application of the VAT exemption, the following vessels are considered to be used for navigation on the high seas, provided that the conditions are cumulatively met:

- Vessels that have been designed for navigation on the high seas, namely whose upper external length is equal to or exceeds 12 meters and that are classified under tariff class codes 8901 10 10, 8901 20 10, 8901 30 10, 8901 90 10, 8902 00 10, 8903 91 10, 8903 92 10, 8904 0091 and 8906 90 10 of the EU Common Customs Tariff; and

- Vessels that mostly operate on the high seas.

Sponge fishing is included in the scope of the VAT exemption as a fishing activity.

Hungary

Updated version of legislation for real-time invoice data reporting issued

As reported in the December 2017 edition of GITN, from 1 July 2018 taxpayers issuing invoices (B2B only) using invoicing software must provide real-time data to the tax authorities.

The updated version of the legislation (which may be treated as final) and the technical details of the obligation are now available, see: https://www.nav.gov.hu/nav/onlineszamla.

Reporting form issued for tourism development contribution

As reported in the December 2017 edition of GITN, a new tax has been introduced in Hungary, the tourism development contribution, which applies from 1 January 2018. According to information on the rules of reporting and payment procedures issued by the tax authorities, the deadline for the first reporting and payment obligation (which will be a monthly obligation) was 20 February 2018.

The contribution must be reported electronically through a portal, using form 18TFEJLH. The contribution must arrive by the reporting deadline, to the HU13100320000107912200000000 bank account of the tax authorities.

Ireland

Review of Revenue opinions/confirmations

At the end of January 2018 Irish Revenue issued eBrief No. 007/18 on individual tax rulings issued to taxpayers which updates their Tax and Duty Manual Part 37-00-41, see Review of Opinions/Confirmations.

Revenue rulings are issued to taxpayers concerning particular matters which are complex in nature and on which guidance is not readily available or where there is uncertainty about the tax rules. It essentially delivers Revenue's interpretation of the tax law in the context of a particular situation or transaction, for example, in the context of VAT, the determination of the correct VAT rate applicable to a particular food product on the basis of the particular ingredients used to manufacture same.

Historically Revenue did not place an expiry date on a ruling and it remained valid unless there was a change in law. According to new Revenue policy, the validity of all rulings issued by them to taxpayers is restricted to five years or such shorter period specified when the opinion is issued by them. Following the change, all

opinions issued by Revenue must be reviewed by Revenue every five years (or in a lesser period if specified), and can no longer be relied upon in the absence of such a review. It is a taxpayer's obligation to monitor any opinions issued to them and to approach Revenue for renewal of the ruling on expiration of the five year validity period.

EBrief No. 007/18 reminds taxpayers to apply to Revenue before 30 March 2018 for a renewal of rulings issued during 2012 (i.e. January to December) should they wish to continue to rely on same.

Italy

Post-release customs clearance of goods in transit

With Note No 125443 of 5 January 2018 the Customs Agency clarified that for non-EU goods covered by a T1 document (i.e. external Union transit procedure) not promptly presented to the customs office of destination, but for which a post-release customs clearance is requested by the operator, the administrative penalty provided by art. 318 of the customs law (i.e. between EUR 258 and EUR 2,582) will apply, with the possibility to pay a lower amount in the case of a voluntary disclosure.

Customs Decisions System

Further to its guidelines issued in September and October 2017, on 16 January 2018, the Customs Agency issued notes No 3944 and 4654 aimed to provide additional instructions regarding the EU Customs Decisions System, to be used by operators and customs offices in order to submit and manage the decisions based on the Union Customs Code (UCC) legal package.

'Harbor taxes' updated

With Note No 11075 of 29 January 2018 the Customs Agency listed the rates of the so called 'harbor taxes' applicable until 31 January 2019, in light of recent updates.

Presentation of goods at place approved, other than at designated customs office

Under art. 139, par. 1 of the UCC, goods brought into the customs territory of the Union must be presented to customs immediately upon their arrival:

a) At the designated customs office; or

b) At any other place designated or approved by the customs authorities (which must be authorized by the customs authorities).

On this basis, the Customs Agency issued Circular Letter No 2/D of 7 February 2018, in order to provide clarifications regarding the possibility mentioned under b), and in particular regarding the customs office in charge for the relevant authorization, the assessment of criteria and conditions needed for obtaining authorization, and how a temporary storage warehouse to be used as 'place approval' is to be operatively managed.

