Deloitte.
Legal

Enero 2024

Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

Índice de contenido

I. Normativa

1. Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía.

2. Real Decreto 1007/2023, de 5 de diciembre, por el que se aprueba el Reglamento que establece los requisitos que deben adoptar los sistemas y programas informáticos o electrónicos que soporten los procesos de facturación de empresarios y profesionales, y la estandarización de formatos de los registros de facturación.

3. Real Decreto 1171/2023, de 27 de diciembre, por el que se modifican el Reglamento del Impuesto sobre el Valor Añadido, aprobado por el Real Decreto 1624/1992, de 29 de diciembre; el Reglamento de los Impuestos Especiales, aprobado por el Real Decreto 1165/1995, de 7 de julio, y el Reglamento de procedimientos amistosos en materia de imposición directa, aprobado por el Real Decreto 1794/2008, de 3 de noviembre.

4. Orden HFP/1359/2023, de 19 de diciembre, por la que se desarrollan para el año 2024 el método de estimación objetiva del Impuesto sobre la Renta de las Personas Físicas y el régimen simplificado del Impuesto sobre el Valor Añadido.

5. Orden HFP/1397/2023, de 26 de diciembre, por la que se modifican la Orden EHA/1274/2007, de 26 de abril, por la que se aprueban los modelos 036 de Declaración censal de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores y 037 Declaración censal simplificada de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores, la Orden EHA/3695/2007, de 13 de diciembre, por la que se aprueba el modelo 030 de Declaración censal de alta en el Censo de obligados tributarios, cambio de domicilio y/o variación de datos personales, la Orden EHA/3111/2009, de 5 de noviembre, por la que se aprueba el modelo 390 de declaración-resumen anual del Impuesto sobre el Valor Añadido, la Orden HAP/2194/2013, de 22 de noviembre, por la que se regulan los procedimientos y las condiciones generales para la presentación de determinadas autoliquidaciones, declaraciones informativas, declaraciones censales, comunicaciones y solicitudes de devolución, de naturaleza tributaria, así como las Órdenes por las que se aprueban los modelos 289 y 345.

6. Orden HFP/1415/2023, de 28 de diciembre, por la que se aprueba el modelo 379 "Declaración informativa sobre pagos transfronterizos" y se determinan la forma y procedimiento para su presentación.

II. Jurisprudencia.

1. Tribunal de Justicia de la Unión Europea. Sentencia de 21 de diciembre de 2023. Asunto C-288/22 (TP)).

2. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 15 de diciembre de 2023. Nº de recurso 4384/2022.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución nº 6872/2020, de 23 de octubre de 2023.
2. Tribunal Económico-Administrativo Central. Resolución nº 1872/2021, de 22 de noviembre de 2023.
3. Tribunal Económico-Administrativo Central. Resolución nº 1039/2023, de 22 de noviembre de 2023.
4. Dirección General de Tributos. Contestación nº V2942-23, de 8 de noviembre de 2023.
5. Dirección General de Tributos. Contestación nº V3048-23, de 23 de noviembre de 2023.
6. Dirección General de Tributos. Contestación nº V3049-23, de 23 de noviembre de 2023.

IV. Country Summaries

Featured articles

Belgium

Draft law on B2B e-invoicing

The government has submitted a draft law to parliament, which would amend the VAT Code to introduce an electronic invoicing obligation. If enacted, the law would establish a requirement for the exchange of structured e-invoices between taxpayers from 1 January 2026.

Nigeria

Nonresident suppliers of electronically supplied low-value goods

The Federal Inland Revenue Service issued a notice postponing (from 1 January 2024) implementation of the collection and remittance of VAT by non-resident suppliers of electronically-supplied goods. There is no new effective date.

Poland

KSeF implementation postponed

The minister of finance has announced that the mandatory introduction of the National e-Invoicing System (KSeF) will be postponed. A new implementation date was not specified. It is highly likely that the new implementation date will not be earlier than January 2025.

United Kingdom

Proposed introduction of CBAM

The government intends to implement a carbon border adjustment mechanism by 2027, targeting imports of carbon-intensive products such as aluminium, cement, ceramics, fertilizer, glass, hydrogen, iron, and steel. There will be consultation on the design and delivery.

Other news

Australia: Commissioner appeals second AAT decision in ongoing GST missing trader gold dispute

Brazil: Provisional measure revokes temporary 0% tax rate for tourism industry

Brazil: New legislation subjects investment subsidies to taxation

Cambodia: Which export-import and transit goods must pass through scanner inspection system?

China: 2024 Tariff Adjustment Plan issued

Czech Republic: Highlights of key tax changes effective for 2024, including tax rate changes

Ghana: Key tax highlights of 2024 budget statement: Indirect tax

Ghana: Electronic invoicing regime: Update on implementation

Japan: Podcast: 2024 tax reform series—Introduction

Malaysia: Proposed service tax rate increase: What rate would apply in the transition period?

Malaysia: Sales tax on low value goods: RMCD releases updated guide and FAQs

Malaysia: Guide available on applications for extension of export period for sales tax purposes

Philippines: Legislation to enhance tax compliance and improve tax administration enacted

Poland: Draft bills on JPK_V7 reporting scope and KSeF exceptions published

Portugal: Highlights of indirect tax measures in 2024 budget law and other recent legislation

Singapore: GST error correction threshold revised

Spain: New requirements for electronic systems and programs for invoicing processes

United States: State Tax Matters (5 January 2024), including indirect, sales and use tax developments in Illinois, Massachusetts, Michigan, and New Mexico

United States: State Tax Matters (12 January 2024), including indirect, sales and use tax developments in Colorado, Illinois, Indiana, and Texas

United States: State Tax Matters (19 January 2024), including indirect, sales and use tax developments in Colorado

United States: State Tax Matters (26 January 2024), including indirect, sales and use tax developments in California and South Carolina

I. Normativa

1. Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía.

Con fecha 28 de diciembre de 2023 se ha publicado en el Boletín Oficial del Estado el Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía.

En relación con el Impuesto sobre el Valor Añadido, dicho Real Decreto-ley contempla en los artículos 19, 20 y 21 y en la disposición transitoria segunda, las siguientes modificaciones:

A) En relación con los tipos impositivos aplicables a determinados bienes:

- Se prorrogan, desde 1 de enero de 2023 hasta el 30 de junio de 2024, los tipos impositivos aplicables a las entregas, importaciones y adquisiciones intracomunitarias de los siguientes bienes:

  - Tipo del 5 por ciento a: los aceites de oliva y de semillas y las pastas alimenticias.

    Durante ese periodo temporal, el tipo del recargo de equivalencia aplicable a las entregas de dichos bienes será el 0,62 por ciento.

  - Tipo del 0 por ciento a:

    - El pan común, así como la masa de pan común congelada y el pan común congelado destinados exclusivamente a la elaboración del pan común.

    - Las harinas panificables.

    - Los siguientes tipos de leche producida por cualquier especie animal: natural, certificada, pasterizada, concentrada, desnatada, esterilizada, UHT, evaporada y en polvo.

    - Los quesos.

    - Los huevos.

    - Las frutas, verduras, hortalizas, legumbres, tubérculos y cereales, que tengan la condición de productos naturales de acuerdo con el Código Alimentario y las disposiciones dictadas para su desarrollo.

    Durante ese periodo temporal, el tipo del recargo de equivalencia aplicable a las entregas de dichos bienes será el 0 por ciento.

- Aplicación temporal, durante los periodos que se indican, del tipo reducido del 10 por ciento a las entregas, importaciones y adquisiciones intracomunitarias, de los siguientes bienes:

- Gas natural –desde 1-1-2024 hasta 31-3-2024-.
- Briquetas y ”pellets” procedentes de la biomasa y a la madera para leña -desde 1-1-2024 hasta 30-6-2024-.
- Suministro de energía eléctrica -desde 1-1-2024 hasta 31-12-2024-.

B) Regímenes especiales (artículo 19 y disposición transitoria segunda).

- Se contempla el mantenimiento para el año 2024 de los mismos límites o magnitudes, tanto de volumen de ingresos como de volumen de compras y servicios, que delimitan la aplicación del régimen especial simplificado y el régimen especial de la agricultura, ganadería y pesca en el IVA, al igual que en los ejercicios 2016 a 2023, es decir, dichos límites quedan fijados en 250.000 euros para 2024.
- Este Real Decreto-ley incluye, como en otros años, un nuevo plazo para presentar las renuncias o revocaciones a los citados regímenes especiales, como consecuencia de las prórrogas que se introducen en los límites excluyentes del régimen simplificado y del régimen especial de la agricultura, ganadería y pesca del IVA.

2. Real Decreto 1007/2023, de 5 de diciembre, por el que se aprueba el Reglamento que establece los requisitos que deben adoptar los sistemas y programas informáticos o electrónicos que soporten los procesos de facturación de empresarios y profesionales, y la estandarización de formatos de los registros de facturación.

Con fecha 6 de diciembre de 2023 se ha publicado en el Boletín Oficial del Estado el Real Decreto 1007/2023, de 5 de diciembre, por el que se aprueba el Reglamento que establece los requisitos que deben adoptar los sistemas y programas informáticos o electrónicos que soporten los procesos de facturación de empresarios y profesionales, y la estandarización de formatos de los registros de facturación.

En relación con el IVA, se adapta el Reglamento por el que se regulan las obligaciones de facturación (Reglamento de facturación) al nuevo Reglamento que se aprueba, estableciéndose las siguientes modificaciones:

- Tratándose de facturas generadas por los sistemas informáticos que soporten los procesos de facturación recogidos en el nuevo Reglamento, además de los requisitos ya exigidos en el artículo 6 del Reglamento de facturación, debe incluirse en la factura el siguiente contenido:
  - La representación gráfica del contenido parcial de la factura mediante un código “QR”.

    En el caso de factura electrónica, la representación gráfica puede ser sustituida por el contenido que representa el código “QR”.
  - Estas facturas, sean electrónicas o no, deben incorporar la frase “Factura verificable en la sede electrónica de la AEAT” o “VERI*FACTU”, únicamente en aquellos casos en los que el sistema informático realice la remisión de todos los registros de facturación a la AEAT.

Este nuevo contenido también se exige en el caso de las facturas simplificadas (artículos 4 y 7 del Reglamento de facturación).

- En relación con la autenticidad del origen e integridad del contenido de la factura, se establece que se presume acreditada cuando se haya expedido utilizando un sistema o programa informático conforme a los requisitos establecidos en el nuevo Reglamento.

Estas modificaciones entraron en vigor el 7-12-2023. No obstante lo anterior, los obligados tributarios tienen hasta el 1-7-2025 para adaptarse a los cambios del software de facturación, si bien los desarrolladores y fabricantes de sistemas informáticos deben tenerlos en el mercado en un plazo de nueve meses desde la aprobación de la Orden Ministerial que especifique todos los detalles técnicos del registro.

3. Real Decreto 1171/2023, de 27 de diciembre, por el que se modifican el Reglamento del Impuesto sobre el Valor Añadido, aprobado por el Real Decreto 1624/1992, de 29 de diciembre; el Reglamento de los Impuestos Especiales, aprobado por el Real Decreto 1165/1995, de 7 de julio, y el Reglamento de procedimientos amistosos en materia de imposición directa, aprobado por el Real Decreto 1794/2008, de 3 de noviembre.

Con fecha 28 de diciembre de 2023 se ha publicado en el Boletín Oficial del Estado el Real Decreto 1171/2023, de 27 de diciembre, por el que se modifican el Reglamento del Impuesto sobre el Valor Añadido, aprobado por el Real Decreto 1624/1992, de 29 de diciembre; el Reglamento de los Impuestos Especiales, aprobado por el Real Decreto 1165/1995, de 7 de julio, y el Reglamento de procedimientos amistosos en materia de imposición directa, aprobado por el Real Decreto 1794/2008, de 3 de noviembre.

En relación con el Impuesto sobre el Valor Añadido, el artículo primero realiza las siguientes modificaciones en el Reglamento del IVA que entrarán en vigor el 1 de enero de 2024, con la excepción que se indica:

A) Proveedores de servicios de pago.

Se desarrolla el contenido de los registros de los pagos transfronterizos realizados en los que intervengan y se faculta a la persona titular del Ministerio de Hacienda y Función Pública para la aprobación del modelo para la declaración de dichos registros así como su forma de presentación que se realizará antes de que finalice el mes siguiente al correspondiente trimestre natural.

B) Otras modificaciones:

- Se desarrollan las modificaciones realizadas en la Ley del IVA, por la Ley 31/2022, relativas a la armonización y adaptación de su contenido a la normativa aduanera comunitaria.

- Se ajustan los requisitos relativos a la modificación de la base imponible como consecuencia de un proceso de insolvencia declarada por un órgano jurisdiccional de otro Estado miembro.

