Deloitte.
Legal

Julio, Agosto y Septiembre 2018

Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

Índice de contenido

12. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 19 de julio de 2018. Nº de recurso 4069/2017.

III. Doctrina Administrativa

1. Dirección General de Tributos. Contestación nº V1146-18, de 7 de mayo de 2018.

2. Dirección General de Tributos. Contestación nº V1152-18, de 8 de mayo de 2018.

3. Dirección General de Tributos. Contestación nº V1401-18, de 28 de mayo de 2018.

4. Dirección General de Tributos. Contestación nº V1402-18, de 28 de mayo de 2018.

5. Dirección General de Tributos. Contestación nº V1436-18, de 29 de mayo de 2018.

6. Dirección General de Tributos. Contestación nº V1453-18, de 30 de mayo de 2018.

7. Dirección General de Tributos. Contestación nº V1542-18, de 6 de junio de 2018.

8. Dirección General de Tributos. Contestación nº V1549-18, de 6 de junio de 2018.

9. Dirección General de Tributos. Contestación nº V1585-18, de 8 de junio de 2018.

10. Dirección General de Tributos. Contestación nº V1681-18, de 13 de junio de 2018.

11. Dirección General de Tributos. Contestación nº V1943-18, de 29 de junio de 2018.

12. Dirección General de Tributos. Contestación nº V2001-18, de 4 de julio de 2018.

13. Dirección General de Tributos. Contestación nº V2129-18, de 18 de julio de 2018.

14. Dirección General de Tributos. Contestación nº V2218-18, de 25 de julio de 2018.

IV. Country summaries (July 2018 – September 2018)

July 2018

Global

The World Customs Organization has released an update to its *Guide to Customs Valuation and Transfer Pricing*.

The EU and Japan have signed an Economic Partnership Agreement.

The European Commission has adopted provisional safeguard measures on imports of certain steel products.

Americas

Canada

Surtaxes have been imposed on certain products originating in the US.

Asia Pacific

Australia

Deloitte Australia has successfully challenged the revenue authority's approach to calculating how much interest should be paid to taxpayers receiving delayed GST refunds.

The Australian customs authority has introduced deferred customs duty payment arrangements for importers accredited under Australia's Authorised Economic Operator program.

China

Regulations have been published regarding the refund of excessive input VAT credit balances.

India

The GST Council has made recommendations for changes in the GST law as well as the rates of certain goods and services.

EMEA

GCC

Kuwait is progressing with the implementation of VAT.

Following the implementation of VAT in the Kingdom of Saudi Arabia, Deloitte has launched Deloitte VAT Check, a post-implementation review.

The Federal Tax Authority in the United Arab Emirates has published VAT guidance and tools for taxpayers. Also, the list of designated zones for VAT purposes has been extended.

France

The tax authorities published guidelines specifying the scope of the anti-fraud legislation requiring a certification for cash-register software/systems, applicable as from 1 January 2018.

Hungary

The real-time invoice data provision obligation entered into force in Hungary as of 1 July 2018.

The Government has introduced the summer tax package.

Italy

The tax authorities released guidelines about VAT group ruling petitions.

The tax authorities published some of the expected guidelines regarding the e-invoicing obligation.

Guidance and operative instructions were issued on the rules relating to the storage of energy products in third party warehouses.

Operating instructions were issued for the e-communication of consideration relating to sales of petrol and diesel motor fuel for self-service filling stations.

Operative guidelines were issued for the Customs Decisions System.

New forms were issued for alcohol production, industrial uses of alcohol, and bioethanol production.

Latvia

Draft regulations are under consideration to deal with the process of how taxes (including VAT) and duties are payable to the State Treasury.

Luxembourg

From 31 July 2018, two or more persons established in Luxembourg will be eligible to apply to the VAT administration to form a VAT group.

Luxembourg is to apply the open market value for VAT purposes on transactions between closely linked persons.

Luxembourg is to treat services that have characteristics similar to those normally attributed to capital goods as capital goods for VAT purposes.

The Netherlands

A Court of Appeal referred questions to the Court of Justice of the European Union for a preliminary ruling regarding the VAT consequences of membership of a supervisory board.

Poland

The 0% VAT rate on the export of goods from Poland will be subject to a CJEU ruling.

The tax authorities have issued explanations on the split payment mechanism and on demand SAF-T files.

Portugal

There is an update on the calculation of vehicle tax (*Imposto Sobre Veículos*).

The tax authorities have released a decision concerning the VAT taxable value of imported goods.

Russia

The State Duma has approved a draft law that will increase the standard VAT rate from 18% to 20% from 1 January 2019 in the first reading.

The Ministry of Finance has clarified the application of VAT with respect to foreign entities' services of providing IP-addresses and content access.

The Ministry for Industry and Trade has announced the preliminary results of the tax-free implementation pilot project.

The Government has adopted the list of VAT-exempt airport services.

Obligatory certification has been established for radiators and heating convectors

Import licensing of aluminum wheels has been introduced.

Import customs duty rates have been increased for certain goods originating from the US.

South Africa

The International Trade Administration Commission of South Africa has issued a notice on antidumping duties due to expire in 2019.

Spain

The General State Budget 2018 has been published.

There have been changes to the Intrastat form.

Tunisia

Indirect tax measures were included in the Financial Act of Management.

United Kingdom

There has been a CJEU judgment on the VAT treatment of penny auctions.

A number of indirect tax measures have been included in the draft Finance Bill.

The tax authorities have issued guidance on Making Tax Digital for VAT, which will come into effect from 1 April 2019.

Eurasian Economic Union

Customs duty rates for certain goods have been decreased in accordance with Russia's obligations to the World Trade Organization.

Zero import customs duty has been introduced for certain goods.

The EEU and Iran have signed an Interim Agreement cancelling non-tariff restrictions for certain goods and establishing decreased customs duty rates.

There have been amendments to procedures and calculations for customs value.

The list of goods subject to permission for import/export into/from the EEU has been amended.

An expiry date has been established for certain forms of customs documents.

There are new rules for marking milk-containing products.

September 2018

Asia Pacific

Australia-Indonesia

Australia and Indonesia have concluded negotiations for a bilateral free trade agreement.

India

There are a number of GST updates.

There are customs and trade updates regarding AEO applications, paperless processing of documents for exports, and applications for Import Export Codes.

There has been a High Court judgment on the constitutional validity of a GST clause.

Indonesia

There have been changes regarding the Importer Identification Number.

Producers exporting e-liquids will be provided with incentives.

There is a new regulation regarding the Online Single Submission.

There is an article 22 income tax rate increase for certain import goods.

EMEA

GCC

There are VAT and excise duty updates from the GCC, in particular UAE and KSA.

Angola

There are updates on VAT and excise duty implementation.

Finland

There is a court judgment on the VAT taxable status of vessels used for rescue and assistance operations.

France

A new law aims to reinforce a taxpayer's 'right to be mistaken' and to introduce new guarantees.

Greece

Emergency measures have been adopted to support citizens affected by the fires in the Attica Region on 23 and 24 July 2018.

Guidelines have been issued for input VAT deduction by taxable persons filing late declarations for the commencement of business activities.

Hungary

The Ministry of Agriculture of Hungary has proposed the introduction of a reverse charge for soy.

A proposal has been submitted to the European Council to allow Hungary to adopt a presumed VAT input deduction rate of 50% on the use of the leased cars.

Ireland

Irish Revenue issued an eBrief to announce updated guidance on the VAT treatment of business assets disposed of by way of a transfer of a business.

Irish Revenue issued an eBrief on the movement of excisable products.

Italy

The form is now available for election to form a VAT group.

There is an update on VAT ledgers for e-invoices.

There is a new method for paying customs duties.

The Customs authorities have provided operative guidelines regarding the use of TIR carnets.

Netherlands

The announcement of the annual budget took place on 18 September 2018, including indirect tax announcements on the reduced VAT rate, the VAT scheme for small businesses, the VAT sports exemption, and the implementation of the VAT e-commerce Directive.

The Supreme Court has ruled that the opportunity to park at a nature park is an independent service, subject to the VAT standard rate of 21%.

Poland

There is an update on VAT deregistration.

There is a draft bill regulating the VAT treatment of vouchers.

Russia

The Ministry of Finance has clarified the application of VAT rates for advance payments under agreements signed before 1 January 2019.

The Central Bank of Russia has analyzed the influence of the VAT rate increase on inflation.

There are a number of customs changes.

A limitation on ozone-depleting substances has been introduced.

South Africa

Registration requirements have been implemented for cargo reporters.

Switzerland

The Swiss Federal Tax Administration has announced that only businesses liable for Swiss VAT with a registered office, domicile, or permanent establishment on Swiss territory will be required to pay the corporate fee for radio and television fee.

United Kingdom

The Government has issued technical notices on a 'no deal' Brexit scenario.

There are proposed VAT changes for digital services to consumers from January 2019.

Eurasian Economic Union

A zero import customs duty rate has been introduced for certain equipment for fish farming.

The zero import customs duty rate for certain types of goods has expired.

The trigger protective measures in respect of goods originating from Vietnam has expired.

An anti-dumping measure for goods from China has been extended.

Tariff quotas have been introduced for agricultural products.

Unified veterinary-sanitary requirements for activities subject to veterinary control (supervision) have been introduced.

I. Normativa

1. Orden HAC/748/2018, de 4 de julio, por la que se modifica la Orden HAP/2652/2012, de 5 de diciembre, por la que se aprueban las tablas de devolución que deberán aplicar las entidades autorizadas a intervenir como entidades colaboradoras en el procedimiento de devolución del Impuesto sobre el Valor Añadido en régimen de viajeros regulado en el artículo 21, número 2.º, de la Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido.

La Ley 6/2018, de 3 de julio, de Presupuestos Generales del Estado para el año 2018, modificó la letra a) del número 2.º, letra A), del artículo 21 de la Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido, para eliminar el importe total mínimo de factura que se venía exigiendo para poder aplicar el reembolso del Impuesto soportado en las adquisiciones realizadas por los viajeros.

Por su parte, esta Orden modifica tanto el artículo 2, como el anexo de la Orden HAP/2652/2012, de 5 de diciembre, por la que se aprueban las tablas de devolución que deberán aplicar las entidades autorizadas a intervenir como entidades colaboradoras en el procedimiento de devolución del IVA en régimen de viajeros, regulado en el artículo 21, número 2.º, de la Ley 37/1992 del IVA.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 13 de junio de 2018. Asunto C-665/16, Gmina Wrocław.

Directiva 2006/112/CE — Artículo 2, apartado 1, letra a) — Entrega de bienes efectuada a título oneroso — Artículo 14, apartado 1 — Transmisión del poder de disposición sobre un bien corporal con las facultades atribuidas a su propietario — Artículo 14, apartado 2, letra a) — Transmisión, mediante pago de una indemnización, de la propiedad de un bien perteneciente a un municipio al Tesoro Público a fin de construir una carretera nacional — Concepto de "indemnización" — Operación sujeta al IVA.

Se plantea al TJUE si constituye una operación sujeta al IVA la transmisión por Ley, con indemnización, al Tesoro Público de un Estado miembro, de la propiedad de bienes inmuebles pertenecientes a un sujeto pasivo del IVA, en una situación en la que la misma persona representa a la vez a la administración o entidad expropiante y al

municipio expropiado y en la que este continúa administrando, en la práctica, el bien de que se trata, aunque el pago de la indemnización únicamente se haya efectuado mediante una transferencia interna en el marco del presupuesto municipal.

Concluye el Tribunal de forma afirmativa señalando que la operación descrita constituye una entrega de bienes sujeta al IVA, de conformidad con el artículo 14 apartado 2, letra a) de la Directiva del IVA, dado que los 3 requisitos exigidos por dicha disposición se cumplen en caso concreto, a saber: a) la propiedad de unos bienes inmuebles pertenecientes a un municipio, sujeto pasivo del IVA, se han transmitido efectivamente al Tesoro Público con el fin de construir una carretera nacional; b) dicha transmisión tuvo lugar a requerimiento de la autoridad pública competente, la cual, mediante resolución separada c) fijó el importe de la indemnización adeudada al municipio.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 13 de junio de 2018. Asunto C-421/17, Polfarmex.

Directiva 2006/112/CE — Artículo 2, apartado 1, letra a) — Ámbito de aplicación — Operaciones imponibles — Entrega de bienes efectuada a título oneroso — Transmisión, por parte de una sociedad anónima, de un bien inmueble a un accionista como contraprestación por la compra de sus acciones en dicha sociedad.

Se plantea ante el TJUE en esencia si se encuentra sujeta al IVA, con arreglo al artículo 2, apartado 1, letra a), de la Directiva del IVA, la transmisión de un bien inmueble efectuada por una sociedad anónima a uno de sus accionistas como contraprestación por la compra, por dicha sociedad, de las acciones del accionista para su posterior amortización.

Señala el TJUE que, en el caso en cuestión, entre el proveedor de bienes inmuebles y el beneficiario de estos existe una relación jurídica con arreglo a la cual la sociedad anónima transmite la propiedad de los bienes inmuebles a su accionista a cambio de las acciones de las que este es titular. Por lo tanto, al transmitirse recíprocamente derechos de propiedad, ambas partes intervienen en la operación simultáneamente en calidad de proveedor y adquiriente. Dicha circunstancia hace preciso distinguir entre las dos operaciones:

- Respecto a la operación de entrega de bienes inmuebles, señala el TJUE que, si están afectos a la actividad económica de la sociedad en cuestión, debería concluirse que tal operación está sujeta al IVA.

- En cuanto a la operación de amortización de las acciones, destaca el Tribunal que la mera adquisición y la sola tenencia de acciones no deben considerarse una actividad económica en el sentido de la Directiva del IVA, por lo que lo mismo ocurre respecto de las operaciones que consisten en ceder tales participaciones.

3. Tribunal de Justica de la Unión Europea. Sentencia de 20 de junio de 2018. Asunto C-108/17, Enteco Baltic.

Directiva 2006/112/CE — Artículo 143, apartado 1, letra d), y artículo 143, apartado 2 — Exenciones de IVA a la importación — Importación seguida de una entrega intracomunitaria — Requisitos — Prueba de la expedición o del transporte de los bienes a otro Estado miembro — Transporte en régimen suspensivo de impuestos especiales — Transmisión al adquirente del poder de disposición sobre los bienes — Fraude fiscal — Inexistencia de obligación de la autoridad competente de ayudar al sujeto pasivo a obtener la información necesaria para demostrar el cumplimiento de los requisitos de exención.

Enteco Baltic, sociedad domiciliada en Lituania y dedicada al comercio mayorista de combustible, importó en Lituania combustible procedente de Bielorrusia sujeto al régimen denominado «régimen aduanero 42», que permite su despacho a libre práctica con exención del IVA a la importación. En las declaraciones de importación, dicha sociedad indicó el número de identificación a efectos del IVA de los adquirentes situados en otro Estado miembro, a los que tenía intención de entregar los productos. Aquella almacenaba estos últimos en depósitos de productos sujetos a impuestos especiales pertenecientes a otras empresas lituanas.

Al término de una inspección realizada por las Autoridades de Lituania se determinó que la compañía no había entregado el combustible a los sujetos pasivos indicados en las declaraciones de importación o no había demostrado que el combustible hubiera sido transportado y que se hubiera transmitido a las personas indicadas en las facturas del IVA el poder de disposición sobre el mismo con las facultades atribuidas a su propietario, denegando así la exención al IVA de dichas operaciones.

Conforme a lo anterior, se plantearon ante el TJUE una serie de cuestiones prejudiciales, sobre las cuales arroja el Tribunal una serie de conclusiones en relación con la interpretación de determinados preceptos del artículo 143.1 y 143.2 de la Directiva del IVA. Así, y entre otras conclusiones, considera el TJUE que dichos preceptos han de interpretarse en el sentido de que se oponen que las autoridades competentes de un Estado miembro denieguen la exención del IVA a la importación:

- por el mero hecho de que, a raíz de un cambio de circunstancias posterior a la importación, los productos en cuestión se hayan entregado a un sujeto pasivo distinto de aquel cuyo número de identificación a efectos del IVA se había indicado en la declaración de importación, siendo así que el importador comunicó toda la información relativa a la identidad del nuevo adquirente a las autoridades competentes del Estado miembro de importación, siempre que se acredite que se cumplen efectivamente los requisitos materiales para la exención de la entrega intracomunitaria ulterior.

- debido a que tales bienes no se han transmitido directamente al adquirente, sino que se han hecho cargo de ellos empresas de transporte y depósitos fiscales que el adquirente ha designado, cuando el poder de disposición sobre dichos bienes con las facultades atribuidas a su propietario ha sido transmitido por el importador al adquirente.

- cuando no se cumplen los requisitos para la exención de la entrega intracomunitaria ulterior a causa de un fraude fiscal cometido por el adquirente, salvo que se acredite que el importador sabía o hubiera debido saber que la operación estaba implicada en un fraude cometido por el adquirente y que no adoptó todas las medidas razonables a su alcance para evitar su participación en el fraude.

4. Tribunal de Justica de la Unión Europea. Sentencia de 27 de junio de 2018. Asuntos acumulados C-459/17 y C-460/17, SGI y Valériane SNC.

Sistema común del impuesto sobre el valor añadido (IVA) — Derecho a deducción del impuesto soportado — Requisitos materiales del derecho a deducción — Entrega efectiva de los bienes.

En esta sentencia el TJUE se pronuncia sobre la posibilidad de denegar a un sujeto pasivo, destinatario de una factura, el derecho a deducir el IVA mencionado en esa factura bajo un supuesto en el que los bienes de equipo que en teoría habría adquirido dicho sujeto pasivo, a los que se refiere el IVA soportado, no habrían sido suministrados efectivamente.

El Tribunal concluye señalando que, con el fin de denegar el derecho a la deducción del IVA soportado, bastaría con que la Administración competente acreditara que las operaciones a las que corresponde dicha factura no han sido realizadas efectivamente, sin ser necesario demostrar la falta de buena fe del sujeto pasivo.

5. Tribunal de Justicia de la Unión Europea. Sentencia de 5 de julio de 2018. Asunto C-544/16, Marcandi Ltd.

Directiva 2006/112/CE — Artículo 2, apartado 1, letra c) — Emisión de créditos que pueden usarse para pujar en subastas en línea — Prestación de servicios a título oneroso — Paso intermedio — Artículo 73 — Base imponible.

En primer lugar, se plantea al TJUE si la emisión de «créditos» a cambio de un pago de dinero constituye una «prestación de servicios a título oneroso», en el sentido del artículo 2, apartado 1, letra c) de la Directiva del IVA, o si debe considerarse un «paso preliminar» a la entrega de bienes, en el sentido de la sentencia McDonald Resorts, Asunto C-270/09.

Concluye el Tribunal que la emisión de tales constituye una prestación de servicios a título oneroso, cuya contrapartida es el importe abonado a cambio de tales «créditos».

En segundo lugar, se plantea al TJUE si el artículo 73 de la Directiva IVA debe interpretarse en el sentido de que el valor de los «créditos» utilizados para pujar en una subasta, está incluido en la contrapartida percibida por el sujeto pasivo, a cambio de las entregas de bienes que efectúa a favor de los usuarios que hayan ganado una subasta que él organiza o bien de los que hayan adquirido un bien a través de las opciones «Cómpralo Ya» o «Descuento Ganado».

Responde de forma negativa el Tribunal, señalando que el valor de los «créditos» utilizados para pujar, que se descuenta del precio inicial que resulta de la utilización de la opción «Cómpralo Ya» o del precio indicado en la tienda en línea, debe considerarse una rebaja sobre el precio de los bienes adquiridos utilizando las opciones «Cómpralo Ya» o «Descuento Ganado». Así pues, con arreglo al artículo 79, letra b), de la Directiva IVA, el valor de esos «créditos» no puede formar parte de la base imponible correspondiente a la entrega de bienes.

En respuesta a una tercera cuestión prejudicial planteada, concluye el TJUE que, cuando interpreten las disposiciones pertinentes del Derecho de la Unión y del Derecho nacional, los tribunales de un Estado miembro que declaran que una misma operación es objeto en otro Estado miembro de un trato diferente a efectos del IVA, tienen la facultad y, en su caso la obligación, según sus decisiones puedan o no ser objeto de un recurso judicial de Derecho interno, de efectuar la remisión prejudicial al Tribunal.

6. Tribunal de Justicia de la Unión Europea. Sentencia de 5 de julio de 2018. Asunto C-320/17, Marle Participations SARL.

Directiva 2006/112/CE — Artículos 2, 9 y 168 — Actividad económica — Intervención directa o indirecta de una sociedad de cartera en la gestión de sus filiales — Alquiler de un bien inmueble por parte de una sociedad de cartera a su filial — Deducción del impuesto soportado — IVA pagado por una sociedad de cartera sobre los gastos efectuados para adquirir participaciones en otras empresas.

Mediante la presente sentencia, el TJUE señala que la Directiva del IVA debe interpretarse en el sentido de que el alquiler de un bien inmueble por parte de una sociedad de cartera a su filial es una «intervención en la gestión» de esta última, debe considerarse actividad económica, a efectos del artículo 9, apartado 1, de dicha Directiva.

Tal operación da derecho a deducir el IVA por los gastos soportados por la sociedad para la adquisición de participaciones en la filial, ya que se trata de una prestación de servicios tiene carácter permanente, se realiza con carácter oneroso y está gravada, lo que implica que el alquiler en cuestión no está exento, y que existe una relación directa entre el servicio proporcionado por el prestador y el contravalor recibido del beneficiario.

Así, los gastos relacionados con la adquisición de participaciones en sus filiales soportados por una sociedad de cartera que participa en su gestión, alquilándoles un bien inmueble y que, por esta razón, ejerce una actividad económica, deben considerarse parte integrante de sus gastos generales y el IVA soportado por esos gastos debe, en principio, poder ser objeto de deducción íntegra.