Intrastat declarations

On 8 February 2018 the Customs Agency Director issued Decision No 13799, providing operative guidelines regarding the drafting and filing of Intrastat declarations.

Malta

Criminal case based on misappropriation of VAT

In *Il-Pulizija vs Carmel Spiteri,* proceedings based on criminal law for misappropriation of VAT were instigated against the director, company secretary, and shareholder of a company for failing to remit VAT due by the company.

On 23 January 2018, the Court of Magistrates of Malta, acting as a court of criminal justice, adjudicated on the matter (Comp. No. 943/2010). The Court concluded that a charge for misappropriation could not be upheld in this case. In particular, it transpired during the proceedings that the accused had not actually collected from its customers the VAT due which was alleged to have been misappropriated.

The company was operating on an accruals basis of accounting for VAT, and as such it was legally obliged to account for VAT on all of its issued invoices, irrespective of whether these invoices were settled or not. However, the Court held that the criminal law concept of misappropriation presupposes that the perpetrator has actually 'taken' the funds. Since the company had not actually collected the VAT in question from its customers, the Court acquitted the accused.

This judgment establishes a significant legal precedent relating to VAT collection in Malta. It might potentially lead to the withdrawal of other pending criminal proceedings for misappropriation initiated against VAT taxpayers by the VAT authorities as well as possibly discourage the initiation of future ones, to the extent that the cases are factually and legally similar to the decided case.

Netherlands

One VAT rate applicable to single supply of services comprised of two distinct elements

The Court of Justice of the European Union has ruled that only one VAT rate applies to the so-called 'World of Ajax' tour through a football stadium offered by Stadion Amsterdam. The tour consists of a guided tour of the stadium and a visit, without a

guide, to the AFC Ajax museum. The fee must be paid for both elements and it is not possible to visit the museum without participating in the guided tour of the stadium.

The Supreme Court of the Netherlands previously stated that it is evident from the national proceedings that the supply of services at issue is comprised of two elements, namely the guided tour of the stadium and the visit to the museum, the former being the principal component, the latter the ancillary component, those components thereby giving rise to a single supply.

However, the Court questioned whether the fact that the guided tour of the stadium and the visit to the museum are so closely connected to each other that they should be regarded as a single supply of services for VAT purposes means that the same VAT rate must necessarily apply to that supply. To this end, it referred a question to the CJEU for a preliminary ruling.

According to the CJEU, a single supply, comprised of two distinct elements, one principal, the other ancillary, which, if they were supplied separately, would be subject to different VAT rates, must be taxed solely at the VAT rate applicable to that single supply, that rate being determined according to the principal element, even if the price of each element forming the full price paid by a consumer in order to be able to receive that supply can be identified. The option, left to EU Member States, to subject the various elements comprising a single supply to the various VAT rates applicable to those elements would mean artificially splitting that supply and risk distorting the functioning of the VAT system, in disregard of the case law. In addition, the principle of fiscal neutrality might be jeopardized.

Poland

CJEU to resolve dispute regarding input VAT recovery on accommodation and catering services

The Supreme Administrative Court has turned to the Court of Justice of the European Union on the issue of input VAT recovery restriction for accommodation and catering services. Under Polish VAT law, such restriction applies regardless of whether such services are purchased for private purposes or business activity (i.e. further resold to other entities). Albeit the restriction has been introduced to Polish VAT law as a standstill clause, the SAC has doubts as to whether this provision violates other rules of VAT, including proportionality and VAT neutrality. According to the SAC, if there is no doubt that accommodation and catering services are purchased for business purposes, not private ones, then the taxpayer should be entitled to deduct VAT, as otherwise double taxation occurs.

Further developments on fixed establishment for VAT purposes

Following a recent press release, the Ministry of Finance is apparently considering issuing a general binding ruling regards fixed establishment (FE) for VAT purposes.

At this stage, it is unknown what the scope of such a ruling would be (i.e. whether it would cover toll structures only or some other structures would also be addressed) or the date of its issuance.

The general binding ruling would present the standpoint of the Ministry of Finance as regards this particular case (within the background presented) and the position of all taxpayers adhering to would be secured. All binding ruling applications with an identical background would be left without consideration, on the grounds that the issue has been ruled upon in the general ruling. Moreover, the tax authorities are able, following the issue of the ruling, to change *ex officio* individual rulings issued if their conclusions are different from those resulting from the general binding ruling.