- Se acota el concepto de adquisiciones intracomunitarias de servicios, a efectos de la declaración recapitulativa de operaciones intracomunitarias, exclusivamente en los que el sujeto pasivo sea el destinatario.

- En el ámbito del procedimiento de devolución del IVA soportado en España por empresarios y profesionales no establecidos en la Comunidad (art. 119 bis de la Ley del IVA), se establece la necesidad de que la primera solicitud de devolución que un representante presente por cuenta de un solicitante concreto, vaya necesariamente acompañada del correspondiente poder de representación. No será necesario, en cambio, que dicho documento se aporte con carácter previo a la presentación de la solicitud. Además, para equiparar este procedimiento al previsto para las devoluciones de IVA a empresas de otros Estados miembros de la Unión Europea, se exige que la solicitud de devolución se acompañe también de las facturas que serían obligatorias si el solicitante estuviese establecido en la Unión Europea. Esta modificación entrará en vigor el 1 de julio de 2024.

- Por último, se actualizan determinados artículos del Reglamento del IVA cuya redacción había quedado obsoleta o referenciaba normativa no vigente.

4. Orden HFP/1359/2023, de 19 de diciembre, por la que se desarrollan para el año 2024 el método de estimación objetiva del Impuesto sobre la Renta de las Personas Físicas y el régimen simplificado del Impuesto sobre el Valor Añadido.

Esta Orden, en lo relativo al IVA y respecto del año 2024, mantiene el mismo contenido, en cuanto al importe de los módulos y las instrucciones para su aplicación, que el previsto en la Orden HFP/1172/2022, de 29 de noviembre, por la que se desarrollan para el año 2023 el método de estimación objetiva del IRPF y el régimen simplificado del IVA.

5. Orden HFP/1397/2023, de 26 de diciembre, por la que se modifican la Orden EHA/1274/2007, de 26 de abril, por la que se aprueban los modelos 036 de Declaración censal de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores y 037 Declaración censal simplificada de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores, la Orden EHA/3695/2007, de 13 de diciembre, por la que se aprueba el modelo 030 de Declaración censal de alta en el Censo de obligados tributarios, cambio de domicilio y/o variación de datos personales, la Orden EHA/3111/2009, de 5 de noviembre, por la que se aprueba el modelo 390 de declaración-resumen anual del Impuesto sobre el Valor Añadido, la Orden HAP/2194/2013, de 22 de noviembre, por la que se regulan los procedimientos y las condiciones generales para la presentación de determinadas autoliquidaciones, declaraciones informativas, declaraciones censales, comunicaciones y solicitudes de devolución, de naturaleza tributaria, así como las Órdenes por las que se aprueban los modelos 289 y 345.

Esta Orden realiza determinadas modificaciones de carácter técnico en los siguientes modelos de declaración:

- Modelo 030 de Declaración censal de alta, cambio de domicilio y/o de variación de datos personales.

- Modelo 036 de Declaración censal de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores,

- Modelo 037 de Declaración censal simplificada de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores,

- Modelo 390 de declaración-resumen anual del Impuesto sobre el Valor Añadido. En este modelo se añaden campos específicos para consignar los diferentes tipos de recargo de equivalencia vigentes en el año 2023, no contemplados en el artículo 161 de la Ley del IVA, del 0 por ciento y del 0,62 por ciento.

Estas modificaciones entrarán en vigor:

- el día 1 de enero de 2024 y se aplicará por primera vez a la declaración informativa modelo 390, correspondiente al ejercicio 2023.
- El día 1 de febrero de 2024 y se aplicarán por primera vez a los modelos 030, 036 y 037 que se presenten a partir de dicha fecha.

6. Orden HFP/1415/2023, de 28 de diciembre, por la que se aprueba el modelo 379 "Declaración informativa sobre pagos transfronterizos" y se determinan la forma y procedimiento para su presentación.

Esta Orden aprueba el nuevo modelo 379 "Declaración informativa sobre pagos transfronterizos" así como la forma y procedimiento para su presentación que deberá realizarse por vía electrónica.

Están obligados a su presentación los proveedores de servicios de pagos a que se refiere el artículo 166 quater de la Ley del IVA.

Dicha Orden entrará en vigor el 1 de enero de 2024 y será aplicable, por primera vez, a las declaraciones informativas correspondientes al primer trimestre del ejercicio 2024.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 21 de diciembre de 2023. Asunto C-288/22 (TP).

Directiva 2006/112/CE – Artículo 9 — Sujetos pasivos — Actividad económica realizada con carácter independiente — Concepto de "actividad económica" — Concepto de "realización de la actividad con carácter independiente" — Actividad de un miembro del consejo de administración de una sociedad anónima.

TP es miembro del consejo de administración de varias sociedades anónimas luxemburguesas en las cuales ejerce diversas funciones relacionadas con la toma de decisiones. Por tales actividades, TP percibió una remuneración en forma de porcentaje del beneficio obtenido por dichas sociedades por las que recibió una liquidación del IVA por entender la Administración luxemburguesa que tales actividades constituían una actividad económica.

En el presente caso, entiende el TJUE que TP realiza una actividad económica, en la medida en que se trata de una prestación de servicios realizada a título oneroso, respecto de la cual existe una remuneración fijada previamente, y además dicha actividad dispone de carácter permanente, puesto que su mandato tiene una duración de 6 años renovable en el tiempo sin límite.

Sin embargo, señala el Tribunal que, a pesar de que el sujeto disponga de cierta libertad en la organización del trabajo, si no actúa por su cuenta ni bajo su propia responsabilidad y no soporta el riesgo económico de su actividad, no puede considerarse que la actividad económica la realiza con carácter independiente, a los efectos del artículo 9 de la Directiva del IVA.

2. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 15 de diciembre de 2023. Nº de recurso 4384/2022.

Derecho a la deducción — Actividades de investigación básica — Operaciones no sujetas al Impuesto — Investigación básica e investigación aplicada.

El tratamiento a efectos del IVA de las operaciones efectuadas por las universidades públicas relacionadas con la investigación básica ha sido siempre problemático. Cabe recordar, como muestra de ello, las seis sentencias dictadas en 2016 por el propio Tribunal Supremo (TS), centradas básicamente todas ellas en el debate de si la actividad investigadora básica es común automáticamente a la actividad de enseñanza desarrollada por esas universidades.

Pues bien, en esta sentencia del TS de 2023, que estamos comentando, la cuestión que presenta interés casacional objetivo consiste en determinar si, a los efectos del derecho a la deducción de las cuotas del IVA soportadas por adquisiciones de bienes y servicios afectos a la actividad de investigación básica realizada por una universidad pública, dicha actividad de investigación básica debe entenderse, en todo caso, sujeta al IVA o si, por el contrario, cabe distinguir, dentro de la actividad de investigación básica, una parte que no tiene la consideración de actividad empresarial o profesional por no concurrir el ánimo de explotar empresarialmente, de manera inmediata o mediata, los resultados de la misma y, consiguientemente, no se encuentra sujeta al Impuesto.

El TS analiza esta cuestión sobre un supuesto en el que la Administración tributaria, en el marco de un procedimiento de comprobación, regularizó la situación tributaria a efectos del IVA de una universidad pública al considerar que determinados proyectos de investigación básica efectuados por esta estaban no sujetos al IVA, dentro del sector diferenciado de la actividad de investigación, y consideró que no procedía deducir cuota alguna del IVA soportado en los “inputs” adquiridos para la realización de dichos proyectos. Sin embargo, en vía económico-administrativa, el TEAC vino a aplicar, a estos proyectos de investigación básica (no sujetos al IVA) la prorrata general, al entender que las cuotas soportadas eran deducibles en cuanto gastos generales de la actividad.

Esta actuación del TEAC, a juicio del TS, no es correcta y “desquicia” el sistema. Según el Alto Tribunal, si el TEAC considera que la investigación básica, al menos respecto de determinadas operaciones, está no sujeta, la forma de proceder hubiera de ser la de aplicar razonable o proporcionalmente la deducibilidad en el sector de la investigación, *mutatis mutandi* de los entes duales, o bien considerar la no deducibilidad en ninguna medida del IVA soportado en las adquisiciones de bienes o servicios utilizados en la realización de estas operaciones de investigación básica, como entendió la Administración tributaria.

Además, el TS considera que los proyectos de investigación básica, aunque de forma inmediata y directa no conlleven contraprestación alguna, los bienes y servicios utilizados en los mismos son necesarios para sus operaciones gravadas. Es decir, para nuestro Alto Tribunal "*nada se fuerza, pues, de considerar que la investigación básica es el sustrato de la investigación aplicada, porque los nuevos conocimientos adquiridas en ella se trasladarán a los nuevos proyectos de investigación aplicada*". Es decir, distinguir entre investigación básica y aplicada "*resulta de todo punto artificial*".

Todo ello lleva al TS a establecer como doctrina el derecho a la deducción de las cuotas del IVA soportadas por adquisición de bienes y servicios afectos a la actividad de investigación básica realizada por la universidad, aun cuando estos proyectos de investigación básica de forma inmediata y directa no conlleve contraprestación, pues han de entenderse que son necesarios para sus operaciones gravadas, en tanto supone un beneficio económico que favorece su actividad investigadora general, sujeta y no exenta.

En definitiva, el Alto Tribunal plantea una aplicación del IVA a la universidad basado en el régimen de sectores diferenciados: el de enseñanza, sujeto y exento; y el de investigación (tanto la básica como la aplicada), sujeto y no exento, con derecho a la deducción del 100%. En el caso de adquisición por parte de la universidad de "inputs" comunes a los dos sectores diferenciados de actividad, se deberá aplicar la regla de prorrata.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución nº 6872/2020, de 23 de octubre de 2023.

IVA a la importación — Régimen de diferimiento del ingreso del IVA a la importación — Inicio del periodo ejecutivo — Providencia de apremio — Ingreso del IVA a la importación realizado antes de la notificación de la providencia de apremio — Improcedencia de la providencia de apremio.

La Ley 28/2014 modificó la redacción del artículo 167 de la Ley del IVA permitiendo, a partir del 1 de enero de 2015, que el ingreso de las cuotas devengadas del IVA por la importación de bienes se haga, bajo el cumplimiento de determinados requisitos, mediante su inclusión en la autoliquidación del Impuesto correspondiente al periodo en que reciban el documento en el que conste la liquidación practicada por la Administración. Es lo que se conoce como el régimen de diferimiento de las cuotas del IVA a la importación.

En esta resolución, el TEAC aborda la problemática de cuando el ingreso de este IVA diferido se produce una vez iniciado el periodo ejecutivo, al que se refiere la Disposición Adicional 8ª del Reglamento del IVA, pero antes de la notificación de la providencia de apremio.

Pues bien, la relevancia de esta Resolución es que modifica el criterio que hasta ese momento había mantenido el TEAC sobre este asunto, para acoger la doctrina jurisprudencial del Tribunal Supremo de 13 de julio de 2023 (recurso nº 1274/2023), que se remite a la sentencia de 13 de diciembre de 2022 (recurso nº 3084/2021), referida a un supuesto en el que el IVA a la importación se ingresó una vez iniciado el periodo ejecutivo,

pero antes de la notificación de la providencia de apremio. Es por ello por lo que el TEAC estima la reclamación económico-administrativa, anulando las providencias de apremio impugnadas, que fueron dictadas una vez ingresada la deuda del IVA a la importación.

Así, el TEAC asume el criterio jurisprudencial en el sentido de considerar que en los supuestos en los que se haya ejercitado la opción por el sistema de IVA diferido, no procederá dictar providencia de apremio cuando, habiendo tenido el empresario o profesional la obligación de consignar a ingresar en la autoliquidación del Impuesto el importe correspondiente a las cuotas del IVA a la importación liquidado por la Aduana sin que ello hubiese tenido lugar, hubiese procedido posteriormente a ingresar tales cuotas antes de que se le notificara la indicada providencia de apremio.

Esta misma doctrina se ha incorporado también en las resoluciones del TEAC de 20 de noviembre de 2023 (nº 5766/2020 y 7720/2020), si bien en ambos casos el Tribunal ha considerado procedente el recargo ya que se realizó el ingreso de la deuda tributaria por parte del contribuyente, junto con el propio recargo, después de habérsele notificado la providencia de apremio.

2. Tribunal Económico-Administrativo Central. Resolución nº 1872/2021, de 22 de noviembre de 2023.

Base imponible — Subvenciones — Concepto de subvenciones vinculadas al precio — Sociedad mercantil pública que recibe transferencias presupuestarias de la Administración territorial de la que depende para ejercer las competencias que corresponden a esa Administración.

Una sociedad mercantil, perteneciente íntegramente a la Administración de una Comunidad Autónoma, ejerce las competencias que en materia aeroportuaria le confiere el Estatuto de Autonomía de dicha Comunidad Autónoma.