Asimismo, establece el Tribunal que los gastos relacionados con la adquisición de participaciones en sus filiales soportados por una sociedad de cartera que únicamente participa en la gestión de algunas de estas y que, respecto de las demás, no ejerce, por el contrario, ninguna actividad económica, forman parte solo parcialmente de sus gastos generales, de modo que el IVA abonado por esos gastos solo puede deducirse en proporción a los que son inherentes a la actividad económica, según los criterios de reparto definidos por los Estados miembros.

7. Tribunal de Justicia de la Unión Europea. Sentencia de 11 de julio de 2018. Asunto C-154/17, SIA E LATS.

Directiva 2006/112/CE — Artículo 311, apartado 1, punto 1 — Régimen especial de los bienes de ocasión — Concepto de "bienes de ocasión" — Bienes que contienen metales preciosos o piedras preciosas revendidos por un comerciante.

Se plantea al TJUE si el artículo 311, apartado 1, punto 1, de la Directiva del IVA debe interpretarse en el sentido de que el concepto de «bienes de ocasión» comprende los bienes usados que contienen metales preciosos o piedras preciosas y se revenden con el propósito de extraer estos metales o estas piedras presentes en ellos.

Responde de manera negativa el Tribunal señalando que el concepto de «bienes de ocasión» no comprende los bienes usados que contengan metales preciosos o piedras preciosas si estos bienes ya no pueden cumplir su funcionalidad inicial y solo han conservado las funcionalidades inherentes a dichos metales y a dichas piedras, extremo que corresponde comprobar al juez nacional teniendo en cuenta todas las circunstancias objetivas pertinentes de cada asunto concreto.

8. Tribunal de Justicia de la Unión Europea. Sentencia de 25 de julio de 2018. Asunto C-5/17, DPAS Limited.

Exención — Artículo 135, apartado 1, letra d) — Operaciones relativas a pagos y giros — Concepto — Ámbito de aplicación — Plan de pagos de servicios dentales mediante débito directo.

Se solicita al TJUE que dilucide si el artículo 135, apartado 1, letra d), de la Directiva del IVA, debe interpretarse en el sentido de que la exención del IVA que establece respecto a las operaciones relativas a pagos y giros es aplicable a una prestación de servicios, consistente en que el sujeto pasivo:

- solicita a las entidades financieras, por una parte, que se transfiera una cantidad de dinero de la cuenta bancaria de un paciente a la del sujeto pasivo sobre la base de un mandato de débito directo y,

- por otra parte, que se transfiera dicha cantidad, una vez deducida la retribución adeudada al sujeto pasivo, de la cuenta bancaria de este último a las cuentas bancarias respectivas del dentista y de la aseguradora del paciente.

A este respecto, concluye el Tribunal que, teniendo en cuenta que las exenciones en materia del IVA contenidas en la Directiva son objeto de una interpretación estricta, la exención del IVA en materia de servicios

financieros no se extiende a una prestación como la controvertida en el litigio principal, dado que no se realizan, como tal, las modificaciones jurídicas y financieras que caracterizan la transmisión de una cantidad de dinero, en el sentido de la jurisprudencia del TJUE. Además, resalta el hecho de que estas prestaciones constituirían solo una etapa previa a la operación relativa a pagos y giros, cuya exención del IVA sí se contempla en dicho precepto normativo.

9. Tribunal de Justicia de la Unión Europea. Sentencia de 25 de julio de 2018. Asunto C-140/17, Gmina Ryjewo.

Directiva 2006/112/CE — Artículos 167, 168 y 184 — Deducción del impuesto soportado — Regularización — Bienes inmuebles de inversión — Afectación inicial a una actividad que no confiere el derecho a deducción y luego, además, a una actividad sujeta al IVA — Organismo público — Condición de sujeto pasivo en el momento de realizar la operación sujeta al impuesto.

Se plantea ante el TJUE si los artículos 167, 168 y 184 de la Directiva IVA y el principio de neutralidad del IVA se oponen a que un organismo de Derecho público disfrute del derecho a regularizar las deducciones del IVA que soportó por un bien inmueble de inversión que al adquirirse podía destinarse por su naturaleza tanto a actividades gravadas como a actividades no gravadas, pero en un primer momento se utilizó para actividades no gravadas y, por otra parte, el organismo público no había declarado expresamente que tuviera la intención de afectar dicho inmueble a una actividad gravada, pero tampoco había excluido tal posibilidad.

Concluye el Tribunal de manera negativa a la cuestión prejudicial planteada, siempre que el análisis de conjunto de las circunstancias de hecho, cuya realización incumbe al tribunal nacional, permita concluir que concurre el requisito establecido en el artículo 168 de la Directiva del IVA, según el cual el sujeto pasivo debe haber actuado en su condición de sujeto pasivo en el momento en que adquirió el bien de que se trate.

10. Tribunal de Justicia de la Unión Europea. Sentencia de 7 de agosto de 2018. Asunto C-16/17, TGE Gas Engineering.

Impuesto sobre el valor añadido (IVA) — Deducción del impuesto soportado — Nacimiento y alcance del derecho a deducción.

Se plantea ante el TJUE si los artículos 167 y 168 de la Directiva del IVA, así como el principio de neutralidad, se oponen a que la Administración tributaria de un Estado miembro considere que una sociedad que tiene su sede en otro Estado miembro, y la sucursal que

tiene en el primero de dichos Estados (A), constituyen dos sujetos pasivos distintos dado que cada una de dichas entidades dispone de un NIF y, por ello, deniega a la sucursal el derecho a deducir el IVA relativo a las notas de adeudo emitidas por una AIE de la que la mencionada entidad, y no su sucursal, es miembro.

El TJUE señala que dichas entidades constituyen un único y mismo sujeto pasivo del IVA dado que la sucursal no realiza una actividad económica independiente. Por lo tanto y dado que ambas entidades actúan como un único sujeto pasivo concluye el TJUE que no se puede denegar tal deducción del IVA soportado, relativo a las citadas notas de adeudo.

11. Tribunal de Justicia de la Unión Europea. Sentencia de 7 de agosto de 2018. Asunto C-475/17, Viking Motors AS.

Directiva 2006/112/CE — Artículo 401 — Impuestos nacionales que tienen carácter de impuestos sobre el volumen de negocios — Prohibición — Concepto de "impuesto sobre el volumen de negocios" — Impuesto local sobre las ventas — Características esenciales del IVA — Inexistencia.

Se plantea ante el TJUE si de acuerdo con el artículo 401 de la Directiva del IVA, un impuesto nacional que se aplica con carácter general y cuya cuota se determina en proporción al precio, pero que solamente se exige en la fase de venta de un bien o servicio al consumidor, obstaculiza el sistema común del IVA y falsea la competencia.

A este respecto, señala el TJUE que hay que tener en cuenta las cuatro características fundamentales propias del IVA:

- Se aplica a transacciones que tengan por objeto bienes y servicios.
- La determinación de su cuota en proporción al precio percibido por el sujeto pasivo.
- La percepción del impuesto en cada fase del proceso de producción y distribución (incluido el de venta al por menor).
- Permite la deducción del IVA devengado en etapas anteriores del proceso de producción y distribución, de manera que el impuesto sólo se aplica en la última fase y este recae sobre el consumidor.

Concluye el TJUE que, dado que el impuesto objeto del litigio no reúne las características tercera y cuarta anteriores, propias del IVA y, especialmente, al no existir la certeza de que la carga del impuesto controvertido sea asumida por el consumidor final, el artículo 401 de la Directiva del IVA no se opone a la existencia de este impuesto.

12. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 19 de julio de 2018. Nº recurso 4069/2017.

Deducciones – Vehículos de turismo – Grado de afectación a la actividad empresarial – Artículo 95.Tres.2º, e) LIVA – Vehículos automóviles utilizados en los desplazamientos profesionales de los representantes o agentes comerciales.

En el presente recurso, el Tribunal Supremo (en adelante, TS) estima, por un lado, el recurso de casación interpuesto por la Administración General del Estado contra la sentencia del Tribunal Superior de Justicia de la Comunidad Valenciana respecto de la adecuación del art. 95.Tres de la Ley del IVA al Derecho de la Unión.

La cuestión suscitada consistió en determinar si el artículo 95. Tres, reglas 2ª y 4ª, de la LIVA se opone a lo dispuesto en los artículos 168 a) y 173.1 de la Directiva 2006/112/CE, a la vista de la doctrina que emana de la jurisprudencia del TJUE.

El TS centra su fundamentación en lo siguiente:

i. La ley española no limita *ex ante* el derecho a deducir a una determinada proporción, ni niega la deducción cuando el grado de utilización del bien (en la actividad empresarial o profesional) sea inferior a un porcentaje específico o concreto.

ii. La deducción que el legislador entiende procedente en todos los casos es la que responda "al grado efectivo de utilización de los bienes en el desarrollo de la actividad empresarial o profesional" pues, si se acredita (artículo 95. Tres, regla 3ª) que dicho grado de afectación es distinto del 50 por 100 que se presume, resulta forzoso proceder a la correspondiente regularización ("deberán regularizarse" las deducciones, señala expresamente esa regla).

iii. La carga de acreditar un grado de afectación distinto al determinado por la presunción no solo se impone al contribuyente sino a la Administración, pues ésta se encuentra legalmente obligada a regularizar la deducción derivada de la presunción cuando "se acredite" un porcentaje distinto a aquél.

De esta manera, a la vista de la jurisprudencia del TJUE, el Tribunal concluye que el artículo 95. Tres de la LIVA resulta, a su juicio, claramente respetuoso con lo dispuesto en los artículos 168 a) y 173.1 de la Directiva 2006/112/CE del Consejo y con la jurisprudencia del TJUE que lo interpreta, de suerte que considera contraria a derecho la interpretación contenida en la sentencia de instancia.

Ahora bien, por otro lado, el TS rechaza la tesis sostenida por la Administración tributaria en el acuerdo de liquidación inicial respecto de la interpretación de la letra e) incluida en el último párrafo de la regla 2ª del artículo 95. Tres de la LIVA. Sostiene el Alto Tribunal que la presunción establecida en el citado artículo de deducibilidad del 100% de las cuotas soportadas en la adquisición de vehículos para representantes o agentes comerciales no se refiere exclusivamente a profesionales que desarrollan esa actividad, sino que también puede referirse a empleados de la propia empresa. En particular, basa su argumentación en estos motivos:

i. una interpretación literal de la mencionada letra e) no justifica la solución defendida por la Administración, pues su texto gramatical no exige que los representantes o agentes comerciales a que se refiere actúen necesariamente como personal autónomo;

ii. En su lugar, ha de acudirse a una interpretación teleológica que tenga en cuenta que el propósito del legislador era aceptar la presunción de una afectación del cien por cien para aquellos desplazamientos relativos a actividades comerciales y de representación, por entender que los mismos tendrían un carácter permanente; y

iii. En cuanto a la necesidad de esos desplazamientos permanentes en las tareas comerciales o de representación, no habría diferencia entre la relevancia de dicho transporte sea efectuado por personal autónomo o por trabajadores por cuenta ajena. Por tanto, carece de justificación razonable esa diferenciación que ha sido establecida por la Administración tributaria.

III. Doctrina Administrativa

1. Dirección General de Tributos. Contestación nº V1146-18, de 7 de mayo de 2018.

Consideración de una cesión de remate como una primera o segunda entrega de edificación a efectos del IVA.

La entidad consultante ha cedido el remate a un tercero de forma simultánea o posterior a la subasta judicial derivada de ejecuciones hipotecarias sobre inmuebles. En particular, el consultante solicita aclaración a la contestación vinculante de 4 de septiembre de 2017, con número de consulta V2204-17, sobre si la cesión del remate supone en dichos casos una primera o segunda entrega de edificación. Asimismo, se cuestiona si la cesión de remate de un préstamo hipotecario puede considerarse una operación financiera sujeta y exenta del IVA.

En primer lugar, alude este Centro Directivo a la contestación vinculante a la consulta de 4 de septiembre de 2017, numero V2204-17, donde se analizaron las cesiones de remate posteriores a la subasta judicial. En particular, la DGT concluyó lo siguiente:

"En el segundo caso planteado en el párrafo inicial del apartado 4 de esta contestación, es decir, cuando la declaración de voluntad de ceder el remate a un tercero se efectuase con posterioridad a la celebración de la subasta, se produciría una doble transmisión del dominio del inmueble, la efectuada por el propietario al acreedor hipotecario inicial (cedente del remate) y la que este realiza al cesionario del remate. Este criterio ya ha sido reiterado por este centro directivo en distintas consultas tales como la contestación de 26 de abril de 2012, V0929-12 o, más recientemente, la contestación de 8 de marzo de 2017, V0582-17.

En cuanto a la segunda transmisión, resultaría de aplicación, en su caso, las exenciones previstas en el artículo 20, apartado uno, números 20º y 22º, de la Ley 37/1992, sin perjuicio de la tributación que corresponda por el Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados, modalidad "transmisiones patrimoniales onerosas", habida cuenta de lo establecido en el artículo 4, apartado cuatro de la citada Ley 37/1992, salvo en los casos en que se renuncie a la exención del Impuesto sobre el Valor Añadido en la forma prevista en el artículo 20.Dos de la Ley 37/1992.".

Sin embargo, y para aquellos casos en los que el ejecutante no forma parte en la subasta por no existir licitadores, no pudiendo, por tanto, ceder el remate de la misma, se remite la DGT al artículo 671 de la Ley de Enjuiciamiento Civil, donde se determina que "si en la subasta no hubiere ningún postor, podrá el acreedor, en el plazo de los veinte días siguientes al del cierre de la subasta, pedir la adjudicación del bien ".

De conformidad con lo anterior, cabría concluir que, en los supuestos como el consultado, en los que el ejecutante no ha tomado parte de la subasta por quedar esta desierta, y, posteriormente, en el plazo de los veinte días siguientes, cede la adjudicación a un tercero, existe una única transmisión a efectos del IVA.

Si, por el contrario, el ejecutante hubiera tomado parte de la subasta, y con posterioridad a la misma se hubiera cedido el remate, habrá que concluir que existen dos transmisiones en los términos previamente fijados en la contestación vinculante a la consulta de 4 de septiembre de 2017, numero V2204-17.

Por otro lado, el consultante plantea si la cesión del remate a un tercero con sobreprecio, en el marco de la ejecución hipotecaria sobre un préstamo adquirido por la consultante en una operación no sujeta del artículo 7.1 de la LIVA, podría considerarse como incluida dentro de la letra d) del artículo 20.Uno.18º de la citada Ley, en concreto, bajo la mención "demás operaciones, incluida la gestión, relativas a préstamos o créditos efectuados por quienes los concedieron en todo o en parte".

En este sentido, la Resolución vinculante de esta Dirección General de 24 de julio de 1987, precisa qué servicios, entre otros, se pueden considerar incluidos dentro de la exención bajo la denominación de "demás operaciones incluida la gestión". Así, se establece que serán aquellos que se prestan a los destinatarios principales de las operaciones de crédito o préstamo, incluidos la gestión del préstamo o crédito.

Como conclusión, y en lo que se refiere a los supuestos de cesión del remate con sobreprecio, aclara la DGT que el destinatario no es el prestatario sino un tercero ajeno a esa relación financiera, por lo que cabe concluir, para el caso que aquí nos ocupa, que el servicio prestado debe estar sujeto y no exento al Impuesto.

2. Dirección General de Tributos. Contestación nº V1152-18, de 8 de mayo de 2018.

Consideración de la venta de un buque a favor de una entidad bancaria así como del arrendamiento financiero efectuado posteriormente por la entidad bancaria a favor de una Agrupación de Interés Económico.

La consultante es un astillero de construcción naval que recibe el encargo de una entidad bancaria para construir un buque. La consultante ha sido autorizada para la utilización del Régimen de Perfeccionamiento Activo (en adelante, RPA) previsto en la normativa aduanera ultimándose en el momento de la finalización de la construcción. El buque será objeto de sucesivas cesiones planteándose dos opciones por parte del consultante donde solicita aclaración sobre la tributación de la venta del buque por ésta a favor de la entidad bancaria así como del arrendamiento financiero efectuado posteriormente por la entidad bancaria a favor de la Agrupación de Interés Económico.

1) El buque será transmitido a la entidad bancaria una vez ultimado el RPA habiendo acordado las partes que será la consultante la que transporte el buque fuera de la Comunidad y la que realice los trámites aduaneros necesarios para su exportación.

La entidad bancaria cederá el buque a una A.I.E. en virtud de un contrato de arrendamiento financiero y esta última, a su vez, suscribirá un contrato de arrendamiento a casco desnudo con opción de compra con una entidad naviera que utilizará el buque en el ejercicio de su actividad de transporte marítimo suscribiendo con terceros contratos de fletamento a largo plazo o "time charter".

2) ultimar el RPA para, vincular el buque al Régimen de zona franca vigente el cual se producirán las sucesivas cesiones antes descritas siendo finalmente la entidad naviera la que ultime el Régimen de zona franca.

Sobre la primera alternativa la DGT ha visto a concluir lo siguiente, la operación asimilada a la importación de bienes efectuada por la consultante derivada de la ultimación del RPA no tendrá lugar cuando la ultimación se produzca en virtud de una entrega exenta efectuada por la consultante a favor de la entidad bancaria.

Es preciso que sea la consultante quien transporte el buque fuera del territorio de la Comunidad figurando ante la Aduana de exportación como exportador en nombre propio del buque; que el transporte del buque fuera del territorio de la Comunidad esté relacionado con la entrega efectuada por la consultante a favor de la entidad bancaria, extremo que podrá acreditarse por cualquier medio de prueba admitido en Derecho y, por último, que se produzca la salida efectiva del buque fuera de la Comunidad pudiéndose acreditar asimismo por cualquier otro medio de prueba.

En relación con la entrega de la embarcación efectuada con posterioridad a la exportación por la entidad bancaria a favor de la A.I.E., debe señalarse, como reiteradamente se ha manifestado la DGT (V0550-10) que, en el caso de ventas en cadena en la que unos mismos bienes son objeto de varias transmisiones con anterioridad a su expedición fuera del territorio de la Comunidad, las entregas que tengan lugar con posterioridad a aquella que queda exenta en virtud del artículo 21 de la Ley del IVA, estarán no sujetas al IVA. Por lo tanto, la entrega efectuada por la entidad bancaria a favor de la A.I.E. estará no sujeta al IVA.

Con respecto a la segunda alternativa, la DGT viene a concluir que, cuando la ultimación del RPA se realice mediante la vinculación de la embarcación a un Régimen de zona franca, de modo que el hecho imponible importación, o en su caso, operación asimilada a la importación, van a quedar suspendidos exige que el devengo de estas operaciones, se produzca cuando los bienes se desvinculan de este último régimen.

Por otra parte, las sucesivas entregas de bienes efectuadas mientras la embarcación se encuentre vinculada al Régimen de zona franca estarán exentas del IVA.

Por último, debe indicarse que en la medida en que los contratos de fletamemto se efectúen en las condiciones previstas en el artículo 22.Uno de la Ley del IVA, dichas prestaciones de servicios estarán sujetas y exentas del IVA. En consecuencia, no se producirá el hecho imponible operación asimilada a la importación imponiéndose así el destino real del bien que es, en el supuesto objeto de consulta, la realización de operaciones asimiladas a la exportación de bienes.

3. Dirección General de Tributos. Contestación nº V1401-18, de 28 de mayo de 2018.

Deducción de las cuotas del Impuesto sobre el Valor Añadido pendientes de compensar de la entidad adquirida tras un proceso de fusión.

En la presente contestación, la DGT se ha pronunciado sobre si procede o no la deducción de cuotas del IVA pendientes de compensar de una entidad adquirida tras su proceso de fusión acogido al artículo 7.1 de la Ley del IVA.

La DGT, señala que, la consultante como entidad absorbente, se subroga en el derecho a deducir las cuotas que tuviera la entidad absorbida y, por tanto, dentro del plazo establecido en el artículo 99, podrá adicionar a sus cuotas del IVA soportado el importe de las correspondientes a la entidad adquirida aplicando a la cantidad resultante la prorrata provisional de la entidad absorbente.

En este sentido, el porcentaje de prorrata provisional deberá ser regularizado a final de año en los términos previstos en el artículo 105.Cuatro de la Ley del IVA. Por consiguiente, para efectuar esta regularización, el consultante deberá computar, a final de año, el total de operaciones efectuadas tanto por la empresa absorbente como por la entidad absorbida, determinando una prorrata definitiva que se aplicará a la totalidad de cuotas soportadas tanto por la entidad absorbente como absorbida procediendo a continuación a la regularización de las deducciones provisionales.

Finalmente, a efectos de la regularización de bienes de inversión, señala la DGT que la subrogación del artículo 7.1 de la Ley, supone que a las cuotas por bienes de inversión de la entidad transmitida se les aplicará la prorrata de deducción de la entidad absorbente durante el año de adquisición y los restantes al periodo de regularización.

4. Dirección General de Tributos. Contestación nº V1402-18, de 28 de mayo de 2018.

Sujeción de la operación al Impuesto sobre el Valor Añadido.

La mercantil consultante es una entidad financiera que va a proceder a transmitir su negocio de cajeros automáticos localizados fuera de las oficinas bancarias (negocio "cajeros off-branch") a otra entidad establecida en el territorio de aplicación del Impuesto dedicada a la gestión de cajeros automáticos.

La transmisión comprenderá la mayor parte de los "cajeros off-branch", los equipos de seguridad, los derechos derivados del negocio, la subrogación de contratos suscritos para el funcionamiento del negocio (contratos con proveedores, entidad de servicio de procesamientos, servicios de gestión integral, arrendamiento espacio donde se ubican, mantenimiento y seguridad), así como, los derechos relacionados con reclamaciones e indemnizaciones, fondo de comercio, derechos y obligaciones derivados del negocio, cesión de uso de la marca y contrato de exclusividad de los mismos.

No obstante, una parte minoritaria de los mismos no serán transmitidos; los equipos de seguridad; los derechos derivados del negocio; la subrogación de contratos suscritos para el funcionamiento del negocio celebrados con terceros o con entidades del mismo grupo; los contratos con proveedores, con la entidad de servicio de procesamiento, y los de servicios de gestión integral, los de arrendamiento del espacio donde se ubican los cajeros, los de mantenimiento y seguridad; así como, los derechos relacionados con reclamaciones e indemnizaciones; fondo de comercio; derechos y obligaciones derivados del negocio; la cesión de uso de la marca y el contrato de exclusividad de los cajeros.