New registers of VAT payers

On 15 January 2018, the Ministry of Finance published on its website two new registers of taxpayers, listing: (i) deregistered taxpayers and those who were denied VAT numbers; and (ii) taxpayers who were restored as active VAT payers. The registers, updated on a daily basis, can be searched by VAT ID number or by the name of the taxpayer.

This follows the changes to the VAT law as regards registration from 1 January 2017, further to which the tax authorities in certain situations are able to deregister an entity as a VAT payer (without prior notification), deny a VAT number to an applicant, and restore a deregistered entity as an active VAT payer. The registers are an element of due diligence good practice, allowing taxpayers to verify the status of their contactors, to mitigate the risk of participation in fraudulent transactions. Previously, the webpage of the Ministry was only able to verify whether a given entity is at the time of verification registered as an active VAT payer – this functionality is still available.

The data included in the new registers is not always consistent, as an entity can show up in two different ledgers or not appear at all. The Ministry of Finance is enhancing the new search engines. It is also planned to broaden the scope of the data available via the active VAT payer register, adding name, address, date of registration and/or deregistration for VAT purposes in Poland, and bank account in Poland. The active VAT payer register in the updated form should be introduced later this year.

Tax verification of new contractors

On 25 December 2017, amendments to the Tax Ordinance were introduced, allowing taxpayers to verify the status of the tax settlements of their contractors. In particular, taxpayers are able to obtain from the tax authorities official information on whether a contractor submits returns on a timely basis, settles tax liabilities on a timely basis, and reports the transactions subject to Polish taxes in

the respective returns. This is another tool made available to taxpayers as part of due diligence standards, to confirm that the taxpayer is not involved in fraudulent transactions.

Portugal

Arbitration Court decision on mixed use of goods and services for leasing activities

A decision from the Arbitration Court (CAAD) has recently been published in which the Court decided on a case where a financial institution deducted input VAT incurred for mixed used goods and services via a deductible proportion based on a *pro rata* method, which included in both the numerator and the denominator the total amount of the rental payments related to the leasing contracts, and not only the interest included in those rental payments.

In this context, CAAD considered that the tax authorities could not require the taxpayer to deduct the input VAT based on the use made of all or part of the goods and services (Article 173 (2) (c) of the EU Principal VAT Directive), as this prerogative was not included in the Portuguese VAT Code.

To a certain extent, this decision reopens the discussion regarding the Court of Justice of the European Union case *Banco Mais*, raising an apparent (but probably not more than that) contradiction between the two.

Reverse charge of VAT due on import of goods fully implemented from 1 March 2018

On 1 March 2018 the reverse charge mechanism for the VAT due on the import of all goods will be fully implemented. This new regime entered into effect on 1 September 2017, and since then has only been applicable with respect to the import of goods listed in Annex C of the VAT Code (similar to Annex V of the EU Principal VAT Directive), except for mineral oils.

As such, taxpayers that comply with the relevant conditions and that wish to benefit from the reverse charge mechanism for the importation of goods must apply through the tax authorities' website by the 15th day of the previous month in which the new mechanism is intended to apply (see the July 2017 and September 2017 editions of GITN for further information).

Russia

Ministry of Industry and Trade draft procedure for inclusion in the list of VAT tax-free participants

On 1 January 2018, a tax-free system was introduced allowing citizens of non-Eurasian Economic Union (EAEU) states a refund of VAT paid on purchases made in Russian retail stores that are then taken outside the EAEU customs territory.

To become a tax-free participant, retailers must provide the following documents to the Ministry of Industry and Trade:

- An application for inclusion on the list of tax-free participants (the form of the application is available in draft);

- A confirmation issued by the tax authorities that the retailer has no unexecuted obligations, as of the first day of the month in which the documents are filed, to pay taxes, duties, insurance contributions, late payment interest, or fines due to be paid in accordance with the tax legislation of the Russian Federation.

The decision to include or not to include a retailer in the list of tax-free participants will be made within 30 days of the date of filing an application.

Ministry of Finance drafts law to specify confirmation procedure for application of 0% VAT rate upon export/re-export of goods

The Ministry of Finance has drafted a law aimed at specifying the procedure of confirmation for the application of the 0% VAT rate upon export/re-export of goods.