Su objeto social comprende, entre otras actividades, la dirección, gestión y administración de infraestructuras aeroportuarias, mediante la explotación de sus instalaciones, conservación, así como la prestación de todo tipo de servicios aeroportuarios y la realización de actividades de fomento y comercialización de estas infraestructuras.

Una parte importante de los servicios prestados son financiados mediante transferencias y aportaciones realizadas por la Comunidad Autónoma, así como por otros entes públicos.

Con este marco fáctico, la cuestión fundamental que se suscita es la procedencia o no de incluir en la base imponible del IVA por los servicios prestados las aportaciones y transferencias percibidas por la sociedad mercantil de las Administraciones Públicas anteriormente citadas.

A juicio de la Administración tributaria, las subvenciones (aportaciones y transferencias) percibidas por la sociedad mercantil para llevar a cabo las distintas actuaciones encomendadas deben considerarse contraprestación de los servicios que dicha sociedad presta a esas Administraciones Públicas.

Sin embargo, no es esta la conclusión que alcanza el TEAC en esta resolución, ya que, a su juicio, y de acuerdo con la jurisprudencia comunitaria y de nuestro Alto Tribunal (con especial referencia a la sentencia del TS de 20 de octubre de 2021, recurso 1974/2018), las transferencias presupuestarias percibidas por la sociedad mercantil al objeto de financiar la prestación de los servicios aeroportuarios no son contraprestación de operaciones realizadas en favor de las Administraciones Públicas, al no existir ningún negocio jurídico entre ambas en el cual se haya pactado un precio o contravalor, sino que se trata de meras aportaciones destinadas a financiar la actividad de la sociedad mercantil.

Por otro lado, continúa el TEAC, tampoco cabe considerar que se trate de subvenciones vinculadas directamente al precio de las operaciones sujetas al IVA, al no apreciarse, en concreto, la concurrencia de las características propias de este tipo de subvenciones.

En consecuencia, concluye el Tribunal que no procede la inclusión de dichas transferencias y aportaciones (subvenciones) en la base imponible del Impuesto.

Este mismo criterio interpretativo ha sido ratificado por el TEAC, en otro supuesto similar, en la resolución de 22 de noviembre de 2023, resolución número 3745/2021. Ambas resoluciones, dictadas en la misma fecha, suponen un cambio de criterio frente a resoluciones anteriores dictadas por este mismo Tribunal.

3. Tribunal Económico-Administrativo Central. Resolución nº 1039/2023, de 22 de noviembre de 2023.

Derecho a la devolución del IVA soportado — Procedimiento de devolución de no establecidos — Actuaciones de comprobación en el seno del propio procedimiento de devolución de no establecidos — Derecho de defensa — Trámite de Audiencia.

Una sociedad no establecida en el territorio de aplicación del Impuesto (TIVA-ES) solicitó las devoluciones de unas cuotas del IVA soportado en los años 2020 y 2021 a través del procedimiento de devolución a empresarios o profesionales no establecidos en el territorio de aplicación del impuesto, previsto en los artículos 119 y 119 bis de la Ley del IVA.

La Administración tributaria (Oficina Nacional de Gestión Tributaria), tras realizar sendos requerimientos de información en los que solicitaba la aportación de una serie de documentación y ser ésta aportada por la sociedad, dicta dos resoluciones denegando las solicitudes al considerar que la sociedad operaba en España mediante un establecimiento permanente, por lo que queda excluida del procedimiento de devolución previsto para empresarios o profesionales no establecidos.

Disconforme con las resoluciones, la sociedad interpone reclamaciones económico-administrativas alegando, en lo que aquí interesa, lo siguiente:

a) Entiende, en primer lugar, que el procedimiento utilizado por la Administración tributaria para determinar que la sociedad actúa mediante un establecimiento permanente es improcedente por exceder de las competencias que se le atribuyen en el marco del procedimiento de devolución.

   Alegación que es desestimada por el TEAC al considerar que la comprobación realizada por la Administración tributaria tiene cabida en el seno de dicho procedimiento, de acuerdo con la redacción actual dada al artículo 119, apartado siete, de la LIVA que

indica que la Administración tributaria, en el procedimiento específico derivado de la solicitud de devolución, podrá exigir a los solicitantes la aportación de información adicional y, en su caso, ulterior, así como los justificantes necesarios para poder apreciar el fundamento de las solicitudes de devolución que se presenten y, en particular, para la correcta determinación del importe de la devolución según lo previsto en este artículo y en su desarrollo reglamentario.

b) La sociedad reclamante alega, en segundo lugar, indefensión causada por no habérsele otorgado trámite de audiencia o de alegaciones.

En este punto, entiende el TEAC que, aunque no esté específicamente previsto un trámite de audiencia en la normativa comunitaria de aplicación al procedimiento derivado de la solicitud de devolución de cuotas de IVA a no establecidos en el Estado miembro de devolución, ni, por ende, en el artículo 119 o 119 bis de la Ley del IVA, debe tenerse en cuenta que el derecho de defensa es un principio general del Derecho comunitario, tal y como ha sostenido en numerosas ocasiones por el TJUE.

Es por ello por lo que concluye que el trámite de audiencia, en tanto que materialización de un principio fundamental del Derecho comunitario, cual es, el derecho de defensa en todo procedimiento debe garantizarse aun cuando no se haya previsto expresamente por la normativa reguladora del procedimiento de que se trate.

De esta forma, el TEAC anula los acuerdos de denegación dictados por la Administración tributaria para retrotraer las actuaciones al tiempo en que se produjo el defecto formal.

4. Dirección General de Tributos. Contestación nº V2942-23, de 8 de noviembre de 2023.

Base imponible — Artículo 78.Dos.4º LIVA — Tributos y gravámenes que recaigan sobre las mismas operaciones gravadas — Impuesto sobre ***sobre el depósito de residuos en vertederos, la incineración y la coincineración de residuos.***

En esta consulta, la DGT se ha pronunciado sobre si el importe del Impuesto sobre el depósito de residuos en vertederos, la incineración y la coincineración de residuos debería incluirse en la base imponible del IVA por los servicios prestados por un empresario, consistentes **en la transferencia, transporte y tratamiento de los residuos sólidos urbanos de diferentes municipios.**

Recordemos que la Ley 7/2022, de 8 de abril, de residuos y suelos contaminados para una economía circular configura en su artículo 84 el Impuesto sobre el depósito de residuos en vertederos, la incineración y la coincineración de residuos, como un tributo de carácter indirecto que recae sobre la entrega de residuos en vertederos, instalaciones de incineración o de coincineración para su eliminación o valorización energética.

La finalidad de este Impuesto es el fomento de la prevención, la preparación para la reutilización y el reciclado de los residuos, con la fracción orgánica como fracción preferente y la educación ambiental, al objeto de desincentivar el depósito de residuos en vertedero, la incineración y su coincineración.

Argumenta la DGT que, de acuerdo con la doctrina jurisprudencial del TJUE, para incluir un tributo en el valor del bien o servicio prestado, la cuestión decisiva es que el tributo de que se trate en cada caso recaiga sobre la misma operación a cuya realización se vincula el devengo del Impuesto. En caso contrario, se podría concluir la no inclusión del tributo en la base imponible.

A estos efectos, y de acuerdo con la regulación contenida en la indicada Ley 7/2022, de 8 de abril, la DGT considera que existiría un vínculo directo entre los servicios de depósito de residuos prestados y los servicios gravados por el Impuesto sobre el depósito de residuos en vertederos, la incineración y la coincineración de residuos.

Es por ello por lo que concluye que el Impuesto sobre el depósito de residuos en vertederos, la incineración y la coincineración de residuos formará parte de la base imponible del Impuesto sobre el Valor Añadido sin que, a estos efectos, se produzca una doble imposición.

5. Dirección General de Tributos. Contestación nº V3048-23, de 23 de noviembre de 2023.

Hecho imponible — Concesión de una opción de compra sobre un terreno — Exenciones— Arrendamiento de un terreno para instalar un parque solar.

Una entidad mercantil, dedicada a la gestión y realización de proyectos de energías renovables, arrienda terrenos a diversos propietarios o adquiere opciones de compra sobre los mismos, por las que va satisfaciendo importes periódicos en concepto de prima de opción hasta que, en su caso, la ejecute.

Se consulta el tratamiento a efectos del IVA tanto de la opción de la compra como del arrendamiento de los terrenos.

En relación con las opciones de compra, comienza la DGT recordando que los concedentes de opciones de compra sobre terrenos (de manera independiente al margen de los futuros arrendamientos) sólo tendrán la condición de empresarios o profesionales a efectos del Impuesto si, de conformidad con el artículo 5.Uno.a) de la LIVA, tuvieran la intención de realizar una actividad empresarial o profesional que implique la ordenación por cuenta propia de factores de producción materiales y humanos o de uno de ellos, con la finalidad de intervenir en la producción o distribución de bienes o servicios, en cuyo caso estarán sujetas al Impuesto sobre el Valor Añadido las entregas de bienes y prestaciones de servicios que en el ejercicio de su actividad empresarial o profesional realicen en el territorio de aplicación del Impuesto.

En caso contrario, las operaciones realizadas por los mismos no se encontrarían sujetas al IVA, sin perjuicio de la tributación que pudiera corresponderles por el Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados.

Partiendo de la hipótesis de que los concedentes tienen la condición de empresarios o profesionales a efectos del Impuesto, la concesión por un empresario o profesional de una opción de compra sobre un bien inmueble afecto a su actividad empresarial o profesional es una operación sujeta al Impuesto sobre el Valor Añadido que, de acuerdo con lo preceptuado por el artículo 11.Uno de la LIVA, se considerará prestación de servicios, por cuanto la concesión de dicha opción no supone la transmisión del poder de disposición

sobre el inmueble objeto de la opción y no se trata de una entrega de bienes, sino de la constitución de un mero derecho a favor del beneficiario de la opción, que podrá o no ejercitarla llegado el momento.

No obstante lo anterior, podría conceptuarse como entrega de bienes la concesión de una opción de compra si el beneficiario se compromete formalmente al ejercicio de la misma, en cuyo caso, más que ante una verdadera opción de compra, se está ante un contrato de promesa bilateral de compraventa.

De tener la condición de prestación de servicios, se encontraría sujeta al IVA y quedaría gravada al tipo impositivo general del 21 por ciento sin que resulte aplicable ninguno de los supuestos de exención previstos en el artículo 20 de la LIVA.

En relación con el devengo de esta prestación de servicios, la DGT reitera su doctrina administrativa respecto a que la concesión de una opción de compra sobre un bien inmueble no puede calificarse como una operación de tracto sucesivo o continuado y su devengo se producirá de conformidad con el número 2º del artículo 75.Uno de la LIVA cuando se preste el servicio, con independencia de que el derecho a ejercitar la opción pueda estar vigente o pueda realizarse durante toda la vigencia del arrendamiento. Por lo tanto, el Impuesto relativo a la concesión de la opción de compra se devengará cuando se transfiera o conceda el derecho de opción a su adquirente, con independencia de que el mismo se abone en pagos periódicos posteriores a la realización del hecho imponible.

En segundo lugar, respecto del arrendamiento de los terrenos, la DGT considera que. si tal y como parece deducirse, en los terrenos objeto de arrendamiento la entidad mercantil va a instalar un parque solar, debe considerarse que resulta de aplicación la excepción a la exención prevista en la letra b'), del artículo 20.Uno.23º de la LIVA, que dispone que la exención no comprenderá "los arrendamientos de terrenos para depósito o almacenaje de bienes, mercancías o productos, o para instalar en ellos elementos de una actividad empresarial". Ello sería así dado que las placas solares constituyen, en principio, elementos de una actividad empresarial.

En consecuencia, tales arrendamientos quedarán sujetos y no exentos del IVA y quedarán gravados al tipo impositivo general del 21 por ciento.

6. Dirección General de Tributos. Contestación nº V3049-23, de 23 de noviembre de 2023.

Devengo — Entrega de vehículos de limpieza urbana con impartición de un curso de formación para su utilización.

Una entidad mercantil comercializa vehículos de limpieza urbana y tiene como clientes a diversos ayuntamientos que exigen que el vehículo se encuentre matriculado antes de entregárselo. Además, la entidad también tiene que dar un curso de formación a los operarios del cliente tras la entrega del vehículo y, tras esto, los clientes firman el "acta de recepción" de los vehículos.

Se consulta acerca del devengo del Impuesto por estas operaciones.

Comienza la DGT por analizar si las operaciones efectuadas por la consultante, esto es, la entrega de vehículos y la prestación de los servicios de formación que acompañan a dicha entrega constituyen dos o más operaciones independientes o bien una única operación efectuada por la consultante a favor de sus clientes.

A juicio de la DGT, se dan las circunstancias necesarias para determinar que el servicio de formación específico para la utilización de los vehículos de limpieza no constituye para el destinatario un fin en sí mismo y, por consiguiente, seguirá el mismo régimen de tributación que la operación de la que es accesoria, esto es, la entrega de los vehículos.