A la hora de determinar la no sujeción del artículo 7. 1º de la ley de IVA, el criterio establecido por el Tribunal de Justicia y por el Centro Directivo en lo que respecta al concepto de "universalidad parcial de bienes" sostiene que la aplicación del supuesto de no sujeción exige que el conjunto de los elementos transmitidos por el empresario o profesional sean suficientes para permitir desarrollar una actividad económica autónoma en el propio transmitente.

Concluyendo esta Dirección que en la medida en que los elementos transmitidos se acompañan de la necesaria estructura organizativa de factores producción en los términos establecidos en el artículo 7. 1º de la Ley 37/1992, se determina la no sujeción al Impuesto.

5. Dirección General de Tributos. Contestación nº V1436-18, de 29 de mayo de 2018.

Cómputo en prorrata general del Impuesto sobre el Valor Añadido en la entrega de un bien inmueble sujeto y exento al IVA.

La entidad consultante es titular de un terreno rústico afecto a la actividad agrícola que tenía contabilizado como bien de inversión. Posteriormente transmite dicho terreno a una entidad gestora íntegramente participada para destinarlo a la promoción inmobiliaria. La consultante plantea cómo ha de computarse dicha entrega del terreno a la entidad participada en relación al cálculo de la prorrata general.

En cuanto a la trasmisión del terreno entiende la DGT que al no formar parte de ningún Plan Parcial que permita su transformación y desarrollo urbanístico tendente a su transformación física ni al haberse emitido tampoco licencia alguna de edificación, se entienden cumplidos los requisitos establecidos en el artículo 20.Uno.20º de la Ley del IVA (en adelante LIVA) por lo que dicha entrega de la entidad consultante a la participada estaría sujeta pero exenta de IVA.

En lo que respecta al cómputo para el cálculo de la prorrata general, entiende la DGT que el terreno dejó de estar afecto a una actividad agrícola como bien de inversión y pasó a contabilizarse como existencia en relación a la actividad de promoción inmobiliaria de la entidad gestora participada.

Como consecuencia de lo anterior, concluye la DGT que la transmisión de los terrenos, debe considerarse en el denominador de la prorrata general de deducción.

6. Dirección General de Tributos. Contestación nº V1453-18, de 30 de mayo de 2018.

Aplicación de la exención contemplada en el artículo 22.siete de la Ley 37/1992 a los servicios prestados por los estibadores a favor de las empresas estibadoras en relación con la carga de buques afectos a la navegación marítima internacional.

La consultante es una asociación nacional empresarial constituida para la defensa de los intereses de las empresas estibadoras; estas empresas efectúan, la recepción, carga y estiba de mercancías a bordo del buque así como la desestiba, descarga y entrega de dichas mercancías. Para la realización de estos trabajos, las empresas estibadoras contratan, a su vez, los servicios de personal estibador que facturan a las primeras.

La DGT recuerda que es criterio reiterado, que la exención contemplada en el artículo 22.Siete de la Ley 37/1992 es aplicable cuando los servicios se prestan al titular de su explotación (armador del buque o al consignatario del mismo, como representante del buque en cada puerto), pero no a los servicios que se presten a un tercero, aunque se refieran a buques afectos a la navegación marítima internacional.

Esta doctrina ha de ser matizada a la luz de la sentencia del TJUE de 4 de mayo del 2017, A Oy, (asunto C-33/16). El Tribunal establece que los servicios de carga y descarga de los buques marítimos deben quedar exentos cuando se efectúen en la fase final de comercialización de tales servicios, así como cuando las prestaciones se realicen en una fase anterior, como la prestación efectuada por un subcontratista a un operador económico que la refactura posteriormente a una empresa de transporte. Asimismo, también pueden estar exentas las prestaciones de servicios de carga y descarga efectuadas al exportador o al importador del mismo.

Además en la sentencia A Oy, se establece que por la propia naturaleza y finalidad de los servicios de carga y descarga de un buque, se pueden considerar ciertos desde el momento en que se estipula, pues la aplicación de la exención atañe únicamente al tipo de buque en el que debe efectuarse la carga o descarga. Así pues, la utilización que se hace de estos servicios se puede considerar determinada desde el momento en que se estipulan las modalidades de ejecución.

En este sentido establece la DGT que puede señalarse que los servicios prestados por los profesionales estibadores en nombre propio a favor de las empresas estibadoras (con independencia de la procedencia de los profesionales estibadores) que posteriormente éstas prestan a favor de los armadores de buques o sus representantes en puerto, estarán sujetos aunque exentos del impuesto en la medida en que tengan por objeto la carga y estiba o la descarga y desestiba de la mercancía transportada en buques afectos a la navegación marítima internacional en los términos y con el cumplimiento de las demás condiciones previstas en la normativa.

En conclusión, se determina que la aplicación de la exención, precisa que el buque sea uno de los referidos en el apartado uno del artículo 22 de la Ley. De tal forma, que en el momento de la prestación del servicio puede ser conocido, tanto por las autoridades portuarias como por las empresas estibadoras, si un buque concreto se dedica al tráfico internacional o al cabotaje. Por tanto será necesario identificar en cada caso concreto los buques afectos a la navegación marítima internacional a efectos de la aplicación de la exención.

7. Dirección General de Tributos. Contestación nº V1542-18, de 6 de junio de 2018.

Intermediación financiera aplicación de exención – Sector diferenciado – Actividades accesorias – concesión de descuentos.

En la presente contestación, la DGT se ha pronunciado sobre tres cuestiones. En primer lugar, si la actividad de intermediación llevada a cabo por la consultante (una federación de asociaciones de concesionarios de automoción), que consiste en la intermediación financiera entre los compradores de los vehículos y las entidades financieras, constituye un servicio de mediación financiera exento regulado en el artículo 20. Uno. 18º.m) de la LIVA.

La DGT señala que, los criterios para apreciar la existencia de mediación dentro del ámbito de la exención se basan en la concurrencia de tres requisitos. Así, es necesario, que el prestador del servicio de negociación o, en este caso, de intermediación, sea un tercero, distinto del comprador y del vendedor de la operación principal y, que las funciones que realiza vayan más allá del suministro de información y la recepción de solicitudes, matizando por último, que el mediador asimismo, debe percibirse como un tercero completamente independiente de las partes, conocido por ambas y cuya actividad es sabida y aceptada por dichas partes.

En este sentido, concluye la DGT entendiendo que, en la medida en que, en el caso de autos, el mediador es un tercero con personalidad jurídica independiente y consta de medios materiales y humanos suficientes para el desarrollo de su actividad. Cuya labor asimismo, abarca entre otros aspectos, la búsqueda del cliente, el ofrecimiento de financiación, el análisis de circunstancias y el ofrecimiento de alternativas de financiación diferentes, dicha actividad constituye un servicio de mediación financiera exento del IVA.

En segundo lugar, se plantea la posibilidad de considerar las actividades de venta de vehículos y de intermediación financiera como sectores diferenciados o, como actividad principal y accesoria respectivamente.

A este respecto, la DGT señala que, conforme a lo dispuesto en el art.9.1º.c) de la LIVA se considerarán sectores diferenciados de la actividad empresarial o profesional aquéllos en los que las actividades económicas realizadas y los regímenes de deducción aplicables son distintos. Pues bien, en el caso de autos, atendiendo a la Clasificación Nacional de Actividades Económicas ambas actividades se encuentran

asignadas a distintos grupos. Por otro lado, los porcentajes de deducción difieren en más de 50 puntos porcentuales, puesto que, el porcentaje de deducción para la venta de coches es del 100% mientras que para la actividad de intermediación financiera es del 0%.

Tras todo lo anteriormente expuesto, concluye la DGT que no se puede considerar como accesoria de la actividad principal la compraventa de vehículos, puesto que no contribuye a la realización de la actividad principal, si no que se trata de una actividad independiente, constituyendo por tanto sectores diferenciados al cumplirse los requisitos anteriormente enunciados.

En último lugar, pregunta la consultante si la concesión de descuentos por las entidades financieras o por los fabricantes suponen una menor base imponible.

En este sentido, cabe diferenciar en primer lugar el descuento que otorga el concesionario al comprador, aplicable en caso de financiación de la operación con una determinada entidad financiera. Pues bien, en estos casos, la base imponible correspondiente a la venta del vehículo será, el importe pactado como contraprestación minorado por el descuento concedido, conforme a lo dispuesto en el art.78.Tres.2º de la LIVA, puesto que nos encontramos ante un descuento previo o simultáneo al momento en el que la operación se realiza.

Por último, el concesionario concede otro descuento al comprador, aplicable en caso de financiación con la entidad financiera designada por el fabricante del vehículo. En tal caso, el fabricante realiza un abono posterior al concesionario, equivalente al importe del descuento concedido. Pues bien, la DGT señala que, en aras a respetar el principio de neutralidad del IVA recogido en la Directiva 2006/112/CE y, siguiendo el criterio establecido por el TJUE (asunto C-317/94, de fecha 24 de octubre de 1996), se entiende que, el descuento es otorgado por el fabricante puesto que el consumidor final obtiene la devolución de parte del precio final por parte del fabricante y, por tanto, la base imponible correspondiente a la venta del vehículo, no debe ni puede ser minorada.

Por tanto, para garantizar dicho principio, la entidad fabricante deberá expedir una factura rectificativa que modifique su base imponible según lo dispuesto en el art.80.Uno.2º) de la LIVA con arreglo a los requisitos previstos en el art.15 del Reglamento de Facturación.

8. Dirección General de Tributos. Contestación nº V1549-18, de 6 de junio de 2018.

Regularización de deducciones – Cambio afectación viviendas.

En la presente contestación, la DGT se ha pronunciado sobre el procedimiento para practicar la regularización de las deducciones de cuotas de IVA soportadas en la construcción de un inmueble destinado en un principio al arrendamiento de viviendas, encontrándose finalmente el arrendamiento de algunas de las viviendas sujeto y no exento de IVA.

En primer lugar, la DGT señala que, tratándose de una edificación, las cuotas deducibles por su adquisición deberán regularizarse durante los nueve años naturales siguientes a su correspondiente adquisición de acuerdo con el artículo 107.Tres de la Ley del IVA.

Asimismo, en este sentido, matiza la DGT que, según lo dispuesto en el artículo 108 de la Ley del IVA el inmueble objeto de consulta reúne la naturaleza de bien de inversión, puesto que es destinado a ser utilizado por un período de tiempo superior a un año como instrumento de trabajo o medio de explotación.

Finalmente, en cuanto a la forma de prorratear el importe de las cuotas correspondientes a la vivienda objeto de arrendamiento no exento para su regularización, la DGT entiende que deberá ser acreditada por el consultante por cualquier medio de prueba admitido en Derecho. Para ello deberá adoptarse un criterio homogéneo y razonable, mantenido en el tiempo, como podría ser la superficie construida que represente dicha vivienda respecto del total de la promoción.

9. Dirección General de Tributos. Contestación nº V1585-18, de 8 de junio de 2018.

Deducibilidad cuotas extemporáneamente soportadas.

La entidad consultante es arrendataria de un local comercial habiéndole concedido el arrendador un periodo de carencia para la realización de obras en el mismo sin repercutirle ninguna cuota de IVA durante el mismo. No obstante, como consecuencia de unas actuaciones de comprobación realizadas sobre el arrendador, éste procedió a repercutirle las cuotas de IVA derivadas del referido periodo de carencia.

Se plantea la posibilidad de deducir dichas cuotas extemporáneamente soportadas.

En primer lugar, la DGT entra a analizar la procedencia de la repercusión de las cuotas IVA de acuerdo con lo dispuesto en el apartado cuatro del artículo 88 de la Ley del IVA, en la medida en que éste establece, que la pérdida del derecho a su repercusión inicial, se produce cuando transcurre un año desde la fecha de devengo de cada una de las operaciones gravadas.

En este sentido, señala la DGT, refrendada por jurisprudencia del TS, que dicha pérdida se refiere a aquellos casos en los que la ausencia de repercusión se produce sin causa que lo justifique y, que de la norma no se desprende la imposibilidad de que la entidad destinataria pueda aceptar voluntariamente soportar la repercusión extemporánea del impuesto.

En lo que respecta al ejercicio del derecho a la deducción de las cuotas soportadas voluntariamente, la DGT explica los criterios para poder ejercitarlo. Así, es necesario, dado que las cuotas no se encuentran previamente contabilizadas, que se deduzcan en la declaración-liquidación del periodo correspondiente a su contabilización o en los siguientes. Asimismo no debe haber transcurrido el plazo de cuatro años, computado a partir del nacimiento del mencionado derecho conforme a lo dispuesto en el artículo 99 de la Ley del IVA. Por último, la DGT señala que la deducción se debe llevar a cabo con arreglo a las limitaciones y requisitos establecidos por la Ley del IVA.

En último lugar, la DGT señala que el plazo de cuatro años para ejercitar el derecho a la deducción de las citadas cuotas habrá estado interrumpido desde la fecha de la notificación formal del inicio de la actuación inspectora hasta que devenga firme la resolución económico-administrativa que ponga término al procedimiento de reclamación iniciado por la entidad consultante contra la liquidación practicada por la Administración tributaria, no pudiéndose efectuar la deducción mientras la referida resolución no adquiera firmeza.

10. Dirección General de Tributos. Contestación nº V1681-18, de 13 de junio de 2018.

Concepto de entregas de bienes – Préstamos con pignoración de materias primas.

En la presente contestación la DGT se ha pronunciado sobre la posible calificación como entrega de bienes o como prestación de servicios de la siguiente operación realizada por la consultante, entidad establecida en el TIVA-ES, a favor de una entidad holandesa no establecida en dicho territorio.

La consultante vende aceitunas a la entidad holandesa, si bien éstas quedarán en posesión de la consultante, como depositaria, obligándose a la guardia y custodia de las mismas y haciéndose responsable de cualquier merma o daño que pudieran sufrir en depósito, incluso en caso fortuito o fuerza mayor.

Por otro lado, la entidad holandesa adquiere a la consultante una opción de venta en virtud de la cual puede decidir revender las aceitunas a la propia consultante estando ésta obligada a adquirirlas al precio inicial de venta más un margen comercial calculado en función del Euribor.

De acuerdo con el criterio de la DGT, ninguna de las operaciones anteriores efectuadas por la consultante puede calificarse, a los efectos del IVA, como entrega de bienes. Así, si bien parece acordarse la transmisión jurídica de las aceitunas de la consultante a favor de la entidad holandesa, la DGT entiende que no se produce una traslación de la totalidad de los beneficios y las cargas que, dado su contenido económico, resultan inherentes al ejercicio del derecho de propiedad. Resulta relevante para la Dirección General que realmente no se trasmitan al comprador el derecho a hacer suyos los frutos derivados de la cosa vendida, así como, en caso contrario, la obligación de asumir la pérdida o deterioro de la cosa que, de acuerdo con el contrato suscrito entre las partes, sigue recayendo sobre la parte vendedora.

Por el contrario, dicho Centro Directivo señala que el contrato suscrito por las partes tiene naturaleza de operación financiera de préstamo con pignoración de materias primas, en virtud del cual la entidad holandesa libera fondos a favor de la consultante viniendo esta última obligada, en el plazo de un año, al reembolso de los mismos junto con unos intereses calculados, precisamente, en función de un índice de evolución del precio del dinero como es el Euribor incrementado en un diferencial. La operación queda adicionalmente garantizada con la pignoración de las aceitunas que quedan en poder de la consultante.

Sobre la base de lo anterior, la DGT concluye que la operación de referencia se debería calificar como una prestación de servicios realizada por la entidad holandesa, sujeta al IVA al ser la Consultante un empresario establecido en el TAI, pero exenta del IVA por su calificación de operación financiera, todo ello de acuerdo con los artículos 69.Uno.1º y 20.Uno.18º de la Ley del IVA.

11. Dirección General de Tributos. Contestación nº V1943-18, de 29 de junio de 2018.

Régimen especial de grupo de entidades – Sociedad dominante – Requisito de vinculación financiera.

La DGT analiza en esta contestación la posibilidad de que una entidad dominante integre una sociedad en el régimen especial de grupo de entidades, cuando su participación indirecta en dicha sociedad es inferior al 50 por ciento pero, sin embargo, ostenta la mayoría en los derechos de voto.

En su análisis, la DGT recuerda la necesidad de cumplir con todos los requisitos subjetivos del régimen especial, establecidos en el artículo 163 quinquies de la Ley del IVA. En particular, la DGT incide en la necesidad de que la entidad dominante y sus dependientes se hallen firmemente vinculadas entre sí en los órdenes financiero, económico y de organización.

A este respecto, la DGT recuerda que el apartado 7 del artículo 61 bis del Reglamento del IVA, entiende cumplido el requisito de vinculación financiera, cuando la entidad dominante tenga el control efectivo de las entidades dependientes, a través de una participación superior al 50 por ciento en el capital o en los derechos de voto de las entidades del grupo. Asimismo, dicho artículo presupone que, una vez cumplido el vínculo financiero, que garantice el control efectivo de la entidad dependiente, los requisitos de vinculación económica y organizativa también se deben entender cumplidos, si bien cabe prueba en contrario.

En virtud de lo anterior, la DGT concluye en el presente caso que la entidad dominante podrá integrar dicha sociedad en el régimen especial de grupo de entidades, en la medida en que la posesión de la mayoría de los derechos de voto, le permita el control efectivo de la entidad participada. La anterior conclusión se realiza sin perjuicio de la posibilidad de admitir prueba en contrario, que justifique el incumplimiento de las presunciones de vinculación económica y organizativa, a pesar del cumplimiento del requisito de vinculación financiero.

12. Dirección General de Tributos. Contestación nº V2001-18, de 4 de julio de 2018.

Sujeción al Impuesto – Subvención.

En la presente contestación, la DGT se ha pronunciado sobre la sujeción al IVA de las subvenciones que la consultante, en este caso un Ayuntamiento, concede al adjudicatario de la gestión de determinados servicios públicos, a raíz del siguiente supuesto de hecho:

El Ayuntamiento consultante está tramitando un expediente de contratación de gestión de servicios públicos en la modalidad de concierto cuyo objeto es la gestión del servicio público de actividades deportivas. La retribución contemplada para el adjudicatario viene dada

por las tarifas a percibir de los usuarios y una subvención concedida por el consultante para cubrir el déficit de explotación de dicho servicio deportivo.

En primer lugar, la DGT señala, de acuerdo con el Artículo 78.Dos.3º de la Ley del IVA, que para considerar una subvención como vinculada directamente a las operaciones sujetas del IVA y, por ende, que forme parte de la base imponible del Impuesto, es necesario que dicha subvención se establezca en función del número de unidades entregadas o del volumen de los servicios prestados cuando se determinen con anterioridad a la realización de la operación.

No obstante, este mismo apartado señala que no se considerarán subvenciones vinculadas al precio, no formando parte de la base imponible dela operación, aquellas realizadas por las Administraciones Públicas que sirvan para financiar, entre otras:

a) La gestión de servicios públicos o culturales en los que no exista distorsión significativa de la competencia.

b) Actividades de interés general cuando sus destinatarios no sean identificables y no satisfagan contraprestación alguna.

Del escrito de consulta resulta que el Ayuntamiento consultante abonará la referida subvención, limitada a un máximo de 87.500 euros anuales, en la medida en que el servicio que va a prestar el adjudicatario es deficitario al considerarse que los ingresos derivados del abono de las tarifas por los usuarios resultan insuficientes para el mantenimiento del servicio.

Con base en lo anterior, la DGT concluye que, en la medida en que dicha aportación no comporta las características incluidas en las letras a) y b) del artículo 78.Dos.3º de la Ley del IVA, para calificar la aportación como no sujeta, la referida aportación constituye parte de la contraprestación que percibe el adjudicatario por la prestación de sus servicios y, por tanto, estará sujeta al IVA debiendo dicho adjudicatario repercutir el Impuesto correspondiente con ocasión de su percepción.

13. Dirección General de Tributos. Contestación nº V2129-18, de 18 de julio de 2018.

Deducibilidad de las cuotas generadas en el ejercicio de la asistencia pericial gratuita.

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

El consultante es un colegio profesional que tiene como fin esencial, entre otros, la ordenación del ejercicio de la profesión de arquitecto técnico, aparejador e ingeniero en una provincia.

En el marco de la Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita, sus colegiados deben actuar como peritos privados en el marco de procedimientos de asistencia pericial gratuita.

De acuerdo con el artículo 7.10º de la Ley del IVA, los servicios objeto de consulta no estarán sujetos IVA cuando sean obligatorios para su prestador y se realicen a título gratuito, entendido que se cumple este último requisito cuando los colegiados no perciban cantidad alguna como contraprestación de sus servicios profesionales.

En este sentido, y teniendo en consideración el criterio mantenido en consultas anteriores relacionadas con los servicios prestados por abogados en el marco de la Ley de asistencia jurídica gratuita, la DGT entiende que si los colegiados de la entidad consultante se encuentran dentro de los profesionales que, según la Ley 1/1996, tras la reforma operada por la Ley 2/2017, vienen obligados a la prestación de la asistencia jurídica gratuita en los términos previstos en la citada Ley, con derecho al abono de las correspondientes indemnizaciones a favor de los mismos por la realización de dicha actividad prestacional, los servicios prestados por los mismos no estarán sujetos al IVA.

14. Dirección General de Tributos. Contestación nº V2218-18, de 25 de julio de 2018.

Consideración de los servicios logísticos y de transporte como accesorios y su correspondiente tributación.

La entidad consultante es una compañía de supermercados que tiene como canal de ventas, además de la venta presencial, la venta a través de una página web. Además, presta servicios logísticos y de transporte de los pedidos correspondientes a los consumidores.

Plantea la consultante, cuál es la naturaleza que reúnen los servicios logísticos y de transporte prestados, en función de si podrían considerarse como accesorios de la operación principal de venta online, y en su caso, la tributación de los mismos.

