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IV. Country Summaries

Americas

México

The initiative to reform the Customs Law was approved by Congress as of 25 April 2018.

The Ministry of Economy announced the retaliatory measures executed in response to the US Government eliminating the exemption of tariff increases on imports of steel and aluminum for products originating in Canada, Mexico and the European Union.

United States

The US Supreme Court has overturned the physical presence nexus standard required for a state or locality to impose a sales or use tax collection responsibility upon a remote seller.

On 31 May 2018, President Trump issued two Presidential Proclamations amending the Section 232 tariffs on designated steel (25%) and aluminum (10%).

The Department of Commerce has initiated a Section 232 investigation into US imports of cars, SUVs, vans, light trucks, and automotive parts.

Asia Pacific

China

China has reduced import tariffs on completed cars and car parts.

China has reduced import tariffs on daily consumable products.

India

There is an update on GST, including a number of GST Council updates and clarifications.

There is an update on foreign trade policy.

There is an update on customs law and policy.

There have been court decisions regarding service tax, customs, and entry tax.

Indonesia

The regulation on the import of certain products has been amended to enhance the effective implementation of imports of certain products and the smooth distribution of goods.

The Indonesian Anti-Dumping Committee is to make a recommendation for the extension or cessation of antidumping import duty for tinplate products.

Malaysia

There is an update following the introduction of the 0% GST rate on 1 June 2018.

EMEA

European Union

The European Commission has issued the detailed technical proposal for the Definitive VAT Regime.

Certain products originating in the US and imported into the EU will be subject to additional duties from 22 June 2018.

GCC

There are VAT updates from the Kingdom of Saudi Arabia and the United Arab Emirates.

Angola

According to recent reports, the Government aims to introduce VAT from 2019.

Czech Republic

There is a proposed amendment to the VAT Act regarding the taxation of supplies of goods by a person established outside the Czech Republic.

Germany

The Federal Ministry of Finance has updated the VAT treatment of supplies via consignment stock.

The Federal Ministry of Finance has updated the VAT treatment of reverse charge supplies regarding construction services and cleaning services in relation to buildings.

To tackle VAT fraud in relation to online trading, the Federal Ministry of Finance has prepared a draft bill.

Hungary

The real-time invoice data provision obligation enters into force on 1 July 2018.

There is an update on the Food Chain Supervision Fee reporting obligation for VAT registered foreign businesses.

Ireland

Revenue has issued guidance on tax treatment of cryptocurrency transactions.

Italy

The European Commission objected to a request from Italy to apply the reverse charge mechanism for supplies of goods and services made to consortia by their members.

The tax authorities have published instructions regarding the appointment of the intermediaries enabled for e-invoicing procedures.

The implementation of the obligation to raise e-invoices for supplies of fuels has been postponed from 1 July 2018 to 1 January 2019.

It is understood that the tax authorities are considering simplifications to e-invoicing obligations.

Malta

VAT grouping was implemented from 1 June 2018.

A higher VAT registration threshold has been implemented for small businesses.

Netherlands

The reduced VAT rate is set to increase, with no transitional provisions.

The proposed change to the VAT cost sharing exemption has been withdrawal.

Poland

Cases are now arising following the 1 January 2017 law changes on the methodology for input VAT recovery on reverse charge transactions.

A question has been referred to the CJEU on the right to deduct VAT based on non-compliant invoices.

There are upcoming VAT changes in relation to SAF-T requirements and the split payment mechanism.

The tax authorities have published due diligence standards.

Portugal

There has been a change to the instructions for completing the annexes for VAT adjustments in VAT returns.

Serbia

The National Assembly of the Republic of Serbia has adopted amendments to the Law on Value Added Tax, the Law on Tax Procedure and Tax Administration, and the Law on Excise.

South Africa

The Customs Sufficient Knowledge Test has been implemented for certain customs registration and licensing types.

Switzerland

From 1 January 2019, Swiss and foreign companies registered for Swiss VAT with a yearly worldwide turnover exceeding CHF 500,000 will have to pay the Radio and Television corporate fee.

Ukraine

Clarifications have been issued regarding the determination of the customs value of imported goods.

There has been an increase in export duty on ferrous waste and scrap.

The list of products to be inspected at the border checkpoints has been issued.

United Kingdom

Draft legislation has been published for the construction industry reverse charge.

The Court of Appeal has ruled on whether 'Beyblades' are toys or games for customs duty purposes.

I. Normativa

1. Directiva (UE) 2018/912 del Consejo de 22 de junio de 2018 por la que se modifica la Directiva 2006/112/CE relativa al sistema común del IVA, en lo que se refiere a la obligación de respetar un tipo normal mínimo.

Esta Directiva, que entró en vigor el 17 de julio de 2018, contempla la modificación del artículo 97 de la Directiva 2006/112/CE, del IVA -este artículo establecía ya la obligación de aplicar un tipo normal mínimo del 15 % hasta el 31 de diciembre de 2017-, para garantizar que todos los Estados miembros apliquen un tipo normal del 15 %, como mínimo, con carácter permanente.

2. Propuesta de Directiva del Consejo por la que se modifican las Directivas 2006/112/CE y 2008/118/CE en lo que respecta a la inclusión del municipio italiano de Campione d'Italia y las aguas italianas del Lago de Lugano en el territorio aduanero de la Unión y en el ámbito de aplicación territorial de la Directiva 2008/118/CE.

Esta propuesta de Directiva contempla la modificación de la Directiva 2006/112/CE (Directiva del IVA) para incluir al municipio italiano de Campione d'Italia y a las aguas italianas del Lago de Lugano en los territorios que forman parte del territorio aduanero de la Unión Europea y están excluidos del ámbito de aplicación territorial de la Directiva del IVA.

3. Propuesta de Directiva del Consejo por la que se modifica la Directiva 2006/112/CE, relativa al sistema común del impuesto sobre el valor añadido, en lo que respecta al período de aplicación del mecanismo opcional de inversión del sujeto pasivo en relación con determinadas entregas de bienes y prestaciones de servicios susceptibles de fraude, y al mecanismo de reacción rápida contra el fraude en el ámbito del IVA.

Esta propuesta de Directiva tiene como finalidad prorrogar: i) la posibilidad de que los Estados miembros apliquen el mecanismo de inversión del sujeto pasivo para combatir el fraude en las entregas de bienes y las prestaciones servicios comprendidas en el artículo 199 *bis*, apartado 1, de la Directiva del IVA, y ii) la posibilidad de utilizar el mecanismo de reacción rápida (MRR) para combatir el fraude.

4. Propuesta de Directiva del Consejo por la que se modifica la Directiva 2006/112/CE en lo relativo a la introducción de medidas técnicas detalladas para el funcionamiento del régimen definitivo del IVA de tributación de los intercambios entre Estados miembros.

Esta propuesta de Directiva contiene las disposiciones detalladas para aplicar los principios fundamentales en relación con las entregas de bienes entre empresas de la Unión que se contemplaban en la Propuesta de Directiva del Consejo por la que se modifica la Directiva 2006/112/CE en lo que se refiere a la armonización y simplificación de determinadas normas del régimen del impuesto sobre el valor añadido y se introduce el régimen definitivo de tributación de los intercambios entre los Estados miembros (COM (2017) 569 final).

Las disposiciones previstas en esta propuesta de Directiva se aplicarán a partir de 1 de julio de 2022.

5. Ley 6/2018, de 3 de julio, de Presupuestos Generales del Estado para el año 2018.

Con fecha de 4 de julio de 2018, el Boletín Oficial del Estado publicó la Ley 6/2018, de 3 de julio, de Presupuestos Generales del Estado para el año 2018.

Las modificaciones que se introducen en la Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido (Ley del IVA), son las siguientes:

A) <u>Exenciones</u>

- Desde el 1 de enero de 2019, y en principio con vigencia indefinida, se modifica la exención relativa a los servicios prestados directamente a sus miembros por uniones, agrupaciones o entidades autónomas (incluidas las Agrupaciones de Interés Económico), cuando estén constituidas exclusivamente por personas que realicen una actividad exenta o no sujeta al Impuesto que no origine el derecho a la deducción del IVA soportado (artículo 20.uno.6º de la Ley del IVA).

- La finalidad de esta modificación es ajustar la regulación del supuesto de exención al Derecho de la Unión, tal y como ha sido interpretado recientemente por el Tribunal de Justicia de la Unión Europea. A tal efecto, se exigirá que las operaciones exentas realizadas sean distintas de las señaladas en los números 16.º (operaciones de seguro, reaseguro y capitalización), 17.º (entregas de sellos de Correos y efectos timbrados de curso legal

en España por importe no superior a su valor facial), 18.º (operaciones financieras), 19.º (loterías, apuestas y juegos de azar), 20.º (entregas de terrenos rústicos y demás que no tengan la condición de edificables), 22.º (segundas y ulteriores entregas de edificaciones), 23.º (arrendamientos de terrenos y edificios destinados a viviendas), 26.º (servicios profesionales prestados por artistas, escritores y otros) y 28.º (operaciones efectuadas por los partidos políticos) del artículo 20.Uno de la Ley del IVA.

- Con efectos desde la entrada en vigor de la Ley (5 de julio de 2018) y vigencia indefinida, se suprime el umbral mínimo existente de 90,15 euros por factura (impuestos incluidos) para que el turista extracomunitario pueda solicitar la devolución o reembolso del IVA soportado en sus compras de bienes, en el marco de aplicación de la exención en las exportaciones de bienes en régimen de viajeros, prevista en el artículo 21. 2º, letra A) de la Ley del IVA.

- También con efectos desde la entrada en vigor de la Ley (5 de julio de 2018) y vigencia indefinida, se modifica el artículo 22.Trece de la Ley del IVA, para incluir expresamente en la exención de los servicios de transporte aéreo internacional de viajeros –aquellos con origen o destino final en un aeropuerto situado fuera del territorio de aplicación del IVA español– a los vuelos de conexión aérea que estén incluidos con aquellos en un único título de transporte.

  Pese a que la norma no define el concepto de "vuelos de conexión aérea", cabría entender que comprenden, a estos efectos, a los transportes interiores de viajeros, prestados entre dos puntos situados dentro del ámbito espacial de aplicación del Impuesto español, en conexión con transportes internacionales, que son operados generalmente en virtud de acuerdos "interline" o "code-share".

  Con esta modificación legal, se da una mayor seguridad jurídica al tratamiento a efectos del IVA de los llamados "vuelos de conexión", que, hasta la fecha, habían sido objeto de varias resoluciones administrativas, no siempre coincidentes.

B) <u>Tipos impositivos</u>

Con efectos desde la entrada en vigor de la Ley (5 de julio de 2018) y vigencia indefinida:

- se rebaja el tipo impositivo aplicable a las entradas a las salas cinematográficas, pasando de tributar del 21% al 10%; y

- se aplica el tipo impositivo del 4% a los servicios de teleasistencia, ayuda a domicilio, centro de día y de noche y atención residencial, realizados como consecuencia de una prestación económica vinculada a tales servicios que cubra más del 10% de su precio, en aplicación de lo dispuesto en las letras b), c), d) y e) del apartado 1 del artículo 15 de la Ley 39/2006, de 14 de diciembre, de Promoción de la Autonomía Personal y Atención a las personas en situación de dependencia.

  Hasta ahora, para la aplicación a estos servicios del tipo impositivo del 4% se exigía que dicha prestación económica cubriese más del 75% del precio del servicio; por debajo de este porcentaje se aplicaba el tipo impositivo del 10%.

  En cualquier caso, estos servicios de teleasistencia, ayuda a domicilio, centros de día y de noche y atención residencial quedarán exentos del Impuesto, de cumplirse los requisitos establecidos en el artículo 20.uno.8º de la Ley del IVA.

C) Servicios de telecomunicaciones, radiodifusión, televisión y prestados por vía electrónica.

La Directiva (UE) 2017/2455, de 5 de diciembre de 2017, recientemente aprobada, modifica la Directiva del IVA (2006/112/CE) en lo referente, entre otras materias, a las reglas de tributación de los servicios prestados por vía electrónica, de telecomunicaciones, radiodifusión y televisión cuando el destinatario de los mismos sea un consumidor final o un particular.

Es por ello por lo que, con efectos desde el 1 de enero de 2019 y vigencia indefinida, la Ley 6/2018, de 3 de julio, de Presupuestos Generales del Estado para el año 2018 introduce los siguientes cambios en la Ley del IVA:

- se modifican las reglas de localización aplicables a los servicios prestados por vía electrónica, de telecomunicaciones, radiodifusión y televisión, cuando estos servicios se presten por pequeños empresarios o profesionales establecidos en un único Estado miembro de la Comunidad a consumidores finales residentes en otros Estados miembros. La finalidad de esta modificación es aliviar a los primeros de la carga de gestión del IVA que actualmente tienen, al tributar por dichas prestaciones de servicios en el Estado miembro de residencia del consumidor final (destinario de los servicios).

A tal fin, se establece un umbral común a escala comunitaria para esas prestaciones de hasta 10.000 euros anuales –o el equivalente en la moneda nacional del Estado miembro en cuestión– que, de no ser rebasado, permitirá que los servicios prestados por vía electrónica, de telecomunicaciones, radiodifusión y televisión estén sujetos al IVA en el Estado miembro de establecimiento de estos pequeños empresarios o profesionales y no en el Estado miembro de residencia de los consumidores finales (destinatarios de estos servicios).

- En relación también con las prestaciones de servicios por vía electrónica, de telecomunicaciones, radiodifusión y televisión, se modifica el Régimen especial aplicable a dichos servicios cuando son prestados por empresarios o profesionales no establecidos en la Comunidad.

  La finalidad, en este caso, de la modificación es principalmente la de favorecer la utilización de este sistema simplificado de ventanilla única. Para ello, se elimina la limitación que actualmente tienen estos empresarios y profesionales en cuanto a no poder aplicar el régimen especial cuando están registrados, a efectos del IVA, en un Estado miembro de la Comunidad (por ejemplo, porque realicen ocasionalmente determinadas operaciones sujetas al Impuesto en dicho Estado).

D) <u>Otras medidas</u>

- Finalmente, con efectos desde la entrada en vigor de la Ley (5 de julio de 2018), se deroga el régimen de matrícula turística que regulaba determinados beneficios fiscales en el Impuesto sobre el Valor Añadido, ya que los vehículos amparados por matrícula turística se consideraban en régimen de importación temporal.

  No obstante, dicho régimen de matrícula turística se mantiene transitoriamente –hasta el 31 de diciembre de 2018– para aquellos vehículos y embarcaciones que estuviesen amparados por él a la entrada en vigor de la Ley de Presupuestos (5 de julio de 2018).

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 17 de mayo de 2018. Asunto C-566/16, David Vámos.

Directiva 2006/112/CE — Artículos 282 a 292 — Régimen especial de las pequeñas empresas — Régimen de franquicia — Obligación de optar por la aplicación del régimen especial en el año natural de referencia.

Se plantea al TJUE si el Derecho de la Unión debe interpretarse en el sentido de que se opone a una normativa nacional que excluye la aplicación de un régimen especial de imposición del IVA, que establece una franquicia para las pequeñas empresas, a un sujeto pasivo que cumple todos los requisitos materiales, pero que no ha ejercido la facultad de optar por la aplicación de dicho régimen en el momento de declarar el comienzo de sus actividades económicas.

Señala el Tribunal que cada uno de los Estados miembros tienen la obligación de adoptar todas las medidas legislativas y administrativas necesarias para garantizar que el IVA se perciba íntegramente en su territorio y para luchar contra el fraude. No obstante, los Estados miembros están obligados a ejercer su competencia respetando el Derecho de la Unión y los principios generales de proporcionalidad, neutralidad fiscal y seguridad jurídica.

Concluye el TJUE que no resulta contrario a la Directiva de IVA una normativa nacional como la expuesta anteriormente, puesto que la misma es conforme a los principios generales de la Unión en la siguiente medida:

- la irretroactividad del procedimiento de aprobación en sí, no lo hace desproporcionado;

- el permitir a los sujetos pasivos optar por un régimen de franquicia una vez expirado el plazo concedido otorgaría a estos una ventaja competitiva indebida en perjuicio de los operadores que sí lo hicieron;

- habida cuenta de que los beneficiarios de la exención subjetiva no pagan IVA y que no lo tienen que repercutir a sus clientes, puede resultar indispensable que las administraciones tributarias conozcan de antemano a los sujetos pasivos que han optado por dicho régimen.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 31 de mayo de 2018. Asuntos acumulados C-660/16 y C-661/16, Kollroß, Wirtl.