In particular, it has been suggested that the following amendments will be introduced into the procedure of documentary support for the application of the 0% VAT rate.

Currently a taxpayer can provide a register of transportation documents in electronic form that include data on export supplies. In the framework of the tax audit, the tax authorities can request documents that are indicated in the register. In accordance with the current version of the Tax Code, the respective documents should include the stamps of the customs authorities confirming the actual transfer of goods outside the territory of the EAEU. In the draft law:

- It is envisaged that a taxpayer will be entitled to provide documents requested by the tax authorities without the stamps of the customs authorities.

- The period within which the requested documents must be submitted to the tax authorities is extended from 20 to 30 days from the date of receipt of the request.

- In the framework of cooperation between the tax and customs authorities, the customs authorities will confirm the actual export of goods outside the territory of the EAEU. If the customs authorities do not confirm the actual export, the application of 0% VAT rate will be rejected by the tax authorities.

- It is envisaged that some documents required to confirm the application of the 0% VAT rate could be provided in electronic form.

The changes will apply from 1 July 2018.

Ministry of Finance clarifies application of VAT with respect to aircraft maintenance services taking place in territory of airports and airspace

In accordance with recent amendments to the Tax Code, from 1 January 2018, the VAT exemption with respect to airport services is limited to services explicitly mentioned in the official list established by the Government. The list of such services exempt from VAT has not yet been released by the Government.

By way of Letter, the Ministry of Finance has stated that before the respective list is approved by the Government, it is recommended that taxpayers use the list of aircraft maintenance services in the territory of airports and in the airspace established by the Ministry of Transport (Order No 241 dated 17 June 2012).

Slovakia

New VAT return form

Following the amendments to the VAT Act that entered into force on 1 January 2018, the Ministry of Finance has published the new form of the Slovak VAT return. The new form will be used for the first time by monthly VAT payers in February 2018 (for the January 2018 VAT period) and by quarterly VAT payers in April 2018 (for the first quarter of 2018).

South Africa

Budget announcements

The Budget, delivered on 21 February 2018, included an increase in the rate of VAT from 14% to 15% from 1 April 2018. Basic food items will remain zero-rated and, therefore, unaffected by the increase.

Also, the ad-valorem excise duty on luxury goods will be increased from 5% and 7% to 7% and 9% while ad-valorem excise duty on motor vehicles will be increased from 25% to 30%. These amendments will take effect from 1 April 2018. This duty will apply in addition to any other duties levied on the goods in terms of other schedules.

Continuance of anti-dumping duty on clear float glass originating in or imported from Indonesia

A sunset review initiated by the International Trade Administration Commission of South Africa (ITAC) in respect of anti-dumping duties on clear float glass originating in or imported from Indonesia has been concluded.

A decision was made to maintain the protective anti-dumping duty, after the investigation concluded that the expiry of the antidumping duty on clear float glass originating in or imported from Indonesia would likely lead to the continuation or recurrence of dumping and the recurrence of injury.

Rebate provision for diapers

Industrial rebate item 320.12 has been substituted to allow for the importation of raw materials to be used in the manufacture of baby diapers and adult diapers.

General rebate item 412.13/00.00/01.00 has also been amended to exclude adult diapers from the rebate.

Spain

ECSL

From January 2018, the EC Sales List (ECSL), Spanish form 349, will no longer be submitted through the *Informativas* program. Instead, ECSLs must be submitted through an online platform developed by the tax authorities, see Form 349.

New regulation issued in relation to Intrastat

On 24 February 2018, the Government issued a new Order, intended to simplify Intrastat obligations as from 1 March 2018. The main changes included in the Order are as follows:

- The field regarding port/airport of origin/destination is removed.
- The Intrastat period for intra-Community acquisitions and supplies of goods (not for EU transfers of own goods) would follow the same tax rules as for filing both the VAT return and the ECSL.

SII (Immediate Information Supply)

The tax authorities have proposed a number of amendments which, in principle, will enter into force on 1 July 2018, including the following:

- A special mark has been created to identify records where it would be difficult to comply with the deadline (for example, it would be difficult for the taxpayer to know its condition as a large-size company or that the special monthly refund regime applies as a request for the regime to apply is made after the period to which the regime applies).
- Two new communication keys have been created in the VAT book of issued invoices in connection with the supply of information for VAT refunds under the special scheme for travellers.