La DGT, refrendada por jurisprudencia del TJUE señala que una prestación debe ser considerada accesoria de una prestación principal cuando no constituye para la clientela un fin en sí misma, sino el medio de disfrutar en las mejores condiciones de la operación principal. Por tanto, entiende que las operaciones logísticas y de transporte en el caso

de autos, contribuyen a una mejor y más efectiva prestación de la que considera la prestación principal, la entrega de bienes y, consecuentemente, ostentan carácter accesorio de la principal.

Por lo tanto, con base en lo anterior, la contraprestación total por la operación estará constituida por el precio del producto más el coste de los servicios accesorios con arreglo a lo dispuesto en art. 78.Dos.1º), habiendo de someterse ambos al tratamiento tributario de la prestación principal.

Por último, en la respuesta a la consulta planteada, la DGT hace mención a los artículos 90 y 91 de la Ley del IVA estableciendo que, en la medida en que el tipo de gravamen aplicable a cada entrega varía en función del bien entregado, procederá aplicar criterios racionales de imputación respecto de los importes correspondientes a los servicios accesorios objeto de consulta, en cuanto a su distribución entre las distintas porciones de base imponible. En este sentido, parece aceptar como criterio válido el de proporcionalidad, asociado sobre la base imponible atribuida a los distintos tipos del impuesto que gravan las entregas de bienes que se entregan.

IV. Country summaries (July 2018 - September 2018)

July 2018

Global

WCO Guide to Customs Valuation and Transfer Pricing

On 5 June 2018, the World Customs Organization (WCO) released an update to the 2015 edition of its Guide to Customs Valuation and Transfer Pricing. The new 2018 edition was included as part of the WCO's 'Revenue Package Phase III', which is a package of all available tools and instruments (including, *inter alia*, formal instruments and conventions, guidance notes, and training materials) that are relevant to revenue collection by customs authorities. As before, the updated Guide notes that it does not provide definitive approaches to dealing with customs valuation or transfer pricing issues, but rather provides only technical background as well as potential solutions that should be used in conjunction with domestic laws.

It remains, however, a leading reference on the coordination of tax and customs practices with respect to related party pricing analyses. Although no major revisions were made, notable updates to the Guide include:

- References to developments in the Organization for Economic Co-operation and Development (OECD) Base Erosion and Profit Sharing (BEPS) initiative that combats tax avoidance strategies that utilize low-tax jurisdictions. This includes references to OECD BEPS Action Items 8, 9, and 10 and updated guidance on the use of the transactional profit split method in Chapter 3.

- Specific references in Chapter 4 to the two case studies previously considered and issued by the WCO Technical Committee on Customs Valuation. Specifically, Case Study 14.1, which applies the transactional net margin method (TNMM) and Case Study 14.2, which applies the resale price method.

- Korea's contribution concerning its practice on the interaction of Customs Valuation and Transfer Pricing in Annex I, titled 'National Initiatives'.

EU and Japan sign Economic Partnership Agreement

On 17 July 2018, the EU and Japan signed an Economic Partnership Agreement (EPA) at a joint summit in Tokyo. The EU-Japan EPA will create an open trade zone with a (gradual) removal of tariff barriers. The agreement is expected to be ratified by each party by the end of 2018 in order to allow for entry into force in early 2019. The joint statement released at the EU-Japan Summit refers to the EPA as a tool to improve prosperity domestically and globally and as a reaction against protectionism.

Road to implementation

The signing of the EPA marks an important step on the road to implementation. The signing was preceded by a Council of the European Union mandate to the European Commission. The EPA will only become effective after it passes through the internal legislative decision-making processes of both jurisdictions.

For the EU, the next steps are as follows:

1. The European Parliament must provide its consent with the content of the EPA through a single vote, and

2. The Council must adopt the decision on the conclusion of the EPA, after which the Agreement will be concluded.

With chapters on investment protection standards and dispute resolution negotiated separately, the EPA only covers EU-exclusive competencies, which will not require separate approval on an EU Member State level. In principle, this should allow a smooth and relatively quick entry into force of the EPA.

For Japan, the ratification process is set forth in Japan's national legislation, which requires submitting the EPA for ratification through the Diet, i.e., the Japanese Parliament.

Once the national requirements for ratification have been completed, the EU and Japan will notify each other. In principle, the EPA will then enter into force on the first day of the second month following that bilateral notification.

Implications

The EPA will create an open trade zone covering more than 600 million people and almost a third of the global gross domestic product, i.e., the biggest free trade agreement ever concluded by the EU.

Under the EPA, both parties will bilaterally reduce or remove import duties. In addition, the agreement will end a number of long-standing non-tariff barriers between the parties (e.g., safety regulations in the food and automotive industries).

The EPA will regulate the following objectives between the EU and Japan:

- Creating market access for goods, services, and investments in each party's respective territory;
- Breaking down non-tariff measures;
- Promoting sustainable development;
- Harmonizing rules on intellectual property rights; and
- Protecting geographical indications.

EU imposes provisional safeguard measures on import of steel products

On 18 July 2018, the European Commission adopted provisional safeguard measures on imports of certain steel products pursuant to Implementing Regulation 2018/1013.

The EU safeguard investigation comes as a response to the threat of trade diversion of steel products to the EU as a consequence of additional tariffs applied by the US Government on steel on 23 March 2018 under Section 232 of the US Trade Expansion Act of 1962.

Implications

The products investigated encompass 28 steel product categories within Chapters 72 and 73 of the Combined Nomenclature. These product categories were found to be also subject to the US tariff measures under Section 232. However, the EU provisional safeguard measures will only apply to 23 steel product categories for which imports into the EU were found to be increasing significantly over the last five years.

Entered into force on 19 July 2018, the EU's provisional measures will take the form of tariff rate quotas (TRQs), in excess of which an additional duty of 25% will be owed. For each of the 23 product categories covered by the

Implementing Regulation, quotas are calculated on the historical annual level of imports in the years 2015, 2016, and 2017. TRQs will then be allocated in the chronological order of the declarations of release for free circulation, allowing for equal access for all importers in the EU.

Provisional measures will, however, not apply to:

- Any product originating in a developing country, provided that imports from these countries represent less than 3% of the total import of the impacted products; or
- Any product originating in one of the European Economic Area countries (Norway, Iceland, and Liechtenstein) due to the close economic ties between the EU and these countries.

These exclusions are compatible with both the EU's bilateral and multilateral WTO obligations.

The provisional safeguards measures will remain in effect for a maximum of 200 calendar days as of the entry into force of the Implementing Regulation on 19 July 2018. Definitive safeguard measures are expected to be published before the end of January 2019.

Americas

Canada

Surtaxes imposed on certain products originating in the US

From 1 July 2018, certain goods imported from the US are subject to new surtaxes. The surtaxes apply to certain goods originating in the US. In particular, the goods must be eligible for marking as goods of the US in accordance with the Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations. The surtaxes will be levied pursuant to United States Surtax Order (Steel and Aluminum) and United States Surtax Order (Other Goods).

The surtaxes will be levied on the value for duty of both commercial and casual (i.e., 'non-commercial') goods. For certain imported steel goods, the surtax rate is 25 percent. For certain imported aluminum and other goods, the surtax rate is 10 percent. The surtaxes will be levied on goods released from a Customs Bonded Warehouse or Sufferance Warehouse on or after 1 July 2018 regardless of their date of importation.

Goods listed in Schedules 1 and 2 of the United States Surtax Order (Steel and Aluminum) and in the Schedule to the United States Surtax Order (Other Goods) are subject to the surtaxes even if they might otherwise be eligible for preferential tariff treatment under Chapter 99 (Special Classification Provision – Commercial) of the Schedule to Customs Tariff.

Similarly, goods listed in Schedules 1 and 2 of the United States Surtax Order (Steel and Aluminum) and in the Schedule to the United States Surtax Order (Other Goods) are generally subject to the surtaxes (with a few exceptions) even if they might otherwise be eligible for preferential tariff treatment under Chapter 98 (Special Classification Provisions – Noncommercial) of the Schedule to the Customs Tariff.

Examples of Chapter 98 exceptions where the surtax orders would not apply are goods classified under headings: 98.01 (conveyances engaged in international commercial transportation), 98.02 (temporary importation of conveyances for non-commercial transportation), 98.03 (conveyance and baggage imported by non-residents), etc. The list is not exhaustive.

The surtax orders also do not apply to goods that are in transit to Canada prior to 1 July 2018.

The onus is on importers to prove that goods imported into Canada should not be subject to the United States Surtax Order (Steel and Aluminum) and the United States Surtax Order (Other Goods). Importers may consider whether they can apply duty relief programs (such as the duty drawback program) in relation to duties, including surtaxes that may be levied on imported goods.

Further details regarding both Orders are set out in Customs Notice 18-08 (Surtaxes Imposed on Certain Products Originating in the United States). See also the Department of Finance, Canada document Countermeasures in Response to Unjustified Tariffs on Canadian Steel and Aluminum Products.

Persons engaged in international trade should consider the degree to which increased US tariffs and Canada's countermeasures will impact their businesses, as well as strategies and options for dealing with these changes.

Asia Pacific

Australia

Delayed GST refunds and taxpayer entitlement to interest

Deloitte Australia has successfully challenged the revenue authority's approach to calculating interest on delayed GST refunds, with the Federal Court ruling in favor of the taxpayer in *Travelex Limited v Commissioner of Taxation* [2018] FCA 1051.

In *Travelex*, the Court ruled that the taxpayer was entitled to receive interest on a delayed GST refund, calculated from the time the taxpayer lodged its GST return for the affected tax period. The Court rejected the approach of the Australian Taxation Office (ATO) of calculating interest on the delayed refund only from the much later date when the taxpayer gave notice of its outstanding GST refund entitlement for the tax period. It is important to note that the dispute related to a tax period that occurred before changes affecting GST reporting and assessment were introduced on 1 July 2012.

Subject to the outcome of any appeal, the *Travelex* decision may provide grounds for other taxpayers to seek payment of additional interest in respect of delayed GST refunds received from the ATO for tax periods before 1 July 2012. In light of this, GST taxpayers should be reviewing their records to identify any potential claim for underpaid interest and taking appropriate steps to protect it.

The implications of the decision for delayed refunds of other federal indirect taxes are also being considered.

Customs duty deferral arrangements for qualifying importers

On 24 July 2018, the Australian Border Force (ABF) extended the benefits offered under its Authorised Economic Operator (AEO) arrangements (i.e. the Australian Trusted Trader Program) to allow accredited businesses to defer payment of customs duty on imported goods.

The duty deferral benefit allows businesses to defer paying duty in respect of most imported goods until the 21st day after the end of the calendar month in which the goods were entered for home consumption.

Being able to make just one combined payment of customs duty in the month after the goods are entered for home consumption, rather than making many individual payments for multiple consignments of goods throughout each month, offers several potential advantages, including streamlined accounting and reduced import transaction costs. Depending on a business's circumstances and amount of duty it typically pays each month, the opportunity to defer paying duty could also offer a useful cash-flow boost.

Eligibility for the duty deferral benefit

The duty deferral benefit is available provided that:

- The agreement made between the business and the ABF for the purposes of the Trusted Trader Program permits deferred payment of import duties on the goods;
- The business has approval to defer paying GST on taxable importations of the goods;

- The goods have not been entered for warehousing before being entered for home consumption;

- The goods do not create Luxury Car Tax or Wine Equalisation Tax obligations for the business.

Other recent changes affecting accredited businesses

On 31 May 2018, the ABF signed a mutual recognition agreement (MRA) with Singapore's customs authority. The MRA provides secure access to streamlined trade examination and faster customs clearance for each country's authorised economic operators.

Australia currently also has an MRA with each of Canada, the People's Republic of China, Hong Kong, the Republic of Korea, and New Zealand.

China

Regulations for refund of excessive input VAT credit balance in 2018 published

On 27 June 2018, China's Ministry of Finance (MOF) and State Administration of Tax (SAT) issued Caishui [2018] No. 70 (Circular 70) to clarify the issues related to the one-time refund of excessive input VAT credit balance for enterprises in certain industries. According to Circular 70, the list of eligible companies and the refund amounts must be registered with MOF and SAT before 31 August and the input VAT will be refunded before 30 September.

Highlights

The refund policy applies to the following two categories of industries:

- Advanced manufacturing industry such as equipment manufacturing, and modern services industry such as R&D;

- Power grid enterprises.

Taxpayers applying for the refund must have a tax compliance rating of A or B.

The refund amount will be the excessive input VAT credit balance at the end of 2017 or the refundable input VAT amount, whichever is smaller.

> The refundable input VAT amount = excessive input VAT credit balance prior to the application * refundable rate.
>
> The refundable rate = credited input VAT in 2015, 2016 and 2017 derived from VAT special invoices, import VAT certificates, withholding VAT certificates / the total credited input VAT of years 2015, 2016 and 2017.

Comment

Circular 70 is positive news for advanced manufacturing industries, high-tech industries, and the power grid industry, as the refund can release the amount in the input VAT credit balance. Considering the total available refund amounts and other limitations, not every enterprise will be able to benefit from the policy. In this regard, enterprises are suggested to take the following actions:

- Evaluate the eligibility (including industry category, tax compliance rating, etc.) and review the input VAT credit balance as soon as possible;
- Where eligible for the refund, follow closely the regulations following Circular 70 published by local authorities, and communicate actively with the local tax bureaux to understand the local practice.

Entry into force of Tariff List 1

Starting at 12:01 AM 6 July 2018 Eastern Day Time, the US imposed additional tariffs of 25% on USD 34 billion worth of Chinese goods (US Tariff List 1) imported into the US.

As a corresponding action, China increased tariffs on 545 products of US origin (China Tariff List 1) by 25%, which became effective at the same time as the US tariffs (12:01 AM 6 July 2018 China Standard Time), based on Tariff Committee of State Council Announcement No. 5 dated 15 June.

China Tariff List 1 includes 545 products such as agriculture, aquatic, and automotive products. The current bonded and tax relief policy will remain unchanged, and the increased tariff cannot be reduced or exempted.

The effective date of the remaining 114 products mentioned in Announcement No. 5 (China Tariff List 2) has not yet been announced. For companies which import products listed in China Tariff List 2, including chemical products, medical devices, and energy products, there remains time to manage the potential impact.

India

GST updates

In its 28th meeting held on 21 July 2018, the GST Council made various recommendations for changes in the GST law as well as the rates of certain goods and services. Legislative changes will be effective after being approved by the Parliament as well as the state legislature. With respect to the rate changes, notifications have been issued to give effect to the recommendations.

The next meeting of the Council will be on 4 August 2018.

Some of the key recommendations of the Council are as follows.

Registration and related aspects:

- Taxpayers who received provisional GST IDs but could not complete the process of migration of their erstwhile indirect tax registration can now approach a jurisdictional nodal officer before 31 August 2018 to complete migration. Such taxpayers will be entitled to a waiver of the late fee for delay in submission of GST returns. They will have to make payment of late fees while submitting the returns, which will subsequently be refunded in the cash ledger as 'tax'.

- The monetary threshold for the composition scheme is to be enhanced from INR 10 million (INR 1 crore) to INR 15 million (INR 1.5 crore).

- Composition dealers are to be permitted to supply services (other than restaurant services) up to 10% of turnover in the preceding financial year or INR 500,000, whichever is higher.

- The threshold limit for obtaining GST registration in Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim, and Uttarakhand is to be enhanced from the existing INR 1 million (INR 10 lakh) to INR 2 million (INR 20 lakh).

- Taxpayers having more than one place of business in a state can opt for obtaining a separate GST registration for each such place.

- GST registration will be suspended from the date of making an application for cancellation, hence there will be no requirement to submit returns or comply with other compliance obligations.

- E-commerce operators are required to obtain GST registration only if they are liable to collect tax at source.

Compliance

The Council approved new formats and business processes for GST returns. Some of the key features of the new GST compliance system are:

- Small taxpayers (comprising 93% of aggregate taxpayers) with annual turnover below INR 50 million (INR 5 crore) and making only B2B suppliers or only B2B and B2C supplies can opt to furnish simplified GST returns on a quarterly basis; GST payment will continue to be on monthly basis.

- Other taxpayers are to furnish only one monthly GST return per state; taxpayers having obtained input service distributor registration are to file an additional return.

- The return will have a simple interface with two main tables – for outward supplies and for input tax credits.

- Taxpayers will be able to take input tax credit on the basis of invoices uploaded by suppliers in their GST return on a continuous basis; recipients will also be able to upload inward supply invoices.

- Taxpayers will be able to amend invoice and other details by filing an amendment return.

- There will be a facility to file nil returns by sending a SMS.

Applicability of tax

The following transactions will not be treated as a supply and, hence, will not be liable to GST:

- A supply of goods from a non-taxable territory to another non-taxable territory, without the goods entering into India;

- A supply of warehoused goods before their customs clearance for home consumption;

- A supply of goods in the case of high sea sales.

GST under the reverse charge mechanism on procurement from unregistered suppliers will be applicable only with respect to specified goods procured by notified classes of registered taxpayers.

Input tax credit

Input tax credit will be available in respect of the following items:

- Most of the activities or transactions specified in Schedule III as a supply of goods or supply of services;

- Motor vehicles for transportation of passengers, with seating capacity exceeding 13 (including driver), vessels and aircraft;

- Motor vehicles for transportation of money for or by a banking company or financial institution;

- General insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available;

- Goods or services that are mandatorily required to be provided by an employer to its employees, under any law for the time being in force.

There will be no interest liability on reversal of input tax credit due to failure to make payment to a supplier within 180 days from the date of invoice.

Fabrics manufacturers will be entitled to claim a refund of accumulated input tax credit on account of inverted tax structure. The refund will be available prospectively on purchases made after issuance of the notification for such refund.

The order of cross-utilization of input tax credit is being rationalized so as to provide that a taxpayer will be first required to exhaust the Integrated GST Credit before utilizing the central GST or state GST credit for making payment of tax.

Other:

- Consolidated credit/debit notes in respect of multiple invoices will be able to be issued in a financial year.
- Supplies of services will be able to qualify as exports, even if payment is received in Indian Rupees, where permitted by the Reserve Bank of India.
- The Commissioner will be empowered to extend the time limit for return of inputs and capital goods sent on job work, up to a period of one year and two years, respectively.
- The place of supply in the case of job work of any treatment or process undertaken on goods temporarily imported into India and then exported without applying them to any other use in India, is to be outside India.
- The amount of pre-deposit payable for appeal before the Appellate Authority is to be capped at INR 250 million (INR 25 crore), and before the Appellate Tribunal, to be capped at INR 500 million (INR 50 crore).
- The recovery of tax due from a taxpayer can be made from its distinct persons, even if present in a different state.

Changes in and clarifications of rate of tax

The Council has recommended changes in the rate of tax of certain goods:

Details	Current rate	Proposed rate
Paints and varnishes (including enamels and lacquers), specified putty and resin cement	28%	18%
Refrigerators, freezers and other refrigerating or freezing equipment including water cooler, milk cooler, refrigerating equipment for leather industry, ice cream freezer etc.	28%	18%
Washing machines, vacuum cleaners, domestic electrical appliances such as food grinders and mixers, food or vegetable juice extractor, storage water heaters, immersion heaters, shavers, hair clippers, hair dryers, hand dryers, electric smoothing irons etc.	28%	18%
Television sets up to the size of 68 cm	28%	18%
Lithium-ion batteries	28%	18%
Special purpose motor vehicles, for instance crane lorries, fire fighting vehicle, concrete mixer lorries, spraying lorries	28%	18%
Works trucks [self-propelled, not fitted with lifting or handling equipment] of the type used in factories, warehouses, dock areas or airports for short transport of goods, trailers and semi-trailers	28%	18%
Miscellaneous articles such as scent sprays, toilet sprays, powder-puffs and pads for application of cosmetics or toilet preparations	28%	18%
Fuel cell vehicle *Compensation cess also proposed to be*	28%	12%
Stone/Marble/Wood Deities	12%	Exempt
Sanitary Napkins	12%	Exempt
Bamboo flooring	18%	12%
Brass Kerosene Pressure Stove	18%	12%
Hand Operated Rubber Roller	18%	12%
Zip and Slide Fasteners	18%	12%
Footwear having a retail sale price up to INR 1,000 per pair	18%	5%
Ethanol for sale to Oil Marketing Companies for blending with fuel	18%	5%
Solid bio fuel pellets	18%	5%
Chenille fabrics and other fabrics under heading 5801	12%	5%
Phosphoric acid of fertilizer grade	12%	5%
Knitted cap/topi having retail sale value not exceeding INR 1,000	12%	5%
Specified handicraft items	18% or 12%	12% or 5%

The Council further issued clarifications regarding the applicable rate on the following goods:

- Milk enriched with vitamins or minerals salt (fortified milk) classifiable under heading 0401 as milk and hence, exempt from GST.
- Beet and cane sugar, including refined beet and cane sugar, (heading 1701) attracts GST at 5%.
- Water supplied for public purposes (other than in sealed containers) does not attract GST.
- Marine engine (sub-heading 8408 10 93) attracts GST at 5%.
- Unpolished kota and similar stones (except marble and granite) attracts GST at 5%, whereas ready-to-use polished kota and similar stones attracts GST at 18%.