Directiva 2006/112/CE — Entrega de bienes — Artículo 65 — Artículo 167 — Pago anticipado a cuenta para la adquisición de un bien que finalmente no ha sido entregado — Condena de los representantes legales del proveedor por estafa — Insolvencia del proveedor — Deducción del impuesto soportado — Requisitos — Artículos 185 y 186 — Regularización por la autoridad tributaria nacional — Requisitos.

El órgano jurisdiccional remitente plantea al TJUE si, cuando una entrega de bienes con respecto a la cual se ha efectuado un pago a cuenta finalmente no se llega a producir a causa de la comisión de una estafa, el sujeto pasivo tiene derecho a deducir el importe del IVA pagado al proveedor de dichos bienes, de conformidad con los artículos 65 y 167 de la Directiva IVA.

En estas circunstancias, señala el TJUE que, si en el momento del cobro de un pago anticipado a cuenta concurren los requisitos de exigibilidad del IVA, relativos esencialmente a que se efectúe el pago y a que estén identificadas las características y el precio de los bienes a entregar, nace entonces el derecho a deducción. Así, el sujeto pasivo que ha efectuado ese pago puede ejercer en ese momento dicho derecho, sin que proceda tener en cuenta otros elementos fácticos, conocidos posteriormente, que puedan hacer que la realización de la entrega o de la prestación de que se trate resulte incierta. No obstante lo anterior, las autoridades y órganos jurisdiccionales nacionales deberán denegar el citado derecho a la deducción a ese sujeto pasivo si, a la luz de elementos objetivos, queda acreditado que, cuando efectuó el pago anticipado a cuenta sabía, o no podía razonablemente ignorar, que era posible que dicha entrega o prestación no se realizase.

En segundo lugar, se plantea al TJUE si la Directiva IVA se opone a normativas nacionales que supeditan la regularización de la deducción del IVA correspondiente a un pago anticipado a cuenta, efectuado con vistas a la entrega de un bien, al reembolso de dicho pago por el proveedor.

Señala el TJUE que, habida cuenta de la insolvencia de los proveedores, sería excesivamente difícil, o incluso imposible, para los adquirentes obtener el reembolso de los pagos anticipados a cuenta efectuados por ellos de buena fe con vistas a la entrega de los bienes adquiridos. Por lo que, de acuerdo con los principios de neutralidad fiscal y de efectividad, el adquirente del bien podrá reclamar directamente la devolución a las autoridades tributarias.

3. Audiencia Nacional. Sentencia de 6 de marzo 2018. Nº de recurso 531/2014.

Devengo del IVA — Suministros y ejecuciones de obra - solicitud de rectificación de autoliquidaciones - devolución de ingresos indebidos.

Interpuesto recurso contencioso administrativo contra la resolución del TEAC, la Audiencia Nacional valora la discrepancia en cuanto a la determinación del momento en el que se produjo el devengo del IVA repercutido en los suministros y ejecuciones de las obras realizadas por los subcontratistas de las misma.

La Administración entendió que el momento del devengo se producía en la fecha en que se entregaba la obra, mientras que las empresas constructoras procedieron a deducir las cuotas soportadas en relación con las facturas expedidas mensualmente por los subcontratistas y que coincidían con las certificaciones parciales de obra que iban siendo facturadas a medida que esta avanzaba, sin haberse producido aun la entrega de la obra a su dueño.

A este respecto, se giran liquidaciones por parte de la AEAT que son recurridas por las sociedades primero en vía económica administrativa y, posteriormente, en vía jurisdiccional por entender que podían ejercer el derecho a la deducción.

De acuerdo con lo anterior, el Tribunal Supremo confirma el criterio mantenido por las sociedades constructoras, entendiendo que las liquidaciones que la AEAT giró son nulas, lo que implica que fue correcta la decisión de las citadas empresas de ejercer el derecho a deducir las cuotas por IVA soportado en las autoliquidaciones presentadas.

En este sentido, la Audiencia Nacional, con base en el criterio anterior del Tribunal Supremo, concluye que, toda vez que lo que se pretendía con la solicitud de rectificación de las autoliquidaciones presentadas con posterior a la puesta a disposición de la obra al dueño de la misma, momento en el que la AEAT entendió se produjo el devengo de la operación, se ha obtenido ya por la vía de ejecución de sentencias firmes que han acordado la nulidad de las liquidaciones que denegaban la deducción de las cuotas soportadas, no procede analizar si procedía o no dicha rectificación de las autoliquidaciones del IVA.

4. Audiencia Nacional. Sentencia de 9 de marzo de 2018. Número de Recurso 418/2016.

Existencia de dos actividades económicas en dos sectores diferenciados — Autoconsumo de bienes.

Interpuesto recurso contencioso administrativo contra la resolución del TEAC, la Audiencia Nacional valora la posible realización por parte de la entidad recurrente de dos actividades económicas distintas que constituyen a su vez sectores diferenciados.

En primer lugar, conviene señalar que la entidad recurrente, sociedad que se encontraba dada de alta en la actividad de construcción y promoción inmobiliaria (epígrafe 501.1 del Impuesto sobre Actividades Económicas), promovió la construcción de un edificio que destinó en un porcentaje del 84,99% al arrendamiento, mientras que tres de las viviendas y uno de los locales construidos fueron vendidos. Dicha entidad dedujo las cuotas soportadas en relación con dicha promoción en su totalidad, conforme a lo dispuesto en el artículo 94 de la Ley del IVA.

A este respecto, la Audiencia Nacional, basándose en lo dispuesto en artículo 9 de la Ley del IVA y en jurisprudencia sentada por el Tribunal Supremo, señala lo siguiente:

- La entidad realiza, dos actividades económicas (promoción y arrendamiento) que constituyen dos sectores diferenciados de actividad, conforme al artículo 9.1.c) de la Ley del IVA, al encontrarse calificadas en grupos diferentes de la CNAE, y diferir en más del 50% el porcentaje de deducción aplicable.

- La actividad de promoción se encuentra sujeta y no exenta del IVA (con derecho a la deducción del 100% de las cuotas soportadas, de acuerdo con lo dispuesto en el artículo 94 de la Ley del IVA), mientras que a la actividad de arrendamiento le resulta aplicable la regla de prorrata (hay que distinguir el arrendamiento del local que estaría sujeto y no exento, mientras que el arrendamiento de viviendas se encontraría exento del IVA, por aplicación del artículo 20.Uno.23° de la Ley del IVA, sin derecho a la deducción de las cuotas soportadas) con determinación previsible de un porcentaje de deducción inferior al 50%, en cuanto la mayoría de arrendamientos tienen por objeto viviendas.

- Adicionalmente, el arrendamiento no puede considerarse actividad accesoria a la promoción dado que no mejora o incrementa la misma y la entidad recurrente destina un 84,99% del edificio al arrendamiento.

Concluye, por tanto, este Tribunal señalando que se trata de dos sectores diferenciados de actividad en los que se produjo un cambio de afectación de bienes corporales de un sector a otro, habiéndose aplicado la actora una deducción del 100% prevista para la actividad de

promoción cuando ha destinado el 84'99% del edificio a su arrendamiento, actividad que integra un sector diferenciado en el que el porcentaje de deducción difiere en más de 50 puntos porcentuales de aquel.

5. Audiencia Nacional. Sentencia de 22 de marzo de 2018. Número de Recurso 732/2015.

Sujeto pasivo y base imponible en cesión de remate.

El ejecutante, tras celebración de subasta que tuvo lugar sin efecto por falta de licitadores, presenta escrito solicitando la adjudicación por el 50% del valor de tasación de un inmueble en calidad de ceder el remate a un tercero. En fecha posterior comparece la ejecutante al objeto de ceder el remate a D. Casimiro.

El propietario (entidad AIFOS) expide factura por la transmisión a nombre del cliente D. Casimiro por importe ascendente al 50% del valor de la tasación, incluyendo el IVA correspondiente. La factura es remitida por burofax y posteriormente es requerido el pago en varias ocasiones a D. Casimiro, quien no atiende al mismo.

Recuerda el presente tribunal, con base en jurisprudencia sentada por el Tribunal Supremo, que la figura del remate, definible como el acto procesal, público y solemne, por el que el rematante transmite a un tercero el derecho subjetivo a adquirir la cosa subastada en un proceso, no genera, sin más, la traslación de la cosa subastada y rematada (pues aún no se ha adquirido); en realidad, lo único que se transmite al cesionario es el derecho (único ostentado por el rematante, ejecutante o no) a adquirir la cosa, mediante la aceptación coetánea o sucesiva de la cesión, por el precio ofrecido en la subasta.

De acuerdo con lo anterior, la Audiencia Nacional concluye lo siguiente:

- La transmisión se produce en un procedimiento de ejecución hipotecaria donde el ejecutante ha presentado escrito solicitando la adjudicación por el 50% del valor de tasación, en calidad de ceder el remate a un tercero, por lo que la transmisión la efectúa el propietario (en este caso AIFOS) y no el Juzgado, tratándose de una única transmisión del ejecutado al cesionario, como sostiene la Administración y no una doble transmisión del ejecutado al ejecutante y de éste al cesionario como sostiene la actora.

- En cuanto al importe sobre la que debe repercutir IVA la entidad AIFOS, de acuerdo con el artículo 78.Uno de la Ley del IVA, la base imponible estará constituida por el importe total de la contraprestación de las operaciones sujetas al mismo procedente del

destinatario o de terceras personas, que en este caso es el importe del remate, abonado al ejecutado, distinto del precio de adquisición de la cesión del remate, abonado al cedente del remate.

- El precio de satisfecho por D. Casimiro al cedente del remate como contraprestación de la cesión sería precisamente eso, una contraprestación por la cesión del remate, la cual resultaría exenta conforme al apartado Uno, número 18º, del artículo 20 de la Ley del IVA.

6. Audiencia Nacional. Sentencia de 19 de abril de 2018. Número de Recurso 742/2015.

Medios de prueba — Devolución del IVA - Sujetos no establecidos en el TIVA-ES.

En fecha 8 de mayo de 2012 se emiten por la Oficina Nacional de Gestión Tributaria sendos acuerdos de denegación de devolución de las cuotas del IVA, soportadas por determinados empresarios o profesionales no establecidos en el TIVA-ES correspondientes a los ejercicios 2010 y 2011.

Dichos acuerdos se notificaron por correo ordinario, constando en el expediente acuse de recibo, de fecha 23 de mayo de 2012, sellado por la oficina de correos francesa.

En un momento posterior, en fecha 29 de junio de 2012 presenta la entidad recurrente recursos de reposición que se inadmiten por extemporáneos mediante acuerdos de fecha 20 de septiembre de 2012 y notificados el 5 de octubre de 2012. Constan en el expediente los acuses de recibo de las notificaciones efectuadas por correo ordinario.

Al momento de presentar las reclamaciones económico-administrativas ante el TEAC, la actora señala que obtuvo pantallazo de la página web de la Agencia Tributaria en el que consta que la notificación se produjo el 1 de junio de 2012. Posteriormente, al recibir el acuerdo de inadmisión del recurso de reposición por extemporáneo, volvió a consultar la página web de la Agencia (5 de octubre de 2012), constando en este caso como fecha de notificación el 23 de mayo de 2012.

En tal sentido, la compañía alega que esta rectificación a posteriori de la fecha de notificación del acuerdo desestimatorio indujo a error a la interesada, por lo que solicitó la retroacción de las actuaciones y su derecho a la devolución de las cantidades solicitadas. Añade que el medio de notificación que debió utilizar la Administración era la vía electrónica, ya que el hecho de que en la solicitud de devolución debiese

incluir una dirección de correo electrónico implicaba una clara manifestación de la elección por parte del sujeto pasivo de recibir las notificaciones por vía electrónica.

Entiende el presente Tribunal que dicho cambio, unido al hecho de que hayan existido dos notificaciones, una por correo con acuse de recibo y otra electrónica, cuando está última según lo expuesto anteriormente resulta obligatoria para la Administración, y de que las mismas señalan distintas fechas, ha inducido o ha podido inducir a error a la parte actora, por lo que estima el presente recurso a fin de evitar causar indefensión a dicha parte, declarando admisibles los recursos de reposición inadmitidos y procediendo a retrotraer las actuaciones a fin de que previa valoración de la documentación aportada, la Administración resuelva éstos pronunciándose sobre el derecho de la actora a la devolución solicitada.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución 2492/2017, de 24 de mayo de 2018.

Ejercicio del derecho a compensar cuando no se ha presentado la declaración-liquidación susceptible de generar el derecho.

El obligado tributario declaró en el modelo 303 correspondiente al primer trimestre del año 2011 "cuotas a compensar de períodos anteriores" sin haber presentado el modelo 303 correspondiente al cuarto trimestre de 2010 ni el modelo 390 de dicho ejercicio.

En una comprobación posterior la Administración detecta esta situación y, en diciembre de 2012, declara la improcedencia de la compensación del saldo declarado al no haber presentado la recurrente la autoliquidación del 4T de 2010.

En respuesta a la liquidación anterior, la recurrente procede a presentar un recurso de reposición y a presentar la autoliquidación del 4T de 2010 de forma extemporánea (en enero de 2013).

La Administración desestima el recurso de reposición al entender que se han incumplido las limitaciones del artículo 99.Cinco de la Ley del IVA (compensación de cuotas pendientes). En particular, entiende la Administración que el inicio del cómputo de 4 años para la compensación se inicia el día de la presentación de la autoliquidación extemporánea, esto es el 11 de enero de 2013, de manera que no puede aplicarse a declaraciones presentadas con anterioridad (en abril del 2011).

Frente a los acuerdos desestimatorios la recurrente interpuso reclamaciones económico administrativas ante el TEAR de Aragón, el cual estimó sus pretensiones y anuló las resoluciones previas. En este sentido, el TEAR entiende que "el derecho a compensar el saldo pendiente de las cuotas que correspondieran al cuarto trimestre de 2010 en la autoliquidación del primer trimestre del 2011 estará condicionado a que la cuantía de las deducciones procedentes en el cuarto trimestre de 2010 (según lo dispuesto en los artículos 92 a 98 de la Ley de IVA), supere el importe de las cuotas devengadas del mismo periodo".

Contra dicha resolución, el Director del Departamento de Gestión Tributaria presenta un recurso extraordinario de alzada para la unificación de criterio.

La cuestión controvertida se centra en determinar si el ejercicio del derecho a compensar el saldo de cuotas de IVA generado en un periodo en una autoliquidación posterior, exige necesariamente la presentación de la autoliquidación que originó dicho saldo o si basta sólo con la mera acreditación del saldo.

En su análisis, el TEAC diferencia entre el derecho a la deducción (que es potestativo y nace, con carácter general, cuando se devenga la cuota) y el derecho a la compensación.

En cuanto al segundo derecho (compensación), el TEAC señala que es un derecho que surge de las propias declaraciones por lo que solo podrá ser ejercido por el obligado tributario en las declaraciones-liquidaciones presentadas posteriormente y antes del transcurso de cuatro años.

En conclusión, la no presentación de la autoliquidación susceptible de generar un resultado a compensar impide el ejercicio del derecho a la compensación en las autoliquidaciones posteriores. Solo se podrá ejercer el derecho a compensar a partir del momento en que se presente la autoliquidación en que se genere el exceso de cuota soportada.

2. Dirección General de Tributos. Contestación nº V0892-18, de 6 de abril de 2018.

Modificación de la base imponible cuando el destinatario no actúa como empresario o profesional.

En la presente contestación, la DGT se ha pronunciado sobre si procede o no la modificación de la base imponible en el siguiente supuesto de hecho:

Modificación de la base imponible cuando los créditos correspondientes a cuotas repercutidas por operaciones gravadas por el IVA resulten total o parcialmente incobrables.

La DGT señala que, en el caso de impago de los destinatarios de las operaciones gravadas por el IVA, se estará a lo dispuesto en los apartados Cuatro y Cinco del artículo 80 de la LIVA.