- To avoid submissions with errors, a new code has been created to identify invoices with amounts that exceed thresholds.

Switzerland

Revised Swiss VAT Law from 1 January 2018

The revised Swiss VAT Law is effective from 1 January 2018, and brings about important changes, notably for foreign domiciled entities generating turnover in Switzerland. The new rules are now fully enforceable and companies should be aware of them in order to be VAT compliant.

An overview of the new VAT legislation was given in the April 2017 edition of GITN, further details are provided below.

Worldwide annual taxable turnover of CHF 100,000

A foreign domiciled entity will become liable to report and pay VAT in Switzerland from the first taxable supply of goods or services on Swiss VAT territory, provided its worldwide annual taxable turnover exceeds CHF 100,000.

'Fictitious input VAT' deduction/VAT margin scheme

The newly introduced margin taxation, replacing the 'fictitious input VAT' deduction, allows a VAT registered person that acquired a work of art or an antique for resale to account for VAT on the difference between the sale price and the purchase price, provided the person has not deducted any input VAT on the acquisition price.

The 'fictitious input VAT' deduction still applies to movable and identifiable goods that are not subject to the margin taxation.

New definition of 'entrepreneurial activity' and 'related persons'

The new law specifies that an activity can qualify as 'entrepreneurial' provided an organization is not funding its costs exclusively with donations, subsidies, etc. Also, the holding and disposal of shares constitutes an entrepreneurial activity as from 1 January 2018.

The definition of 'related persons' no longer depends on the Direct Federal Tax Law. Closely related persons include:

- Owners of 20% of the share capital in a business or persons associated with them or in a partnership company;

- Foundations and associations with a particularly close economic, contractual or personal connection, but excluding pension funds.

Combination of supplies

For combined supplies invoiced for a global price, if 70% of such supplies are rendered abroad, the supplier can consider that the part of the supply rendered on Swiss territory is also rendered abroad. Indeed, the supply on Swiss territory can now follow the VAT treatment of the supply rendered abroad according to the new rules.

Reduced VAT rate on e-magazines, e-newspapers and e-books

E-magazines, e-newspapers and e-books, without promotional character and which fulfil the same function as printed magazines, newspapers and books, are subject to the same reduced VAT rate of 2.5% as for printed magazines, newspapers and e-books.

VAT rates

On 1 January 2018, the standard rate decreased to 7.7%, the special rate for accommodation decreased to 3.7% and the reduced rate remained at 2.5%.

New quarterly VAT forms published

Following the changes to the VAT Law (including the change of VAT rates) applicable as from 1 January 2018, the Swiss Federal Tax Administration (FTA) has also issued a new VAT return.

As from the Q4/2017 VAT return, new numbers have been assigned to the boxes related to the new VAT rates. The layout of the return has also changed; the boxes with the new numbers have replaced those related to the VAT applicable before 2011, which have now been deleted.

As from Q1/2018, the VAT return has also undergone some wording changes, in particular the description of ciphers 200, 221 and 230.

Non-Swiss established taxpayers should also now report their worldwide turnover in their Swiss VAT return, at least once a year after the compulsory annual reconciliation exercise.

In addition, within the new form, only supplies exempted from VAT without credit, according to article 21 Swiss VAT Law, rendered within Swiss territory are to be declared in cipher 230. Supplies located abroad, and for which option is possible, must be declared, as from Q1/2018, in box 221. This change could potentially have IT consequences for companies performing such supplies, since it could imply the creation of a new tax code for VAT exempt supplies without credit, located abroad.

E-invoicing

E-invoicing is recognized in Switzerland provided the authenticity and integrity of invoices is evidenced. To this effect, it is sufficient that companies ensure there is a robust audit trail in place. On 1 January 2018, the usual e-invoicing practice was codified, i.e., given legal value. This codification brings no specific change to the usual practice, but provides legal certainty for taxable persons using e-invoicing in Switzerland.

New rules for importation

In an effort to reduce administrative costs, the Swiss Federal Customs Administration recently announced that paper-based Import Electronic Assessment Decisions will be phased out by 1 March 2018. By then, importers should ensure that business processes are ready for the replacement of the hardcopy documents by the electronic version and must register for the customs online platform.

Next steps

Given these important changes in the legislation, a review of internal processes should be considered, in particular considering the new rules in terms of VAT registration obligation, VAT rates, e-invoicing, and import documents.