Changes in the rate and mechanism of applicability of GST for some key services are listed below:

Details	Current rate	Proposed rate
e-books for which print version exists	18%	5%
Warehousing of minor forest produce	18%	Exempt
Installation and commissioning undertaken by electricity distribution companies for extending electricity distribution network up to the tube well of the farmer/agriculturalist for agricultural use	18%	Exempt
Services provided by FSSAI to food business operators (Food Safety and Standards Authority of India)	18%	Exempt
Services by an old age home run by state/ central government or a body registered under Section 12AA of the Income Tax Act to its residents aged 60 years or more against consideration up to INR 25,000 per month per member, inclusive of charges for boarding, lodging and maintenance	18%	Exempt
Reinsurance services provided to specified insurance schemes funded by Government	18%	Exempt
Import of services by foreign diplomatic missions/UN and other international organizations, based on reciprocity	18%	Exempt
Services provided by an establishment of a person in India to any establishment of that person outside India (i.e. related party) in banking and IT sectors	18%	Exempt

The Council made some further changes and issued clarifications regarding the following services:

- The rate of tax for accommodation services by hotels etc. will be determined on the basis of transaction value, instead of declared tariff.
- The composite supply of food and drinks in restaurant, mess, canteen, eating joints and such supplies to institutions (educational, office, factory, hospital) on a contractual basis will be liable to GST at 5%; the Council clarified that the scope of outdoor catering is restricted to supplies in the case of outdoor/indoor functions that are event based and occasional in nature.
- Exemption granted on the outward transportation of all goods by air and sea is to be extended to 30 September 2019.
- A composite supply of multimodal transport will be liable to GST at 12% under forward charge with availability of input tax credit.
- The reduced rate of GST applies on composite supplies of works contracts received by the Government or a local authority in the course of their sovereign functions.
- An explanation is to be inserted in the relevant notification to define the term 'renting of immovable property'.
- The liability of GST on services provided by individual direct sales agents to banks/NBFCs is to be paid under the reverse charge by the banks/NBFCs (Non-Banking Financial Company); services by non-individuals (corporate, partnership firms) to banks/NBFCs would continue under forward charge.

EMEA

Gulf Cooperation Council

Kuwait

According to local newspaper sources, the Government intends to prioritize the approval of the VAT regime during the next session of the National Assembly starting in October 2018. The Financial Affairs Committee of the Parliament is expected to discuss the underlying legislative acts in September before they are debated by the National Assembly.

The upcoming VAT implementation process in Kuwait encompasses the ratification of the Unified VAT Agreement of the Gulf Cooperation Council and the enactment of the local VAT law by the National Assembly. It is understand that preparations for the aforesaid are currently underway.

Kingdom of Saudi Arabia

Post-implementation review

Following the implementation of VAT in the Kingdom of Saudi Arabia (KSA) on 1 January 2018, KSA's General Authority of Zakat and Tax (GAZT) have taken an increased level of interest in undertaking VAT inspections of companies (for example the recent focus on foodstuff and car rental vendors). Many KSA businesses have found that simple systems or processing errors have led to penalties being applied and assessments being raised for mistakes that could have been avoided.

In response to this, Deloitte Middle East has launched its post-implementation review, Deloitte VATCheck, to support KSA businesses in understanding their post-implementation VAT position. Deloitte Middle East has designed an approach and methodology to review post-implementation compliance to allow errors and issues to be identified and any related risks of non-compliance mitigated in a proactive manner.

United Arab Emirates

VAT guidance and tools for taxpayers

Following the introduction of VAT in the UAE on 1 January 2018, the UAE Federal Tax Authority (FTA) has published a range of guidance and tools to support taxpayers in understanding their VAT obligations. It has released four Public Clarifications which cover complex VAT matters:

1. VAT treatment of compensation-type payments
2. Profit margin scheme – eligible goods
3. Labour accommodation: residential versus serviced property
4. Use of exchange rates for VAT purposes

The FTA has also updated its Taxable Person Guide for VAT. Issue 2 of the Guide now serves as the main FTA VAT reference document.

The FTA has also updated its online e-Services portal with additional features to support taxpayers. Taxpayers can now link their account to an accredited tax agency to allow the agency to perform tasks on their behalf, including registration, submitting tax returns, and completing tax transactions. It also includes features to simplify procedures for customs clearance companies operating under its approval, with streamlined registration procedures to make it easier for them to submit tax returns.

Extension of designated zone list

The Government has issued a Cabinet Decision extending the list of designated zones for VAT purposes. The following free zones will be considered designated zones effective from 18 June 2018:

- Al Ain International Airport Free Zone;
- Al Butain International Airport Free Zone; and
- International Humanitarian City.

Designated zones are areas within the UAE which are treated as being outside the state for certain transactions for the purposes of VAT. The VAT rules which apply to designated zone transactions are complex. It is critical that businesses within a designated zone, or which transact with businesses within designated zones, are fully aware of these rules and review their activities to identify potential impacts of the designated zone expansion on existing transactions.

France

Mandatory certification of cash-register software/systems

The tax authorities recently published their guidelines specifying the scope of the anti-fraud legislation requiring a certification for cash-register software/systems, applicable as from 1 January 2018 (BOI –TVA-DECLA-30-10-30-20180704).

This mandatory certification initially targeted all accounting, management, and cash-register software in order to fulfill conditions of immutability, security, storage, and of archiving data. The legislation now applies to cash-register systems or software only.

A definition has been provided by the tax authorities: it is an IT system with a cash function consisting of storing and recording out of the books payments received for a sale of goods or a supply of services, that is to say that the recorded payments do not lead automatically, immediately and mandatorily to an accounting posting.

Thus, payment terminals are excluded. As regards multifunction software, only the cash-register features they include are subject to this requirement.

Finally, the tax authorities, by administrative concession, consider that when all payments for the sales of goods or supplies of services are received by a credit establishment to which they can request information (according to their communication right), the certification is not necessary. This is also the case when all payments are received through a bank established in the EU covered by the automatic exchange of information mentioned in Directive 2011/16/UE.

Available information and final documentation on real-time invoice data provision obligation

The real-time invoice data provision obligation entered into force in Hungary as of 1 July 2018. Starting from then, taxpayers who are issuing invoices (in B2B relation exclusively) using invoicing software are obliged to provide real-time data to the tax authorities. The real-time data provision applies to invoices issued by invoicing software if the VAT amount indicated on the invoice reaches or exceeds HUF 100,000 (however, taxpayers may also choose to report all invoices issued by invoicing software). The invoice data must be provided immediately.

The tax authorities issued a statement that they will not penalize taxpayers who have already registered on the tax authorities' dedicated webpage (https://onlineszamla.nav.gov.hu/regisztracio/start) and will be able to upload the data of invoices issued from 1 July 2018, until 31 July 2018 the latest, but cannot go live before this date.

To support preparation for the obligation, the tax authorities publish information and documentation regarding the real-time invoice data provision obligation, on an ongoing basis. The latest updates are available from the following link, including in English:

https://www.nav.gov.hu/nav/onlineszamla.

Prior to 1 July 2018, VAT taxpayers were required to report inbound/outbound domestic transactions where the VAT indicated on the invoice reached or exceeded HUF 1,000,000 in the domestic sales and purchases listing. As a result of the real-time invoice data provision, the domestic sales listing is cancelled and the threshold for reporting purchases in the domestic purchases listing is decreased to HUF 100,000 as of 1 July 2018.

Government introduces summer tax package

VAT rate of milk

The VAT rate of milk would be unified at 5% as of 1 January 2019. Consequently, the VAT rate for ESL and UHT milk would be 5% besides fresh milk.

VAT deduction right for new taxable persons

Sole traders newly engaged in business activities and VAT registered foreign businesses are entitled to exercise their VAT deduction rights with respect to purchases linked to their taxable activities in a verifiable way based on the invoice

issued to their names even if the purchase took place before registering with the tax authorities. The draft legislation would clearly settle that in such cases the VAT deduction right may be exercised in the tax assessment period of the date of registration.

Italy

Authorities release guidelines about VAT group ruling petitions

The tax authorities released guidelines regarding ruling petitions to file on VAT group matters.

As Italy enacted the 'all in all out rule' and a specific presumption rule (where a financial link exists, economic and organizational links are deemed to be met), the new VAT rules state that to exclude one or more companies of a group from the VAT group, a ruling petition must be filed to the tax authorities to prove the lack of economic and organizational links. Once the ruling is filed, a written reply must be made by the authorities within 120 days.

In Resolution n° 54/E dated 10 July 2018, the authorities focused on this ruling petition to provide significant clarifications regarding certain procedural aspects, in particular:

- The ruling can be filed prior to the option for the VAT group;
- The submission of this ruling by the representative of the VAT group will not trigger the obligation for the representative to opt for the VAT group;
- The ruling can be alternatively filed by the company interested to prove the lack of economic and organizational links (and thus to stay outside of the VAT group) or by the representative of the VAT group;
- The ruling must be signed by the company interested to prove the lack of economic and organizational links (and thus to stay outside of the VAT group) and also by the representative of the VAT group; both the signatures are required;
- With respect to all ruling petitions already filed on VAT group matters (i.e. rulings submitted before the release of Resolution n° 54/E, which occurred on 10 July 2018), the authorities confirmed that these will be valid, even in the absence of the signature of the representative of the VAT group.

A single ruling petition can be filed on behalf of all the companies interested to prove the lack of economic and organizational links; in this case, the ruling must be signed by all these companies as well as by the representative of the VAT group.

Tax authorities release e-invoicing guidance

On 2 July 2018, the tax authorities published some of the expected guidelines regarding the e-invoicing obligation.

In line with the Council Implementing Decision (EU) 2018/593 published on 16 April 2018, the authorities confirmed that the e-invoicing law provisions do not apply to foreign established subjects having an Italian VAT registration number, as only Italian established companies are within the scope of the new obligation. It follows that starting from 1 January 2019:

- E-invoices must be issued by Italian established companies;
- E-invoices can be received by foreign established companies VAT registered in Italy; in this case, the Italian suppliers (who raise the e-invoices) must provide a paper invoice (if requested by customers); the paper invoice is also deemed as valid for VAT recovery purposes.

The authorities provided a number of other clarifications about specific issues regarding the exact scope of the new law provisions (concerning fuel, subcontracts with public bodies, consortia) and the technicalities of e-invoicing.

In this last respect, as regards the time of transmission of e-invoices through the Interchange System (SDI), the guidelines confirm that, based on the ordinary VAT law provisions applicable to traditional paper invoices, the time of issuance of e-invoices will occur when the taxable event takes place (i.e. the underlying transaction will be deemed carried out for VAT purposes).

However, since the finalization of all the technical steps to be satisfied for processing e-invoices may take time (e.g. checks to be performed by SDI, etc.), the authorities clarified that, if transmitted through SDI on a timely basis and not rejected by the system, the e-invoices will be considered as issued at the time of creation and transmission through the SDI (technically speaking, the date of issuance of the e-invoices will be the date reported in the field 'Date' included in the box '*Dati Generali*' of the e-invoice).

Due to the complexity of the new e-invoicing procedure and the need for operators to update their ERP in order to be able to satisfy the new obligation, the authorities confirmed that, during the period of first implementation, penalties will not apply for 'slightly' late transmissions of e-invoices to the SDI system (being considered as mere formal violations), upon condition that such delay will not impact the correct settlement and payment of the VAT due.

Moreover, the authorities clarified that in case of rejection of the e-invoice by SDI, it is advisable to re-issue the e-invoice (within five days from the rejection notice) by using the same number and date of the e-invoice originally rejected; otherwise, the following alternative solutions are available:

- Re-issuance of the (rejected) e-invoice with a new number and date, upon condition that there is a link with the e-invoice originally rejected;

- Re-issuance of the (rejected) e-invoice with a specific numbering series (e.g. n. 1/R or n. 1/S, etc.) available only for amending e-invoices (i.e. e-invoices raised because of mistakes or rejections of former e-invoices) and posting of the new invoice in a specific sectional ledger dedicated to the re-issued invoices.

Guidance and operative instructions issued on rules relating to storage of energy products in third party warehouses

The decree concerning the new rules relating to the storage of energy products in third party warehouses entered into force on 1 July 2018, and the relevant provisions will take effect from 29 August 2018. Accordingly, the customs authorities issued Note no. 71725 of 27 June 2018 and Note no. 73179 of 2 July 2018. The former Note includes an overview (and comments) of the main articles of the abovementioned decree, the latter provides the operative instructions for the submission of the specific application to be filed with the customs authorities.

Operating instructions for e-communication of consideration relating to sales of petrol and diesel motor fuel for self-service filling stations

The customs authorities issued Note no. 73285 on 5 July 2018, making reference to the note of 28 May 2018 issued by the customs and tax authorities, providing operating instructions relating to the obligation, in force from 1 July 2018, to undertake e-communication of the consideration for sales of petrol and diesel motor fuel in self-service filling stations.

Operative guidelines issued for Customs Decisions System

On 5 July 2018, the customs authorities issued Note no. 73669/RU, aimed to provide operative guidelines regarding the quantities of goods to be indicated within the Customs Decisions System (CDS), in the applications and authorizations for inward and outward processing.

New forms for alcohol production, industrial uses of alcohol, and bioethanol production

With circular letter no. 5/D of 12 July 2018, the customs authorities published, in agreement with AGEA (Agency for supplying in agriculture), the updated facsimile of the following forms:

- Form B: alcohol production;

- Form C: industrial use destination;

- Form D:

- Bioethanol production
- Bioethanol production by a transformation plant site in another Member State.

Latvia

Latvian tax administration changes

Currently, draft Cabinet of Ministers regulations dealing with the process of how taxes (including VAT) and duties would be payable to the State Treasury are under consideration. If officially announced, the regulations would come into force on 1 January 2021.

The draft regulations propose changes in administrative procedures for paying taxes, duties, and other payments which are directly linked to them. At the moment, there are around 50 different tax accounts of the State Treasury to which taxes and duties are payable. If the draft regulations are adopted, most tax liabilities, starting from 1 January 2021, would be payable to a single tax account.

According to the regulation, the payments will be classified in two groups:

1) General tax and duty liabilities;

2) Liabilities for which a specific payment identification number is assigned by the tax authorities and which must be included in the payment details.

The tax and duty liabilities that will require a specific payment identification number (e.g. tax liabilities arising due to insolvency procedures, the sale of taxpayer's property in auctions in accordance with a bailiff's decision, etc.) are set as a finite list by the regulations. With respect to VAT liabilities, the specific payment identification number would be required in respect of VAT liabilities arising due to the performed supply of digital services in the EU (the VAT Mini One Stop Shop – VAT MOSS). Tax liabilities related to the use of motor vehicles would retain a separate tax account (i.e. they would not be payable to the single tax account). This is mostly due to the fact that these taxes are administrated by the Traffic Safety Directorate of the Republic of Latvia and the tax authorities.

The order by which payments made to the single tax account will be attributed to specific tax liabilities is to be determined by three main criteria in the following order: 1) maturity of the liability; 2) liability type; and 3) reason for the calculated liability. Detailed guidelines on how payments will be attributed to the specific tax liability and the order of attribution will be set by the regulation.

These regulations, if adopted, will allow taxpayers to minimize administrative costs arising due to the performance of multiple different tax and duty payments to different State Treasury tax accounts.

Luxembourg

On 26 July 2018, the Parliament voted on the law implementing VAT grouping into Luxembourg law, and two other measures. These measures entered in force on 31 July 2018.

VAT grouping implementation

As of the effective date of entry of the law, 31 July 2018, two or more persons established in Luxembourg will be eligible to apply to the VAT administration to form a VAT group.

Any person established in Luxembourg including natural persons and VAT non-taxable persons (e.g. passive holding companies) and Luxembourg branches of foreign companies are eligible to form a VAT group.

To form a VAT group, each applicant must be bound to each of the others by financial, economic and organizational links. The law defines these links in a flexible manner. The links could be *de jure* or *de facto*. For example, financial links will be met when a company owns a majority of voting rights of another undertaking (*de jure* control) or when a company has the right to appoint or remove a majority of the members of the administrative, management, or supervisory body of another undertaking (*de facto* control).

In principle, all potential participants that meet these three categories of links must be a member of the group. However, an 'opt-out' option is available for persons closely linked when they are not interposed in the economic flow between two members of the group and if their non-affiliation to the group does not imply a VAT saving. Members should stay in the group at least two calendar years except if the links cease to exist.

A VAT group formed in Luxembourg will be allocated a single VAT identification number to be used in the relationship with the VAT authorities, including the filing of the consolidated VAT returns of the group. Pre-existing individual VAT identification numbers of its respective members will remain active and will be used for relationships with third parties. The members of the VAT group will nominate a representative 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 Luxembourg VAT purposes, on the basis that they fall outside the scope of Luxembourg VAT.

Each member is jointly liable to the VAT authorities for the VAT due by the group.

Introduction of open market value for VAT purposes for transactions between related parties

Luxembourg has decided to introduce article 80 of the EU Principal VAT Directive into its national law, which allows EU Member States to apply the open market value on transactions between closely linked persons. These links could be close personal, management, ownership, membership, financial, or legal ties, including the relationship between an employer and employee or the employee's family, or any other closely connected persons.

This rule could be applied in the three following situations:

- The consideration agreed by the parties is lower than the open market value and the recipient of the supply does not have a full VAT deduction right;
- The consideration agreed by the parties is lower than the open market value and the supplier does not have a full VAT deduction right and the supply is VAT exempt;
- The consideration agreed by the parties is higher than the open market value and the supplier does not have a full VAT deduction right.

The open market value is defined by reference to article 72 of the EU Principal VAT Directive. It is the full amount that a customer would have to pay in order to obtain the goods or the services in question at that time, at the same marketing stage at which the supply of goods or services takes place, under conditions of fair competition, to a supplier at arm's length within the territory of the EU Member State in which the supply is subject to tax. When no comparable supply of goods or services can be ascertained, the open market value is the purchase price of comparable goods or the cost price of comparable goods, or the full cost of the person providing the service.

Services qualifying as capital goods for VAT purposes

Luxembourg has decided to introduce article 190 of the EU Principal VAT Directive into its national law, which allows EU Member States to consider services that have characteristics similar to those normally attributed to capital goods as capital goods, i.e. goods that a taxable person uses over a certain period. These services will thus be subject to the rules regarding adjustment of deductions in the same manner as tangible capital goods, i.e., during five years from their acquisition. Services captured by these new rules are, for example, intellectual property (patents) and software.

The Netherlands

Court of Appeal refers questions for preliminary ruling on qualification of supervisory board member as taxable person for VAT purposes

On 21 June 2018, a Court of Appeal referred questions to the Court of Justice of the European Union for a preliminary ruling regarding the VAT consequences of membership of a supervisory board. The question is whether a supervisory board member is a taxable person for VAT purposes acting independently, or is carrying out his/her activity in the context of a relationship of subordination and, therefore, not a VAT entrepreneur.

The interested party in this procedure is a supervisory board member of a foundation. Moreover, he is employed as a municipal civil servant. He does not hold any other additional positions apart from his supervisory board membership at the foundation. The Court of Appeal addressed the question whether the interested party should qualify as a VAT entrepreneur in respect of his activities as a supervisory board member of the foundation.

The Court of Appeal considers there to be sufficient doubt about the answer to this question that it prefers to refer the question to the CJEU. The Court of Appeal refers to the State Secretary for Finance's repealed position that supervisory board members who have no more than four supervisory board memberships do not qualify as VAT entrepreneurs. Furthermore, the Court refers to the differing position of the European Commission that a supervisory board membership is to be interpreted as an economic activity for VAT purposes, even if individuals hold only one membership. The State Secretary withdrew his position on the back of impending infringement proceedings by the Committee.

The CJEU's answer to the questions raised by the Court of Appeal may have far-reaching consequences for the current VAT treatment of supervisory board memberships in EU Member States, particularly for supervisory board members of organizations that are not fully entitled to input tax recovery.

Poland

0% VAT rate on export of goods subject to CJEU ruling

Following a question referred from the Supreme Administrative Court, the Court of Justice of the European Union is to rule on the application of the 0% VAT rate on the export of goods from Poland. The case concerns a taxpayer who applied the 0% VAT rate to export transactions with a Ukrainian customer on the grounds of clear customs evidence that the goods had left the EU customs territory. During the VAT audit the Polish tax authorities questioned the 0% VAT rate, as the purchaser denied that he received the goods, and consequently assessed VAT at the 23% VAT rate on these transactions.

The taxpayer disagreed with this conclusion and challenged the decision in the courts.

The CJEU is to rule on whether: (i) it is possible to apply the 0% VAT rate to exports if there is clear evidence that the goods left the EU territory and export was made to an unidentified recipient; and (ii) it is allowed, based on national practice, to question the 0% VAT rate where there is no doubt that the goods have left the EU but the recipient of the goods is not the purchaser indicated on the invoice. Finally, following question (ii), the CJEU is to conclude whether VAT at the local VAT rate should be assessed or whether no taxable transaction occurred, and thus the taxpayer has no input VAT recovery right.

The ruling would be of crucial importance for taxpayers exporting goods.

Split payment mechanism and on demand SAF-T files

As of 1 July 2018, VAT payers may use the split payment mechanism whilst settling payments to contractors. The Ministry of Finance has published on its website tax explanations on the split payment mechanism which provide official guidelines on the mechanism as well as new VAT-7 form (18) adapted to the regulations that entered into force on 1 July 2018. The new VAT-7 (18) form will be used from the July 2018 VAT reporting period. Within a few days of the split payment mechanism going live, taxpayers noticed some technical issues whilst making payments, however, generally the mechanism is working well and more companies are starting to use it.

Furthermore, as of 1 July 2018, the tax authorities in the course of tax audits or explanatory proceedings may ask to be provided by the taxpayer with SAF-T files concerning transactions included in the ledgers (JPK_KR), operations on their bank accounts (JPK_WB), arrivals and dispatches in warehouses (JPK_MAG), and items of goods or services revealed on sales invoices (JPK_FA). The Ministry of Finance has also published some explanations as regards the new schemes which outline some technical elements of the schemes and provide guidelines on their application.

Portugal

Vehicle tax (Imposto Sobre Veículos)

As a consequence of the change in the way CO2 is computed, from an old laboratory test called the New European Driving Cycle (NEDC) to a new procedure called Worldwide Harmonized Light Vehicle Test Procedure (WLTP), as from 1 September 2018, all new cars must be certified according to the WLTP test procedure, and no longer on NEDC.

Taking this into consideration, CO2 emission values will increase based on the WLTP test, since it is a more robust test cycle and more realistic taking into consideration the several evolutions in technology and driving conditions that were not foreseen in the old laboratory NEDC test designed in the 1980s.

Considering that in Portugal the vehicle tax calculation is dependent on the CO2 component (as well as the cubic capacity), and that the calculation formula for vehicle tax has not yet been updated (and there is no information that it will be), vehicles will be subject to a higher vehicle tax as from 1 September 2018.