En este sentido, si los clientes de la consultante actúan como particulares o como consumidores finales, la modificación de la base imponible sólo procederá en el caso en el que la contraprestación de la operación cuya base imponible se pretende modificar sea superior a 300 euros, IVA excluido. Así, y a estos efectos, para determinar el límite de 300 euros de la base imponible a que se refiere dicho apartado Cuatro del artículo 80 de la LIVA, se tendrá en cuenta lo dispuesto en los artículos 78 y 79 de dicha Ley.

En cuanto al devengo de la operación de referencia, y al tratarse la misma de la prestación de un servicio de abastecimiento de agua, prestado por el Ayuntamiento consultante, que tiene la consideración de operación de tracto sucesivo, señala la DGT que el mismo tendrá lugar en el momento en que resulte exigible el pago de la tasa de agua.

Por consiguiente, en el supuesto objeto de consulta, el plazo de un año a que se refiere el artículo 80. Cuatro se computará desde que resulte exigible el crédito impagado. En el caso en el que concurra un periodo de pago durante el cual no exista ninguna penalización, esto es, cuando el pago en cualquiera de los días incluidos en dicho periodo no conlleve el pago de intereses de demora, ni ninguna otra cuantía indemnizatoria, el plazo de un año se computará desde el día siguiente a la finalización de dicho periodo de pago.

En consecuencia, en el caso objeto de consulta relativo al pago del servicio de abastecimiento de agua prestado por el Ayuntamiento consultante, el plazo de un año referido se computará desde el día siguiente a la finalización del periodo de pago voluntario de la tasa de agua fijado legalmente.

Concluye la DGT que la modificación de la base imponible en los supuestos de créditos incobrables a que se refiere el artículo 80. Cuatro de la LIVA, que daría lugar a la rectificación de las cuotas impositivas repercutidas, y a la emisión de las correspondientes facturas rectificativas, sólo podrá realizarse en el plazo de los tres meses siguientes a la finalización del período de seis meses o un año desde el devengo del IVA en los términos establecidos por la LIVA.

No siendo, por tanto, posible, la modificación de la base imponible correspondiente a operaciones gravadas repercutidas por el consultante e impagadas por sus clientes, sin el debido cumplimiento de los requisitos, y fuera de los plazos establecidos en el artículo 80. Cuatro de la LIVA.

3. Dirección General de Tributos. Contestación nº V0931-18, de 11 de abril de 2018.

Tipo impositivo aplicable a los servicios prestados por la sociedad a sus clientes y por los taxistas a la sociedad.

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

Una sociedad limitada, en la que todos sus socios son titulares de licencia de taxi, dispone de una central de llamadas para recepcionar los servicios de taxi. Se plantea que la sociedad les facture a sus clientes por los servicios prestados de transporte y posteriormente los socios taxistas facturan a la sociedad por la prestación de estos servicios.

Comienza la DGT aludiendo al apartado Dos, número 15 del artículo 11 de la LIVA, donde en particular se establece que se considerarán prestaciones de servicios "*las operaciones de mediación y las de agencia o comisión cuando el agente o comisionista actúe en nombre ajeno. Cuando actúe en nombre propio y medie en una prestación de servicios se entenderá que ha recibido y prestado por sí mismo los correspondientes servicios.*".

Así, y según lo descrito en el escrito objeto de consulta, la entidad consultante presta en nombre propios servicios de transporte de personas a terceros, para lo que se servirá de los servicios prestados por los propios socios que son los titulares de las licencias de taxis.

De esta forma, si los referidos servicios de taxi son prestados en nombre propio por la consultante, empleando para ello medios ajenos, deberá tenerse en cuenta lo dispuesto en el artículo 141 de la LIVA en relación con el régimen especial de las agencias de viajes.

Del escrito de consulta se desprende que el consultante va a prestar servicios de transporte, en nombre propio, y utilizando exclusivamente medios ajenos, por lo que le resultaría de aplicación el régimen especial de agencias de viajes del IVA, con independencia de que formalmente tenga la consideración de agencia de viaje o no, tal y como ya ha puesto de manifiesto reiteradamente el TJUE.

Por último, y en cuanto al tipo aplicable a los servicios prestados en régimen de agencias de viajes, señala la DGT que resultará de aplicación el tipo general del 21 por ciento, siendo, por el contrario, el tipo del 10 por ciento, el que resultará de aplicación a las prestaciones de servicios de transportes de viajeros recibidas por el consultante de sus asociados.

4. Dirección General de Tributos. Contestación nº V0984-18, de 17 de abril de 2018.

Base imponible en las cesiones de créditos y calificación del servicio prestado por los cedentes a efectos del Impuesto sobre el Valor Añadido.

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

La consultante formaliza con otras entidades contratos de "forfaiting" por los que se ceden sin recurso créditos a la consultante.

Señala la DGT que el contrato de "forfaiting" ya fue analizado en la contestación vinculante a la consulta tributaria de 20 de enero de 2017, numero V0116-17, entendiéndose como un contrato mercantil atípico que permite obtener financiación inmediata de un tercero en operaciones, generalmente de ámbito internacional.

Del escrito objeto de consulta, resulta que la entidad consultante formalizara contratos de "forfaiting" con entidades terceras y de su grupo, a través de los cuales las entidades cedentes transmiten un efecto financiero derivado de su actividad a la entidad consultante, que lo acepta sin recurso, y que anticipa el importe descontando su remuneración. De igual forma, del escrito se deduce que la gestión del crédito seguirá siendo realizada por la entidad cedente.

En cuanto al importe que debe consignarse en la prorrata en las operaciones de financiación objeto de consulta, se remite la DGT a los párrafos 5º y 6º del artículo 104.dos.2º de la LIVA, donde se dispone que *"en las operaciones de cesión de pagarés y valores no integrados en la cartera de las entidades financieras, el importe a computar en el denominador será el de la contraprestación de la reventa de dichos efectos incrementado, en su caso, en el de los intereses y comisiones exigibles y minorado en el precio de adquisición de los mismos*. *Tratándose de valores integrados en la cartera de las entidades financieras deberán computarse en el denominador de la prorrata los intereses exigibles durante el período de tiempo que corresponda y, en los casos de transmisión de los referidos valores, las plusvalías obtenidas.".*

De conformidad con lo anterior, deberá imputarse en el denominador la "diferencia entre la contraprestación obtenida por la cesión de los mismos y su valor de adquisición".

Añade, además, la DGT, que como en la mayoría de las ocasiones dicha diferencia tiene valores negativos, resulta razonable que el importe a consignar para el cálculo de la prorrata, sea cero.

Además, concluye este Centro Directivo que las operaciones relativas a la gestión del crédito realizadas por persona distinta del concedente, no deben quedar sujetas y exentas del IVA, en la medida en que el servicio prestado tiene naturaleza administrativa, y como tal, debe quedar sujeto y no exento del mismo.

Por tanto, puede concluirse que los servicios de gestión que prestarán las entidades cedentes se deben entender como servicios de naturaleza administrativa que estarán sujetos y no exentos del Impuesto sobre el Valor Añadido.

5. Dirección General de Tributos. Contestación nº V1002-18, de 18 de abril de 2018.

Suministro Inmediato de Información – Adquisición de una unidad de negocio.

En la presente contestación, la DGT se ha pronunciado sobre si la consultante tiene la obligación de llevar los libros registro a través del Suministro Inmediato de Información (SII) y, en su caso, a partir de qué fecha, a raíz del siguiente supuesto de hecho:

La sociedad consultante adquirió el 3 de julio de 2017 un conjunto global de activos y pasivos constitutivos de una unidad de negocio. Hasta la fecha de la citada adquisición la consultante no había superado el volumen de operaciones de 6.010.121,04 euros, mientras que el volumen de operaciones correspondiente al mencionado negocio adquirido en 2016 superó el citado importe.

En primer lugar, la DGT señala que, de acuerdo con el artículo 71.3 del Reglamento del IVA, la consultante tendrá un periodo de liquidación mensual una vez producida la transmisión, con efectos a partir del día siguiente al de finalización del periodo de liquidación en el curso del cual haya tenido lugar, ya que su volumen de operaciones del año natural inmediato anterior junto con el volumen de operaciones efectuado en el mismo periodo por el transmitente del negocio adquirido con el patrimonio transmitido excedieron de 6.010.121,04 euros.

Por tanto, dado que la adquisición del negocio se produjo el 3 de julio de 2017, la obligación de presentar declaraciones mensuales tendrá efectos a partir del 1 de agosto, fecha a partir de la cual la consultante estará obligada a remitir los registros de facturación a través del SII.

Por último, la DGT entiende que la consultante también que tendrá que informar a través del SII los registros de facturación correspondientes al primer semestre de 2017, incluyendo los registros de facturación correspondientes a la unidad de negocio adquirida.

6. Dirección General de Tributos. Contestación nº V1084-18, de 25 de abril de 2018.

Bono social de los grupos que desarrollen la actividad de comercializadora de energía eléctrica.

En la presente contestación, la DGT se ha pronunciado sobre la consideración de descuento del bono social y sobre si el bono social constituirá parte de la base imponible del IVA:

La consultante plantea si las conclusiones de la consulta de 19 de octubre de 2009, número V2334-09 (LA LEY 4102/2009), relativas al denominado bono social son igualmente aplicables a la luz de la nueva regulación que impone la asunción del coste del bono social a las matrices de los grupos de sociedades que desarrollen la actividad de comercialización de energía eléctrica, o a las propias sociedades que así lo hagan si no forman parte de ningún grupo societario.

En primer lugar, la DGT explica los criterios para considerar una operación como realizada a título oneroso, siendo su aspecto más destacable que la operación tenga una base contractual. Este requisito se cumple en aquellas operaciones onerosas típicas en las cuales hay prestación y contraprestación, quedando estas operaciones sujetas al IVA.

En este sentido, señala la DGT la posibilidad de que la prestación y contraprestación estén vinculadas de manera que la falta de una implique la ausencia de la otra, ya que, según lo dictado por la jurisprudencia comunitaria, se permite considerar como operaciones a título oneroso.

En lo que respecta al Real Decreto que regula lo relativo al bono social, se señala que el descuento del precio, será calculado según la metodología de cálculo de los precios voluntarios para el pequeño consumidor de energía eléctrica y su régimen jurídico de contratación, que será aplicado en la factura del consumidor.

Asimismo, en este Real Decreto se dispone que la financiación del bono social y el coste del suministro de electricidad del consumidor, será asumido por los grupos sociales que desarrollen la comercialización de energía eléctrica.

Por lo tanto, con base en lo anterior, la DGT concluye que el suministro de electricidad que se realice a título oneroso a aquellos particulares que gocen del bono social, tendrá la naturaleza de descuento y que este, al entenderse realizado simultáneamente con el referido suministro cuyo precio constituye la tarifa reducida, no formará parte de la base imponible del IVA.

En último lugar, en cuanto a la financiación del coste del bono social que supondrá para comercializadoras de energía eléctrica, la DGT concluye que estas transferencias no estarán sujetas al IVA, puesto que no constituyen contraprestación de operación alguna sujeta al Impuesto.

7. Dirección General de Tributos. Contestación nº V1105-18, de 27 de abril de 2018.

Consideración del transporte de mercancías bajo el régimen de perfeccionamiento pasivo, como una operación exenta de IVA.

La entidad consultante realiza como actividad principal el transporte de mercancías en régimen de perfeccionamiento pasivo. Además, presta servicios de intermediación y logística. En el desarrollo de la actividad de transporte, en ocasiones realiza el envío de las de mercancías a territorios terceros como subcontratada y en otras ocasiones, los servicios son subcontratados con terceros.

Se plantea la posibilidad de aplicar la exención del Impuesto sobre el Valor Añadido en relación al transporte de mercancías, como servicio accesorio a la exportación temporal de las mismas en régimen de perfeccionamiento pasivo.

Entiende la DGT que los servicios de transporte prestados por la consultante estarían exentos en virtud del Art. 21.5º LIVA en la medida en que estén directamente relacionados con una entrega de bienes que fuesen exportados o enviados fuera de la Comunidad, y siempre que concurran los requisitos y condiciones expresados en la Ley y Reglamento del Impuesto (en el Art. 21.1º de la Ley del Impuesto, entre otros).

Por ello, la DGT analiza si, en aquellos supuestos en los que se produzca una entrega de las mercancías y en los que las mismas salgan de la Comunidad en régimen de perfeccionamiento pasivo, se entiende que la salida de los bienes con ocasión del citado régimen de

perfeccionamiento pasivo merece la calificación exportación y, por consiguiente, resulta posible aplicar la exención tanto a la entrega, como a los servicios accesorios a la misma.

Concluye la Dirección General, en aplicación del artículo 269 del Reglamento 952/2013, de 9 de octubre, por el que se establece el código aduanero de la Unión, que no tienen la consideración de exportaciones las salidas del territorio aduanero de "mercancías incluidas en el régimen de perfeccionamiento pasivo" y que, por tanto, no resulta aplicable la exención en los servicios de transporte de las mercancías, "con independencia de con quién se contraten los referidos servicios objeto de la consulta".

Adicionalmente, la DGT hace mención al artículo 22.Uno de la Ley del IVA (relacionados con buques destinados a la navegación marítima internacional) considerando que si la consultante prestase algún servicio de los recogidos en dicho precepto, sí resultaría aplicable la exención, pero que no parece deducirse del escrito de consulta que ese sea el supuesto de la consultante.

IV. Country Summaries

Americas

Mexico

Customs law reform

On 22 February 2018, the initiative to reform the Customs Law was submitted to the House of Representatives. This initiative made its way through the House and was approved by Congress as of 25 April 2018.

The initiative includes changes to strengthen the schemes already provided, as well as to establish new measures that will allow global trade logistics chains to operate more efficiently and granting legal certainty to users, thereby strengthening the existing legal framework in the customs field to benefit investments that lead to greater economic growth for the country.

Part of this initiative is to provide the necessary platform for Mexico to address challenges that may arise as a result of potential changes in free trade agreements and globalization of markets, while maintaining the ability to control and properly supervise foreign trade operations that contribute to the economic growth of Mexico.

Also, it is intended to adapt the regulatory framework for the use of new and better technologies, promote flexibility of processes, clarify the obligations to different global trade actors, strengthen existing customs regimes, and provide benefits to certified and reliable companies for customs authorities, among others.

One of the most significant changes is that the customs authorities will be in a position to conduct customs clearance together with authorities from other countries, called joint clearance, (including sharing customs facilities) by performing clearance of goods in the national territory, as well as abroad. This includes hosting the US for customs clearance in Mexico.

Mexico responds to US trade policy on steel

On 5 June 2018, the Ministry of Economy announced the retaliatory measures executed by Mexico in response to the impositions made by the US on products from Mexico. Such measures were implemented through the decree that modifies the General Import and Export Tariff Law (TIGIE), the decree that establishes Applicable Import Duty Rates during 2003 for North America Originating Goods (LIGI) and the decree that establishes Sectoral Relief Programs (PROSEC).

The measures taken respond to the proclamations made by the US Government on 30 April 2018, when it decided to eliminate the exemption of tariff increases on imports of steel and aluminum for products originating in Canada, Mexico, and the European Union as of 1 June 2018.

According to this publication and in light of the need to implement measures equivalent to those implemented by the US, Mexico determined to carry out the following actions:

- NAFTA preferential duty rate treatment suspended for 71 HTS (Harmonized Tariff Schedule) Codes, including steel and aluminum.
- Increased MFN (Most Favored Nation) import duty rate of 71 HTS Codes, applicable only to US originating goods.
- Increased MFN import duty rate of 186 HTS Codes from chapters 72 and 73, corresponding to steel and aluminum.
- Incorporation of 11 HTS Codes to the electric, electronic, and automotive and auto parts sectors of the PROSEC Decree.

The 71 HTS Codes for which the NAFTA preferential duty rate treatment has been suspended are the same 71 HTS Codes for which the MFN import duty rate has been increased, and 50 of them correspond to steel products, which are taxed with a 25% duty rate as of 5 June 2018.

163 of the 186 HTS Codes for which the MFN import duty rate has increased were exempt until 4 June 2018, and 10 of them have been relocated as exempt via PROSEC Decree, for the industrial sectors indicated in the last bullet above.