Una vez despejada esta cuestión, y respecto del análisis propiamente dicho del devengo de la operación (calificada como una entrega de bienes), considera ese Centro directivo que en el supuesto objeto de consulta en el que, junto con entrega material de los vehículos de limpieza, se ha acordado por las partes la necesidad de que la entidad consultante realice unos cursos de formación a los destinatarios de las mismas para que puedan comenzar a utilizarlos, cabría concluir que la puesta a disposición de los bienes no se produce hasta que dichos cursos de formación se realicen.

En consecuencia, el devengo de la operación se producirá en el momento en que los bienes se ponen a disposición del adquirente en los términos indicados anteriormente.

IV. Country Summaries

Featured articles

Belgium

Draft law mandating B2B e-invoicing as from 1 January 2026 submitted to parliament

On 5 January 2024, the Belgian government submitted a long-awaited draft law (available in Dutch and French) to parliament, which would amend the VAT Code to introduce an electronic invoicing ("e-invoicing") obligation. If enacted, the law would establish a broad requirement for the exchange of structured electronic invoices ("e-invoices") between taxpayers with effect from 1 January 2026.

For this legislative proposal to be enacted, the government must apply to the European Commission for a derogation from the EU VAT directive and successfully navigate the draft legislation through the parliamentary process.

Mandatory business-to-business (B2B) e-invoicing

After several pre-draft bills, Belgium has officially published a draft law mandating the use of e-invoicing for certain transactions (see "In-scope transactions," below). At this stage, the draft law only contains an e-invoicing obligation, however it is expected that a reporting obligation ("e-reporting") will also be introduced at a later stage.

Scope and exclusions

Overview

The e-invoicing mandate would apply to domestic transactions between the majority of taxpayers registered for VAT in Belgium.

In-scope entities

Belgian-established VAT registered entities, including VAT groups, small and medium enterprises (SMEs), and agricultural enterprises would need to be able to issue and receive invoices in the defined structured electronic format. According to the draft, foreign entities registered for VAT in Belgium but with no Belgian establishment would also need to be able to receive structured e-invoices where they are required to communicate their Belgian VAT number to a Belgian-established supplier.

In-scope transactions

The B2B e-invoicing mandate would apply to domestic transactions, i.e., transactions that are located in Belgium for VAT purposes, except for operations performed by foreign suppliers for which the recipient is liable to pay the Belgian VAT (as these transactions are not subject to the Belgian invoicing rules).

Transactions that are subject to a VAT exemption under article 44 of the Belgian VAT code (i.e., an exemption without the right to deduct) would not be within scope of the e-invoicing obligation, nor would cross-border transactions initiated by Belgian taxpayers (unless the transaction is an export of goods where the buyer must provide its Belgian VAT number to the supplier).

E-invoicing framework

The electronic exchange framework preferred by the Belgian VAT authorities is Pan-European Public Procurement Online (PEPPOL). This framework, already used for business-to-government (B2G) e-invoicing in Belgium, would become the default standard that all taxpayers would be required to adopt. As such, the standard e-invoice format would be the PEPPOL-BIS format. Entities would be able to mutually agree to use other frameworks or standards, as long as these comply with the relevant European standard (EN 16-931).

To ease the transition, businesses that do not yet have the technical capability to receive structured e-invoices could temporarily rely on the Belgian public platform HERMES. This platform would be a backstop system enabling e-invoices to be sent even if the receiver was not yet registered with PEPPOL.

Supporting tax measures

In order to address businesses' concerns with respect to the investment required to comply with the proposed new e-invoicing obligations, some supporting fiscal measures are foreseen.

An increased cost deduction of 120% will be introduced for SMEs for costs incurred in implementing invoicing packages that enable structured e-invoicing, as well as for related consultancy costs. This measure would apply from the 2024 through 2027 financial years.

Additionally, companies performing digital investments with respect to invoicing can benefit from the increased investment deduction of 20%, that would be extended to cover digital investments with respect to invoicing, customer relationship management (CRM), e-commerce, and cyber security as from 1 January 2025.

What does it mean for businesses?

Businesses should start preparing for this new mandate as soon as possible and leverage this opportunity to reassess their digital strategy for the future, while exploring solutions that are tailored to their company's unique requirements. In Deloitte Belgium's experience, the introduction of e-invoicing may serve as a catalyst for the transformation and automation of a business' tax and finance processes.

Nigeria

Federal Inland Revenue Service issues a public notice to non-resident suppliers of electronically supplied low-value goods

The Federal Inland Revenue Service (FIRS) has issued a public notice[1] (hereinafter "the Notice") postponing the implementation of the collection and remittance of Value Added Tax (VAT) by non-resident suppliers (NRS) of electronically supplied goods (ESG). The Notice, which was made public on 15 January 2024, is a rider to the "Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers" (hereinafter "the Guidelines")

It will be recalled that on 11 October 2021, FIRS released the Guidelines in line with section 10 of the Value Added Tax Act as amended (VATA). The Guidelines appointed all NRS of ESG and/or services as VAT collection agents[2] effective 1 January 2022 (for the supply of services and intangibles) and 1 January 2024 (for the supply of goods).

The Notice has now been issued by FIRS to postpone the previously communicated effective date of 1 January 2024 for NRS of ESG to comply with the Guidelines. This postponement is to enable FIRS conclude its development of a seamless process for the effective and efficient collection and remittance of VAT. We have provided below our comments on the Notice.

Commentary

The Notice, whilst coming late, has provided NRS of ESG with some needed clarity around their Nigerian VAT compliance obligations. However, there are still some areas that require clarification:

1. The Notice specifically mentions "low-value" goods whereas there is no such wording in the Guidelines. We expect the FIRS to provide some clarity on what constitutes "low-value" goods in subsequent publications/communications on this subject.

2. The Notice does not communicate a new effective date. We believe that this has been deliberately done to enable FIRS properly develop a seamless and working compliance process. We, therefore, expect that the process will adequately cater to the needs of all the stakeholders and ensure that NRS are not overly burdened in their bid to comply with Nigerian tax laws

Conclusion

It is commendable that FIRS is taking its time to ensure that the modalities for collecting VAT from NRS of ESG are finalized before going ahead with implementation. It is hoped that going forward, FIRS will:

1. Provide early communication of the new commencement date. This will give NRS of ESG time to change their systems to comply with the new VAT compliance process.

2. Ultimately arrive at a seamless compliance process devoid of bottlenecks that could occur at the time the goods are imported into the country. The Nigeria Customs Service must be fully aware of the process change regarding VAT collection on a category of imported goods.

---

[1] The public notice is titled "Postponement of the Implementation of the Guidelines on the Value Added Tax Simplified Compliance Regime on the Supply of Low-Value Goods through Digital Means by Non-Resident Suppliers"

[2] The implementation of this appointment would mean that the VAT collection responsibility on ESG would move from the Nigeria Customs Service to the NRS.

NRS of ESG are advised to take advantage of this postponement to gain a better understanding of the implications of the looming change and make the necessary plans needed for a smooth transition to the new VAT compliance approach.

We will continue to monitor developments and provide necessary updates and insights. For deeper insights, as may be relevant to your business, please reach out to us on NGTaxPartners@deloitte.com.ng

Poland

Mandatory implementation of KSeF postponed

On 19 January 2024, the Polish minister of finance announced in a press conference that the mandatory introduction of the National e-Invoicing System (KSeF) would be postponed. The minister did not specify a new implementation date for the regulations, indicating instead that it would depend on the results of an audit of the KSeF system which will be commissioned by the Ministry of Finance. Therefore, it is highly likely that the new KSeF implementation date will not be earlier than January 2025.

It was clear from the announcement that analysis carried out at this stage has highlighted certain technical concerns with the KSeF platform and its ability to serve taxpayers effectively, which will be examined in further detail prior to the system's implementation.

Importantly, the minister stressed that he is determined to introduce mandatory electronic invoicing and the KSeF. At the same time, the Ministry of Finance's goal is to introduce the KSeF in a way that guarantees business continuity for taxpayers. The minister also provided reassurance that public consultations would be increased so that the KSeF can be introduced with the full cooperation of the business community.

It is important to highlight that no legal regulations in this area have yet been published. It is also unclear whether this postponement, aside from delaying the date of enforcement, will lead to any practical substantive changes to the KSeF.

Deloitte Poland will review and share any additional information provided by the Ministry of Finance.

United Kingdom

Government announces introduction of carbon border adjustment mechanism by 2027

In March 2023, the UK government launched a consultation on potential policy measures to mitigate carbon leakage risk to support decarbonization in the UK. On 18 December 2023, the government published its response and announced its intention to implement a "carbon border adjustment mechanism" (CBAM) by 2027.

This new UK levy will target imports of carbon-intensive products such as aluminium, cement, ceramics, fertilizer, glass, hydrogen, iron, and steel. The government has published a factsheet on the key elements of the UK CBAM, and its design and delivery will be subject to further consultation in 2024.

The government also announced that the UK Emissions Trading Scheme (ETS) will be extended to run through at least 2050 and has launched further consultations on its future operation.

Other news

Australia

Commissioner appeals second AAT decision in ongoing GST missing trader gold dispute

On 30 November 2023, the Australian Administrative Appeals Tribunal ("the tribunal") published its decision in *HNMF and Commissioner of Taxation* ("HNMF").

The tribunal found in favor of the taxpayer, setting aside the Commissioner's application of Division 165 of the Goods and Services Tax Act (i.e., the GST general anti-avoidance rules) to deny the taxpayer's entitlement to input tax credits on its acquisitions of taxable gold (i.e., gold not in "investment form").

The Commissioner has since commenced an appeal against the tribunal's decision in the Full Court of the Federal Court.

Context of the tribunal's decision

The HNMF decision is a continuation of the litigation in which the taxpayer was previously identified as ACN 154 520 199 Pty Ltd.

The tribunal's decision in HNMF arises from the decision of the Full Court of the Federal Court in *ACN 154 520 199 Pty Ltd (in liquidation) v Commissioner of Taxation* [2020] FCAFC 190 (ACN FFC), in which the court allowed an appeal by the taxpayer from the initial tribunal decision in the dispute – *ACN 154 520 199 Pty Ltd (in liq) and Commissioner of Taxation* [2019] AATA 5981 (ACN AAT)—and ordered the matter to be reheard by the tribunal, differently constituted. The HNMF decision is the result of that rehearing.

The HNMF decision is the latest installment in a series of disputes concerning the Commissioner's application of Division 165 to curb "missing trader" or "carousel" fraud in the precious metals space, which broadly involves fraudulent behavior where a supplier engages in activity with an intention to deliberately not remit the GST on taxable supplies it makes to an acquiring entity. The primary consequence of this activity is that it leaves the Commonwealth "out of pocket" where the acquiring entity, who may or may not be a collaborator in or have knowledge of the scheme, is paid an input tax credit on the creditable acquisition that it has made, but no corresponding GST liability is paid on account of the supplier failing to remit the GST.

Relevant facts and issue in dispute

The dispute surrounded an arrangement in which the taxpayer acquired taxable gold from fraudulent suppliers, who charged and collected GST from the taxpayer when supplying the gold, but deliberately failed to pay their GST liabilities to the Commissioner. The taxpayer then refined the gold and subsequently supplied it GST-free to precious metals dealers.

The sole issue before the reconstituted tribunal was whether Division 165 operates to deny the taxpayer's input tax credit entitlement on its acquisition of taxable gold for the relevant tax periods. The input tax credit amounts in dispute were not insignificant, amounting to almost AUD 73 million over a three-year period between 2012 and 2014.

The tribunal's task was to determine whether the taxpayer had discharged the burden of proof that, having regard to the various matters described in section 165-15, it is not reasonable to conclude that:

- An entity that entered into or carried out a scheme or part of the scheme did so with the sole or dominant purpose of the taxpayer getting a GST benefit, being the input tax credit entitlement, from the scheme; or
- The principal effect of the scheme, or of part of the scheme, was that the taxpayer got a GST benefit, being the input tax credit entitlement, from the scheme directly or indirectly.

The parties' respective submissions in relation to these matters are summarized below.

Taxpayer's submissions

The taxpayer ultimately submitted that the steps it undertook were wholly consistent with its day-to-day operations as a refiner and its input tax credit entitlement was a normal and intended (by the GST law) incident of such a business. On this basis, the taxpayer contended that the dominant purpose of the fraudulent suppliers was to obtain and dishonestly retain for themselves the benefit of the GST payable on prices paid to them by the taxpayer through collecting the GST-informed prices, but not paying their GST liabilities to the Commissioner.

The taxpayer also contended that creating a taxable supply and the enhanced price paid for it and failing to remit GST to the Commissioner was the principal effect of the scheme, and that " … availability of an input tax credit was nothing more than an incidental consequence and far from the "principal effect" of the scheme."