In addition, from that date, the taxable amount of new vehicles for VAT purposes will also increase, as the vehicle tax is included in the taxable amount computation for VAT purposes.

VAT taxable amount in Euro currency of imported goods

A recent decision from the Portuguese Tax Authorities (PTA) has been released concerning the taxable value of imported goods.

The applicant undertakes the majority of its acquisitions via the importation of goods in US dollars from foreign countries and sought to obtain confirmation of whether the rules in article 16 (8) and (9) of the VAT Tax Code (transposing article 91 of the EU Principal VAT Directive) applied.

The PTA clarified that the taxable amount in Euro currency of the imported goods should correspond to the customs value, to be determined in accordance with the relevant Community Customs Code, as per article 85 of the EU Principal VAT Directive.

The PTA also clarified that a monthly circular letter is to be published concerning the exchange rates to be used during the following month to determine the Euro equivalent customs amount of imported goods.

Russia

State Duma approves draft law on VAT rate increase in the first reading

On 3 July 2018, the State Duma approved a draft law that will increase the standard VAT rate from 18% to 20% (from 15.25% to 16.67% for e-services, assuming amounts received are VAT inclusive) from 1 January 2019, in the first reading.

The Government predicts that this will result in an increase in Federal Budget additional incomes in the amount of RUR 620 billion starting from 2019.

Ministry of Finance clarifies application of VAT with respect to foreign entities' services of provision of IP-addresses and content access

The Ministry of Finance has clarified that the provision of IP-addresses and content access should be treated as e-services. Where such services are purchased by Russian entities, they are subject to Russian VAT as they are considered to be rendered in the territory of the Russian Federation.

A Russian entity should act as a tax agent and should transfer Russian VAT to the budget at the time the fee is paid to a foreign entity.

The Ministry of Finance also noted that in accordance with amendments to the Tax Code from 1 January 2019, foreign entities that make supplies of e-services to businesses tax registered in Russia will have to account for and pay Russian VAT on such B2B supplies themselves.

Ministry for Industry and Trade announces preliminary results of tax-free implementation pilot project

From 1 January 2018, amendments were made to the Tax Code introducing the tax-free system in Russia. The pilot tax-free project was rolled out at the beginning of April 2018.

The Ministry for Industry and Trade has advised that retailers, within the tax-free implementation process, received RUR 350 million from the sale of goods.

From 10 April 2018, more than 2,500 people from 100 states requested a refund of tax within the tax-free system. Chinese customers were leaders from the total number of customers, 50% of all customers, 5% and 4% were from US and Israel, respectively.

At this stage, 130 stores in Russia apply the tax-free system.

In future, special software for the electronic workflow between stores, tax-free operators, and the tax and customs authorities will be implemented.

Government adopted list of VAT-exempt airport services

Historically, the Tax Code exempted airport services provided to airlines from VAT, i.e. in accordance with the provisions of the Tax Code effective prior to 1 January 2018, services rendered directly in airports of the Russian Federation and the airspace of the Russian Federation on aircraft maintenance including aeronautical maintenance were exempt from VAT.

In accordance with amendments to the Tax Code effective from 1 January 2018, services rendered directly in airports of the Russian Federation and airspace of the Russian Federation on aircraft maintenance including aeronautical maintenance indicated in the list established by the Russian Government became exempt from VAT.

In Resolution No. 588 of 23 May 2018, the Government adopted the respective list.

This list includes the following services: maintenance of landing and takeoff of aircraft in Russian airports, provision of parking to the aircraft at the airfield, provision of aviation security, provision of fueling of aircraft by aviation fuel, storage of aviation fuel, aeronautical maintenance.

The document came into effect on 1 July 2018.

Obligatory certification of radiators and heating convectors

Decree of the Government of the Russian Federation No. 717 of 17 June 2017 establishes obligatory certification for radiators and heating convectors. The decree came into effect on 27 June 2018.

Introduction of import licensing of aluminum wheels

Decree of the Government of the Russian Federation No. 725 of 26 June 2018 establishes import licensing of aluminum wheels from 1 July 2018 to 31 December 2018 inclusive. The decree applies to aluminum wheels that are classified under the classification code 8708 70 500 9 and are originating from non-Eurasian Economic Union Member States. The decree came into effect on 7 July 2018.

Increased import customs duty rates for certain goods originating from the US and imported into Russia

Decree of the Russian Government No. 788 of 6 July 2018 establishes increased import customs duty rates for certain types of vehicles, construction and road machinery, oil and gas equipment, tools for metal processing and rock drilling, and fiber optics in the amount of 25% to 40% of customs value of goods.

The increased import customs duty rates are applied with regard to goods originating from the US and imported into Russia.

The decree will come into effect on 6 August 2018.

South Africa

International Trade Administration Commission of South Africa notice on various rates of antidumping duty due to expire in 2019

The International Trade Administration Commission of South Africa (ITAC) notified manufacturers of the below listed products within the South African Customs Union (SACU) of the various rates of antidumping duties which are due to expire in 2019.

The listed products are:

- Frozen potato chips from Belgium and Netherlands, which are set to expire on 7 August 2019;

- Wire ropes from China, Germany, and United Kingdom, which are set to expire on 7 August 2019;

- Gypsom plasterboard from Indonesia and Thailand, which are set to expire on 31 July 2019;

- Soda ash from the USA, which are set to expire on 18 June 2019.

SACU manufacturers of the listed products should consider whether the expiry of the antidumping duties will likely lead to the continuation or reoccurrence of dumping and injury to their markets. A manufacturer who requires a review of the antidumping duty on their affected product must submit a request to ITAC no later than 9 July 2018.

Spain

General State Budget 2018 approved

On 4 July 2018, the General State Budget 2018 was published in the Official Gazette, entering into force the following day. No major changes were included during the parliamentary debate. Below are the main changes introduced by this law.

From a **VAT perspective**, the amendments introduced by the General State Budget Law are the following:

- The reduced VAT rate (i.e. 10%) will apply, from the enforcement of the law, to cinema access tickets, instead of the current applicable standard rate (i.e. 21%). The aim of this amendment is to reduce the VAT rate for cultural events, as it was raised at the beginning of the economic crisis.

- Following the latest Court of Justice of the European Union judgments concerning the applicability of the VAT exemption within the framework of the supply of services rendered by an economic interest group (AEI) to its members (including DNB Banka), with effect from 1 January 2019, the VAT exemption will only apply to the aforementioned provision of services if the corresponding members carry on an activity in the public interest (i.e. education, healthcare, etc.), other than financial, insurance transactions, among others. The aim of this amendment is to align the content of the Spanish VAT Law with the recent CJEU judgments regarding this topic.

- With effect from 1 January 2019, the location rules for services rendered by electronic means will be updated, under a scenario in which such services are rendered by small entrepreneurs established in only one EU Member State to final consumers located in a different EU Member State. The aim of this amendment is to simplify the administrative proceedings for suppliers of these type of services, which are currently taxable in the EU Member State

where the recipient (final consumer) is established. Thus, a EUR 10,000 annual threshold has been introduced that, provided it is not exceeded, will allow that this provision of services is taxable where the small/medium size firm supplier is established instead of being taxable in the recipient EU Member State.

- Further to the above, the same VAT regime is amended when the provision of such services are rendered by companies or entrepreneurs that are not established within the EU. In this case, the aim of this amendment is both to promote the use of the one-stop shop simplification schemes and to incentivize the voluntary fulfilment of the tax compliance obligations of these suppliers. Therefore, the obligation has been removed that required VAT registration in an EU Member State for these entities in order to be entitled to apply this special regime.

From an **excise duties perspective**, the main amendments are as follows:

- Tax rates for the tax on fluorinated greenhouse gases have been reduced. In addition, the potential liabilities for global warming caused by these gases are updated, according to the latest EU guidelines.

- With respect to the hydrocarbons tax, among other measures, the regional tax rates (as the Autonomous Regions are entitled to regulate on this area) have been adapted to the state tax rate, in order to guarantee market unity within Spain. Furthermore, an exemption for this tax is introduced when producing or importing biogas, to be employed in facilities in which electricity or heat will be produced. In addition, this exemption will also apply to self-consumption in those installations where the electricity or the heat has been produced.

- An amendment been introduced to the electricity tax to promote the use of electric power, with the aim of reducing the pollution caused by means of transport in the cities. Also, the legislation has been updated to standardize the minimum tax rates, as well as to clarify that the tax exemption should apply to the owners of the facilities in which the energy is produced.

The Ministry of Finance has already commenced work on gathering the relevant information for the Budget 2019 draft, which should be delivered to the Parliament for debate in September 2018, in order to be passed by December 2018.

New Intrastat regulation

On 1 March 2018 a new Ministerial Order was issued by the Government regarding the Intrastat form. However, this was pending approval by way of a regulation, which was recently published.

Under the regulation:

- It is no longer required to submit information related to the port/airport of charge/discharge.
- For the introductions flow, an additional field (which was left blank previously) named 'Country of origin of the goods' has been introduced. Therefore, there are two fields related to the origin of the goods: 'Member State of origin' and 'Country of origin of the goods'.

The method of calculation of the statistical value has changed: this value must be calculated on the basis of the value of the goods (invoice value) and include, in respect of ancillary costs such as transport and insurance, the part corresponding to the transport from the original point of departure of the goods to the place of departure in Spain (for EU dispatches) or the place of entry in Spain (for EU introductions).

Tunisia

The main indirect tax provisions of the Financial Act of

Management, which came into force on 1 January 2018, are as follows:

Increase in VAT rates

From 1 January 2018, the VAT rates were increased by 1%. The new VAT rates are as follows: 19%, 13% and 7%.

Introduction of social solidarity contribution

A 1% social solidarity contribution should be included in the calculation of the personal income tax and corporate income tax rates. For companies, this tax applies to FY18 revenues, which are declared in FY19.

Increase in customs duties

The customs duties due on the import of goods has increased. The customs duties rates for the majority of equipment or products increase from 20% to 30% and from 0% to 15%.

United Kingdom

CJEU judgment on VAT treatment of penny auctions

In penny auctions, participants pay a fee (a Credit) to place bids. Each bid increases the price of the auctioned goods by 1p and restarts a timer. When the timer reaches zero, the last person to bid gets an opportunity to buy the goods,

normally at a price far below their recommended retail price (RRP). Unsuccessful bidders can buy the goods, at the RRP reduced by whatever Credits they have spent in bidding.

The Court of Justice of the European Union has now endorsed the Advocate General's Opinion (and the tax authorities' (HMRC) approach) and ruled that the Credit should be treated as a separate right to participate in the auction, and not merely a preliminary step to the purchase of the goods. Therefore Marcandi should account for VAT in the UK when it issues the Credits, not in the country where the goods are being sent when an auction ends. This analysis brings forward the time when VAT should be accounted for, and ensures that VAT is accounted for on unused Credits, as well as resolving different approaches by the UK and Germany.

Indirect tax measures in draft Finance Bill

Draft legislation and responses to various consultations were published on 6 July 2018. Measures relevant to indirect tax include changes to VAT and vouchers, to implement the EU Principal VAT Directive from 1 January 2019, see VAT treatment of vouchers; and changes to VAT grouping, to allow non-corporates to join VAT groups in limited circumstances, see VAT grouping eligibility criteria changes. Further details were also published on the replacement of default surcharges with a points-based penalty system, and changes to the way that interest will be paid on claims and assessments.

HMRC guidance on Making Tax Digital for VAT

HMRC have published a VAT Notice, a stakeholder communications pack, and a list of software developers in relation to Making Tax Digital for VAT (MTDfV), see Making Tax Digital for VAT. The requirements for businesses to keep digital records and send VAT returns using compatible software will come into effect from April 2019.

Eurasian Economic Union

Decrease of import customs duty rates due to Russia's obligations to World Trade Organization

Decision of the Board of the Eurasian Economic Commission No. 94 of 5 June 2018 decreases import customs duty rates in respect of certain goods in accordance with Russia's obligations to the World Trade Organization (WTO).

In particular, new reduced rates are set for certain fish, gunpowder, precious metals, automotive components, etc.

Decision No. 94 will come into effect on 1 September 2018.

Introduction of zero import customs duty rate for certain components of two-deck passenger wagons

Decision of the Board of the Eurasian Economic Commission No. 59 of 24 April 2018 introduces amendments into the customs classification codes with regard to certain components of two-deck passenger wagons.

Also, Decision No. 59 introduces a zero customs duty rate for certain two-deck passenger wagons components from commodity positions 8607 19 and 8607 21 from 27 May 2018 to 30 June 2020 (inclusive).

Decision No. 59 came into effect on 27 May 2018.

Introduction of zero import customs duty rate for cashew nuts in shell

Decision of the Board of the Eurasian Economic Commission No. 98 of 13 June 2018 establishes a zero import customs duty rate in respect of cashew nuts in shell (customs classification code 0801 31 000 0) from 2 September 2018 to 31 August 2021 (inclusive).

Decision No. 98 will come into effect on 2 September 2018.

Introduction of zero import customs duty rate in respect of industrial fatty alcohols

Decision of the Board of the Eurasian Economic Commission No. 99 of 13 June 2018 establishes a zero import customs duty rate in respect of industrial fatty alcohols (customs classification code 3823 70 000 0) from 2 September 2018 to 31 August 2021 (inclusive).

Decision No. 99 will come into effect on 2 September 2018.

Eurasian Economic Union and Iran sign Interim Agreement on cancelling non-tariff restrictions and decrease of customs duty rates for certain goods

On 17 May 2018, the Eurasian Economic Union (EEU) and Iran signed an Interim Agreement cancelling non-tariff restrictions for certain goods.

The Interim Agreement also establishes decreased customs duty rates for a wide tariff nomenclature both for Iran and for the EEU.

The Interim Agreement is valid within three years, but a year after the entry into force, EEU and Iran undertake to start negotiations on the establishment of a free trade zone.

The Interim Agreement will enter into force 60 days from the date of receipt of the last written notification certifying that the EEU Member States and Iran have completed their respective internal legal procedures required by national law.

Amendments to procedure for customs value control

Decision of the Board of the Eurasian Economic Commission No. 42 of 27 March 2018 introduces amendments to the procedure for customs value control, in particular, with regard to the following:

- Cases when the customs value is not controlled due to acceptance of the customs value for previous shipments of identical goods under the same contract under the same transaction terms;

- Reasons which can be accepted as meaning that it would be impossible to provide customs authorities with the requested documents.

Decision No.42 came into effect on 2 May 2018.

Amendments to procedure for inclusion of additional calculations in customs value

Decision of the Board of the Eurasian Economic Commission No. 83 of 22 May 2018 introduces amendments to the procedure for the inclusion of additional calculations in the customs value. In particular, there is established a new procedure of calculation of license payments (royalties) that should be included in the customs value.

Decision No. 83 came into effect on 24 June 2018.

Amendments to list of goods subject to permission for import/export into/from the EEU

Decision of the Board of the Eurasian Economic Commission No. 61 of 24 April 2018 specifies the list of goods subject to permission for import/export into/from the EEU.

From 27 May 2018, a permissive procedure is applied for certain detonating charges (commodity position 3603 00). Ammunitions (commodity position 9306 30) are excluded from the said list.

Decision No.61 came into effect on 27 May 2018.

Expiry of certain forms of customs documents

Decision of the Board of the Eurasian Economic Commission No. 84 of 11 July 2017 establishes an expiration date for certain forms of customs documents, blanks of which were made before 1 January 2018.

In particular, forms of customs documents approved by Decision of the Customs Union Commission No. 260 of 20 May 2010 (e.g., act of customs inspection,

preliminary decision on classification of goods), blanks of which were made before 1 January 2018, are valid until 1 July 2018.

Decision No. 84 came into effect on 1 January 2018.

Amendments on marking of milk-containing products

Decision of the Council of the Eurasian Economic Commission No.102 of 10 November 2017 establishes new rules for marking milk-containing products, in particular, at the importation of milk-containing products.

Decision of the Board of the Eurasian Economic Commission No. 40 of 20 March 2018 establishes that documents on the assessment of the conformity of milk-containing products, which are issued or adopted before 15 July 2018, are valid until the end of term of their validity but not later than 15 January 2019.

Decision No.102 and Decision No. 40 came into effect on 15 July 2018.

September 2018

Asia Pacific

Australia-Indonesia

Bilateral free trade agreement

On 31 August 2018, the Australian Government announced the conclusion of negotiations with Indonesia on a bilateral free trade agreement, see A new chapter of economic partnership with Indonesia.

The new agreement, to be known as the Indonesia-Australia Closer Economic Partnership Agreement (IA-CEPA), will build on commitments already made by Australia and Indonesia under the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) in relation to trade in goods and services, investment, and economic co-operation.

Trade in goods – key outcomes

Key outcomes announced in relation to trade in goods between

Australia and Indonesia (Indonesia-Australia Comprehensive Economic Partnership Agreement: Outcomes) include the following:

- Virtually all Australian goods exported to Indonesia (by value) will enter Indonesia free of customs duty or under significantly improved preferential customs tariff arrangements by 2020. Under AANZFTA, only about 85% of imports from Australia (by value) enjoy duty free or preferential treatment in Indonesia.

- The IP-CEPA will particularly benefit Australian steel, copper, plastics, and agricultural producers exporting goods to Indonesia. This will occur through the lowering and/or removal of Indonesian customs tariffs (some as high as 25%), together with certainty of access to preferential arrangements over the longer term.

- Indonesia has guaranteed that import permits will issue automatically for key Australian products such as live cattle, frozen beef, sheep meat, feed grains, rolled steel coil, citrus products, carrots, and potatoes. This measure will address inefficiencies created by Indonesia's current import licensing requirements.

- All Australian customs tariffs remaining on Indonesian imports will be eliminated from the date the IA-CEPA enters into force.

- Australian imports of electric motor vehicles from Indonesia will enjoy very liberal 'origin' requirements.

- Trade in goods will be further facilitated through improvements in administrative procedures for exporters and importers in both countries.

Next steps and commencement

The full text of the agreement is currently being reviewed for accuracy and consistency by both countries in preparation for formal signing. Both countries have indicated a desire to sign the agreement before the end of 2018. After that, each will need to complete its domestic treaty making processes.

At this stage, it seems reasonable to expect that the IA-CEPA will to enter into force around mid-2019.

India

GST updates

On 29th August 2018, GST amendment bills proposed for the Central Goods and Services Tax Act, the State/Union Territories Goods and Services Tax Acts, and the Integrated Goods and Service Tax Act received assent from the President.

Other GST notifications are as follows:

- The Central Government has notified that the provisions of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) under the GST regime will start from 1 October 2018.

- The Central Board of Indirect Tax and Customs (CBIC) has issued clarification regarding the processing of refund claims filed by entities with a Unique Identity Number (UIN), viz. foreign diplomatic missions and embassies in India.

- Clarifications have been issued on the following:

  - Scope and ambit of the principal-agent relationship:

    - The key ingredient for determining the relationship of principal-agent would be whether or not the invoice for the further supply of goods on behalf of the principal is being issued by the agent, and whether the agent has the authority to pass or receive title of the goods on behalf of the principal;

    - Where the invoice for the further supply is being issued by the agent in the agent's name, any provision of goods from the principal to the agent would be construed as a supply.

  - The levy of GST on Priority Sector Lending Certificates (PSLC):

    - PSLC, a tool for promoting comparative advantages among banks while they meet their priority sector lending obligations in India, was notified to be goods under head 4907 of the GST schedule, attracting GST under the reverse charge mechanism on 28 May 2018.

    - It has now been clarified that GST on PSLCs for the period from 1 July 2017 to 27 May 2018 will be paid by the seller bank on a forward charge basis and the GST rate of 12% will apply to the supply.

  - Refund related issues:

    - Certain clarifications relating to the process and requirement to claim refunds of GST in case of exports, unutilized input tax credits, rejection of refund claims, etc. have been issued to ensure uniformity in the implementation of the provisions of the law.

Customs updates

Simplification and rationalization of AEO-T1 application

As the compliance requirements for Authorized Economic Operator (AEO)-Tier 1 were not commensurate with the benefits, it was difficult to attract entities to AEO status.

Therefore, the Central Board of Excise and Customs (CBEC) has issued a circular for the simplification and rationalization of AEO-Tier 1 applications.

Paperless processing of documents for exports

Pilot implementation of paperless processing of documents under SWIFT has commenced, with uploading of supporting documents for exports.

The objective is to reduce the physical interface between customs/regulatory agencies and the trade and to increase the speed of export clearance.

Foreign trade policy updates

Applications for Import Export Code (IEC)

The Director General of Foreign Trade has amended the procedure for filing online applications for IEC/modifications in IEC.

IEC will henceforth be system-generated and the applicant will be able to take a print-out of the IEC.

Also, there will be no requirement for a digital signature when submitting an IEC application.

Customs decision on constitutional validity of clause in Central GST Act

The High Court considered the constitutional validity of a clause in the Central Goods and Services Tax Act, which limits the eligibility of a first stage dealer to claim credit for eligible duties in respect of goods that were purchased from the manufacturer prior to twelve months from the appointed day of GST.

The petitioner company is engaged in trading specialized industrial bearings of various types. The petitioner also imports certain goods. The company must maintain sufficient stock of different kinds of bearings, many of which may not be immediately sold. The petitioner, therefore, has a longer cycle of goods remaining with the company after purchase from the manufacturer before they are sold.

In the earlier regime under the Central Excise Act, first stage dealers were at par with manufacturers. A registered manufacturer could avail a Central Value Added Tax (CENVAT) credit of tax paid on purchases which could be utilized towards duty liability of goods manufactured by the manufacturer. As against this, a first stage dealer or an importer could pass on the credit of tax (excise duties or additional duties of customs) paid on purchases to customers, who could recover such credit for utilizing against their duty liability on the product.

Under GST, the provisions for transitional arrangements for input tax credit allow several classes of persons, including first stage dealers, to take credit for the eligible duties of finished goods held in stock on the appointed day, subject to certain conditions. One such condition is that invoices or other prescribed documents in support of such available stock must be not earlier than twelve months immediately preceding the appointed day.