These measures will impact global trade operations on an industry-specific basis in Mexico. HTS Codes affected in accordance with the published Decree are as follows.

HTS Codes that were suspended from NAFTA preferential treatment, only for goods originating in the US, regardless of the exporting country:

0203.12.01	1602.41.01	7208.51.02	7210.49.99	7214.20.01	7225.40.02	7226.91.99	9405.10.99
0203.19.99	1602.42.01	7208.51.03	7210.61.01	7214.91.01	7225.40.03	7226.99.02	
0203.22.01	2004.10.01	7209.15.01	7211.29.01	7214.99.01	7225.40.99	7304.23.01	
0203.29.99	2008.93.01	7209.15.02	7211.29.02	7214.99.02	7225.50.01	7305.11.01	
0406.10.01	2106.90.99	7209.15.99	7211.29.03	7216.21.01	7225.50.02	7305.39.99	
0406.20.01	2208.30.04	7209.18.01	7211.29.99	7216.31.01	7225.50.03	7306.30.01	
0406.90.04	7208.10.02	7210.12.99	7211.90.99	7216.33.01	7225.50.04	7615.10.99	
0406.90.99	7208.10.99	7210.41.01	7212.30.01	7216.40.01	7225.50.05	8414.59.99	
0808.10.01	7208.38.01	7210.41.99	7213.20.01	7225.30.99	7225.50.99	8903.92.01	
1601.00.02	7208.39.01	7210.49.03	7213.99.99	7225.40.01	7226.91.02	9403.20.99	

These same HTS Codes have been affected with an increase in MFN import duty rates to 7%, 10%, 15%, 20% and up to 25% for US originating goods, regardless of the country of export, as of 5 June 2018.

These 186 HTS Codes have been affected by increasing MFN import duty rates to 5%, 15% and up to 25%:

7208.10.01	7209.15.01	7210.70.99	7212.20.99	7214.99.02	7225.30.02	7225.92.01	7227.20.01
7208.10.02	7209.15.02	7211.13.01	7212.30.01	7214.99.99	7225.30.03	7225.99.99	7227.90.01
7208.10.99	7209.15.03	7211.14.01	7212.30.02	7216.10.01	7225.30.04	7226.19.99	7227.90.99
7208.25.01	7209.15.99	7211.14.02	7212.30.99	7216.21.01	7225.30.05	7226.91.01	7228.30.99
7208.25.99	7209.16.01	7211.14.99	7212.40.01	7216.22.01	7225.30.06	7226.91.02	7228.70.01
7208.26.01	7209.17.01	7211.19.01	7212.40.02	7216.31.01	7225.30.99	7226.91.03	7304.19.01
7208.27.01	7209.18.01	7211.19.02	7212.40.03	7216.31.02	7225.40.01	7226.91.04	7304.19.02
7208.36.01	7209.25.01	7211.19.03	7212.40.99	7216.31.99	7225.40.02	7226.91.05	7304.19.03
7208.37.01	7209.26.01	7211.19.04	7213.10.01	7216.32.01	7225.40.03	7226.91.06	7304.19.99
7208.38.01	7209.27.01	7211.19.99	7213.20.01	7216.32.02	7225.40.04	7226.91.99	7304.23.01
7208.39.01	7209.28.01	7211.23.01	7213.91.01	7216.32.99	7225.40.05	7226.92.01	7304.29.01
7208.40.01	7209.90.99	7211.23.02	7213.91.02	7216.33.01	7225.40.99	7226.92.02	7304.29.02
7208.40.99	7210.30.01	7211.23.99	7213.99.01	7216.40.01	7225.50.01	7226.92.03	7304.29.03
7208.51.01	7210.30.99	7211.29.01	7213.99.99	7216.50.99	7225.50.02	7226.92.04	7304.29.04
7208.51.02	7210.41.01	7211.29.02	7214.20.01	7216.61.99	7225.50.03	7226.92.05	7304.29.05
7208.51.03	7210.41.99	7211.29.03	7214.30.01	7219.33.01	7225.50.04	7226.92.99	7304.29.06
7208.52.01	7210.49.03	7211.29.99	7214.91.01	7219.34.01	7225.50.05	7226.99.01	7304.29.99
7208.53.01	7210.49.99	7211.90.99	7214.91.02	7219.90.99	7225.50.06	7226.99.02	7304.39.05
7208.54.01	7210.61.01	7212.20.01	7214.91.99	7225.19.99	7225.50.99	7226.99.99	7304.39.06
7208.90.99	7210.70.01	7212.20.02	7214.99.01	7225.30.01	7225.91.01	7227.10.01	7304.39.07
7304.39.99	7305.12.99	7305.31.99	7306.30.01	7306.50.99	7307.23.99	7308.30.99	
7305.11.01	7305.19.01	7305.39.99	7306.30.02	7306.61.01	7308.20.01	7308.90.99	
7305.11.99	7305.19.99	7306.19.99	7306.30.99	7306.69.99	7308.20.99		
7305.12.01	7305.20.01	7306.29.99	7306.40.99	7306.90.99	7308.30.01		

In addition to the aforementioned impacts, the following HTS Codes were included within the PROSEC Decree in order to grant duty relief (thus, bringing them to duty free only for companies registered under PROSEC within the industrial sectors hereby specified):

HTS Code	Duty rate	Industry
7208.39.01	Exempt	Electric
7208.51.01	Exempt	Electric
7211.29.02	Exempt	Electric
7225.19.99	Exempt	Electronic
7208.26.01	Exempt	Automotive
7208.27.01	Exempt	Automotive
7209.16.01	Exempt	Automotive
7209.17.01	Exempt	Automotive
7211.29.02	Exempt	Automotive
7225.30.99	Exempt	Automotive
7225.40.01	Exempt	Automotive

United States

Supreme Court opinion on sales tax nexus law

On 21 June 2018, the US Supreme Court issued its opinion in *South Dakota v. Wayfair, Inc. et al.,* a case challenging South Dakota's anti-*Quill* sales tax nexus law, in which it overturned the decades-old physical presence nexus standard required in order for a state or locality to impose a sales or use tax collection responsibility upon a remote seller.

In a 5-4 decision, the Court overruled its earlier decisions in *Quill* and *National Bellas Hess*, holding that the physical presence rule promulgated under these decisions was "unsound and incorrect". The Court's basis for overturning this 50-year-old nexus standard was grounded in a number of significant bases, including:

- The application of a physical presence requirement is an "incorrect interpretation of the Commerce Clause", particularly when measured in a vastly expanded e-commerce marketplace.
- South Dakota's law does not violate substantial nexus requirements because remote sellers have the potential to maintain a significant virtual presence in the state.
- The principle of stare decisis cannot stand when it prohibits states from exercising lawful powers.

For further information, see the Multistate Tax Alert US Supreme Court overturns Quill's physical presence standard, which summarizes the Court's decision, addresses potential implications of the Court's overturning *Quill*'s physical presence requirement, and offers considerations for taxpayers.

US ends steel and aluminum tariff exemptions for EU, Canada, and Mexico – implements quotas

On 31 May 2018, President Trump issued two Presidential Proclamations amending the Section 232 tariffs on designated steel (25%) and aluminum (10%). (Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), provides for the implementation of tariffs based on national security concerns.) According to the Proclamations, the temporary exemptions to the Section 232 tariffs on designated steel and aluminum products that expired on 31 May 2018 have not been renewed. From 1 June 2018, US imports from the EU, Canada, and Mexico are subject to the additional safeguard tariffs applicable to all countries except South Korea, Brazil, Australia, and Argentina. Leaders from Canada, Mexico and the EU announced plans for retaliatory tariffs.

The Trump Administration also announced permanent exemptions for Argentina, Australia, and Brazil (steel exemption only). A Proclamation issued on 30 April 2018 had previously created a permanent exemption from the steel tariffs for South Korea. Imports of iron and steel products from Argentina, Brazil, and South Korea will be subject to absolute quotas. Aluminum imports from Argentina also will be subject to quotas.

US Commerce Department initiates Section 232 investigation on US auto imports

In a *Federal Register* notice published on 30 May 2018, the US Department of Commerce (DOC) initiated a Section 232 investigation into US imports of cars, SUVs, vans, light trucks, and automotive parts. A report on the investigation is due to the President no later than February 2019. Based on this report, President Trump will determine whether to impose additional tariffs on future imports of automotive goods.

A public hearing is scheduled for 19 and 20 July 2018. Requests to testify at the hearing were due by 22 June 2018. The DOC also accepted public comments on the investigation through 22 June 2018.

Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) provides for the implementation of tariffs based on national security concerns. The most recent DOC Section 232 investigations into steel and aluminum products resulted in the imposition of tariffs earlier this year. Prior to the steel and aluminum cases, there had not been a Section 232 investigation since 2001.

Asia Pacific

China

China reduces import tariffs on completed cars and car parts

On 22 May 2018, the Tariff Committee of the China State Council announced significant reductions on the import duty on both completed cars and car parts as listed below. The reductions came into effect on 1 July 2018.

Goods		Current import duty rate (MFN)	New import duty rate from 1 July 2018
Completed cars	135 HS codes	25%	15%
	4 HS codes	20%	15%
Car parts	79 HS codes	8%, 10%, 15%, 20% and 25%	6%

The impact of the duty rate reduction is significant as it will reduce not only the import duty, but also the import consumption tax and VAT.

Car importers, makers, manufacturers, and other companies involved in the automotive sector are advised to closely monitor further developments given the scale of the positive impact, which should include the following:

- A new pricing strategy for import, wholesale, and retail must be considered and developed.
- Related party import prices, royalty, warranty, and other non-trade payments should all be taken into consideration before the implementation of the new price strategy.
- Companies should also revisit the arrangement
- alongside the supply chain in order to optimize cost and tax.
- Upgrading the Customs compliance rating and applying for Authorized Economic Operator (AEO) status would enable increased import efficiency for importers.
- Companies should ensure they satisfy compliance requirements and properly apply the tariff reduction benefits.
- Companies in the automotive sector may consider utilizing the advanced ruling mechanism to secure more certainty for import/export operations.

China reduces import tariffs on daily consumable products

On 30 May 2018, the State Council of China decided at an executive meeting to further reduce the import duty rate on daily consumable goods. The average import duty rates will be broadly reduced as below, which will come into effect on 1 July 2018.

Goods	Current import duty rate (MFN)	Import duty rate from 1 July 2018
Clothes, shoes, hats, kitchen kits and sports products	15.9%	7.1%
Household appliances, such as washing machines and refrigerators	20.5%	8%
Aquatic products and mineral water	15.2%	6.9%
Cleaning products, cosmetics and some healthcare products	8.4%	2.9%

Since 1 June 2015, there have been a number of specific reductions of import tariff on daily consumable products. This tariff reduction, representing around 50% duty reduction, covers a wide variety of daily consumable products.

As import duty comprises part of the import product price and import duty is also a calculation basis for VAT and consumption duty, it is expected that the duty reduction will decrease the sales price of daily consumable products in China.

In addition, affected sectors should evaluate the tariffs reduction impact on operational cost and consider adjusting pricing strategy in the supply chain.

Since the application of the favourable duty rate is based on Harmonized System (HS) codes, companies are advised to:

- Review HS codes carefully to ensure the correct application of the HS code; and
- Consider utilizing the Customs advanced ruling mechanism to secure more certainty for tax issues of classification, valuation, and country of origin.

India

GST updates

Over the course of meetings from March to May 2018, the GST Council has made a number of recommendations, including in relation to the compliance system, support for exporters, and the e-way bill for the inter-state and intra-state movement of goods. Some of the key recommendations and clarifications of the GST Council, and other GST updates, are highlighted below.

GST compliance

The GST Council decided to continue the present system of compliance until 30 June 2018. It is now likely that the present system of simplified returns will continue for another six months.

- The present system of filing GSTR-3B and GSTR-1 is to continue until 30 June 2018, until the new simplified return filing system is finalized. A new model was discussed and a Group of Ministers on IT has been tasked to finalize the simplified return format.

- The payment of tax under the reverse charge mechanism (for procurements from unregistered person) is to be deferred until 30 June 2018.

- Provisions relating to the deduction of tax at source (TDS) and the collection of tax at source (TCS) remain suspended until 30 June 2018.

- Online filing and renewal of Letters of Undertaking (LUT) for the FY 2018-19 have been enabled on the GST portal.

- A single monthly return has been proposed for all taxpayers, except for composition dealers and dealers with nil transactions (who must file quarterly returns).

- The new design of the single monthly return is to be implemented in three stages:

- Under stage 1, the present system of filing GSTR-3B and GSTR-1 will continue for six months;

- Under stage 2, the new simplified monthly return must be filed, which will have the facility to upload invoice data for business-to-business (B2B) transactions. A facility for claiming provisional input tax credit on a self-declaration basis will be available to the recipient for six months from the date of implementation of stage 2.

- Under stage 3 (which will commence after the expiry of six months from the date of implementation of stage 2), the facility of provisional credit will be withdrawn and input tax credit will be available only on the basis of invoices uploaded by the supplier. Uploading of invoices by a supplier who has defaulted in payment of tax above a threshold level will be blocked to prevent misuse of the input credit facility. There will be no automatic reversal of the input tax credit of the recipient on account of non-payment of tax by the supplier. Tax would be recovered from the recipient only under circumstances such as closure of the supplier’s business or the supplier not

having adequate assets, etc., leading to default in payment of tax by supplier. Recovery of tax or reversal of credit will be through issuance of automated notices from the Goods and Services Tax Network (GSTN) portal to reduce human interface.

- It has also been proposed that the content/information required to be reported in the return will be reduced as a measure of simplification.

Export support

E-wallet scheme

Implementation of the e-wallet scheme is to be deferred until 1 October 2018 because of technical legal and administrative issues that have been identified. It is proposed that e-wallets will be credited with notional or virtual currency that can be used by exporters to make payment of GST on the import of goods, so their funds are not blocked.

Accordingly, exporters presently utilizing benefits under various export promotion schemes may continue to use the pre-GST tax exemptions on imports until 1 October 2018.

Export refunds

The GST Council reviewed progress on the grant of export refunds of both Integrated Goods and Service Tax (IGST) paid on exports and input tax credit, and directed speedy disposal of pending claims for immediate sanction and disbursal.

Letter of Undertaking for exports for FY 2018-19

Exporters must file a LUT in FORM GST RFD-11 on the portal only; a LUT will be deemed to be accepted as soon as the Application Reference Number (ARN) is generated. No document must be physically submitted to the jurisdictional office.

IT grievance redressal mechanism

The Government has set up an IT grievance redressal mechanism to address the grievances of taxpayers due to technical issues on the GST portal that arise at the time of filing returns.

Taxpayers should make an application, together with the evidence, to the nodal officers on the issue. On the basis of applications received, GSTN will identify issues affecting a large section of taxpayers.

E-way bill

The e-way bill system for the intra-state movement of goods has already been rolled out in all states and union territories.

In some states, the requirement for an e-way bill is based on consignment value, and in some states, it is commodity-based.

The Government has issued clarification on issues regarding 'Bill To Ship To' transactions for e-way bills. It clarified that one e-way bill is required to be generated either by the supplier or the person who ordered the goods as per the prescribed procedure.

Other GST Council meeting updates

It has been proposed to set up a Group of Ministers for finalizing the proposal of a concession of 2% in the GST rates on business-to-consumer (B2C) supplies, and to discuss the imposition of a sugar cess and reduction of the GST rate of ethanol.

It has been proposed to convert the Goods and Service Network – Special Purpose Vehicle (GSTN-SPV – a private entity) into a fully-owned government company. Centre and state governments will acquire 51% of the equity currently held by private entities.

Priority Sector Lending Certificates

Priority Sector Lending Certificates (PSLC) are a tool for promoting comparative advantages among banks while they meet their priority sector lending obligations in India.

The Central Board of Indirect Taxes and Customs (CBIC) clarified that PSLCs are classified under heading 4907 of the GST schedule and will accordingly attract GST at 12% (circular No. 34/8/2018 – GST, dated 1 March 2018). The Central Government has now notified that the supply of PSLCs by a registered person would attract GST under the reverse charge mechanism.