Commissioner's submissions

Conversely, the Commissioner submitted that the taxpayer would not have paid a GST-informed price for its acquisitions of the gold if it were not for being able to obtain the corresponding input tax credits. Unless that occurred, the transactions would make no commercial sense for the fraudulent suppliers; that is, they would have been operating at a loss. Therefore, it would be concluded that the taxpayer obtaining the input tax credit was both the dominant purpose of the fraudulent suppliers and the principal effect of the scheme or a part of the scheme.

The Commissioner also contended that the taxpayer's acquisitions occurred as part of coordinated transactions in which gold bullion was acquired, deliberately and uncommercially adulterated, destroying value, and on-sold to the taxpayer for the production and sale of bullion. The Commissioner went on to note that the tribunal should conclude that the taxpayer knew of, or at the very least chose not to consider, the activities of the fraudulent suppliers, including the adulteration of the bullion, before its on-supply to the taxpayer.

Tribunal's application of the statutory scheme

Having regard to the matters under section 165-15, the tribunal ultimately found that it was not reasonable to conclude that any entity entered into or carried out the scheme or any part of the scheme with the sole or dominant purpose of enabling the taxpayer to obtain the input tax credits in dispute, or that the obtaining of those input tax credits was the principal effect of the scheme.

In doing so, and prior to working through the section 165-15 matters, the tribunal highlighted the critical question of whether the purposes of a supplier creating a taxable supply, and therefore creating (or creating and not paying) a GST liability, and the recipient obtaining a corresponding input tax credit are effectively "different sides of the one coin," such that they could be regarded as a single composite purpose. This was raised having regard to observations made by the Full Federal Court in the ACN FFC decision and a similar (and ongoing) dispute in *Commissioner of Taxation v Complete Success Solutions Pty Ltd ATF Complete Success Solutions Trust* (Complete Success Solutions), which posited that the purpose of obtaining (and not remitting) GST and the purpose of obtaining input tax credits may be one purpose if the facts showed them to be inextricably linked. In working through the matters under section 165-15, the tribunal appears to have concluded that the purposes of the fraudulent suppliers and the taxpayer were separate.

Additional observations by the tribunal

The tribunal also made other observations to provide further context to its decision:

A single composite purpose or non-dominant incidental purposes facilitating a dominant purpose?

The tribunal observed that what was essential for the scheme to operate was the creation of a product that the marketplace traded at a GST-informed price, and the fraudulent suppliers receiving that price and not paying the GST to the Commissioner. Without that feature, there would not have been ongoing sales by the suppliers, as they would have traded at a loss. The tribunal then observed that the availability of the input tax credits was an ordinary incident of a purchase of a taxable commodity on commercial terms by a GST-registered entity in the course of its enterprise.

Having regard to these observations, the tribunal considered that non-payment of GST by the fraudulent suppliers stands aside from the creation of the GST liability and the input tax credit entitlement. The tribunal found this would be the case even if the transactions were conducted in a coordinated way with the knowledge of the taxpayer (which the tribunal did not find—see also the comments below).

Collection failures

While not part of the reasoning for the tribunal's decision, the tribunal highlighted that the Commissioner's application of Division 165 to deny the taxpayer's input tax credit entitlement would not have been applied if the Commissioner had been able to recover the unpaid GST from the fraudulent suppliers. There is nothing in the text of Division 165, or extraneous materials, or in the jurisprudence relating to Division 165 (nor in the income tax general anti-avoidance rules), to indicate that such rules were intended to be invoked as an alternative to recovery of liabilities owed by other entities.

The tribunal noted that careful and close scrutiny of the statutory considerations relevant to Division 165 is required. This is especially so in a case where the result of applying Division 165 strikes the tribunal as surprising, in terms of both:

- Visiting extraordinarily severe consequences on the taxpayer (who did not participate in the fraud), rather than the fraudulent suppliers (who were the perpetrators that benefited directly from their fraud); and
- Being out of all proportion to any benefit that, on any view, could have been enjoyed by the taxpayer from participation in the scheme.

Knowledge or looking the other way?

Much of the hearing centered on whether the taxpayer knew about or chose to ignore the activities of the fraudulent suppliers, or if the taxpayer participated in coordination of the transactions.

Despite this, the tribunal noted that its conclusions on dominant purpose would not change even if the taxpayer was, as the Commissioner asserted, an informed participant in coordinated arrangements. That is, even if the taxpayer had the relevant knowledge or was an informed participant in the scheme, the requisite conclusion would still be that the dominant purpose of the fraudulent suppliers was to receive but not pay amounts referable to their GST liabilities. The taxable supplies and connected input tax credits were merely steps in an ultimate plan that would remain the same. The tribunal also noted that informed coordination could also not change the principal effect of the scheme (or part thereof).

Deloitte Australia's observations

The tribunal's decision in HNMF adds to the growing pile of GST missing trader fraud cases in recent years and appears to build on the observations and principles expressed by the tribunal and Federal Court in those decisions. However, with the Commissioner appealing the HNMF decision, and a separate decision currently pending following the Full Federal Court's decision in Complete Success Solutions to remit a matter similar to HNMF back to the tribunal, uncertainty remains as to the weight that should be given to the tribunal's decision in HNMF.

With these uncertainties, we can only speculate as to how current and future decisions concerning Division 165 involving missing trader fraud will inform the broader question as to the scope and role of Division 165 in the GST landscape. This is particularly as the arrangements underpinned by precious metals missing trader frauds are quite particular to the recent disputes in question, as is the Commissioner seeking to protect GST revenue by applying Division 165 to a taxpayer who is not the primary perpetrator in a scheme undertaken by a fraudulent supplier. Indeed, the reasoning in the HNMF decision is the first instance that a tribunal or court has called into question the appropriateness of the Commissioner's use of the GST general anti-avoidance provisions for this purpose.

Amid this ongoing conjecture, additional guidance from the judiciary is likely to be required before sufficient clarity on the application of the GST general anti-avoidance rules is available.

Brazil

Provisional measure revokes temporary 0% tax rate for tourism industry

On 28 December 2023, the Brazilian government issued a provisional measure (PM 1,202/2023) revoking the fourth paragraph of Law No. 14,148/2021, which introduced the Emergency Program for the Recovery of the Events Sector ("PERSE") and established a temporary 0% rate for corporate income taxes (IRPJ and CSLL) and federal gross revenue taxes (PIS and COFINS) for taxpayers that were negatively affected by the COVID-19 pandemic, such as those taxpayers involved in the tourism and events sector (e.g., cinemas, concerts, hotels, sporting and cultural events, travel agencies). The reduced rate was to apply from March 2022 through February 2027, i.e., a sixty-month period.

Based on PM 1,202/2023, taxpayers that were eligible for the reduced rate will become fully taxable for CSLL, PIS, and COFINS as from 1 April 2024 and for IRPJ as from 1 January 2025.

Although provisional measures are effective as soon as they are published, the House of Representatives and Senate still must vote on the provisional measure within four months from the date the measure is published. A provisional measure will remain in force for two months but will expire automatically if it is not extended for an additional two-month period or if the House of Representatives and Senate do not vote on the provisional measure within the four-month period.

Brazil

New legislation subjects investment subsidies to taxation

On 29 December 2023, the Brazilian government published Law No. 14,789/2023, which provides that investment subsidies, such as state VAT (ICMS) incentives, are subject to corporate income taxes (IRPJ/CSLL) and federal gross revenue taxes (PIS/COFINS) as from 1 January 2024. A new investment subsidy tax credit also is available. The new law is a result of the conversion of Provisional Measure No. 1,185/2023 published on 31 August 2023, although some provisions in the new law differ from those contained in the provisional measure. Furthermore, the Brazilian Federal Revenue published Normative Instruction No. 2,170/2023 on 2 January 2024, which sets forth regulations that reinforce the requirements established by Law No. 14,789/2023 and provides procedures on how to apply for the investment subsidy tax credit.

There has been a longstanding debate over the tax treatment of tax incentives through exemptions or reductions to encourage business investment/expansion (i.e., investment subsidies) and whether investment subsidies should be subject to tax for corporate income and federal gross revenue tax purposes. Prior to the new law, investment subsidies were excluded from such taxation.

Based on legislation and interpretations by the tax authorities, certain conditions have been imposed to allow the exclusion of investment subsidies from taxation, including the recognition of a specific net equity reserve and the requirement that amounts from investment subsidies must be used to implement or expand economic businesses in Brazil. There have been several legal disputes and court decisions as to whether such conditions should be effectively met.

Investment subsidy taxation and new tax credit

Under the new law, investment subsidies are subject to corporate income taxation at the combined statutory tax rate of 34%, which must be reported and taxed in the annual corporate income tax return (rather than monthly reporting and pre-payments). In addition, investment subsidies are subject to federal gross revenue taxes, which have a combined statutory tax rate of 9.25% for taxpayers under the non-cumulative regime.

On the other hand, a new investment subsidy tax credit is available that is calculated by applying the IRPJ rate (currently 25%) on the amount of investment subsidies that are directly related to the implementation or expansion of economic businesses and must not exceed the corresponding expenses related to such implementation or expansion (e.g., depreciation/amortization of capital goods deployed in the business). This is to ensure that the full amount of the subsidy is spent on capital goods used in the business.

The tax credit must be claimed on the corporate income tax return in the tax period that the investment subsidies are recognized as revenue for accounting purposes, and the tax credit may be offset against federal tax debts or taken as a refund in cash.

In order to benefit from the tax credit claimed on the corporate income tax return, a taxpayer must: (i) benefit from the investment subsidy granted by the governmental entity and (ii) request an authorization *(ato concessivo)* from the tax authorities prior to the implementation or expansion of the economic business (the authorization must provide for the conditions and investment requirements related to such implementation or expansion in the region). The tax authorities must review the request within 30 days; if they do not formally respond, then the taxpayer will be permitted to use their tax credit immediately to offset federal tax debts or will receive a refund in cash (which is automatically refunded in cash in the 24th month following the taxpayer's request).

Pursuant to the new regulations issued under Normative Instruction No. 2,170/2023, taxpayers must apply for the investment subsidy tax credit electronically through the Virtual Service Center portal (e-CAC) and attach: (i) a copy of the authorization (*ato concessivo*) issued by the tax authorities, (ii) supporting documentation that proves the taxpayer benefits from the investment subsidy granted by the governmental entity as determined by Law No. 14,789/2023, and (iii) documentation showing that all federal taxes and contributions are in good standing (notably, this last requirement is not contained in Law No. 14,789/2023). Moreover, before making an application, the taxpayer must enroll in the Electronic Tax Domicile System (*Domicilio Tributário Eletrônico*) to acknowledge electronically all communications related to the process. The new regulations also clarify that the tax credit will be denied if an application does not meet the requirements provided in Normative Instruction No. 2,170/2023 or cancelled if the taxpayer no longer complies with such requirements after the authorization is granted.

Federal tax debts

The new law also allows certain payment options for taxpayers that currently owe federal tax debts related to investment subsidies based on article 30 of Law No. 12,973/2014 (revoked by Law No. 14,789/2023). If payment of the total tax debt is made in up to 12 monthly and successive installments, then debt will be reduced to 80% of the total tax debt. If payment is made of at least 5% of the total tax debt (without reductions), then the remaining balance will be reduced by 50% if such balance is paid in 60 monthly and successive installments, or by 35% if such balance is paid in 84 monthly and successive installments. A taxpayer also may make voluntarily tax payments (*autorregularização*); however, making such payments is an irrevocable acknowledgement of the tax debt.

Comments

Law No. 14,789/2023 establishes a more restrictive regime and increased overall taxation when compared with the previous dispositions under Law No. 12,973/2014. Moreover, it imposes an especially bureaucratic process for taxpayers to claim the investment subsidy tax credit, while enabling increased scrutiny by the tax authorities upon the utilization of the tax credit.

Cambodia

Which export-import and transit goods must pass through scanner inspection system?

The Cambodia General Department of Taxation issued Prakas No. 924 on 12 December 2023, effective as from 1 January 2024, to revise the principles and procedures for identifying export-import goods and transit goods in containers that must pass through the scanner inspection system. The guidance provides as follow:

- The determination of export-import and transit goods that must pass through the scanner inspection system should be based on the principle of risk management or at the request of the goods' owner.
- Export-import goods of the best business group members or authorized economic operators and special economic zone investors are exempted from scanner inspections but may be required to go through the scanner inspection system on a selective basis or based on the level of risk as determined by the Customs Administration.
- Imported goods that use the customs regime to complete customs clearance procedures at customs offices and the Dry Port Authority must use the scanning system at the dry port as determined by the Customs Administration.
- For exported goods stored in containers, the following rules apply:
  - Garment and textile investor goods and other investment project goods that have already been inspected before being loaded onto the container by customs and excise officials are exempted from scanner inspection at the request of the goods' owner or based on the level of risk as determined by the Customs Administration.
  - Other export goods to be scanned may be inspected at the customs office and the Dry Port Authority or at the export port at the request of the goods' owner or at the discretion of the Customs Administration.