Ukraine

Ukraine joins pan-Euro-Mediterranean convention on preferential rules of origin

On 1 February 2018, Ukraine became a member of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM Convention) following its application filed in September 2016.

Ukraine's accession to the PEM Convention allows Ukrainian businesses to apply common rules of origin and rules of cumulative origin of goods in trade with the countries of the pan-Euro-Med zone.

This means that Ukrainian products may be combined with products originating in other Member States of the PEM Convention, and then exported within the pan-Euro-Med zone without losing their eligibility for preferential customs tariffs in the country of destination. The application of the so-called 'diagonal cumulation of origin' is possible provided that all countries involved have free trade agreements (FTAs) with each other and operate rules of origin based on the PEM Convention.

Ukraine currently has six bilateral FTAs with the following PEM members: the EU, the EFTA, Georgia, Macedonia, Moldova, and Montenegro. However, several FTAs do not envisage diagonal cumulation of origin, so Ukraine will be required to negotiate with FTA partners regarding amendments to the relevant agreements.

There is also a potential for diagonal cumulation with Albania, Israel, and Turkey, as Ukraine has launched FTA negotiations with these countries recently.

Overall, Ukraine's accession to the PEM Convention will expand the access of Ukrainian goods to foreign markets and make production and export from Ukraine more attractive for investments.

United Kingdom

Changes to guidance on End Use relief

The tax authorities (HMRC) have issued guidance confirming the findings of the European Commission's Special Reliefs Expert Committee that End Use Relief must be fulfilled (i.e. goods must be put to their prescribed end use) within the Customs territory of the EU. Consequently, HMRC have confirmed that they will no longer issue new End Use approvals (or renew existing approvals) where this condition is not met. The guidance sets out a number of ways of ensuring that there is a smooth transition to these changes. Nevertheless, there is likely to be a significant impact in certain sectors, such as oil and gas, and aerospace, which currently make significant use of the relief.

Eurasian Economic Union

Zero import customs duty rate for certain types of compressors for refrigeration equipment

Decision of the Board of Eurasian Economic Commission of 31 January 2018 No. 17 establishes 0% import customs duty rate with respect to certain types of compressors for refrigeration equipment, classified under the tariff code 8414 30 200 9.

0% import customs duty rate is applied from the date of entry into force of Decision No. 17 until 31 December 2019. Decision No. 17 comes into effect on 3 March 2018.

Extension of anti-dumping duty on graphite electrodes originating from India

Decision of the Board of Eurasian Economic Commission of 19 December 2017 No. 183 extends until 1 October 2018 anti-dumping duty regarding graphite electrodes originating from India and imported into the Eurasian Economic Union. The anti-dumping duty is established at the amount of 16.04%-32.83% of the customs value, depending upon the producer.

Decision No. 183 came into effect on 26 January 2018.

Extension of anti-dumping duty on metal products with polymer coating originating from China

Decision of the Board of Eurasian Economic Commission of 23 January 2018 No. 14 extends until 22 January 2023 anti-dumping duty regarding rolled metal products with polymer coating, which originate from China and are imported into Eurasian Economic Union. The anti-dumping duty is established at the amount of 6.98%-20.20% of the customs value, depending upon the producer.

Decision No. 14 came into effect on 25 February 2018.

Trigger protection measure applied to certain clothes originating from Vietnam

Decision of the Board of Eurasian Economic Commission of 7 February 2018 No. 20 introduces a trigger protection measure in the form of import customs duty with regard to certain clothes which previously were subject to 0% customs duty according to a Free Trade Agreement between the Eurasian Economic Union and Vietnam.

Decision No. 20 comes into effect on 14 March 2018.

Customs classification code	Previous import customs duty rate	New import customs duty rate	Period of application of new import customs duty rate
6107	0%	EUR 1.75 per 1 kg	9 months
6108	0%	EUR 1.75 per 1 kg	9 months
6207	0%	EUR 1.75 per 1 kg	9 months
6208	0%	EUR 1.5-1.75 per 1 kg; 10% of the customs value but not less than EUR 1.5 per 1 kg	9 months
6212	0%	15%-17.5%	9 months
Certain codes from 6111	0%	EUR 1.3 per 1 kg	6 months
6209	0%	EUR 1.5-1.75 per 1 kg	6 months

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

Atentamente,
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