Clarification on applicability of IGST to goods supplied from customs bonded warehouse

As a common practice, importers file an into-bond bill of entry and store goods in a customs bonded warehouse, and thereafter supply such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

Under the IGST Act, tax would be levied when goods are imported into India, i.e. when they cross the customs frontiers of India, and under the Customs Act, the point of levy of tax is at the time of clearance of such goods from the bonded warehouse. This leads to double taxation on the goods imported.

It has now been clarified by the Council that IGST will be levied and collected at the time of final clearance of the warehoused goods for home consumption, i.e. at the time of filing the ex-bond bill of entry. The value addition accruing at each stage of supply, where there is more than one transaction while goods remain in bond, will be included in the value on which the IGST will be payable at the time of clearance of the warehoused goods for home consumption.

Clarification on claim of refund

The CBIC has clarified the issues relating to refunds under the GST regime to ensure uniformity in the implementation of the provisions of the law.

Description	Clarification
Refund filed by input service distributor (ISD), a composition dealer, or a non-resident taxable person for claiming the balance in the electronic cash and/or credit ledger.	Clarification has been issued stating that a refund of the balance in the electronic cash and/or credit ledger can be claimed when the respective returns prescribed for ISD dealers are filed.
Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to levy of compensation cess.	It has been clarified that a registered person making zero rated supplies under bond or LUT may claim a refund of unutilized credit of cess paid on inputs. It is further clarified that a registered person making zero rated supplies of products on payment of IGST cannot utilize the credit of compensation cess paid on inputs. Input tax credit of cess can be utilized only for payment of cess on outward supplies.
Whether a bond or LUT is required in the case of a zero rated supply of exempted or non-GST goods and whether refund can be claimed by an exporter of exempted or non GST goods	It is clarified that LUT is not required for claiming a refund on account of export, non-GST goods, and exempted goods without payment of IGST. Further, the exporter would be eligible for a refund of unutilized credit.

Foreign trade policy updates:

- Onetime condonation under the Export Promotion Capital Goods (EPCG) Scheme: The Directorate General of Foreign Trade has issued a public notice allowing an extension of the one time condonation for submission of an installation certificate, filing an application for an increase in the export obligation period, and obtaining a block wise extension for an export obligation.

- Eligibility of IT enabled services under Appendix 3D of the Service Exports from India Scheme (SEIS) Reward of the Foreign Trade Policy 2015-20: It has been clarified that the service categories in Appendix 3D of the SEIS are eligible for a claim irrespective of whether these notified services are delivered on an IT-enabled platform or otherwise.

- Service providers (and not ports) are eligible for SFIS/SEIS benefit: It has been clarified that the actual service providers (and not ports) are eligible for the Served from India Scheme (SFIS) and SEIS in respect of their share of earnings made by performing the notified services under SFIS/SEIS Scheme. An aggregator of services (ports) is entitled to benefits under SFIS/SEIS for services exclusively rendered by them and for which the foreign exchange earnings (or INR payments as allowed under the scheme) are received and retained by them on this account and not simply routed through them as receipt of service charges with regard to services rendered by other actual service providers.

- The threshold level of earnings has been amended for eligibility for Duty Credit Scrip: The service provider must have minimum net free foreign exchange earnings of USD 15,000 in the year of rendering service and USD 10,000 for individual service providers and sole proprietorships.

- Maintenance of annual average export obligation: It will no longer be necessary to maintain an annual average in some year(s) to be offset by excess exports in other year(s) in respect of EPCG authorizations.

Customs update

Regulations

The following regulations are to be introduced:

- Customs Audit Regulations, with effect from the date of publication in the Official Gazette;

- Sea Cargo Manifest and Transhipment Regulations, with effect from 1 August 2018;

- Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, with effect from the date of publication in the Official Gazette.

Sanction of pending IGST refund claims on account of exports

Refunds were being delayed because the GSTN was not able to transmit data to Customs EDI system. As an interim solution, to overcome the issue of blocked refunds, refunds can be made upon the provision of certain undertakings or the submission of certification authority (CA) certificates by exporters for cases where

there is no short payment. For cases where there are short payments, the exporters would be intimated by the authorities to make the payment of IGST equal to the short payment. Only on submission of proof of payment, will the process of refund take place. The exporters would be subject to a post-refund audit under the GST law.

Service tax decisions

Supreme Court holds that no service tax payable on reimbursable expenditure or cost incurred before 14 May 2015 by service provider

The issue before the Court was in relation to the constitutional validity of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 (Service Tax Rules) to the extent it includes reimbursement of expenses in the value of taxable services for the purposes of the levy of service tax, and whether the rule is *ultra vires* the provisions of sections 66 and 67 of Chapter V of the Finance Act, 1994.

The Delhi High Court had previously decided this issue in favor of the taxpayer, and held that service tax did not apply to the amount of reimbursable expenditure and the revenue under appeal in the present case. In the meantime, section 67 of the Finance Act was amended to specifically include the amount of reimbursable expenditure in the value of taxable services.

The Supreme Court rejected the appeal filed by the Revenue and observed that:

- Rule 5 of the Service Tax Rules brings within its scope the expenses that are incurred and reimbursed by the service receiver to the service provider while providing the service. Under these rules, reimbursable expenses also form part of the 'gross amount charged'. Therefore, the core issue in the appeal is whether section 67 of the Finance Act permits the subordinate legislation to be enacted in the said manner, as in Rule 5.

- Section 66 of the Finance Act specifically states that service tax will be levied on the 'value of taxable services'. Accordingly, service tax is to be determined with reference to the value of services that are actually rendered by the service provider.

- In section 67 of Finance Act, the expression 'such' is important, and in deciding the value of taxable services for charging service tax, the Revenue had to determine the gross amount charged for providing 'such' taxable services. Any other amount collected that is not for providing such taxable services could not be brought within the service tax net.

- Accordingly, Rule 5 of the Service Tax Rules was beyond the mandate of section 67, and the Delhi High Court was correct in interpreting sections 66 and 67 to hold that the value of a taxable service is the gross amount

charged by the service provider 'for such service', and the valuation for service tax could not be anything more or less than the consideration paid as quid pro quo for rendering such a service.

- The amendment to section 67 with effect from 14 May 2015 to include the reimbursable expenditure within the meaning of 'consideration' was a substantial change in the law and had to be prospective in nature.

Pre-deposit paid for first appeal adjustable on filing second appeal before Tribunal

A two-judge bench noted that section 35F of the Central Excise Act requires the deposit of a certain percentage of duty demanded or penalty imposed before an appeal can be filed, and stipulates that the Tribunal or Commissioner (Appeals) cannot entertain any appeal unless a pre-deposit of 7.5% or 10%, as the case may be, has been made.

The Delhi High Court set aside this order and direction of the Tribunal, and held that there is no need to make separate payments of 7.5% and 10% as pre-deposit for a First and Second appeal for customs, excise and service tax matters.

A circular dated 27 April, 2017 issued by the Delhi Customs, Excise and Service Tax Appellate Tribunal (CESTAT) was quashed, and it was held that the petitioner and others on filing a second appeal before the Tribunal are required to deposit 10% of the amount of duty/penalty as confirmed by the first appellate authority inclusive of the 7.5% pre-deposit made for the first appeal. The 10% would not be in addition to, and over and above, the 7.5% of pre-deposit made for the first appeal.

Customs decisions

Customs duty and redemption fine can be demanded from person in ownership and custody of imported goods under exercise of option for redemption

A recent case has found that customs duty and a redemption fine can be demanded from the person in ownership and custody of imported goods, having exercised an option for redemption, despite there being no liability to duty on any person other than the importer.

The case concerns an appeal filed by Revenue against an order of the CESTAT setting aside the duty and redemption fine imposed for release of a vehicle seized from the respondent/assessee who opted to pay the duty and redemption fine leviable.

The Tribunal had decided that if the person in charge of imported goods is not the actual importer then there could be no levy of duty or imposition of redemption fine on such person.

The High Court allowed the appeal filed by the Revenue and observed that:

- Customs duty and redemption fines can be demanded from the person in ownership and custody of the imported goods, who has exercised the option for redemption, despite there being no liability to duty on any person other than the importer.

- The imported goods would be liable for confiscation on there being a short levy of duty along with interest. On such confiscation, the Government could sell the goods and realize whatever value is obtained on such sale. For any duty or interest still remaining with respect to the goods, Revenue would have to proceed against the original importer, and not any subsequent purchaser.

- Since the subsequent purchaser (however bona fide) from whom the goods were seized must pay the duty and redemption fine because they have exercised the option to redeem the goods, the order passed by the CESTAT was quashed, and the appeal stands allowed in favor of the Revenue and against the respondent.

Assessable value of imported goods did not include expenditure not obligatory to foreign principal

A recent case has held that the assessable value of imported goods will not include expenditure incurred by the buyer which is not obligatory to the foreign principal as a condition of the sale of imported goods, although it may form a part of the agreement.

The matter concerns an appeal filed against the first

appellate order which confirmed additions of certain amounts to the valuation of imports as held by Customs.

Customs had held that the invoice values of imports were to include additional amounts, namely, annual franchisee fee at 5% of the value of net purchases, 2% for institutional advertising and promotional campaign, and 3% on account of advertising expenditure required to be undertaken by the appellant in India as per the terms of the agreement.

The Tribunal partially allowed the appeal and observed as follows:

- The franchisee fee is paid by the appellant as a condition for the sale of goods by the foreign supplier. Therefore, the franchisee fee will be included in the assessable value under Rule 10 (1) (c) of the Customs Valuation Rules, 2007.

- The share of institutional advertising and promotional campaign is only the sharing of the cost of the worldwide advertisement of the foreign supplier and it comes within the ambit of Rule 10(1) (e), as such payments are being made as a condition of sale of the imported goods.

- Although the appellant is required to incur expenditure of not less than 3% towards advertising in India as per the agreement with the foreign principal, it cannot be said that such expenditure has been incurred to satisfy the obligation of the foreign principal. Such expenditure is incurred after import of the goods. Therefore the condition specified in Rule 10 (1) (e) is not satisfied, and accordingly this expenditure towards advertising is not required to be included in the assessable value of imported goods.

Entry tax decision

Uttar Pradesh Tax on Entry of Goods into Local Area Act, 2007 constitutionally valid

A petition was filed questioning the *vires* of the Uttar Pradesh Tax on Entry of Goods into Local Area Act, 2007 before the High Court.

The petitioner is a Government of India undertaking engaged in the business of import, storage, transportation, and refining of crude oil, and in the manufacture and sale of petroleum products.

The Counsel for the petitioners challenged the Act on the ground that it extends to areas in respect of which the state legislature does not have power to legislate. It was urged that it is only the central Government which can make legislation for cantonment areas.

The Act has its source of power from the schedule of the constitution under which the state government is competent to levy taxes on the entry of goods into a local area for consumption, use, or sale therein. The state government is empowered to enact a law for the benefit of the local area wherein the goods are to be consumed, used, or sold. The words 'local area' have to be understood as an area administered by a local body, like a municipality, a *panchayat*, or like. The use of the word 'a' before 'local area' is of immense significance. The taxable event is not the entry of goods in any area of the state, but in a local area.

The High Court held that whether a tax is collected as a general tax or as local tax is held to be a matter of legislative policy. Regarding the issue of legislative competence of the state it was held that although the union is invested with the power to enact law providing for local self-government, delimitation, and other matters connected with the administration of the cantonment area, this does not mean that a cantonment area is beyond the bounds of the state in which that cantonment lies. It continues to be territory of the state in respect of which state

legislature has power to frame laws. The impugned legislation providing for imposition of a levy on entry of goods into a cantonment area in no manner infringes upon the field reserved for the union legislature.

Indonesia

Fifth amendment to regulation on import of certain products

To enhance the effective implementation of imports of certain products and the smooth distribution of goods, the regulation on the import of certain products has been amended for the fifth time, by amending the provisions of Article 4, which set out sea, land, and air ports of entry for the imports of certain products (food and beverages, traditional medicines and food supplements, cosmetics and home medical supplies, garments and other textile finished products, footwear, and toys). The amendment includes the addition of Merak Mas Seaport in Cilegon as one of the ports of entry.

Anti-dumping import duty for tinplate products

The Indonesian Anti-Dumping Committee (KADI) will make a recommendation for the extension or cessation of antidumping import duty for tinplate products after evaluating the written response provided by the Indonesian Association of Can Producers (APKKI). KADI had given APKKI until 16 May 2018 to provide its written response.

APKKI members, which use tinplate products as the main raw material, object to an extension of the anti-dumping import duty. In addition, they have asked the Government to review the currently applicable anti-dumping import duty of 12.5%.

The argument is that high anti-dumping import duty makes the Indonesian can industry uncompetitive, while the anti-dumping import duty in other member states of ASEAN (Association of Southeast Asian Nations) ranges from 0% to 5%. In addition, consumers prefer to buy foreign products, which are more cost-effective than local products. As a result, three members of APKKI have closed in the past three years to the beginning of 2018.

Malaysia

As discussed in the May 2018 edition of this newsletter, from 1 June 2018, all goods and services that were subject to GST at 6% are now subject to GST at the rate of 0%.

On 30 May 2018, the Royal Malaysian Customs Department (RMCD) issued an updated FAQ Transitional 6% - 0% on the transition from 6% to 0% of standard rated supplies.

Also on 30 May 2018, Prime Minister Tun Dr Mahathir Mohamad announced that the Sales and Services Tax (SST) would be reintroduced from 1 September 2018. In the period since then the Government has said that new SST would have a much broader scope than the previous version. More details are expected in the coming weeks.

For comments on the completion of GST returns for the period from 1 June to 31 August 2018, see Deloitte Malaysia's GST Chat: June 2018.

The Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) has gazetted new anti-profiteering rules (the Price Control and Anti-profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2018), with effect from 6 June 2018. These regulations cover the sale of all goods and services. For more information see Deloitte Malaysia's Indirect Tax Alert: New anti-profiteering regulations for all businesses.

EMEA

European Union

European Commission issues detailed technical proposal for Definitive VAT Regime

On 25 May 2018, the European Commission released a proposal containing detailed technical amendments to the EU VAT Directive that supplement the recently proposed overhaul of the system to reinforce fraud-resilience. Under the proposal, intra-EU cross-border supplies of goods between businesses would no longer be VAT exempt. Applying VAT on cross-border trade should significantly reduce VAT fraud in the EU, especially missing trader intra-Community (MTIC) fraud. At the same time, the changes would also reduce the number of administrative steps needed when businesses sell to companies in other Member States, and would eliminate specific reporting obligations under the current transitional VAT regime for trade in goods. The Commission aims for these rules to enter into force on 1 July 2022.

Background

The present proposal follows through on that of October 2017, which introduced a series of fundamental principles or 'cornerstones' for a Definitive VAT Regime for cross-border trade of goods, as well as a series of 'quick fixes' to the current VAT regime.

The intention is to overhaul the entire EU Principal VAT Directive and replace or delete the current transitional articles. With the publication of these technical amendments, the European Commission finally provides sufficient clarity to initiate discussions between EU Member States on how to shape the Definitive VAT Regime.

The 46 pages of new legislative provisions contain the actual changes constituting the Definitive VAT Regime for goods, as well as textual modifications to reflect the 'Union' concept throughout the VAT Directive, as well as some other minor changes.

The Commission also reiterated its intention to work on the adoption of initially proposed changes for the so-called 'quick fixes', which should enter into force well ahead of the present technical proposal (in principle on 1 January 2019).

Key proposed changes

Intra-Union supply

The Commission's proposal would put an end to the current split of all intra-EU cross-border movements of goods into two different transactions: an exempt intra-Community supply in the Member State of departure and an intra-Community acquisition taxed in the Member State of destination.

Instead, it proposes the concept of an intra-Union supply of goods, which will mean a supply of goods with cross-border transport carried out by one taxable person for another taxable person or for a non-taxable legal person (e.g. a public authority).

Under the principle of taxation at destination, the intra-Union supply will be taxable in the country where the dispatch or transport of goods to the customer ends. A supply will only qualify as an intra-Union supply if it is linked to the cross-border transportation of goods by either the supplier or the purchaser.

Hence, in the Definitive VAT Regime, it will also be important to allocate transport to a specific supply in chain transactions. All supplies preceding or following the intra-Union supply will be taxed as domestic supplies, either in the country of dispatch or country of the goods' arrival. The specific simplification for triangular supplies will cease to exist.

