

Latest VAT developments (2) (2/32/19)

This article picks up where we left off [last week](#).

Aligning the VAT Act with Directive 2006/112/EC and CJEU case law

Since the annotation to the proposals is silent about any changes to the VAT treatment of insurance services, only the wording (without any substantial changes to the scope of exemption) has been adjusted in section 52(1)(20) of the VAT Act, which extends the exemption to insurance and reinsurance services, including related services supplied by an insurance or reinsurance broker or an ancillary insurance service broker.

Aligning the VAT Act with the CJEU interpretation of exempt intra-IGOP transactions

When interpreting the exemption for services supplied within an independent group of persons (IGOP) under article 132(1)(f) of Directive 2006/112/EC, the CJEU stated in its rulings of 21 September 2017 on case C-326/15 DNB Banka and on case C-605/15 Aviva that the exemption is not applicable to an IGOP whose members operate in the insurance and financial sector or make cross-border transactions.

For this reason, section 52 of the VAT Act has been amended and a new section (52.1) has been inserted with effect from 1 July 2019 to ensure that the rules of the VAT Act are consistent with the CJEU interpretation of exempt intra-IGOP services. Under the new wording of the Act, IGOP members may be persons that make exempt supplies listed by section 52(1) of the VAT Act, except for its paragraphs 2 and 18-25, and IGOP members may be only taxable persons registered for Latvian VAT. The taxable amount of a service is its cost, to which an arm's length markup can no longer be applied. Before an IGOP is set up, the State Revenue Service must receive a letter naming its members and a written agreement for services the IGOP will be supplying to its members.

Amendments to the VAT Act for inserting rules on the right of development (*superficies*) passed into the Civil Code

The right of development is a property right granted by contract and capable of inheritance and disposal, which permits the person acquiring it to erect non-residential buildings or engineering structures on a piece of land owned by another person and to use it as owner while the right is valid. The amendments provide that a transfer of the development right is a taxable supply that attracts VAT on the consideration received for granting the right (if this right is sold by auction, then VAT is charged on the auction price).

Amendments to the special scheme for imports (section 85(3-4) of the VAT Act)

The VAT Act provides that a VAT-registered taxable person who holds an appropriate permit and releases goods for free circulation may postpone paying VAT to the government until the due date for filing the VAT return for the tax period. In other words, VAT is paid through the VAT return instead of paying it to the government. Given the widespread use by taxable persons of the special VAT scheme for imports as well as considering the offences detected by the State Revenue Service (SRS) and the dishonest and fraudulent goals pursued by taxable persons in using this scheme, a tighter set of criteria have been prescribed for obtaining, suspending and cancelling a permit to apply the special scheme for imports. The SRS will issue a

permit to taxable persons registered for Latvian VAT (customers registered on the SRS Electronic Declaration System) that meet all of the following criteria:

- The person has been entered on the commercial register or registered with the SRS as a trader;
- The person is not a foreign trader's (entity's) branch or permanent establishment in Latvia (except for credit institutions and insurance companies);
- The person has carried on a business in Latvia for the last 12 months and is registered for Latvian VAT;
- The person's technical and financial capabilities are consistent with its business activities;
- The person has no tax debt on the date of applying for the scheme;
- The person has duly filed its tax returns, informative returns and financial statements and has duly presented any additional information required by the SRS to determine the amount of VAT payable to or refundable by the government in the last 12 months;
- Any person authorised to act for the taxable person does not have a criminal record of fraud, document forgery, tax evasion or other criminal offences likely to affect the tax assessment;
- A corporate taxable person's officer or a private taxable person is not listed as a risk person under the Taxes and Duties Act.

(to be completed)