Prior to enactment of the GST Act, the petitioner company, as a first stage dealer, was not subject to excise duty paid on purchases, and this was without restriction on the time during which the goods must be sold. However, under GST, this benefit must be utilized within a certain time period. The petitioner challenged the constitutional validity of this condition before the High Court.

Considering all the factors and referring to a number of judgments, the High Court has held that the benefit of the credit for eligible duties on purchases made by a first stage dealer as per the then existing CENVAT credit rules was a vested right. Under GST, such right has been taken away with retrospective effect in relation to goods that were purchased prior to one year from the appointed day.

The same factors, parameters, and considerations of 'in order to co-relate the goods or administrative convenience' prevailed with respect to the earlier laws and rules when no such restriction was imposed on the enjoyment of CENVAT credits in relation to goods purchased prior to one year previously. It was held that the impugned provision does impose a burden with retrospective effect without any justification. Therefore, the particular GST clause has been declared unconstitutional.

Indonesia

Importer Identification Number

The Indonesian Government has stipulated Minister of Trade (MoT) Regulation Number 75 of 2018 regarding the Importer Identification Number. This regulation revokes MoT Regulation Number 70/M-DAG/PER/9/2015 as an adjustment to Government Regulation Number 24 of 2018 regarding Online Single Submission (OSS). With this integration with the OSS system, the Business Identity Number (NIB) issued by the OSS Agency will also be applicable as the Importer Identification Number (API).

Furthermore, this regulation sets out the delegation of authority to issue a General Importer Identification Number (API-U) to the Director General of Foreign Trade for importers importing foreign banknotes as intended in Bank Indonesia regulations. Meanwhile, the Importer Identification Number for Producer (API-P) is intended for companies or contractors in the energy, oil and gas, mineral and other natural resources management sectors, conducting their business activities based on a cooperation contract with the Government of the Republic of Indonesia. The procedures and requirements for the issuance of API-U and API-P as intended above are further set out in this regulation.

This regulation is effective from 20 July 2018.

Producers exporting e-liquid to be provided with incentives

In the context of the imposition of excise duty of 57% of the retail sale price of e-liquid (liquid for e-cigarettes), some entrepreneurs have been granted entrepreneur identification numbers for excisable goods. According to the Director General of Customs and Excise, Heru Pambudi, although the number of entrepreneurs who have these numbers is still limited, the number will continue to increase over time.

Based on data of the Directorate General of Customs and Excise (DGCE), there are currently about 200 e-liquid producers, with a target of 150 producers who have an excisable goods entrepreneur identification number by the end of 2018.

The Directorate General estimates that potential revenue from excise duty on e-liquid will reach IDR 50 billion to IDR 70 billion by the end of 2018.

Although the Government imposes excise duty on e-liquid, the Government plans to provide incentives for the producers of such commodity who will export their product in the form of exemption from import duty and import tax on raw materials.

This regulation is effective from 1 October 2018.

Online Single Submission in customs, excise, and taxation sectors

Based on Regulation of the Minister of Finance Number 71/PMK.04/2018 regarding OSS, businesses that have a business registration number and intend to fulfil Customs obligations must create a Customs registration with the DGCE to obtain Customs access. The Customs access only applies for Customs access as importers and/or exporters.

The DGCE provides licensing services through the OSS system that include Customs registration, bonded stockpiling area licensing, ease of import for export purposes licensing, and excisable goods entrepreneur registration number licensing.

This regulation is effective from 6 August 2018.

Article 22 income tax rate increase for certain import goods

The Ministry of Finance (MoF) issued Regulation No.110/PMK.010/2018 (PMK-110) on 5 September 2018 to amend MoF Regulation No.34/PMK.010/2017 (PMK-34) regarding the collection of Art.22 income tax imposed on payments for delivery of goods and activities in import, or on other business activities in other sectors. PMK-110 came into force seven days after the promulgation date (promulgation date is 6 September 2018). The Art.22 income tax rates for several goods are now increased, either from 2.5% (for importers that have import licenses) to 7.5% or to 10%, or from 7.5% to 10%.

The MoF expects that with the issuance of PMK-110/2018, the Government can overcome the country's current trade deficit. Under PMK-110, the tax rates for at least 900 consumable imported goods are increased. The increases are mainly for imported goods with substitute products that can be manufactured by local producers in Indonesia.

As in PMK-34, the imported goods continue to be classified under three categories based on the tax rate, while exported goods remain under one category. The comparison of numbers of goods under each tax rate category, which indicates the increase in items of goods that are now subject to 7.5% or 10%, is as follows:

Transaction	Tax rate	Number of items	
		PMK-34	PMK-110
Import	10%	244	672
	7.5%	568	1,077
	0.5%	7	7
Export	1.5%	70	70

Examples of goods under each category are provided below. There are items that either remain in the same category as in PMK-34 or are now subject to a higher tax rate.

A. Imported goods subject to 10% tax rate: Included in this category are luxury items such as CBU cars and large motorbikes, etc.

B. Imported goods subject to 7.5% tax rate: Consumables (e.g., fish and shrimp meatball and sausage, cookies, instant coffee, chicken curry, vegetable and fruit, wine, vodka, whiskey), cables, several types of apparel such as ski suits, t-shirts, etc.

C. Imported goods subject to 0.5% tax rate: Soybeans, wheat, flour, etc.

D. Export mining commodities in the form of coal, metal minerals and non-metallic minerals which are subject to Art.22 income tax include iron pyrite which is not roasted, sulphur, kaolin, manganese ore and its concentrate, nickel ore and its concentrate, aluminium ore and its concentrate, tin ore and its concentrate.

This regulation is effective from 13 September 2018.

EMEA

Gulf Cooperation Council

United Arab Emirates

VAT – new rules and clarifications

Following the implementation of VAT in the United Arab Emirates (UAE) the Federal Tax Authority (FTA) has released further important Cabinet Decisions, guides, and public clarifications to help businesses better understand the application of the VAT legislation on their activities. The following have recently been published:

- Cabinet Decision No. (41) of 2018 On Introducing the Tax Refunds for Tourist Scheme: This explains the mechanism of the Tourist Refund Scheme whereby non-UAE residents may recover VAT charged on purchases that they will take out of the country. The scheme is expected to come into effect in November 2018. The detail on the actual procedures and documentation is not yet publicly available, but it is likely that participant businesses have been briefed by the FTA.

- Guide on the VAT treatment of Designated Zones: This provides clarity on the application of VAT on transactions with businesses established in Designated Zones. For a summary and analysis of the guide, see FTA publishes guide on the VAT treatment of Designated Zones.

- VAT Public Clarification: Non-recoverable input tax – entertainment services: This explains the application of Article 53 of the VAT Executive Regulations regarding nonrecoverable VAT in respect of entertainment or hospitality. For a summary and analysis of the clarification, see FTA publishes Public Clarification on the treatment of input tax on entertainment services.

- VAT Public Clarification: Use of Exchange Rates for VAT purposes: This provides guidance on how the official exchange rates should be applied to tax invoices issued in a currency other than the UAE Dirham between 1 January 2018 and 16 May 2018 (prior to the Central Bank publishing daily exchange rates) and whether or not they must be retroactively reissued using the Central Bank's historical exchange rates.

- VAT Public Clarification: Tax Invoices: This explains the application of Article 59 of the Executive Regulations regarding tax invoices, including when invoices must be issued and the information required on them.

The FTA has also updated the VAT User Guide and the Tax Group User Guide. The VAT User Guide contains some amendments on procedures for registration and use of the FTA's website. The Tax Group User Guide provides important clarification on the procedure for adding a member to a tax group and contains an insight into the tax group functionality within e-Services accounts.

Finally, the FTA has launched the VAT 'Tax Clinics' campaign across the UAE, which intends to increase awareness of VAT procedures over a period of three months among all business sectors with a focus on assisting small- and medium-enterprises (SMEs). Tax Clinics provide the opportunity for the FTA to communicate directly with businesses, with the objective of promoting compliance with the VAT legislation.

Dubai Customs

The Dubai Customs Authority has published Customs Notice No. 1/2018 – Submittal of Customs Declarations & Required Documents. The document sets out the rules that the Authority has implemented in order to make the processing of clearance of declarations more efficient. Customs Notice No. 1/2018 came into force as of 1 September 2018, and supersedes Customs Notice No. 7/2010 and Customs Notice No. 15/2011.

Excise tax

Following the implementation of Excise Tax in the UAE in October 2017, the FTA has recently released Cabinet Decision No. (42) of 2018 on Marking Tobacco and Tobacco Products. This deals with the application of stickers, or markers, to tobacco products as evidence of the payment of excise tax. The FTA has also updated the Excise Tax User Guide, including some procedural changes for the use of the FTA's website and guidance on the types of registration amendments which require approval from the FTA.

New guides/guidelines

Following the implementation of VAT, the Kingdom of Saudi Arabia (KSA) General Authority of Zakat and Tax (GAZT) has published Simplified VAT Filing Guidelines and a guide on invoicing and record keeping requirements. The guidelines on simplified VAT filing provide a general overview of the process of preparing and submitting a VAT return in KSA. The guide on invoicing and record keeping requirements provides increased clarity on invoicing requirements with respect to both full and simplified tax invoices, as well as the requirements to keep VAT records in the KSA. The guide is currently available in Arabic only, but Deloitte has summarized its key points, see GAZT publishes guide on invoicing and records keeping requirements.

GAZT has also now issued the English version of the VAT on Employee Benefits Guideline. This has previously been in the public domain, but in Arabic only.

E-invoicing

GAZT has signed a Memorandum of Understanding with the Saudi Arabian Monetary Agency (SAMA) to encourage business to implement e-invoicing through the ESAL platform in order to increase transparency around invoicing and to

prevent tax evasion. The ESAL platform was originally launched by SAMA in May to facilitate payment for transactions between government agencies and the businesses that act as suppliers. This new step indicates that the KSA government is actively seeking new ways to integrate its VAT systems with other relevant government mechanisms to increase efficiency.

Tax disputes

The KSA Ministry of Finance has approved the appointment of the Internal Dispute Settlement Committee following a three month pilot. The Committee will act as the final internal dispute resolution level for the GAZT before cases are referred to other external judicial bodies. The objective of the Committee is to manage taxpayers' disputes efficiently, in addition to closing tax cases that may have been pending for some time.

Bahrain – Next to implement VAT?

Following the implementation of VAT in the UAE and KSA, Bahrain appears to be the next GCC state closest to implementing VAT based on various reports in the press. As such, it is recommended that businesses that have not yet started preparing for VAT implementation begin to do so. Preparation is the key and it takes significant time to get systems, processes, and personnel to a point of VAT-readiness. At the very least, businesses should be in a position to understand what the impact of the implementation of VAT will be on any operations within Bahrain, so that once the details are released, businesses can proceed directly to implement based on that level of understanding.

VAT implementation tools for business

With four GCC countries still to implement VAT (Bahrain, Kuwait, Oman, and Qatar), Deloitte has developed an approach and methodology to support businesses during VAT implementation. This document**,** available in English and Arabic, and provides helpful tips on how to best prepare for VAT, as well as actions that should already be under way.

Deloitte has also recently released the latest version of Deloitte's 'VAT in the GCC guide' mobile app that is now available in English and in Arabic. The app is free of charge and is designed to help business understand VAT and its impact in all GCC countries. As and when details of the domestic law, and preparations in the Member States still to implement VAT, become available, it will be updated with that information.

Angola

VAT and excise duty update

Following recent updates regarding the implementation of VAT in Angola, it is understood that it is now anticipated VAT will come into force in July 2019 (not January 2019, as initially planned).

A draft proposal for an excise duties code has also been released, which will apply to certain products, such as alcohol and sugar-added beverages, tobacco, fireworks, jewelry, vehicles, weapons, antiques and art objects, and oil-related products. It is anticipated that the excise duties tax code will come into force at the same time as the current consumption tax is revoked, which will occur with the entry into force of the VAT Code.

Finland

New SAC ruling regarding VAT taxable status of vessels used for rescue and assistance operations

The Finnish Supreme Administrative Court issued a ruling on 3 September 2018 (KHO 2018:123) regarding the taxable status of vessels used for rescue and assistance operations.

A Oy sold rescue and assistance vessels to the Rescue Services Organization for use in marine and inland water rescue operations. The question was whether A Oy had to pay VAT on the sale of these vessels, even though the hull length of the vessels was less than 10 meters. According to the Treaty of Accession of Finland to the EU, Finland may exceptionally apply the exemption from VAT on the sale of watercraft to vessels of 10 meters or more.

The abovementioned right of exception had to be regarded as an extension of the exemption from the tax on the sale of watercraft in the EU Principal VAT Directive, so that the exemption also applies to vessels used in inland waters. Finland, on the other hand, was not entitled to claim the right to limit the exemption of seagoing vessels. Given that Article 148 (c) of the Principal VAT Directive requires EU Member States to exempt, *inter alia*, shipments of sea rescue and aid vessels without restrictions on the length of vessels, A Oy was not required to pay VAT on the sale of those vessels for the purposes of sea rescue. On the other hand, the requirement concerning the length of the vessel was considered to cover inland waterway vessels and therefore A Oy had to pay VAT tax on the sale of rescue and assistance vessels of less than 10 meters used in inland waterways.

France

New law published on 11 August 2018

The main goals of a new law published on 11 August 2018 (*loi pour un Etat au service d'une société de confiance*) are to reinforce a taxpayer's 'right to be mistaken' and to introduce new guarantees.

As regards VAT, four measures are to be noted:

- Reduction of the late interest rate for spontaneous regularization in the absence of a tax audit

  The late interest rate will be reduced by 50% as from 11 August 2018 for good faith taxpayers that file a corrective VAT return spontaneously within the statute of limitations, to the extent that the additional VAT is paid at the same time. (The standard late interest rate is 0.2% per month for late interest as from 1 January 2018.)

- Reduction of the late interest rate for regularization during a tax audit: extension of applicable circumstances

  The late interest rate is reduced by 30% for taxpayers filing a corrective VAT return in the course of a tax audit performed on the premises of the company, to the extent that the additional VAT is paid at the same time. As from 11 August 2018, this measure now also applies to audits undertaken by the tax authorities in other circumstances, such as a request for information and audits performed on the premises of the tax authorities.

- Opposability of the authorities' conclusions

  For tax audits starting from 11 August 2018, the authorities must indicate the issues that have been examined during a tax audit, even where no tax reassessment is made. These conclusions will be 'opposable' to the authorities as from 1 January 2019. This means that the taxpayer may oppose these conclusions in future to the tax authorities.

- Ruling during a tax audit

  For tax audits starting from 11 August 2018, taxpayers may request a ruling on a specific issue raised during the tax audit, and before the receipt of the reassessment notice.

As regards excise duties and custom matters, all these measures apply as from 12 August 2018.

Taxpayers that spontaneously regularize their situation as regards excise duties and custom matters will not be subject to any penalties for first infringements (except for taxes recovered under the application of the French Customs Code and applied to the resources of the EU).

In addition, when a good faith taxpayer asks for a general ruling concerning customs matters, the authorities should respond within three months, as from 12 August 2018. As from this date, it is also possible to ask for a second examination within two months, assuming that no additional information is provided.

Greece

Emergency measures adopted in Greek VAT Code

By virtue of an Act of Legislative Content, which was published in the Government Gazette on 26 July 2018, emergency measures were adopted to support citizens who were affected by the fires in the Attica Region on 23 and 24 July 2018. The Act introduced, *inter alia*, amendments into the Greek VAT Code, as follows.

Under article 9 of the Act of Legislative Content, new provisions were added to articles 7 and 27 of the Greek VAT Code with respect to goods destined for the needs of those affected by extreme natural phenomena. In particular:

- Article 7

  The free of charge supply of goods (edible goods, medicines, clothes or other goods, other than those subject to excise duty) to legal persons of public law or non-profit legal persons of private law, lawfully incorporated in Greece and evidently having a charitable or public benefit purpose, in order to be further distributed exclusively to serve or relieve vulnerable social groups, without consideration, in the context of dealing with situations declared as a state of emergency for Civil Protection, is allowed. In such cases, the restriction on the suitability of goods for sale or exploitation is not applicable.

  The supply of goods to public sector agencies, to local administrative authorities (O.T.A.) and legal persons of public law, in order to be further distributed with a view to cover the needs of those affected by extreme natural phenomena, irrespective of their value and the specifications of their production, is not considered as a deemed supply of goods and therefore, no VAT on a self-supply is due (meaning that no VAT should be remitted to the Greek State).

  More specifically, in both the foregoing cases, goods may be donated to groups of persons affected by natural disasters under the abovementioned conditions and, therefore, no VAT is due on such supply, whereas no issue arises as regards the deductibility of the input VAT paid by the donor at the time of purchase/production of the said goods.

- Article 27

  In addition, the supply of goods and the provision of services to a taxable person with a view to be further distributed to public sector agencies, to local administrative authorities (O.T.A.) and legal persons of public law, free of charge, with a view to cover the needs of those affected by extreme natural phenomena, is VAT exempt (with right to deduct input VAT). Namely, in such case, the purchase of goods destined to be further supplied to those affected by natural phenomena is VAT exempt (with the right to deduct input VAT) under the above conditions, whereas the supplier is not deprived of the right to deduct the input VAT amount that corresponds to the supplier's expenses.

Guidelines for input VAT deduction by taxable person filing late declaration for commencement of business activities

In Circular POL.1155/2018, issued by the Greek Ministry of Finance on 1 August 2018, guidelines have been provided in relation to the exercise of the input VAT deduction right by a taxable person that files a declaration for the commencement of business activities late (retroactively) with the competent tax office.

This is a significant decision, as its content is in alignment with the provisions of the EU Principal VAT Directive, as well as relevant jurisprudence of the Court of Justice of the European Union (see *Senatex GmbH*, *Barlis 06 – Investimentos Imobiliários e Turísticos SA* (points 42,43 & 46 thereof), and *Nidera Handelscompagnie BV*).

In particular, as per the content of the said Circular, it is provided that the right of a taxable person to deduct the input VAT amount which is related to that person's business activity subject to VAT should be granted (to that person), even where the relevant purchases (inputs) were performed prior to the date of submission of the declaration for the commencement of that person's business activities. This should apply to the extent that the purchases (inputs) date back in the time period covered by the reported (to the tax office) retroactive date for the commencement of the business activities, under the reservation of the statute of limitation rules.

To this end, specific guidelines have been released and cover the following cases:

i) Late submission of the declaration for the commencement of business activities by a taxable person who, until the date of filing the said declaration, had not reported to the Registry Department of the competent tax office the carrying out of the person's business activities in Greece. The input VAT deduction right is performed on the basis of the legitimate tax records that the taxable person has received from suppliers. In the case of a tax audit, the taxable person should be able to prove that the said purchases (inputs) are related to that person's economic activity.

ii) Late submission of the declaration for the commencement of business activities for the VAT registration of an EU taxable person non-established in Greece directly electronically (by virtue of Circular Pol.1113/2013, as amended and applied by Circular Pol.1153/2016, through a specific process that does not entail the appointment of a fiscal representative for VAT purposes in Greece). With respect to the relevant tax records which the taxable person has already received (due to the purchase of goods or receipt of services performed as from the reported retroactive commencement date), the following are clarified:

- According to par. 3 of article 11 of Council Implementing Regulation (EU) No 282/2011, the VAT registration in Greece is not considered to be a permanent establishment within the territory of the country. Therefore, the application of the provisions of the VAT Code for the supply of goods or services to a non-established taxable person is not affected.

- For purchases (inputs) charged with Greek VAT, the VAT deduction right is performed through the relevant VAT return. To this end, the invoices which have already been issued by the suppliers should include a reference to the Greek VAT number acquired by the non-established taxable person retroactively in Greece. In case of a tax audit, the taxable person should be able to prove that the said purchases (inputs) are related to that person's economic activity.

iii) In order to comply with the principle of equal treatment, the provisions of point ii) above also apply in case of late submission of the declaration for the commencement of business activities for the VAT registration of an overseas taxable person (either EU or non-EU based) through the appointment of a fiscal representative; the said case is covered, only under the condition that the Power of Attorney for the appointment of the fiscal representative includes an explicit reference to the retroactive effective date for the VAT registration of the principal in Greece.

iv) An overseas taxable person non-established in Greece, who submits a late declaration for the commencement of business activities, which are performed through the permanent establishment (for direct tax purposes) that the taxable person actually has (maintains) in Greece. As regards the invoices that the said taxable person has already received for the purchases (inputs) carried out as from the reported date for the commencement of business activities, in order to be able to deduct the input VAT incurred, supplementary/additional invoices should be issued by the counterparty for the charging of the VAT corresponding to taxable purchases (inputs) of the said permanent establishment in Greece.

For the safeguarding of the VAT deduction right and the correct remittance of VAT, it is clarified that if output VAT is due in Greece for the period as from the commencement effective date declared with the Greek tax office, the relevant tax records (invoices) should be issued, as per the applicable legislation of the place of the establishment of the supplier/issuer (Greece or overseas), for the imposition of the corresponding VAT amount due. As a general rule, the said tax records are dated back in the tax period, within which, the VAT amount is, in principle, due, namely within the tax period of the initial transaction, both for the issuer and the recipient of the said tax records (invoices).

Hungary

Ministry of Agriculture of Hungary proposes reverse charge for soy

To anticipate the domestic use of GMO-free soy, the Ministry of Agriculture has proposed introducing the reverse charge mechanism for soy (as already applies to cereals).

50 percent presumptive VAT deduction on leased cars

A proposal has been submitted to the European Council that would allow Hungary to decide, by way of derogation from the EU Principal VAT Directive, on a presumed VAT input deduction rate of 50% on the use of the leased cars. Currently taxpayers may deduct the VAT on leased cars in proportion to the use of the cars in connection with their taxable activities.

If the proposal is adopted, the VAT Act will be amended accordingly, and the new legislation will apply from 1 January 2019 until 31 December 2021.

Ireland

Updated guidance on VAT treatment of transfer of business relief

Irish Revenue issued an eBrief, No. 150/18, to announce updated guidance on the VAT treatment of business assets disposed of by way of a transfer of a business (i.e. to which a transfer of business relief applies), which has been issued as a result of discussions with relevant industry stakeholders, see Transfer of Business.