The current thresholds under which cross-border supplies of goods to non-taxable legal persons or to fully exempt taxable persons are taxed in the country of dispatch will be abolished, and taxation at destination of these supplies as intra-Union supplies will apply in all cases.

Certain types of supplies (e.g. supply of goods with installation) will not fall under the new rules for intra-Union supplies but remain subject to their own specific place of supply rules.

Transfers of own goods by a business from one Member State to another will be assimilated to an intra-Union supply, in the same way as they are currently assimilated to an intra-Community transaction. The taxable person completing such a transfer will have to self-assess for VAT in the country of arrival.

The concept of Certified Taxable Person (CTP)

The October 2017 proposal introduced the concept of a Certified Taxable Person or CTP. A business established in the EU that carries out or intends to carry out cross-border goods trade (sell or buy side) can apply to its national tax authorities to become a CTP, by proving compliance with certain predefined criteria. Member States will mutually recognise CTP status.

The criteria remain unchanged since the initial proposal, confirming that non-EU established traders will not be able to obtain CTP status, nor will fully exempt taxable persons or non-taxable legal persons.

The CTP concept, which has not been very well received by businesses and Member States so far, will become very important under the Definitive VAT Regime, as it will allow buyers to apply a reverse charge on their cross-border business-to-business (B2B) purchases of goods in many cases, following significant changes to the chargeability rules.

Person liable to pay VAT on supplies of goods

The principle under European VAT legislation remains that sellers should charge VAT due on the sale of goods to their customers and should pay this VAT over to the Member State of taxation.

For an intra-Union supply, this means that sellers will have to charge VAT at the rate applicable in the destination Member State. This will result in additional administrative burden for suppliers operating cross-border (determination of VAT rates) and would have a significant cash flow impact, as no VAT is currently charged on cross-border supplies due to the exempt status of intra-Community supplies.

Where the customer is a CTP, the latter will be VAT liable under a reverse charge mechanism in all situations where the supplier is not established in the destination Member State. This mandatory reverse charge will not only apply on intra-Union supplies, but also on domestic supplies where the supplier is not established in the Member State of taxation.

In order to achieve consistent VAT treatment based on the principle of effectively charging VAT (unless a CTP is involved), Member States will no longer have the possibility to apply so-called domestic reverse charge rules for supplies of goods. As such, domestic reverse charge rules will be aligned with the rules on cross-border supplies: non-established suppliers will apply a reverse charge mechanism only if their customer qualifies as a CTP. For services, domestic reverse charge rules can still be applied at national level.

This change regarding the VAT liability on domestic sales by non-established suppliers could have a positive effect in chain transactions where all parties after the initial supplier are CTPs, as entire chains could be without VAT.

Time of supply rules for intra-Union supplies

The chargeability of VAT on intra-Union supplies will follow the same rules as currently applicable for intra-Community supplies and acquisitions. The chargeability of VAT on cross-border supplies occurs when the invoice for the supply is issued, which should happen before the 15th day of the month following that in which the supply occurs. No VAT is due for payments on account (advances) received in connection with intra-Union supplies. If no invoice is issued by that date, VAT becomes due on the 15th day of the month following the supply.

This approach allows an identical time of supply for all intra-Union supplies, but could mean that VAT included in payments on account for taxable intra-Union supplies could be retained by the supplier until the actual time of supply.

A single intra-Union OSS

Following the statement on the Definitive VAT Regime included in the October 2017 proposal, an online reporting mechanism or 'One Stop Shop' (OSS) will be introduced to allow the declaration, payment, and deduction of VAT for all B2B goods transactions of traders operating in the EU. The current proposal describes this OSS in detail, which has the potential to redefine the VAT obligations that businesses face when conducting cross-border business.

Technically, the OSS will be an extension to the intra-EU OSS that will apply as of 1 January 2021 for the declaration and payment of EU distance sales (cross-border business-to-consumer (B2C) sales) by EU or non-EU taxable persons. It will allow the reporting of supplies of goods for which VAT is payable by the supplier or buyer, and is VAT deductible, in a single portal in the Member State of establishment of an EU based business, or, for non-EU based businesses, in a Member State where they appoint an intermediary to benefit from this scheme.

At first glance, taxpayers opting for this scheme will no longer have local VAT registration and reporting obligations for their goods trade, but will limit their VAT reporting to the domestic VAT return in their country of establishment on the one hand and the OSS for their foreign taxed transactions on the other.

The intra-Union OSS will allow the deduction of input VAT incurred outside of the home country, however, limited to VAT of Member States where the business has (within a certain timeframe) taxable outgoing transactions reportable in the OSS. If not, a taxable person will have to rely on the traditional refund procedures provided by VAT legislation.

The OSS return will in principle have to be filed on a quarterly basis. A monthly filing will be required for companies with an overall EU turnover exceeding a threshold of EUR 2,500,000.

Intra-Union supplies included in the OSS will no longer have to be reported in the currently existing intra-Community Sales Listing for intra-Community supplies. However, a limited set of information on trade flows will still have to be reported in the OSS, per Member State of destination. The intra-Community Sales Listing will be maintained for services.

Comment

The proposal issued by the European Commission certainly gives food for thought on the European VAT system's future direction. To achieve its goal of a robust system of taxation at destination, it makes clear choices towards the effective application of VAT on cross-border supplies and the centralization of reporting obligations in a business' home country.

Whether the EU VAT system is ready for such a significant change in the short- to medium-term remains to be seen. For businesses, the technical proposals allow a detailed study of the impact which these changes, if adopted, could have on trade flows, financial cash flow, processes, and systems.

EU reacts to US measures and imposes additional duties on certain goods originating in the US

As a reaction to the expiry of the EU's temporary exemption from US trade measures on steel and aluminium on 1 June 2018, certain products originating in the US and imported into the EU will be subject to additional duties from 22 June 2018 (for the list of potentially impacted goods see Commission Implementing Regulation (EU) 2018/724, Annexes I and II).

Notwithstanding the US's characterisation of its measures on steel and aluminium as national security measures, the EU considers them to be safeguards. The EU, therefore, will rely on its ability under World Trade Organization (WTO) rules to rebalance the situation by targeting a list of US products with additional duties.

On 16 May 2018, the EU notified the WTO of the proposed suspension of concessions on various products originating in the US, which would be applied in two phases:

- In the first phase, additional duties of 10% or 25% will be levied from 22 June 2018 on goods identified in Annex I, including iron and steel products, certain agricultural goods and prepared foods, orange juice, whiskey, tobacco, cosmetics, clothes, certain motorcycles, and motorboats. The goods listed in Annex I represent up to EUR 2.8 billion of trade in goods with the US.

- In a second phase, additional duties ranging from 10% to 50% will be applied on a wider range of products detailed in Annex II from 1 June 2021, or after a successful WTO dispute, whichever is sooner.

If a business imports into the EU any of the products covered by the first phase of the countermeasures, the business may be faced with additional duties of 10% or 25% upon their importation into the EU.

The EU will apply such additional duties as long as, and to the extent that, the US applies or re-applies its alleged safeguard measures on steel and aluminium in a manner that affects products from the EU. In this respect, the possibility of reducing the list of products exists and is subject to the US Administration's decision on possible exemptions. However, the current state of affairs led the European Commission to formally endorse the full list of US products as notified to the WTO.

Gulf Cooperation Council

Kingdom of Saudi Arabia

Since VAT came into effect on 1 January 2018, the tax authorities (GAZT) have issued a total of at least 5,212 violations to non-compliant businesses. GAZT has recently issued a press release sharing this and other information on its field inspections following the implementation of VAT. Notably, the press release states that the violations identified during these inspections mostly related to non-compliant VAT invoices and not displaying the VAT registration certificate as required. This is consistent with a similar press release from GAZT detailing the common violations identified at recent GAZT inspections of car rental businesses.

GAZT's objective through its field campaigns is not only to raise awareness amongst businesses about the importance of proper VAT implementation, but also to follow up on how businesses are applying the tax in practice.

United Arab Emirates

The UAE Central Bank has started to publish daily exchange rates to be used for VAT purposes when a supply is made in a currency other than the UAE Dirham, see Exchange Rates against UAE Dirham for VAT related obligations. The exchange rates of commonly used currencies are being updated from Monday to Friday and are based on FX rates prevailing at 6pm UAE time each day. Historical rates are also available, see Monthly Exchange Rates. It is expected that Federal Tax Authority (FTA) may also release clarification on actions that businesses should take in relation to the period prior to the date the Central Bank began to publish these exchange rates.

The FTA released the new technical guides: Tax Agents and Tax Agencies User Guide and Tax Groups (the latter differs from the previous tax groups guide as it focuses more on the technical aspects and implications of setting up a tax group, rather than the administrative process).

The FTA also provided updated versions of the following existing guides:

- Payment User Guide
- VAT Returns User Guide
- Warehouse Keeper and Designated Zone Guide
- Excise Tax User Guide: Registration, Amendments and De-registration
- Excise Tax Returns User Guide

Furthermore, two new Cabinet Decisions have been published:

- Cabinet Decision no. (25) of 2018 addresses the VAT treatment of commercial transactions between registered dealers for the supply of non-investment gold, diamonds, and any product where the principal component is non-investment gold or diamonds. In these situations, the dealer purchasing the products must account for the VAT due via the reverse charge mechanism and issue a required written declaration to the supplier. The decision was effective from 1 June 2018.

- Cabinet Decision no. (26) of 2018 relates to the VAT charged on certain supplies pertaining to exhibitions, conferences, and related services. In certain cases, the supplier of exhibition and conference services will not be required to collect VAT from customers that are not established in UAE and are not VAT registered/required to be registered in the UAE. The supplier will instead declare the output tax on its VAT return and may claim a corresponding refund on its VAT return where the relevant conditions are met. A user guide has also been published for suppliers and recipients of such exhibition and conference services that further explains the taxability criteria and refund process. This Cabinet Decision was effective immediately.

The FTA has published Decision no. (3) of 2018 on tax invoices which provides that a supplier may choose not to include the physical address of its customer on the tax invoice/credit note, provided the mailing address of the recipient is included on the tax invoice.

The FTA has released eight online tutorials (initially in English but now also available in Arabic) with detailed guidance on how to fill in VAT returns, including what is required on each box of the return, see VAT Filing Returns. They further address the submission and payment process.

The FTA has published a guide on the process for requesting a refund of VAT by UAE nationals who have built a new residence, see VAT Refund for Building New Residences by UAE nationals. The refund covers VAT incurred on eligible expenses relating to newly constructed buildings which are to be used solely as a residence of the applicant and/or the applicant's family. Deloitte Middle East has produced a summary of the refund process, see The FTA publishes its "VAT refund for building new residences by UAE Nationals" guide. As the FTA has not yet published the list of verification bodies which will form part of the review process for such claims, applicants will not, at date of publication, be able to submit refund claims to the FTA. As such, valid tax invoices in the name of the applicant and related documentation should be retained until such time as refunds can be submitted.

In UAE, taxpayers are now able to submit voluntary disclosures via the e-services portal. No user guide has, to date, been published by the FTA. The voluntary disclosure can be submitted by selecting a button marked 'Submit Voluntary Disclosure' which should now appear next to each submitted return (on the VAT returns screen of the user's e-services portal). A separate tab in the return, marked 'VAT 211 – VAT Voluntary Disclosure/Tax Assessment', provides further details of the treatment of each of the options for the nature of the error to be disclosed. The voluntary disclosure must be made within 20 business days of discovering the error or penalties may apply.

Angola

Tax reform – VAT implementation

According to recent reports, the Government aims to introduce VAT in the State General Budget of 2019, aiming to replace gradually the current consumer tax from 2019.

Being at an advanced stage, a draft version of the future VAT code was released for analysis and public discussion between tax authorities and taxpayers, stakeholders and other experts.

For now, it is known that the introduction of VAT will take place gradually from January 2019, and that the initial two-year stage of VAT implementation will affect only larger taxpayers. However, it is expected that VAT will be fully implemented for all remaining taxpayers by 2021 (therefore, the taxable base will gradually increase).

This implementation takes place at a very specific time for Angola's economy, considering the deep financial, economic, and currency crisis faced by the country, mostly resulting from the negative variation of tax revenue provided by oil exportation, which has been consistently falling since 2014. In this scenario, the introduction of VAT is being considered as fundamental for the stability of Angola's tax revenue, by replacing a simpler consumption tax with a restricted taxable base.

VAT implementation in Angola may also be seen in the scope of a deeper tax reform however; therefore other tax-related implementations may be considered, namely changes regarding the issuance of invoices and equivalent documents, introduction of self-billing mechanisms, invoicing software program certification, or even the introduction of SAF-T (or other types of digital systems/files to proceed with the communication of tax-relevant figures to the tax authorities).

Czech Republic

Amendment to VAT Act

An amendment to the VAT Act, proposed to take effect from January 2019, has been referred to the Government for consideration. A significant change was added to the amendment, concerning the taxation of supplies of goods including assembly by a person established in a country other than the Czech Republic. If both the supplier and the customer are VAT payers, the supplier will have to invoice the supply including Czech VAT (the supply would be subject to self-assessment by the customer until the end of 2018).

Germany

Federal Ministry of Finance updates VAT treatment of supplies via consignment stock

Germany's Federal Ministry of Finance issued a guidance letter on 11 October 2017 that amends the VAT treatment of consignment stock (or call-off stock) provided for in the Decree on the application of the VAT Act, to align with the decisions of the Federal Tax Court (BFH). The amended rules will apply to all cases in which the statute of limitations has not expired as of the date the guidance letter was issued; however, taxpayers may choose to apply the previous rules until 31 December 2017.

Under the amended section 1a.2, paragraph 6 of the VAT Act Application Decree, if a binding purchase order or payment is made by a customer before goods are transported, the transfer of the goods by the supplier is deemed to be a 'direct supply' of the goods to the customer, and not an intra-Community transfer of own goods followed by a domestic supply to the customer. This rule applies both to goods that are brought into a domestic warehouse of the supplier and to goods that are temporarily stored in a consignment warehouse at the initiative of the customer.

The guidance letter clarifies that a customer is considered to be 'fixed' (i.e. identified) if it has made a binding purchase order or has already paid for the goods at the time the shipment begins. For cases involving a purchase order, new wording added to section 3.12, paragraph 3 of the Decree requires that the parties conclude a binding obligation for the purchase of the goods; a probable or likely customer would not be considered to be sufficiently identified. The letter also confirms that if,

on the other hand, the customer is not identified at the beginning of the transport or dispatch of the goods, the temporary storage of the goods in a German consignment warehouse constitutes an intra-Community transfer by the suppler under section 1a, paragraph 2 of the VAT Act. In such a case, the supply of the goods to the customer is deemed to take place only after the goods leave the warehouse and, consequently, the supply is taxable in Germany as a domestic supply.

Comment

The implementation of the principles of the BFH's decisions into the application decree is welcome, even though the guidance letter does not answer all outstanding questions. In individual cases, it may be unclear as to when a binding order will be considered to exist, and the period of time that is still sufficiently 'at short notice' to ensure that interim storage is not relevant for the acceptance of a direct supply.

Companies that deliver goods to their customers via domestic consignment stock or that choose the 'shipment on hold' method should welcome the change in the tax authorities' position, as it should mean that the obligation to register for VAT tax purposes in Germany will no longer apply in the future, as long as transfers to their customers are deemed to be direct supplies.

It should be noted that the draft proposal released by the European Commission on 4 October 2017 on the creation of a Definitive VAT Regime would simplify the VAT rules for certain companies moving goods via consignment stock arrangements. In particular, one of the short-term 'quick fixes' provides that simplifications would be made to consignment stock supplies made by 'Certified Taxable Persons' (CTP) (a new concept that would be introduced), whereby separate VAT registration would not be required in the EU Member State where the consignment stock is located. If the proposal is implemented, the new rules would apply to supplies made as from 1 January 2019.

Federal Ministry of Finance updates VAT treatment of reverse charge supplies regarding construction services and cleaning services in relation to buildings

Germany's Federal Ministry of Finance issued an official decree on 18 May 2018 that amends the VAT treatment of reverse charge supplies provided for in the administrative VAT guidelines of the tax authorities, to align with the decisions of the Supreme Tax Court (BFH). The amended rules will apply to all cases for which the statute of limitations has not yet expired as of the date the decree was issued. However, the tax authorities have granted a transitional period to apply the previous rules until 31 December 2018.