Export-import and transit goods in containers that have been scanned are subject to scanning fees in accordance with applicable regulations.

China

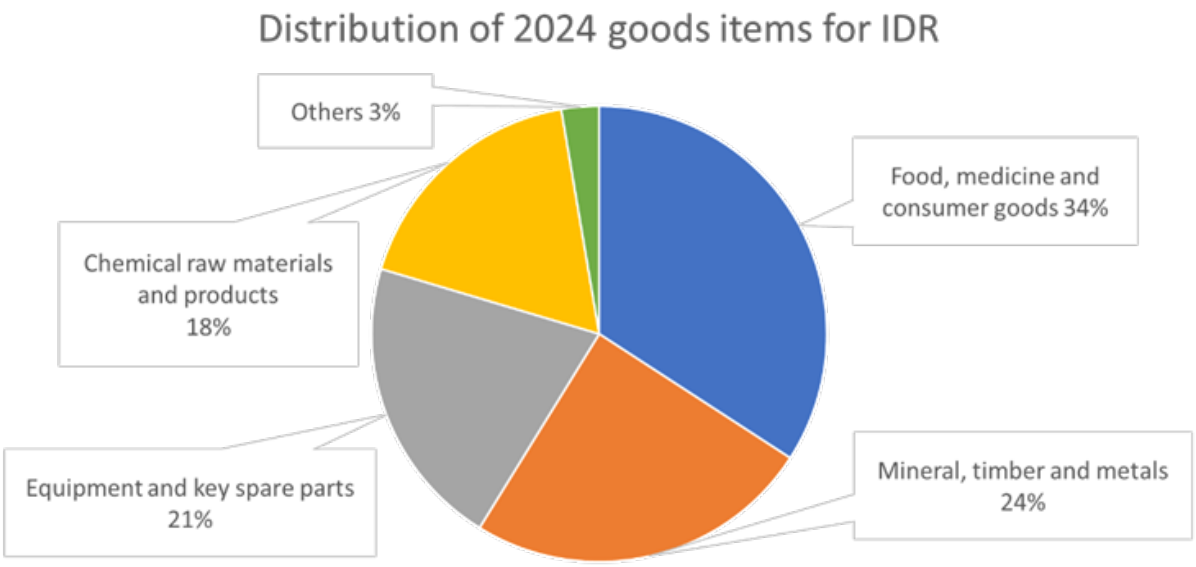
2024 Tariff Adjustment Plan issued

On 20 December 2023, the Tariff Commission of China's State Council issued the Tariff Adjustment Plan for 2024 (2024 Tariff Adjustment Plan), which adjusted the import and export tariffs and tariff codes of certain goods beginning 1 January 2024. The annual tariff plan aims to fully implement national policies and to perform the tariff function of coordinating domestic and international resources and markets.

Import interim duty rates on 1,010 items

One of the prominent points of the 2024 Tariff Adjustment Plan is the application of interim import duty rates (IDRs) on certain goods that are lower than the Most Favored Nation (MFN) duty rates. Pursuant to the below graph, over 95% of goods subject to IDRs fall within the food, medicine and consumer goods, chemical raw materials and products, equipment and key spare parts, and mineral products industries[1]

[1] Distribution data is sourced from IDR list of 2024 Tariff Adjustment Plan.



Compared with 2023, 26 additional items are subject to import IDRs while 36 are no longer subject to import IDRs under the 2024 Tariff Adjustment Plan. Further, IDRs for four items are reduced to 0%, and the rates on two items are increased, as follows:

- To reduce the cost of medication, import IDRs are added for certain anti-cancer drug raw materials, injections, and other similar products. Taking the tariff code 2844.4390 (Yttrium [90] Microsphere Injection) as an example, the import IDR in 2024 is 0%, which is less than the MFN duty rate of 5%.
- To reduce the cost of new energy vehicles industries, import IDRs are added for certain raw materials, including lithium carbonate, lithium chloride, and cobalt carbonate. Taking the tariff code 2836.9100 (lithium carbonate) as an example, the import IDR in 2024 is 0%, which is less than the MFN duty rate of 5%.
- To conform with changing domestic supply and demand, import IDRs are removed for goods such as ethylene, propylene, LCD glass substrates below the sixth generation, some coal products, artificial graphite, aircraft frequency flashing lights, and warning components. Taking the artificial graphite with tariff code 3801.1000 as an example, import IDRs for 2023 is 3% and taxed at the MFN duty rate of 6.5% in 2024, as the IDR for it is no longer applicable in 2024.

Preferential duty rates on imported goods originating from 30 jurisdictions

Imported goods originating from 30 jurisdictions are subject to preferential duty rates in 2024, under either 20 free trade agreements (FTAs) or preferential trade arrangements. Among them are:

- Further reduced preferential tariff rates could be applied in 2024 under the FTAs/Regional Comprehensive Economic Partnership between China and related countries, including Australia, Cambodia, Costa Rica, Iceland, Mauritius, New Zealand, Peru, Pakistan, South Korea, and Switzerland.
- FTAs between China and countries including ASEAN, Chile, Singapore, Georgia, Early Harvest in the FTA with Nicaragua, the Closer Economic Partnership Arrangement between the Mainland and Hong Kong SAR, as well as Macau SAR, have completed tax reductions and continue to implement preferential duty rates.

- The Asia Pacific Trade Agreement will continue its implementation.
- The Economic Cooperation Framework Agreement (ECFA) has completed tax reductions and will continue to implement preferential duty rates, except for goods covered by the Announcement of the Tariff Commission of China's State Council on Suspending Tariff Concessions for Some Products under the ECFA (Shuiweihui [2023] No. 9).
- China also entered into FTAs with Ecuador and Serbia in 2023, which will be effective after the completion of relevant legal procedures.

Other major updates

A total of 107 items are subject to export duty in 2024, among which 68 are subject to export IDRs that are normally lower than their export duty rates. Compared with 2023, the only newly added item with the export IDR of 0% is unwrought, unalloyed aluminum, where the aluminum content is no less than 99.995% by weight (tariff code 7601.1010).

In addition, domestic subheadings of tariff codes are adjusted, resulting in a total of 8,957 items. Taking high-end steel as an example, relevant subheadings are added to products under heading 7208 based on the yield strength index of the product, which is of particular significance for improving the import and export data statistics and analysis of high-strength medium plates.

Further comments

Internal review of customs management

Based on the 2024 Tariff Adjustment Plan, companies should review their internal customs management and make necessary updates according to the 2024 Tariff Adjustment Plan in a timely manner. For example, companies may need to review their tariff classifications to confirm whether the relevant goods are or would be declared under the correct tariff codes to enjoy reduced duty rates.

Provision of tariff policy feedback

Companies that would like to provide feedback on the tariff policies are encouraged to actively communicate their needs and concerns with relevant government authorities or industry associations, in order to seek reasonable policy support, to reduce production and operating costs, and to promote the development of related industries.

Moreover, during the industrial survey conducted by customs or industrial authorities, if any policy adjustments (such as cancellation of IDRs) may have potential adverse effects on the industry, companies may provide evidence and suggestions to the authorities. Professional support may be sought, where necessary.

Analyze FTAs' impacts on supply chains

Companies should pay attention to the policy trends of FTAs or preferential trade arrangements and analyze their impact on cross-border supply chains. They should consider the origin rules under specific FTAs to conduct reasonable commercial planning for the localized manufacturing. They should also focus on the impact of regional value content, micro content, micro processing, direct transportation rules, and green trade barriers such as carbon tariffs and green technology standards.

Czech Republic

Highlights of key tax changes effective for 2024, including tax rate changes

A number of tax changes entered into force in the Czech Republic at the beginning of 2024, including changes resulting from the enactment of the fiscal consolidation package that are intended to reduce the state budget deficit. This article provides a summary of the most significant changes, which include an increase in the corporate income tax rate to 21% and changes to the VAT rates, among other things. The changes generally are effective as from 1 January 2024, unless otherwise noted.

In addition to the changes described below, legislation (Act No. 416/2023 Coll.) transposing into Czech domestic law the EU "Pillar Two"directive that is designed to ensure a global minimum level of taxation of 15% for multinational groups and large-scale domestic groups within the EU with annual consolidated revenue of at least EUR 750 million has entered into force. In line with the directive, the IIR (income inclusion rule) applies for accounting periods beginning on or after 31 December 2023 and the UTPR (sometimes referred to as the undertaxed profit(s) rule or the undertaxed payments rule) applies for accounting periods beginning on or after 31 December 2024. The Czech Republic also has opted to adopt a tax that is intended to be a qualified domestic top-up tax (sometimes referred to as a QDMTT), applicable for accounting periods beginning on or after 31 December 2023.

Amendments to the act on investment incentives (through Act No. 426/2023 Coll.) also have entered into effect, including changes to the approval process for certain investment incentives.

Consolidation package

The consolidation package, which includes amendments to various tax laws, was published on 12 December 2023 in the Collection of Laws (No. 349/2023 Coll.) and entered into force on 1 January 2024. The key changes resulting from the amendments are described below.

Accounting Act

- Reporting entities, subject to specified conditions, may keep their accounts in their "functional currency," i.e., the currency in which the entity carries out most of its transactions. In addition to the Czech koruna (or crown), this may be the euro, the British pound sterling, or the US dollar.
- For the purposes of the Accounting Act, the calculation of "net turnover" is modified, which affects, for example, the obligation to have financial statements audited.
- New obligations for reporting entities in relation to sustainability reporting and income tax reporting are set forth, following the mandatory transposition of EU directives.
- The changes to the Accounting Act are also reflected in related regulations and the Czech Accounting Standards.

Corporate income tax and common provisions of the Income Taxes Act

- The corporate income tax rate is increased from 19% to 21%, and the increase will apply to all taxable periods beginning on or after the date of entry into force of the amendments, i.e., as from 1 January 2024.

- In the period from 1 January 2024 to 31 December 2028, extraordinary depreciation (a special type of highly accelerated depreciation) for newly acquired tangible assets will be available only for "emission-free" vehicles (e.g., electric vehicles). Existing assets already being depreciated under the extraordinary depreciation regime will continue to be depreciated under the regime.

- The maximum possible tax-deductible value of a passenger car is limited to CZK 2 million. This limit will apply only to "M1" vehicles (i.e., vehicles that are used for the carriage of passengers) acquired in tax periods beginning on or after date the amendments entered into force, i.e., as from 1 January 2024.

- In tax periods beginning on after the date the amendments entered into force (i.e., as from 1 January 2024), it will no longer be possible to provide "still" (i.e., non-sparkling) wine with a price up to CZK 500 as a tax-deductible advertising or promotional item.

- With respect to the notification of income paid abroad required from payers of certain Czech-source income to nonresidents, the scope of reportable income exempt from (or not subject to) taxation in the Czech Republic is narrowed. Royalties and income from profit shares (e.g., dividends) newly are required to be reported, regardless of their amount. Interest also is required to be reported, but only if the amount exceeds CZK 300,000 per month. The new regime is effective for income generated on or after 1 January 2024. There is also an option to retroactively apply the new regime for 2023. Income subject to withholding tax is required to be reported under the same conditions that previously were effective.

- An option is available not to include unrealized foreign exchange gains or losses in the tax base upon providing a notification to the tax authorities, effective as from 1 January 2024.

- Adjustments are made to the exchange rates used in determining the tax base, particularly in connection with the introduction of a functional currency for accounting purposes and the related tax calculation in CZK.

The consolidation package also has extended the effectiveness of Act No. 128/2022 Coll., on measures in the field of taxation in connection with the Russia-Ukraine war. The preferential tax treatment of donations to Ukraine is extended through 2023, or for tax periods ending up to 29 February 2024.

Personal income tax

- The threshold for applying the 23% personal income tax rate is reduced from 48 times the average wage to 36 times the average wage for 2024.

- The tax exemption for income from the sale of securities or shares in a company, which is available when the "time test" of three years or five years (depending on the circumstances) between the acquisition and the sale is met, is limited to an amount of CZK 40 million per taxpayer. The new rules will apply to income received in 2025 and subsequent years, and a special adjustment to the acquisition price will apply to securities and shares acquired before the end of 2024.

- Other changes that will apply to individuals in 2024 include the following:

  - The application of the dependent spouse tax credit is limited only to spouses caring for children under three years of age;

  - The tax credit for placing a child in a preschool institution and the student tax credit are abolished;

- The option to reduce the tax base by contributions paid to a trade union and by payments for examinations to verify the results of further education is abolished;
- The limit for the application of withholding tax on agreements for the performance of work (DPP) is linked to the employee's participation in sickness insurance (i.e., the fixed limit of CZK 10,000 is abolished);
- The limit for the tax exemption for lottery or raffle winnings is reduced from CZK 1 million to CZK 50,000;
- The state contribution to the housing savings scheme is now treated as other income; and
- A "general" limit of CZK 50,000 is introduced, under which certain other income of the same type will be tax exempt.