The Transfer of Business Relief (TOB), also referred to as 'Transfer of a Going Concern' (TOGC) in other European jurisdictions, is aimed at reducing the compliance costs for traders. From a VAT perspective, the intention of TOB relief is to remove the requirement from the transferee to pay VAT on the acquisition of business assets where the relief applies.

Although the underpinning legislation is intended to be a simplification measure, it is subject to interpretation, which has led to many disputes over the years and is subject to extensive case law. In the light of this, Revenue have had an extensive

consultation with relevant industry stakeholders and issued an updated guidance document that provides a range of examples intended at clarifying the treatment of business assets disposed of under different scenarios.

The updated guidance introduces significant change in Irish Revenue's position on the application of TOB relief, especially in the context of transactions involving immovable property, and is expected to result in a narrower application of the relief. The main changes include:

- For single properties used for letting purposes, TOB will no longer apply where they are sold without either a sitting tenant or licensee or without an agreement to lease or license to another party in place (even if the property had been let in the past or there had been an agreement in place to let the property historically).

- TOB will no longer apply to sales of a let property to a sitting tenant.

Although Irish legislation seems to contradict some of the new guidance, it has nevertheless come into effect from 31 July 2018. It must be noted, however, that the previous guidance will continue to apply to transfers where binding legal agreement for the transfer was in place prior to this date.

Updated excise duty guidance on registered consignees

Irish Revenue issued an eBrief, No. 160/18, on the movement of excisable products, which updates their Tax and Duty Manual, see Movement of Excisable Products Manual.

The manual in question is a valuable source of guidance on movement of excisable products under both the duty suspension and duty-paid regimes within Ireland as well as to and from other EU Member States. It also provides guidance on the authorization of persons for specific functions relating to the movement of excisable products.

The updated guidance includes changes to section 5 of the Manual (Approval of Registered Consignees and Temporary Registered Consignees) in the following three areas:

1. Supplementary qualifying criteria for traders applying for authorization as Registered Consignees.

2. Procedures applicable on changes in authorization and conditions for Registered Consignees.

3. Procedures applicable when revoking authorization as a Registered Consignee.

VAT ledgers for e-invoices

Based on law provisions recently approved for simplification purposes (Law Decree no. 87 dated 12 July 2018 converted by Law no. 96 dated 9 August 2018, published in the Official Gazette no. 186 dated 11 August 2018), taxpayers required to e-invoice are exonerated from the VAT booking obligation, meaning that they can avoid booking in the VAT ledgers e-invoices that are passed through the SDI.

Form available for VAT grouping option

On 19 September 2018, the tax authorities approved the AGI/1 form (together with the relevant instructions) for use by Italian companies to elect to form a VAT group.

To take effect from 1 January 2019, election via the AGI/1 form must be made by 15 November 2018; this is only for the first year of implementation of the new regime (a derogation). From 2020, election must be made by the end of September of the year prior to the year in which the regime will apply (general rule).

The AGI/1 form:

(a) Is available for free on the official website of the tax authorities;

(b) Must be electronically signed by all members of the VAT group as well as the representative of the VAT group;

(c) Must be filed by the representative of the VAT group through the electronic services made available by the tax authorities on the website.

After e-submission of the AGI/1 form, a new VAT number will be attributed to the VAT group, while the members will retain their own VAT registration numbers.

The AGI/1 form will also be used for:

- Accounting options (e.g. separation of activities);
- Inclusions/exclusions of companies into/from the VAT group;
- Change to a new representative of the VAT group;
- Change to the name of the VAT group or the business activities of the VAT group;
- Revocation of the option;
- Termination of the VAT group.

New method for paying customs duties

With Note no. 36457 of 5 September 2018, the Customs authorities advised that from 17 September 2018, importers could pay customs duties in Italy by means of a new electronic method (PagoPA).

The new method can be used, provided certain conditions are met, and the authorities' note provides operative guidelines in this respect.

Operative guidelines regarding TIR carnets

With Note no. 94642 of 5 September 2018, the Customs authorities provided operative guidelines regarding the use of TIR carnets, in particular regarding the communication flows and fulfilments that must be met under the relevant TIR procedure.

Netherlands

Announcement of annual Budget and presentation of 2019 Tax Plan

The announcement of the annual Dutch budget took place on 18 September 2018. The 2019 Tax Plan was presented to the House of Representatives. The plan includes important indirect tax changes.

Increase of reduced VAT rate

The reduced VAT rate will be increased from 6% to 9% with effect from 1 January 2019. One of the consequences is a potential increase in the cost of daily necessities, refreshments, medicines, and books. A sensible shift, according to the Government, because a tax on consumption, like VAT, causes less disruption to the choices of citizens than taxes on labor. The Government expects the consequences for the border regions to be limited, as the prices for foodstuffs in the surrounding countries are generally higher than in the Netherlands.

The Government has stated that it will not include any additional legislation for transitional situations, thus confirming the earlier statement by the State Secretary for Finance. Services to be performed in 2019 do not require a correction to the new 9% VAT rate if they have been paid before 1 January 2019. The increase of the rate also affects to the Dutch Fixed Book Price Act. This Act will be amended to offer entrepreneurs the possibility to change a set fixed price and to thus set off the effect of a VAT adjustment.

Revision of the VAT scheme for small business

The Government proposes to modernize the scheme for small businesses (*kleineondernemersregeling* or 'KOR'). This scheme solely applies to individuals at present. The proposal provides for replacement of the current KOR with an optional revenue-related VAT exemption scheme. The maximum revenue threshold is EUR

20,000 per calendar year. The goal is to simplify the scheme for small businesses, irrespective of their legal form, and to reduce the implementation costs for the Tax Administration.

All businesses that remain below the maximum revenue threshold may be eligible for the exemption. If they opt for the scheme, they will be released from filing VAT returns and from related administrative obligations for their supplies of goods and services in the Netherlands. Small businesses will still need to declare reverse-charged VAT and VAT due because of intra-Community acquisitions. If businesses want to apply the exemption they must file a request to that end with the inspector, at the latest four weeks prior to the tax period for which the exemption applies.

As application of the exemption abolishes the right to input tax credit, it may be appropriate for businesses to continue to apply the regular VAT rules, particularly when their customers can deduct the VAT they charge. Application of the new KOR may result in changes in applicability. Hence, because the new KOR has the form of an exemption, a revision scheme has been provided for. Under the revision rules, small businesses must repay VAT on investments. A revision will not take place if there is a change in applicability and the amount involved does not exceed a EUR 500 cap. The new scheme is set to come into force on 1 January 2020. Starting 1 June 2019, businesses will be given the opportunity to report application of the new KOR as from 1 January 2020.

Extension of VAT sports exemption

The VAT sports exemption currently applies to sports services provided to members of sports clubs. EU case law has prompted the Government to propose an extension of this exemption as from January 2019. As a result, it will also apply to sports services provided to non-members. As from 2019, the exemption will apply to non-commercial operators of sports accommodations as well. Such operators will not, or will no longer, be entitled to deduct input VAT as from 1 January 2019.

Combined with the Government policy to encourage construction, maintenance, and conservation of sports accommodations, these operators may be adversely affected. Hence, a compensation scheme will be introduced. The compensation scheme distinguishes between municipalities and amateur sports organizations. Amateur sports organizations are compensated through the 'Subsidy scheme for stimulation of construction and maintenance of sports accommodations', while municipalities are compensated through the 'Regulation on payment of specific stimulation'.

The Government will also introduce transitional provisions relating to:

i) Application of the usual adjustment schemes to remaining construction periods of sports accommodations intended for VAT taxable use which must be paid in 2019;

ii) The first use of new sports accommodations intended for VAT taxable use after 1 January 2019;

iii) Adjusted use of movable and immovable property after 1 January 2019, for which VAT taxable use had been foreseen.

Implementation of VAT e-Commerce Directive

Part of the adopted EU Directive on electronic services and distance sales will be written into the Dutch VAT legislation on 1 January 2019. The sections to be implemented particularly relate to simplification of the VAT regime for telecommunication services, broadcasting services, and electronic services (applicable from 1 January 2015). From then, smaller entrepreneurs established in a single EU Member State that offer private customers in other Member States online digital services, must pay VAT in their own Member State at the rate applicable there.

This simplification can only be applied if an entrepreneur does not exceed the total EUR 10,000 cross-border revenue threshold. Entrepreneurs performing digital services for individuals in other EU Member States can apply the invoicing rules of their own Member State. Entrepreneurs established outside the EU but with a VAT registration within the EU can use the Mini One-Stop Shop system (MOSS) as from 1 January 2019.

Supply of parking space next to nature park subject to standard VAT rate

On 17 August 2018 the Supreme Court ruled that the opportunity to park at a nature park is an independent service, subject to the VAT standard rate of 21%.

The case concerned a nature park that offers visitors the opportunity to park their car for EUR 2 per day on a parking lot next to the park. Once arrived, visitors of the nature park have the choice either to park their car before entering the park or to enter the park with their car. Granting access to the park itself is the main service, which is subject to the reduced VAT rate of 6%. Being granted access to the nature park is the customer's main purpose of visiting. The question in this case was whether providing the opportunity for the supply of parking space is ancillary to the main service, being the granting of access to the nature park. If that is the case, the supply of parking space is also subject to the reduced VAT rate of 6%.

The Supreme Court decided that providing parking space for visitors of the park is a distinct and independent service. The Supreme Court confirmed that the use of parking facilities for a car at the destination is an objective in itself for the regular visitor, which has to be separated from visiting the park itself. Visitors have the choice between various means of transport with which they can reach the park. When visitors come by car, they know that they cannot abandon the car, and therefore the provision of parking meets their need for a temporary destination for

the car. As a consequence, the supply of parking space should be regarded as a distinct and independent service which is subject to the standard VAT rate of 21%. According to the Supreme Court, this would not be different if the parking areas were only intended for visitors to the nature park.

Poland

VAT payers deregistration

As of 2017, the tax authorities are entitled to deregister taxpayers for VAT purposes in a number of cases (without prior notification). Such VAT deregistration is confirmed by the tax authorities by way of notification letters. More than 150,000 companies have been deregistered since the entry into force of these new regulations.

The form of such VAT deregistration has been recently questioned by Administrative Court rulings, in which it has been concluded that deregistration may be legally effective only based on the official decision issued by the tax authorities. The courts have stated that a notification letter is insufficient to deregister an entity for VAT purposes, as the taxpayer should have an opportunity to provide an explanation regarding their business activity and explain the reasons for submission of nil VAT returns (which notification does not provide). Therefore, according to these rulings, notifications informing VAT deregistration are ineffective, and the taxpayer has right to request VAT number restoration.

Presented judgments are not final, and it is yet to be seen if the Supreme Administrative Court confirms the above, and how this would affect current practice (which requires in some cases, depending upon the reasons for *ex office* deregistration, resubmission of all the VAT registration documents).

Draft bill regulating VAT treatment of vouchers

EU Member States are required by the end of 2018 to propose amendments to the VAT law transposing the rules for the VAT taxation of vouchers and gift cards to the EU Directive regulations. The Polish VAT law amendments in this respect have been recently published. According to the draft bill of VAT Act amendments, as of 2019 two types of vouchers will be distinguished: single purpose voucher (SPV) and multi-purpose voucher (MPV).

SPV relates to supplies where the place of supply and the amount of VAT on delivery are known at the time of voucher issuance. Transfer (free of charge, sale) of SPV made by the taxpayer will be subject to VAT, as it will be recognized as supply of goods or services. The actual transfer of goods or services in exchange for a SPV accepted as remuneration or part of remuneration will not be an independent transaction taxed with VAT, to the extent to which the remuneration was a SPV.

MPV relates to supplies in which the place of supply and the amount of VAT on delivery are unknown at the time of voucher issuance. MPV is not subject to VAT at the time of its transfer. VAT will apply on the actual supply of goods or services in exchange for a MPV accepted as remuneration or part of remuneration.

Russia

Ministry of Finance clarifies application of VAT rates for advance payments under agreements signed before 1 January 2019

Federal Law No. 302-FZ of 03 August 2018 introduced an increase in the standard VAT rate to 20% with respect to goods, work, services, property rights supplied (performed, provided) starting from 1 January 2019.

The Ministry of Finance clarified that the Federal Law does not contain special provisions with respect to goods, work, services, property rights supplied (performed, provided) under agreements signed before 1 January 2019 with respect to which the transfer of advance payments is envisaged. Thus, with respect to goods, work, services, property rights supplied (performed, provided) starting from 1 January 2019 the VAT rate of 20% will apply regardless of whether the respective agreement is signed before 1 January 2018 and the advance payment is transferred before 1 January 2019.

Central Bank of Russia analyzes influence of VAT rate increase on inflation

The Central Bank has analyzed the influence of the VAT rate increase on inflation, and reached the following conclusions:

- The VAT rate increase will accelerate inflation from 0.6 to less than 1.5 percentage points;
- The largest price rise will be at the beginning of 2019, i.e. in the first months following the VAT rate increase;
- Around 60% of businesses plan to increase prices from 1% to 5%, which will result in a short-term change of prices;
- Some businesses plan to increase their expenses and not to raise prices to protect market share and retain customers following the VAT rate increase;
- The VAT rate increase will result in an annual inflation peak in the first quarter of 2019; it is expected that inflation will temporarily exceed 4% in the first quarter of 2019;
- The quarterly increase of prices will slow down in the second quarter of 2019; in the second half of 2019, the quarterly inflation rate should be equal to 4%.

Customs changes from 4 September 2018

The Federal Law 'On customs regulation in the Russian Federation' No. 289 of 3 August 2018 established, in particular, the following with effect from 4 September 2018:

- The ability for the Customs authorities to issue preliminary decisions on the application of methods for determining the customs value of imported goods;
- Changes in the list of cases that are required to provide security for customs payments to the customs authorities;
- Preliminary information may be provided in English. Previously preliminary information could be provided only in Russian.

In addition, the timeframe for issuing preliminary decisions on the country of origin of goods and on the classification of goods have been reduced.

Quantitative limitation of ozone-depleting substances introduced

A Government decree has established a quantitative limit for the import of certain ozone-depleting goods under the commodity position 2903 (group I, list C, section 2.1 of annex 2 to Decision of the Board of the Eurasian Economic Commission No. 30 of 21 April 2015) for goods imported from 7 September to 31 December 2018.

The volume of ozone-depleting substances can be divided between the participants in foreign trade activity, provided they have submitted an application for the import of such goods to the Federal Service for Supervision in the Sphere of Natural Resource Use (*Rosprirodnadzor*) by 21 August 2018.

South Africa

Implementation of registration requirements for cargo reporters

All shipping lines, airlines, rail carriers, road hauliers, freight forwarders (customs brokers), port and airport authorities, terminal operators, wharf operators, transit-shed operators, and licensees of depots are required, in addition to their current registrations and licenses, to register as cargo reporters with the South African Reserve Services (SARS) by not later than 19 November 2018.

As part of the implementation of the Reporting of Conveyance and Goods (RCG) project, SARS will also no longer allow the use of Cargo Carrier Code ZZZ99999 by non-registered cargo reporters by freight forwarders in the airfreight industry.

Cargo reporters in general, and airfreight forwarders in particular, who fail to register before the deadline date can experience Customs clearance delays when submitting Customs declarations through SARS. SARS intend to use the cargo reporter assigned code to validate Customs clearances and the electronically

submitted cargo reports. Importers and exporters may be negatively affected by a cargo reporter's failure to register or, if registered, failure to submit accurate information to SARS.

The RCG is a project tasked with the implementation of the automated inbound and outbound reporting for cargo carriers and operators of licensed premises. The reports are in the internationally standardized United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) electronic interchange messages format.

The aim of the project will be to facilitate legitimate trade, secure the supply chain, and improve accurate statistical and trade reporting in South Africa. The project is in compliance with the Revised Kyoto Convention, the World Customs Organization's (WCO) SAFE Framework of Standards, and paves the way for the Authorized Economic Operator (AEO) in South Africa.

RCG is also the first of three phases to the implementation of the New Customs Acts Program (NCAP). NCAP is a modernization journey aimed at implementing the New Customs Acts (the Customs Control Act, 31 of 2014 (the CCA), the Customs Duty Act, 30 of 2014 (the DDA) and the Customs and Excise Amendment Act, 32 of 2014 (the CEAA)) through the amendment and gradual phasing-out of the current Customs and Excise Act, 91 of 1964 (the Customs Act). The other two phases are the Declaration Processing System (DPS) and the Registration, Licensing and Accreditation (RLA).

Switzerland

Radio and television corporate fee

As covered in previous editions of this newsletter, as from 1 January 2019, the corporate fee for radio and television (RTV) will be device-independent and based on the worldwide turnover businesses declare in their Swiss VAT returns. The Federal Act on Radio and Television requires all Swiss VAT payers to pay the corporate fee. This is also what was initially announced in the guidelines published by the Swiss Federal Tax Administration (SFTA).

However, on 30 August 2018, the SFTA announced that only businesses liable for Swiss VAT with a registered office, domicile, or permanent establishment (PE) on Swiss territory will be required to pay the fee. According to the explanatory report on the Federal Act on Radio and Television, both international law and Switzerland's obligations under various international treaties agreements would be infringed if the obligation to pay the RTV corporate fee also applied to businesses without a registered office, domicile, or PE on the Swiss territory.

Action required

Foreign businesses do not have any new obligations in this respect.

The Federal Tax Authority has not changed its position that all Swiss VAT payers, both domestic and foreign domiciled, must declare their worldwide turnover in the VAT return.

United Kingdom

Government technical notices on 'no deal' Brexit scenario

Negotiations for the UK's withdrawal from the EU are continuing, and the Government remains confident that it will achieve an agreement over Brexit. However, as part of its planning for every eventuality, the Government has prepared a series of technical notices to help businesses make informed preparations for a 'no deal' scenario. These include the following relating to VAT and customs and trade:

- Guidance on VAT for businesses if there's no Brexit deal
- Classifying your goods in the UK Trade Tariff if there's no Brexit deal
- Trading with the EU if there's no Brexit deal
- Trade remedies if there's no Brexit deal
- Exporting controlled goods if there's no Brexit deal

Proposed VAT changes for digital services to consumers from January 2019

The Government has released two draft statutory instruments relating to supplies of digital services to consumers.

The first would introduce a threshold in respect of EU sales of digital services, allowing small businesses to account for UK VAT if relevant annual supplies across the EU fall below EUR 10,000, rather than accounting for VAT in the EU Member State where the customers belong.

The second statutory instrument would allow certain non-EU businesses already registered for VAT for other activities to use the 'Mini One Stop Shop' (MOSS) simplification scheme.

Both instruments would take effect from 1 January 2019, in accordance with changes to the EU Principal VAT Directive. Their continued application after 29 March 2019 will depend on the terms of any Brexit deal.

Eurasian Economic Union

Introduction of zero import customs duty rate for certain equipment for fish farming

Decision of the Board of the Eurasian Economic Commission No. 129 of 21 August 2018 establishes a zero customs duty rate for certain fish farming equipment, in particular for vessels intended for feeding fish in the open sea. A zero customs duty rate will apply to equipment that is installed on a sea farm and intended for cultivation of Atlantic salmon and rainbow trout from commodity subpositions 8905 90 100 1 and 8907 90 000 1. A zero customs duty rate will be applied until 31 December 2019.

Decision No. 129 came into effect on 23 September 2018.

Expiry of zero import customs duty rate for certain types of goods

Decision of the Council of the Eurasian Economic Commission No. 81 of 15 September 2017 established a zero import customs duty rate for certain types of internal combustion engines under customs classification code 8408 20 990 4, for the period up to 30 September 2018 (inclusive). After 30 September 2018, the import customs duty rate will be 5% of the customs value of such goods.

Decision No. 81 came into effect on 19 January 2018.

Expiry of trigger protective measure in respect of goods originating from Vietnam

Decision of the Board of the Eurasian Economic Commission No.20 of 7 February 2018 established the trigger protective measure (in the form of the import customs duty at tariff rates) in respect of children’s clothing and accessories under commodity codes 611120, 611130, 611190, 6209, which are imported with the use of tariff preferences into the EEU and originating from the Socialist Republic of Vietnam for up to six months. Thus, the application of the trigger protective measure expired on 14 September 2018.

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

Extension of anti-dumping measure for goods from China

Decision of the Board of the Eurasian Economic Commission No. 139 of 21 August 2018 extends the validity period of the anti-dumping measure for roller bearings (except for needle roller bearings) originating from China and imported in the EEU, to 20 August 2023 (inclusive).

Decision No. 139 came into effect on 23 September 2018.

Introduction of tariff quotas for agricultural products

Decision of the Board of the Eurasian Economic Commission No.141 of 28 August 2018 established tariff quotas for 2019 for certain agricultural products from third countries. There are lowered import rates in the Unified Customs Tariff of EEU for goods imported within the tariff quotas. Tariff quotas for the Republic of Kazakhstan and the Russian Federation are set in the amounts stipulated by the tariff obligations of these countries in the World Trade Organization. In particular, the volume of tariff quotas for the Russian Federation in 2019 will be 570,000 tons of cattle meat, 430,000 tons of pork, including pork trimming, 364,000 tons of poultry meat, 15,000 tons of whey.

Decision No. 141 came into effect on 29 September 2018.

Unified veterinary-sanitary requirements for activities subject to veterinary control (supervision)

Decision of the Board of the Eurasian Economic Commission No. 27 of 13 February 2018 introduces unified mandatory veterinary-sanitary requirements for activities subject to veterinary control (supervision). Thus, the requirements are set for the production (manufacture) and/or storage of goods of animal origin (food and non-food) subject to veterinary control (supervision), and for the slaughtering of animals.

Legal entities and individuals included in the register of organizations engaged in the production, processing and/or storage of goods before the date of entry of this Decision may continue to carry out activities for 18 months in accordance with the mandatory requirements previously established by the EEU Member State in which territory the considering object is located.

The Decision came into effect on 14 August 2018.

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