Germany has implemented the reverse charge mechanism for construction services provided to other construction service providers and cleaning services provided to other cleaning service providers. The recipients must prove that they qualify as construction service providers or cleaning service providers by means of a certificate issued by their local competent tax office.

Under the amended section 13.5, paragraph 8 and section 13b.12, paragraph 3 of the administrative VAT guidelines of the tax authorities if, at the time an instalment payment is made, the requirements for the reverse charge mechanism are not fulfilled, the supplier is liable for the VAT amount due on the collected instalments. However, where the requirements for the reverse charge mechanism are met at the time the supply is finished, the supplier remains liable for the VAT amount regarding the collected instalments. Consequently, the recipient only has to self-account for the VAT under the reverse charge mechanism on the final amount to be paid (i.e. the difference between the collected instalments and the total amount). The official decree furthermore clarifies that in this situation, the recipient is entitled to reclaim the respective VAT amount from the tax authorities, provided the general conditions for input VAT deduction according to section 15 of the VAT Act are fulfilled.

These amendments concern in essence construction services and cleaning services in relation to buildings according to section 13b, paragraph 2, No. 4 and 8 of the VAT Act, if, at the time the instalment payment is made, no certificate of the recipient is available, and hence the requirements for the reverse charge supplies do not apply.

Proposal for combatting VAT fraud in relation to online trading

To tackle VAT fraud in Germany in relation to online trading, the Federal Ministry of Finance has prepared a draft bill.

A new legal provision would place increased obligations on the operators of online marketplaces. In future, the operators of online marketplaces could be held liable for VAT not paid by traders making sales on their platform. The operators of online marketplaces would bear the liability if goods are traded by dealers on their platforms who do not possess a certificate demonstrating tax registration with the competent tax authorities. The primary objective of the bill is to encourage foreign online traders to register for tax in Germany and pay VAT.

The intended new regulation would enter into effect on 1 January 2019, but it has not yet passed the parliamentary chambers.

Hungary

Real-time invoice data provision obligation in force

The real-time invoice data provision obligation enters into force in Hungary on 1 July 2018.

The final version of the legislation is available, see https://www.nav.gov.hu/nav/onlineszamla.

Further to the above, the tax authorities, in order to support preparation for the obligation, publishes information and documentation on a regular basis. The latest updates are available on the above link, including in English.

Food Chain Supervision Fee reporting obligation for VAT registered foreign businesses

The registration deadline for the Food Chain Supervision Fee (FCSF) for VAT registered foreign businesses expired on 31 May 2018.

It is important that all VAT registered foreign businesses that are subject to FCSF should prepare and submit their FCSF report for 2017 to the National Chain Safety Office.

In the case of non-compliance with this obligation, default penalties may be imposed. The maximum amount of default penalty may be HUF 500,000,000 (approx. EUR 1,600,000), but at a maximum of 10% of the previous financial year's Hungarian sales revenue that is subject to FCSF.

Ireland

Guidance on tax treatment of cryptocurrency transactions

On 15 May 2018, Revenue issued guidance on its view of the Irish tax treatment of cryptocurrency transactions, see Revenue eBrief No. 88/18. A newly created Tax and Duty Manual 02-01-03 clarifies how 'normal' tax rules apply to transactions involving cryptocurrencies for Income Tax, Corporation Tax, Capital Gains Tax, VAT and PAYE purposes, and provides guidance on the valuation of cryptocurrencies.

From a VAT perspective, the guidance states that Bitcoin and similar cryptocurrencies are regarded as 'negotiable instruments' by Revenue, and thus are covered by an exemption from VAT under Paragraph 6 (1)(c) of Schedule 1 to the Value-Added Tax Consolidation Act 2010 (VATCA 2010). Revenue has also stated that the exchange of cryptocurrencies for traditional currency by a company acting as a principal is also exempt from VAT under Paragraph 6 (1)(d) of Schedule 1 VATCA 2010. As regards the income received from mining activities, this will generally fall outside the scope of VAT in Revenue's view, on the basis that mining does not constitute an economic activity for VAT purposes.

When it comes to the supply of goods/services in exchange for cryptocurrency, the taxable amount for VAT purposes will be the Euro value of the cryptocurrency at the time of exchange. As the value of the cryptocurrencies may vary between different sources (i.e. there would be varying exchange rates available at the same time), Revenue have indicated that a reasonable effort should be made to use an appropriate valuation for each individual transaction in question.

Italy

No reverse charge for supplies of goods and services made to consortia by their members

With Communication COM(2018) 484 of 21 June 2018, the European Commission objected to the request made by Italy on 19 July 2016, asking for a special measure derogating from Article 193 of the EU Principal VAT Directive (PVD) as regards the application of the reverse charge mechanism for supplies of goods and services made to consortia by their members.

According to Article 193 of the PVD, the person liable for the payment of VAT to the tax authorities is the taxable person supplying the goods. The purpose of the derogation requested by Italy is to place that liability on the taxable persons (consortia) to whom the supplies are made by their members (reverse charge mechanism). According to Italy, the aim of the requested derogation is to combat tax evasion.

However, the Commission is of the view that Italy did not demonstrate that the derogating measure is requested in order to fight fraud or in order to simplify procedures for taxable persons and/or tax administrations, as required by Article 395 of the PVD. Therefore, as the request does not fulfil the conditions laid down in Article 395, it is was rejected.

Appointment of intermediaries for e-invoicing procedures

Through Act no. 117689 dated 13 June 2018, the tax authorities published official instructions regarding the appointment of the intermediaries enabled for e-invoicing procedures.

In particular, this Act provides measures regulating the appointment of intermediaries for:

- The consultation and acquisition of e-invoices and copies;
- The enrolment of the email account and generation of the QR Code.

Mandatory e-invoicing for supplies of fuels postponed to 1 January 2019

By way of a Law Decree of 27 June 2018, issued by the Council of Ministers, the implementation of the obligation to raise e-invoices for supplies of fuels has been officially postponed from 1 July 2018 to 1 January 2019.

Based on the new Decree, until the end of 2018:

- E-invoicing for supplies of fuels will be optional or upon request of the client;
- Payments through fuel card will be still valid; alternatively, only payments through electronically traceable means of payment will be allowed.

However, as announced by the specialized press, it seems that the new Decree (not yet published in the Official Gazette) would not affect the following obligations, which should still be effective from 1 July 2018:

- E-invoicing for supplies of services rendered by subcontractors of public bodies;
- The e-storage and e-transmission of daily payments data arising from supplies of fuels used as engine.

Potential e-invoicing simplifications

It is understood that the tax authorities are considering simplifications related to e-invoicing obligations. The simplifications would relate to:

- Postponement of the deadline for the transmission of e-invoices to the SDI system

  As a matter of principle, an e-invoice should be transmitted to the SDI system by the end of the day when the taxable event occurs. Considering this deadline is very short, the tax authorities are evaluating a time extension, to even more than 24 hours after the taxable event, upon the condition that this delay in the transmission of e-invoices does not affect the time of periodical VAT settlements. This simplification would be in line with some previous conclusions raised by the tax authorities in Circular Letter No 180/E/1998, where they clarified that 'late invoicing' would be a formal violation, and thus not subject to penalties, upon the condition that such a delay in the issuance of the invoice does not affect the time of periodical VAT settlements.

- Pre-registration of email address where receiving e-invoices

  A new application would be made available on the official website of the tax authorities for the pre-registration of an email address at which taxpayers wish to receive e-invoices. As a result of this application, each registered

email address would be matched to the specific VAT number of the taxpayer. Consequently, all e-invoices issued to a certain VAT number would be automatically sent to the matched email address.

- QR code

  A new application would be made available on the official website of the tax authorities for generation of QR codes for taxpayers. This barcode would be a machine-readable optical label that would contain the tax data of the taxpayer. Through this QR code, taxpayers will be able to provide their suppliers with the correct tax data to report on the e-invoices, which will be raised more quickly.

Malta

VAT grouping implementation

On 22 May 2018, regulations implementing VAT grouping were published as Legal Notice 162 of 2018 – Value Added Tax (Registration as a Single Taxable Person) Regulations, 2018, which entered into force as of 1 June 2018.

As of the effective date of entry, two or more persons, defined as legal persons and excluding physical persons, that are established in Malta, will be eligible to apply to the Commissioner for Revenue for the purposes of being registered as a single taxable person (i.e. to form a VAT group) provided the following eligibility criteria are conclusively met:

- At least one of the applicants is a taxable person licensed or recognized by the Malta Financial Services Authority or the Malta Gaming Authority in terms of the pertinent legislation;

- Each applicant must be bound to each of the others by financial links, economic links, and organizational links;

- At the time of application, any VAT and income tax filings of the applicants must be up-to-date and all related dues (including tax, interest and administrative penalties) must have been settled in full.

A VAT group formed in Malta will be allocated to a single VAT identification number, and any pre-existing individual VAT identification numbers of its respective members will be deactivated. The members of the VAT group will nominate a Group Reporting Entity to act as representative and to exercise all rights and discharge all obligations of the VAT group. Any supplies of goods or services between members of the VAT group (intra-group supplies) will be disregarded for Malta VAT purposes, on the basis that they fall outside the scope of Malta VAT.

Higher VAT registration threshold for small businesses

On 22 May 2018, by means of Legal Notice 163 of 2018, the Sixth Schedule to the VAT Act has been amended with effect from 1 July 2018. These amendments implement Council Implementing Decision (EU) 2018/279 of 24 February 2018, which authorized Malta to establish a higher VAT registration threshold for certain small businesses.

Under this amendment, taxable persons whose economic activity consists principally in supplies of services with a high value-added, and whose annual turnover is no higher than EUR 20,000 (previously EUR 14,000), will be eligible to opt to register for VAT as a small undertaking in terms of article 11 of the VAT Act, thereby being exempt from charging VAT on their supplies.

Furthermore, the annual turnover threshold permitting a shift from an article 10 (standard registration) to an article 11 VAT registration (small undertaking registration) has also been increased from EUR 12,000 to EUR 17,000 as of 1 July 2018.

Netherlands

Reduced VAT rate set to increase – no additional VAT on supplies paid in 2018

The Dutch 2017 coalition agreement provides for an increase of the current reduced VAT rate from 6% to 9%. This change will be part of the 2019 Tax Plan and will (most likely) become effective on 1 January 2019.

State Secretary for Finance Snel recently announced that the 2019 Tax Plan will not include any transitional provisions relating to the increase of the reduced VAT rate. This means that no correction for the increased VAT rate of 9% is required for payments made before 1 January 2019 related to supplies rendered in 2019. For entrepreneurs, the announcement made by the State Secretary alleviates the administrative burden involved in correcting the VAT on prepayments.

Envisaged change to VAT cost sharing group legislation withdrawn

The scope of the Dutch cost sharing exemption will remain as it is currently after 1 January 2019.

In March 2018, the previous Government announced a change of legislation concerning VAT cost sharing groups. Existing cost sharing groups in mainly the insurance, banking, and social housing sector, as well cost sharing groups operating for pension funds would no longer have qualified for the cost sharing exemption. The envisaged change in legislation was the result of the State Secretary of Finance's analysis of the recent Court of Justice of the European Union cases concerning the VAT cost sharing exemption: *Commission v. Luxembourg* (C-

274/15), *Aviva* (C-605/15), *DNB Banka* (C-326/15), and *Commission v Germany* (C-616/15). The State Secretary of Finance had therefore announced that the scope would be limited and this scheme would be aligned with the CJEU's decisions. These changes were to enter into force with effect from 1 January 2019.

However, the new State Secretary of Finance Snel has recently announced that he will not go ahead with these changes to the legislation, given the financial interests of entrepreneurs and government agencies. To limit the scope of the cost sharing exemption would be to obstruct (sometimes-needed) cooperation in order to reduce costs. The Government will therefore focus its efforts on amending European legislation, rather than limiting the scope of the scheme itself.

Poland

Intra-Community acquisitions and other reverse charge transactions

Changes to the VAT law concerning the methodology for input VAT recovery on reverse charge transactions applied from 1 January 2017. As covered in previous editions of this newsletter, to ensure VAT neutrality on such transactions (i.e., reporting both output and input VAT in the same period), output VAT must be reported in the correct reporting period (as per the taxpoint rules) and not later than within three months from the month in which the taxpoint occurred. If this condition is not met, output VAT must be reported in the period when the taxpoint for the transaction occurred, whilst input VAT can only be recovered in the current return. Where such transactions are not reported at all, there is a risk of VAT sanction.

The first cases are now arising of where such VAT sanction (in the amount of 30% of undeclared VAT) is being imposed. These concern audits of the VAT settlements of taxpayers during which the tax authorities identified intra-Community acquisition (ICA) transactions that were not reported for VAT purposes. Taxpayers are encouraged to review their settlements and agree a methodology of required corrections to ensure the impact of these provisions is limited.

CJEU to rule on right to deduct VAT based on noncompliant invoices

The Administrative Court referred a question to the Court of Justice of the European Union on the recovery of input VAT based on an invoice that does not meet the requirements set out in EU VAT law.

The question arose in a case where the tax authorities challenged the right to recover input VAT from invoices on which the type of goods was wrongly stated. The tax authorities recognized that the invoices did not meet the requirements set out in the provisions of the EU VAT Directive and did not reflect the circumstances of the transaction. The taxpayer provided explanations and other documents, which confirmed the existence and specific features of the goods, therefore there was no

question of tax fraud. The tax authorities accepted the above explanations, however still denied the right to recover input VAT on the grounds of formal irregularities of the invoice.

The CJEU will determine if formal non-compliance of an invoice is sufficient to challenge the right of VAT deduction.

Upcoming VAT changes

As covered in previous editions of this newsletter, from 1 July 2018, the tax authorities can request on demand SAF-T files from all taxpayers in Poland. To date, the tax authorities have been able to request such files from so-called big taxpayers and practice has indicated that rather short, seven day deadlines are set for the provision of the requested SAF-T documentation in the predefined format. Non-compliance with the deadlines set may trigger penalties. Accordingly, it is recommended that taxpayers undertake steps aimed at ensuring they are prepared for the upcoming obligations.

In addition, as of 1 July 2018, the split payment mechanism will come into force – triggering changes in the forms (as of the July/3rd 2018 VAT return). As advised, the mechanism is to be voluntary. However, the Ministry of Finance is planning for mandatory application as of 2019 for some industries (considered as most exposed to VAT frauds, i.e. the construction industry and the sale of fuel and electronic equipment, and those currently covered by the obligatory reverse charge mechanism and joint liability). An application to the European Commission has already been submitted.

Due diligence standards

As advised in previous editions of this newsletter, the Ministry of Finance was planning to issue due diligence standards for taxpayers. Adhering to the method for verification of contractors set out in these guidelines should have secured a taxpayer's position as regards input VAT recovery, even if at a later stage it transpires that fraudulent transactions occurred somewhere in the supply chain.

The long-awaited document has now been published, however it was directed to tax offices and not taxpayers in the form of official explanations. As a result, it does not provide taxpayers with formal protection as initially planned. The document provides some insight into what elements would be considered by auditors when assessing whether a taxpayer maintained due diligence in contacts with its customers. The methodology distinguishes between the criteria for assessing due diligence: (i) when starting cooperation with a new contractor; and (ii) with respect to ongoing business cooperation. The elements mentioned therein include the criteria discussed and presented by the Ministry of Finance previously, including verification of statutory/registration documents of the contractors, ensuring market conditions of supplies, etc. The list of guidelines is not closed, therefore the taxpayer may undertake additional activities with due diligence.

The Ministry of Finance confirms that if a taxpayer takes the actions indicated in the 'methodology, the probability of the due diligence will increase considerably. Only when the taxpayer ignores objective circumstances indicating that transactions may be aimed at the violation of law or fraud, should authorities question the right of the entrepreneur to deduct input VAT. The document is expected to be updated in the future.

Portugal

Change to instructions for completing the annexes for VAT adjustments in VAT returns

Decree no. 166/2018, dated 8 June 2018 has been published. The Decree, issued by the Secretary of State for Tax Affairs, introduced new instructions for completing the annexes of the periodic VAT return related to fields 40 (VAT adjustments in favor of the taxpayer) and 41 (VAT adjustments in favor of the tax authorities). The amendment entered into force on the day following the one in which it was published in the Official Journal.