Employee benefits

- For employees, non-monetary benefits (i.e., benefits relating to recreation, health and medical services and goods, services of educational and sports facilities, cultural events, and printed books) will be exempt up to a limit of one-half of the average wage per year, which for 2024 is CZK 21,983.50. Benefits exceeding this limit are considered taxable and also are subject to insurance contributions by both the employee and the employer.
- Non-monetary benefits provided up to the limit described above are a non-tax-deductible expense, whereas above this limit they may be tax deductible for the employer.
- A unified approach is adopted for the treatment of all forms of meal allowances, regardless of whether they are in the form of meal vouchers, in-kind meals provided at the workplace, or a cash meal allowance.
- The tax exemptions for gifts to employees of up to CZK 2,000 per year and for social assistance to employees to overcome exceptionally difficult circumstances are abolished.
- The new rules for employee benefits apply as from 1 January 2024, regardless of the employer's taxable period.

Additional guidance in the Czech language is available from the General Financial Directorate (GFD) in relation to the taxation of employee benefits as from 1 January 2024.

Social security contributions and contributions to state employment policy

- The employee's contribution is increased from 6.5% to 7.1% of the assessment base in 2024, i.e., by 0.6%, which is the rate for the newly reintroduced employee contribution for sickness insurance.
- As from 2024, the assessment base for a self-employed person's contribution to pension insurance and the contribution to the state employment policy is at least 55% of the taxable base (with the possibility of a voluntary increase).
- As from 2024, the minimum assessment base for self-employed persons will gradually increase each year until 2026, based on the average wage.

- The contribution for a self-employed person participating in sickness insurance is increased from 2.1% to 2.7% of the assessment base.

VAT

- A limitation of CZK 420,000 on input VAT recovery in relation to the purchase of certain M1 passenger cars is introduced. This means that the limitation will not affect purchases of cars at a price not exceeding CZK 2 million, exclusive of VAT.
- Three VAT rates apply as from 1 January 2024: 0%, 12%, and 21% (previously, the VAT rates were 0%, 10%, 15%, and 21%).
- The zero rate is applicable to books (including e-books).
- A number of items that were previously subject to one of the reduced VAT rates are now subject to the 12% tax rate. These include the following:
  - Catering services (excluding most beverages);
  - Accommodation services;
  - Tickets to cultural and sporting events, museums, zoos, etc.;
  - Construction work on houses or apartment buildings;
  - Newspapers and magazines;
  - Food products and consumables; and
  - Tap water.
- Items such as the following, which previously were subject to a reduced VAT rate, are reclassified to the standard 21% VAT rate:
  - The supply of cut flowers or firewood;
  - The supply of beverages (except for selected milk beverages for children);
  - Hairdressing services;
  - The service of beverages in a restaurant, except for drinking water;
  - Services of authors and artists;
  - Services for the collection, transport, or dumping of municipal waste;
  - Services to repair footwear, leather goods, or bicycles; and
  - House cleaning services.
- The occasional public transport of passengers by bus and the supply of disposable medical and diagnostic devices (including repairs of such devices) are reclassified from the standard 21% VAT rate to the reduced 12% VAT rate.

In relation to the VAT changes effective as from 1 January 2024, the GFD has issued additional guidance on VAT rates and on the limitation of VAT recovery for M1 passenger vehicles (available in the Czech language only).

A separate legislative amendment effective as from 1 January 2024 has revised the rules for determining the date of a taxable supply in relation to supplies of electricity, gas, heating, cooling, and other supplies provided under the conditions set out in the Energy Act. The change should affect only producers and/or distributors of these commodities; the amendment will allow them to defer VAT payments beyond the deadline specified in the current regulations.

Real estate tax

- As from 2024, the real estate tax rates are increased, in some cases by up to 1.8 times the previous rates.
- An inflation coefficient is introduced, which will automatically increase the real estate tax by the inflation rate for the previous period, as from 2025.
- Other substantive changes are introduced, which may result in an obligation to file a tax return.

Excise and energy taxes

- The tax on cigarettes, smoking tobacco, cigars, and cigarillos is increased by 10% for 2024 and by an additional 5% each year from 2025 through 2027. The tax on heated tobacco is set to increase by 15% each year from 2024 through 2027. Chewing tobacco and snuff are newly subject to tax, with the tax rate increasing gradually over the four years from 2024 through 2027.
- A new tax on nicotine sachets and e-cigarette refills is introduced. The tax rate will be gradually increased from 2024 through 2027.
- The excise tax on alcohol is set to increase by 10% in both 2024 and 2025. Subsequently, there will be a more moderate increase of 5% in 2026. However, the zero rate will continue to apply to still wine.
- The excise tax exemption for aviation fuel for domestic flights is abolished.
- The refund of excise tax on mineral oils consumed in mineralogical and metallurgical processes is abolished, which should result in the alignment of the taxation of these oils with the rate for fuel oils of CZK 660 per 1,000 liters.
- The tax exemptions for natural gas, electricity, and solid fuels consumed in mineralogical and metallurgical processes are abolished. A rate of CZK 30.60 per megawatt hour (MWh) of combustion heat for natural gas, CZK 28.30 per MWh for electricity, and CZK 8.50 per gigajoule of combustion heat for solid fuels in the original sample will now apply.

Gambling tax

The rate for “other games of chance” (e.g., fixed-odds betting) is increased from 23% to 30%, while the tax rate for lotteries and technical games remains at 35%. The minimum “sub-tax” on technical games will now be CZK 13,400 per authorized device.

Changes to the Income Taxes Act outside of the consolidation package

Apart from the consolidation package, the Income Taxes Act has been subject to another legislative amendment, related to a change in the law on financial market development. The amending law was published on 29 December 2023 in the Collection of Laws (No. 462/2023 Coll.) and entered into force on 1 January 2024.

Perhaps the most discussed change in the amendment relates to the taxation of employee stock option plans (ESOPs). In essence, the tax treatment of ESOPs remains almost unchanged, except that in terms of personal income tax, the taxation of income is deferred to a future date that is determined based on the occurrence of certain events. However, there is an open question as to how to deal with the social security and health insurance that must be paid on such employee income.

The amendment also modifies the research and development deduction, specifically with respect to the taxpayer's burden of proof—if the tax authorities question the project documentation, the content of the project documentation may be proven by other means of evidence. This provision will apply to tax proceedings initiated on or after the date of entry into force of the amendment, i.e., as from 1 January 2024.

In addition, the amendment includes a significant change to set up a new system of support for "retirement savings schemes," i.e., additional pension insurance with state contributions, supplementary pension savings under the law regulating supplementary pension savings, pension insurance with a pension insurance institution, private life insurance, and long-term investment products for employees. "Long-term care insurance," which covers situations where the policyholder or their close person becomes dependent on the assistance of another person, is eligible for tax support.

Ghana

Key tax highlights of 2024 budget statement: Indirect tax

On 15 November 2023, Ghana's Minister for Finance, Ken Ofori-Atta, presented the 2024 budget statement to parliament, in which the government outlined several tax policy proposals aimed at continuing efforts to achieve fiscal consolidation, stabilization, and growth. The key tax measures announced include the expansion of the scope of electronic invoicing requirements, extensions to various VAT zero-rating provisions, a new requirement for businesses to have a certified VAT invoice to claim a deduction for an expense for corporate income tax purposes, and a review of individual income tax bands.

This article provides a summary of the indirect tax proposals, which are expected to apply as from 2024, pending the enactment of new or amending legislation.

The key corporate income tax and individual income tax policy proposals contained in the budget are addressed in separate articles.

Implementation of second phase of electronic invoicing

The second phase of the electronic invoicing system implementation will cover around 600 large taxpayers and over 200 small and medium taxpayers.

Deloitte Ghana comments

Phase one of the electronic invoicing rollout launched in 2022 included several specified large taxpayers. This phase has been generally successful as it has led to a significant increase in tax collections. The government is now seeking to expand electronic invoicing to a larger group of taxpayers.

The electronic invoicing initiative provides the Ghana Revenue Authority (GRA) with real-time oversight of taxpayer sales data, helping to enhance revenue assurance. For taxpayers, the system should simplify VAT compliance and associated record keeping.

Other indirect tax measures

VAT zero-rating on locally manufactured textiles extended by two years

The minister for finance has proposed a further extension to the VAT zero-rating for locally manufactured textiles supplied by approved manufacturers through 31 December 2025.

Deloitte Ghana comments

The supply of locally manufactured textiles by manufacturers approved by the minister for trade and industry was originally zero-rated for three years until 31 December 2021, and then subsequently extended to 31 December 2023. The rationale behind the extension was to promote patronage of locally produced textiles to boost the local industry.

The government has now proposed a further extension of the zero-rating through December 2025, which is expected to keep the price of locally manufactured textiles competitive, and thereby support the growth of the local textile manufacturing industry.

Overall, this proposal is an important development that reflects the government's commitment to support the local textile industry. Given that this policy has been extended twice already, this may be seen as an indication that it is beneficial to industry growth. To ensure certainty and allow industry players to plan effectively, the government may wish to consider making the zero-rating permanent for locally manufactured textiles.

Waiver of import duties on import of electric vehicles for public transport

To increase environmentally sustainable practices and reduce carbon emissions, the government has announced its intention to waive import duties on imported electric vehicles for public transport for a period of eight years.

Deloitte Ghana comments

This proposal reflects a new fiscal focus on using taxation to drive the realization of climate goals. This initiative aligns with global efforts to reduce carbon emissions and combat climate change by transitioning to cleaner and more energy-efficient modes of transportation.

The move is expected to incentivize the adoption of electric vehicles in the public transport sector, leading to a reduction in greenhouse gas emissions and air pollution. It also presents an opportunity to modernize the public transport fleet, improve energy efficiency, and reduce reliance on fossil fuels in the long term. A successful move to alternative energy sources could reduce the country’s import bill for fuel, but in its current form, the limitation of the incentive to vehicles for public transport appears to concentrate on achieving significant gains in the short to medium term.

To aid in the country's transition to renewable energy, the government may wish to consider introducing a support program for individual and corporate use of electric vehicles. Additionally, investment could be made in building the required infrastructure to support the use of electric vehicles in the country.

Extension of VAT zero-rating on locally assembled vehicles and import duty waiver on knocked down electric vehicles

The government has proposed to extend the VAT zero-rating of locally assembled vehicles through 31 December 2025. In addition, import duty on fully or partially knocked down electric vehicles (i.e., partially assembled vehicles imported into Ghana for full assembly) imported by registered electric vehicle assembling companies in Ghana would be waived for eight years.

Deloitte Ghana comments

The proposals reflect the government's continued investment in the strategic Ghana Automotive Development Policy objective of making the country a competitive industrial hub for automotive manufacturing.

The zero rate on locally assembled vehicles is due to expire on 31 December 2023. The proposed extension means locally assembled vehicles can be expected to continue to be zero-rated for VAT purposes until 31 December 2025.

The proposed eight-year import duty waiver on fully or partially knocked down electric vehicles also provides a long-term incentive for investment in the local assembly of electric vehicles. This could foster the development of a robust electric vehicle ecosystem in the country, build local capacity in the automotive industry, and promote technology transfer.

The expected cost benefits of the zero-rating and import waiver should incentivize local adoption of electric vehicles and to contribute to the reduction of greenhouse gas emissions.

VAT zero-rating on locally produced sanitary pads and waiver of duties on imported raw materials for local manufacturing of sanitary pads

To boost local production and promote menstrual hygiene, the government has announced the zero-rating of the supply of locally produced sanitary pads. The government also intends to waive import duties on raw materials imported for their local manufacture.

Deloitte Ghana comments

This proposal is in response to recent advocacy for government support of menstrual hygiene especially among young girls. The application of the VAT zero rate is expected to reduce the price of locally manufactured sanitary pads and enhance their competitiveness relative to imported sanitary pads.

The waiver of import duties on raw materials, complemented by the relief from import VAT provided to qualifying manufacturers would reduce the cost of production for local manufacturers, which in turn would reduce the need for import of finished products and ultimately boost local production capacity of sanitary pads.

The GRA is expected to issue guidelines on the list of raw materials that would qualify for this waiver.

Exemption from import duty for agricultural machinery and inputs, medical consumables, and raw materials for the pharmaceutical industry

The government has announced proposals to exempt agricultural machinery, equipment, and inputs; medical consumables; and raw materials for the pharmaceutical industry from import duty.

Deloitte Ghana comments

Agriculture plays a critical role in the development of the Ghanaian economy. This exemption aligns with the government's aim to promote the adoption of modern technologies in agriculture to increase food security and wealth creation in the agricultural value chain.

The exemption from import duty for medical consumables and raw materials for the pharmaceutical industry is also expected to make the production and supply of medicines, medical devices, and equipment cost-effective. This is likely to boost local production of pharmaceutical products and attract investment into the health sector.