Following the update to these annexes (see the July 2017 edition of this newsletter), where a new column was added to insert the date (year/month) of issuance of the documents supporting the VAT adjustments in favor of the taxpayer, it has now been clarified that the date to be inserted depends on the type of adjustment to be performed, as per below:

1. For VAT adjustments performed in the scope of article 78 (2) of the VAT Tax Code (i.e., the operation is cancelled or the taxable value is reduced as consequence of invalidity, resolution, rescission, or reduction in the contract, due to the return of merchandise or due to the granting of refunds or discounts), the date to be inserted in the said column must correspond to the adjustment document (instead of the issuing date of the adjusted document, as per instructions that were force until now); and

2. For VAT adjustments performed in the scope of articles 78 (3) and 78 (6) of the VAT Tax Code (i.e., in the case of an inaccurate invoice or miscalculation and similar errors), the date to be considered when filling in field 40 of the annex must be the date of the adjusted document.

The Secretary of State for Tax Affairs published this Decree in order to match the instructions for VAT returns with the deadlines under the VAT Tax Code for each of the above VAT adjustment circumstances and, as far as may be anticipated, to proceed with the automatic control on whether taxpayers proceed with VAT adjustments on a timely basis.

Serbia

The National Assembly of the Republic of Serbia has adopted amendments to the Law on Value Added Tax, the Law on Tax Procedure and Tax Administration, and the Law on Excise. Below is an overview of the most important changes in these laws.

Amendments to VAT Law

The Law on Amendments to the VAT Law entered into force on 28 April 2018, with the majority of the amendments applying as of 1 July 2018, with the exception of the amendment to Article 53 – VAT refund to a non-resident taxpayer, which will apply as of 1 January 2019.

Amendments to the VAT Law have extended the implementation of the legal provision governing the tax point for services stated in Article 5, paragraph 3, Item 1) of the VAT Law, providing that VAT liability arises when an invoice is issued for the transfer, assignment or lease of copyrights and other related rights, patents, licenses, trademarks, as well as other intellectual property rights, and also for the services provided in direct connection with those services, provided they are provided by the same supplier.

In Article 24, paragraph 1, item 5a) has been added which states that VAT should not be paid on the supply of goods that are entered into the free zone and on transport and other services that are directly related to the entry and supply of goods in the free zone, and which are supplied to a nonresident person who has concluded a contract with the VAT payer – free zone user to incorporate those goods into goods intended for dispatches abroad.

In addition, in Article 53, paragraph 1, item 4) was amended and a new provision added which states that a VAT refund is to be allowed for a non-resident taxpayer who performs supplies of goods and services in the Republic of Serbia if a tax debtor for such supply is deemed to be a registered VAT payer – recipient of goods or services.

Amendments to Tax Procedure Law

The Law on Amendments to the Tax Procedure Law has come into force and applies as of 28 April 2018, except for the amendments regarding the new business functions of the tax authorities (including providing tax services), introducing the unified information system of the local tax administration, and abolishing the authority of the tax authority in the area of foreign exchange, which apply as of 1 January 2019, and amendments related to the obligation to inform the tax authorities of all premises where the taxpayer stores goods and/or performs business activities, which apply as of 27 August 2018.

Refund of VAT

Under amendments to Article 70 of the Tax Procedure Law, where a taxpayer is entitled to a VAT refund, such refund will be granted of the total amount of the VAT refund, decreased by the amount of other tax debts of the taxpayer (for any type of tax).

Expanding liability of natural persons and persons responsible for calculation and payment of tax

An amendment to Article 31 of the Tax Procedure Law stipulates that the secondary tax liability extends the liability of natural persons and persons responsible for the calculation and payment of tax to all types of tax and not solely withholding tax, as was the case prior to the amendments.

Amended tax returns

A new paragraph has been added to Article 40 of the Tax Procedure Law stipulating that a taxpayer cannot file an amended VAT return for a tax period for which the taxpayer has already filed a tax return to amend the choice for a refund, regardless of the amount of the refund.

Also, provisions of Article 40 of the Tax Procedure Law were further specified, so that a taxpayer will be obliged to file an amended tax return at the latest by the expiry of the statute of limitations, when the taxpayer determines that a filed tax return contains an omission that results in an incorrectly assessed tax liability.

Furthermore, under the amendments, amended tax returns cannot be filed where the tax police has commenced action with the purpose of detecting tax frauds.

Providing information

Pursuant to amendments to Article 45 of the Tax Procedure Law, the tax authorities may request information that is of importance for undertaking activities within their competence from persons other than the taxpayer, companies, banks, and government bodies.

Addendum to the Minutes of the tax authorities

Amendments to the Article 128 of the Tax Procedure Law introduce an addendum to the Minutes of the tax authorities, namely, if a tax inspector, after delivering the Minutes of the tax audit to the taxpayer, becomes aware of new information that influences the facts of the case, the tax inspector will prepare an addendum to the Minutes and deliver it to the taxpayer. The taxpayer will have eight days from the date of receiving the addendum to file comments to the Minutes.

Electronic filing of property tax return

Under amendments to Article 38 of the Tax Procedure Law, as of 1 January 2019, taxpayers will be able to file the property tax return electronically.

Write off of penalty interest

Article 76 of the Tax Procedure Law, which provides for the possibility to write-off 50% of penalty interest for a taxpayer who has been granted a deferral of payment of tax debt and who settles both the deferred tax liability and current liabilities in a timely manner, has been amended so that the write-off is not available where the tax debt was assessed in a tax audit.

New structure of business activities of the tax authorities

Instead of the current structure whereby the tax authorities perform desk audits, field audits, and activities with the goal of detecting tax frauds, following amendments which will come into force as of 1 January 2019, the tax authorities will provide tax services, tax audits, and activities with the goal of detecting tax frauds.

Therefore, the tax authorities will provide tax services which encompass, among others, providing legal assistance to taxpayers, receipt and processing of tax returns, etc.

Upon the amendments to the Tax Procedure Law, there is no longer a difference between desk and field audits, but all audits are defined as 'tax audits' and are subject to unified rules.

National Bank of Serbia

As of 1 January 2019, the tax authorities will no longer be authorized to issue licenses for exchange operations, nor will it be authorized to supervise exchange operations; these areas will be taken over by the National Bank of Serbia.

Delivering tax documents electronically and sending reminders to taxpayers

Amendments to the Tax Procedure Law also refer to the possibility of delivering tax documents electronically as well as electronic communication between the tax authorities and taxpayers. Additionally, the amendments provide legal grounds for the tax authorities to send reminders to taxpayers in written form, electronically, or via SMS, prior to sending official notices.

Filing of requests for initiation of criminal or offense procedures

In accordance with amendments to the Tax Procedure Law, when a tax inspector during a tax audit determines irregularities, the tax inspector will either file a request for the initiation of offense procedures or will file a report to the tax police

on reasonable doubt that a tax fraud might have been committed. If a report is filed to the tax police, the tax inspector will not file the request for initiation of the offense procedure, but such request will be filed by the public prosecutor, if required. If the tax police do not file a criminal charge against the taxpayer, the tax police will inform the tax authorities, who will consequently file a request for the initiation of the offense procedure.

Groundless request for tax refund

Article 173a of the Tax Procedure Law has been amended so that if the amount of a requested tax refund is unjustified and does not exceed the amount of RSD 1,000,000 in a 12 month period, the case will be subject to the offense procedure and not to criminal charges.

Informing the tax authorities

Amendments to Article 25 of the Tax Procedure Law clarify that a taxpayer is obliged to inform the tax authorities of all important data not filed with the Serbian Business Registers Agency, which includes data on all business premises in which the taxpayer stores goods or performs business activities, unless such data has already been provided to the tax authorities. Pecuniary fines ranging from RSD 100,000 to RSD 2,000,000 are prescribed for a legal entity that does not provide such data to the tax authorities.

Local tax administrations

Amendments to the Tax Procedure Law provide grounds for establishing a unified information system of the local tax administrations, which would contain data relevant for assessing property tax and other public charges, as well as data on the collection of such revenues, with the purpose of unifying the work and increasing the effectiveness of undertaking the administrative work electronically. It is expected that the unified information system will be set up as of 1 January 2019, as of which date the local tax administrations will be obliged to connect with that system, which the tax authorities will be responsible for the operation of from 1 January 2020, at the latest.

Amendments to Law on Excise

The Law on Amendments to the Law on Excise was published in the Off. Gazette RS No. 030/2018, from 20 April 2018, and entered into force on 28 April 2018.

The most significant amendments to the Law on Excise are related to the additional clarification of Article 39b, which significantly increases the legal security of taxpayers.

Namely, in paragraph 1 of the Article, it has been unambiguously states that a buyer – final consumer has a right to a refund of the excises paid on listed petroleum derivatives and bio liquids even when listed petroleum derivatives are used as energy fuel or as a raw material.

Additionally, in paragraph 3, point 4), and in accordance with the above, the terminology of this provision has been harmonized such that the amended provision states that a right of refund excise paid on petroleum derivatives listed in Article 9, paragraph 1, items 3), 4), 5) and 6) of this Law, which are used as energy fuels or as a raw material, is available to an entity who uses these petroleum derivatives for industrial purposes.

South Africa

Implementation of the Customs Sufficient Knowledge Test for certain customs registration and licensing types

As from 11 May 2018, local road carriers, registered agents of non-local road carriers, customs brokers, and couriers may nominate a maximum of two employees to write the Customs Sufficient Knowledge (CSK) Test. The CSK test is aimed at establishing whether registrants and licensees have sufficient knowledge of all customs laws, guides, interpretative notes, operational manuals, and practices specific to their registration and/or licensing type.

The test is also a prerequisite for certain registration and licensing types in terms of the Customs Control Act, 31 of 2014 (the CCA). The CCA is one of three pieces of legislation, the other two are the Customs Duty Act, 30 of 2014 (the DDA) and Customs and Excise Amendment Act, 32 of 2014 (the CEAA), aimed at phasing-out the current Customs and Excise Act, 91 of 1964 (the Customs Act).

The CSK is not yet mandatory as the CCA is, although published, not yet operational. The affected South African Revenue Services (SARS) customs clients are encouraged to write the test so as to familiarize their staff with the requirements of the new legislation.

Switzerland

Radio and Television corporate fee

From 1 January 2019, with the entry into force of the new Radio and Television Law, the Radio and Television corporate fee (RTV) will no longer be dependent on whether or not a taxpayer possesses a broadcasting device. From this date, Swiss and foreign companies registered for Swiss VAT with a yearly worldwide turnover exceeding CHF 500,000 will automatically have to pay the RTV.

The Swiss Federal Tax Administration will be the processing and cash enforcement body for the RTV.

The turnover (including worldwide turnover, also for foreign taxpayers) declared in box 200 of the VAT returns (minus reductions of the consideration) is relevant to determine whether the company must pay the RTV and the amount. The turnover includes taxable as well as non-taxable supplies (zero rated and exempt transactions).

The previous VAT period is relevant for the assessment of the RTV in the subsequent period.

The below table sets out the fee depending on turnover.

Turnover in CHF	Fee in CHF
500,000 – 999,999	365
1,000,000 – 4,999,999	910
5,000,000 – 19,999,999	2,280
20,000,000 – 99,999,999	5,750
100,000,000 – 999,999,999	14,240
1,000,000,000 – more	35,590

The introduction of the new Radio and Television Law in Switzerland raises a number of uncertainties regarding implementation (such as, actions the Administration could take with respect to foreign companies for non-payment or under-declaration of worldwide turnover, the reference period/turnover for the first year of collection, RTV group versus VAT group, etc.).

Swiss and foreign businesses should examine whether they will have to pay the RTV according to their worldwide turnover and hence ensure that the latter is properly reported in the VAT returns.

Ukraine

Clarifications regarding determination of customs value of imported goods

The State Fiscal Service of Ukraine (SFSU) provided comments on its website on 1 June 2018 regarding mistakes made by companies when including transportation costs in the customs value of goods delivered on FCA terms (Incoterms).

According to the SFSU, a delivery of goods is an individual business transaction, therefore, all costs incurred in the performance thereof should be included in the transportation costs.

Consequently, if goods are transported into Ukraine by motor vehicles that started for the loading point (according to the terms of delivery) without a load, i.e. did not carry export cargo, then the expenses related to driving such motor vehicles to the loading point are part of the delivery of goods as a business transaction and must be included in the customs value of such goods.

Furthermore, the SFSU emphasized that the customs value of goods declared by the declarant, as well as the information on its determination filed by the declarant, must be supported by calculable objective documented evidence. Source documents evidencing such transactions serve as a ground for accounting of business transactions.

Increase in export duty on ferrous waste and scrap

Parliament has amended the law "On amending certain laws of Ukraine regarding the reduction of deficit of ferrous scrap on the domestic market" and raised the export duty on ferrous waste and scrap from EUR 30 to EUR 42 per ton (the Law of Ukraine No. 2434-VIII dated 17 May 2018).

The period of application of the duty was also extended. The new rate of export duty will apply to exported ferrous waste and scrap until 15 September 2019.

Approval of list of products to be inspected at border checkpoints

The Order of the Ministry of Agricultural Policy and Food of Ukraine No. 159 dated 26 March 2018, establishes the list of products of animal origin and goods containing processed products of animal origin that are subject to state control when imported. The products and goods will be inspected at special border inspection points located at Ukrainian border inspection posts. The Order came into force on 18 May 2018.

The products included in the list are arranged based on HS (Harmonized Commodity Description and Coding System) codes and other features required for including the products in the category of goods that are to be inspected by the state veterinary inspector for compliance with the national legislation.

The list includes the following groups of goods:

- Meat and edible by-products
- Fish and crustaceans, shellfish, other water invertebrates
- Milk and dairy products; eggs
- Pure honey, bee pollen, straw, hay
- Fats and oils; black olives, green olives
- Sugar and sugar confectionery
- Flour products, flour confectionery products, pastry
- Chocolate and cocoa preparations
- Alcoholic and non-alcoholic beverages, vinegar
- Pharmaceuticals
- Fur, yarn, leather, feather work
- Fertilizers, animal feed
- Works of art, collectibles, antiques of animal origin, etc.

Cargoes containing products subject to inspection are accepted for inspection provided the person responsible for the cargo has given the border inspection post at least one day prior notice (either by email or in writing) of cargo arrival or has sent the relevant part of the common veterinary document required for the importation of goods.

Notice of cargo arrival must contain the description of goods, copies of international certificates and other documents required at the importation of goods into Ukraine, and the estimated time of cargo arrival at the designated border inspection post.

Cargoes containing the products, which are included in the above list, may be imported into Ukraine only through the designated border inspection posts.

United Kingdom

Draft legislation published for construction industry reverse charge

The tax authorities (HMRC) have published draft legislation for the implementation of a domestic reverse charge for construction services, see Draft legislation: VAT reverse charge for construction services. This follows a consultation in 2017, and subsequent discussions with stakeholder groups. The draft legislation sets out the detailed rules for the first time: the reverse charge covers construction services as defined for the Construction Industry Scheme (i.e. it includes repairs), there will be no *de minimis* limit, and supplies to non-construction businesses (e.g. high street retailers and landlords) and associated businesses will be excluded.

Guidance will be required to ensure that the reverse charge can be applied practically and conveniently by businesses, but the publication of the draft legislation provides a welcome opportunity to comment (by 20 July) before the rules are enacted in the autumn.

Court of Appeal judgment on whether 'Beyblades' are toys or games for customs duty purposes

In *Hasbro European Trading BV*, the Court of Appeal has considered whether 'Beyblades' (spinning tops used for head-to-head battling, in which the winner is the last one spinning) should be classified as toys (duty at 4.7%) or games (duty free).

The explanatory notes to the harmonized system (HSENs) state that 'other toys' include spinning tops. However, the Court of Appeal has ruled that the classification rule which prefers the most specific description does not apply at the level of the HSENs: they are an important guide to interpretation, but do not have force of law. It came down to a simple question: were Beyblades toys, or were they a game?

In the Court of Appeal's judgment, the competitive use of Beyblades suggested that they were a game, and should therefore be duty free.

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

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

Atentamente,
Deloitte Legal