Introduction of 5% VAT flat rate scheme on supply of commercial properties

The budget statement includes a proposal to implement a 5% VAT flat rate scheme on the supply of commercial properties in Ghana, which is currently subject to the standard 15% VAT rate.

Deloitte Ghana comments

The government initially introduced a 5% flat rate scheme for real estate developers on commercial properties in 2015, but this was withdrawn in 2017 and relevant suppliers reverted to the standard VAT regime. However, the flat rate scheme may now be reintroduced for suppliers of commercial properties. The government notes that the new scheme is also intended to simplify VAT administration and enhance the level of compliance within the real estate industry.

A flat rate scheme usually means a restriction of the input VAT deductions that would otherwise be allowed under the standard rate scheme. The implementation of this policy may therefore result in the denial of input VAT deduction to suppliers of commercial properties. This could imply that any VAT cost incurred in the construction of these properties would become a business cost which may be absorbed or passed on to the final purchasers. The impact of this could be a potential increase in the cost and pricing of commercial properties going forward.

Exemption from import duty for cars imported by members of the Ghana Medical Association (GMA)

The government has proposed an exemption from import duties for cars imported by members of the GMA.

Deloitte Ghana comments

The introduction of this exemption regime is expected to help ease the transport burden of GMA members and ensure they provide timely healthcare services. This policy aligns with the government's efforts to incentivize and support workers in the healthcare sector. However, implementation of the policy should be well structured to ensure that it is not subject to abuse, and the government is expected to issue relevant guidelines.

Expansion of environmental excise duty to cover plastic packaging, industrial, and vehicle emissions

To promote sustainable environmental practices, the minister for finance has noted the government's intention to expand the environmental excise duty to cover plastic packaging, and industrial and vehicle emissions.

Deloitte Ghana comments

The environmental excise duty of 10% originally covered plastics and plastic products to discourage the import and use of single-use plastics that are harmful to the environment. With the increasing concerns surrounding environmental degradation, the expansion of the environmental excise duty to cover plastic packaging and carbon emissions should encourage the use of environmentally friendly practices and products.

This policy, together with the proposed waiver of import duties on electric vehicles for public transport, is in line with the medium-term revenue strategy to develop climate friendly and environmentally sustainable policies to promote the adoption of renewable energy sources, tackle harmful activities, and reduce greenhouse gas emissions. Further guidelines would be needed, especially with respect to how the excise duty would apply to vehicle emissions.

Ghana

Electronic invoicing regime: Update on implementation

In the 2024 budget and economic policy statement read on 15 November 2023, Ghana's minister for finance indicated that phase two of the electronic invoicing system (e-VAT), covering 600 large taxpayers and more than 2,000 small and medium taxpayers, will go ahead. The government has noted an underperformance in VAT revenue in recent years and the roll out of e-VAT is one of a number of measures being put in place to address this gap.

In October 2022, the Ghana Revenue Authority (GRA) began implementation of e-VAT in a phased approach. Phase one comprised 600 specially selected large taxpayers who were required to use e-VAT when issuing tax invoices to customers. Ghana's e-VAT operates as a certified invoicing system (CIS) that receives sales data from the taxpayer, which it validates and returns to be issued to the customer. The output from the CIS is dependent on the type of e-VAT solution implemented by the taxpayer.

Ghana's e-VAT is used to report both customer and supplier transactions.

E-VAT solutions provided by the GRA

E-VAT is designed to automate the reporting and validation of a taxpayer's business sales activity to the GRA in real time. The GRA has provided the following three solutions to enable taxpayers to comply with e-VAT requirements:

1. **Application programming interface (API):** This solution is mainly for taxpayers who currently issue computer-generated invoices under a dispensation granted by the GRA. It involves the integration of the taxpayer's billing system with the CIS. The GRA has indicated a framework is being designed to provide guidance on the use of third party integration providers.

2. **Free GRA certified e-invoicing solution:** This is a web-based invoicing application provided for taxpayers who may not have a computerized billing system or wish to implement this solution rather than integrating an API into their billing system.

3. **Authorized third party software:** The GRA is designing a framework to grant accreditation to third party software solutions that have the built-in functionality to exchange data with the GRA's e-VAT as an intermediary.

Sanctions for noncompliance

A taxpayer that fails to comply with the e-VAT implementation requirements is liable to financial penalties of the higher of GHS 50,000 or three times the amount of tax involved. This penalty must be paid in addition to any penalty for failure to issue a tax invoice under the Value Added Tax Act, 2013 (Act 870).

E-VAT will gradually replace manual or standalone taxpayer invoicing, as well as the current VAT invoice dispensation regime where some taxpayers have been granted special approval to issue computer-generated invoices. Given the government's plan to have all relevant taxpayers enrolled for e-VAT by the end of 2024, businesses are encouraged to review their internal processes and assess their compatibility with the available e-VAT solutions offered by the GRA.

There is also a strong indication (based on the recent budget announcement) of the government's intention to use the commissioner-general's certified invoice as the basis for all deductible expenses for income tax purposes. However, legislation to give effect to this objective has yet to be introduced.

Japan

Podcast: 2024 tax reform series—Introduction

Japan's ministry of finance announced in mid-December 2023 proposals for the 2024 tax reform, which include a range of domestic and international measures.

In this episode of *The Japan Perspective*, which is the first in a series of episodes on the 2024 tax reform, Deloitte Japan's tax professionals, Joanna Hazel and Brian Douglas, discuss the 2024 tax reform proposals that were announced by the government and break down the three main themes of the proposed reforms: bridging the gap between inflation and slow wage growth, encouraging companies to invest in Japan, and ensuring compliance.

Specific discussions include changes to the local enterprise tax (addressing issues related to large companies and subsidiaries), proposals around Japanese consumption tax (including platform taxation), and new proposed incentives for strategic goods production and IP-related endeavors.

Please register for Deloitte Japan's upcoming 15 February 2024 webcast discussing the 2024 tax reform proposals in more depth to stay ahead of the tax reform curve.

The Japan Perspective is Deloitte Japan's podcast series committed to communicating the latest Japanese tax developments and their potential impact on foreign multinational companies operating in Japan.

Proposed service tax rate increase: What rate would apply in the transition period?

One key proposal in Budget 2024, released by Malaysia's finance minister on 13 October 2023, is an increase in the service tax rate from 6% to 8%, to be effective as from 1 March 2024. Exceptions would apply for the following services, which would remain subject to the 6% rate:

- Food and beverage (group B);*
- Telecommunication services (group I);*
- Vehicle parking space services (group I); and
- Logistics services (group I) (prescribed as taxable services only as from 1 March 2024).

*Note: These groups include other prescribed taxable services not specifically mentioned above, such as the provision or sale of cigarettes, alcoholic drinks, etc., under group B, and the provision of broadcasting services, digital services, etc., under group I. These services do not seem to be excluded from the proposed rate increase, although expected amendments to the law should confirm this.

Transition from old rate to new rate

The Royal Malaysian Customs Department (RMCD) has yet to publish any guidelines or announcement on the transition from the old rate to the new rate. It should be noted that there was a similar change in the service tax rate, effective 1 January 2011 (from 5% to 6%), under the former service tax regime, i.e., Service Tax Act 1975 (SST 1.0). There were no transitional provisions in the law under SST 1.0 for any tax rate changes. For the purpose of the rate increase in 2011, the RMCD had published transitional guidelines (available only in the Bahasa Malaysia language) to help with the transition from the old to the new rate. These past guidelines potentially could be the basis for new transition guidelines under Service Tax Act 2018 (SST 2.0). However, some modifications likely would be necessary due to differences in the new regime. The guiding principles in the 2011 guidelines are discussed below.

Guiding principles in 2011 transition period guidelines

The 2011 guidelines essentially provided that the applicable rate (5% or 6%) during the transition period was the one in effect when the taxable service was provided or the payment was received, whichever was earlier. For example, where the service was provided after the effective date of the rate change, i.e., after 1 January 2011, but the payment was received before 1 January 2011, the applicable rate was the old rate of 5%, as the date when the payment was received was earlier than the date when the taxable service was provided. This guiding principle was adopted for partial payments and the partial provision of services.

The rationale for this rule, though not explicit in the 2011 guidelines, could be that service tax was due under SST 1.0 when payment was received, subject to a time limit of 12 months after the invoice was issued. After this period, tax became due even if payment was not received. The 2011 guidelines did not seem to factor in the possible expiration of the 12-month time limit.

However, exceptions to the above general guiding principle were made for telecommunication services. In the case of advance billings for such services, the guidelines provided that the applicable rate was the one in effect when the invoice was issued, regardless of when the service was provided or when the

payment was received. (Note that telecommunication services are excluded from the rate increase proposed under SST 2.0, but it remains to be seen whether a similar exception would be used for other taxable services subject to the proposed rate increase.)

Possible adoption or adaptation of 2011 guidelines for SST 2.0 rate increase

The RMCD could adopt the 2011 guidelines or adapt them to the SST 2.0 rate increase since the time when payment is received is still the starting point when service tax is due, although the 12-month time limit to receive payment is measured differently in the current SST 2.0 regime, i.e., it runs from the time the service is provided instead of the date when the invoice is issued.

However, one key difference in the SST 2.0 regime is the requirement, under Service Tax Regulations 2018, for service tax registrants to issue debit notes (DNs) when there is an increase in the tax rate, resulting in a tax increase. This appears to be precisely the scenario that would be covered by the proposed rate increase from 6% to 8%. Such a mandatory DN adjustment provision was absent from SST 1.0. It remains to be seen whether and how the RMCD would take into account the mandatory DN upward adjustment provision in its transitional policy for the proposed rate increase.

Additionally, the current service tax return (SST-02) does not have a specific column to account for tax-only upward adjustments via DNs, such as would arise in a rate increase scenario, since the value of the services are unchanged when the rate is increased. Therefore, if the RMCD does take into account the mandatory tax-only DNs for purposes of the proposed rate increase, the service tax return would seem to require an amendment as well, i.e., it would have to provide a new column for registrants to account for tax-only DNs.

Because the increase in the service tax rate would take effect on 1 March 2024, other changes to the law, such as other tax rates, tax ordering rules, etc., are expected by the end of 2023 or in early 2024. More importantly, an early release of transitional guidance by the RMCD and clarification regarding whether the 2011 guidelines would be followed would be welcome, allowing businesses to start updating their related compliance processes.

Malaysia

Sales tax on low value goods: RMCD releases updated guide and FAQs

The Royal Malaysian Customs Department (RMCD) announced on 3 November 2023 that the imposition of sales tax on low-value goods (LVG) will begin on 1 January 2024. The tax, which was first announced in Budget 2022, was supposed to be implemented as from 1 April 2023 but was subsequently deferred.

In line with the announcement of the new implementation date, the RMCD released an updated Sales Tax on LVG Guide (LVG guide, available only in the Bahasa Malaysia language) dated 3 November 2023, superseding the previous draft guide dated 1 January 2023. Additionally, Frequently Asked Questions (FAQs) on the implementation of the tax were released on 6 November 2023.

Overview of sales tax on LVG

A 10% sales tax will be charged on the importation of LVG sold online by a seller and delivered to consumers in Malaysia.

LVG refers to all goods that are sold at a price not exceeding MYR 500 and brought into Malaysia by land, sea, or air, excluding cigarettes, tobacco products, intoxicating liquors, smoking pipes (including pipe bowls), electronic cigarettes and similar personal electric vaporizing devices, and preparations of a kind used for smoking through an electronic cigarette or electric vaporizing device, in liquid or gel form, whether or not containing nicotine.

A seller with a total sale value of LVG in a rolling 12-month period exceeding MYR 500,000, or that has reasonable grounds to believe that the value of LVG to be sold in a rolling 12-month period will exceed MYR 500,000, will need to register for sales tax on LVG. A registered seller (RS) will then need to charge and account for the sales tax on the online sale of LVG brought into Malaysia.

Updates to sales tax on LVG

The discussion below highlights certain key changes and updates to the LVG guide that are aimed to align with the changes in the law as well as to clarify previous guidance.

Determination of registration threshold

The LVG guide emphasizes that the threshold should be calculated by the seller as from 1 January 2023, which is the effective date of the tax, although the tax should be collected by sellers only as from 1 January 2024.

- A seller with a total sale value of LVG in a rolling 12-month period exceeding MYR 500,000, or that has reasonable grounds to believe that the value of LVG to be sold in a rolling 12-month period will exceed MYR 500,000, should apply to register for sales tax on LVG.
- Once the seller is successfully registered, the effective date of registration will be the first day of the month following the month in which the seller becomes liable to be registered.

Accounting for sales tax on LVG

The sales tax on LVG will be due and payable at the time the LVG are sold by an RS. The LVG guide clarifies that the point of sale refers to the time when the purchase order is confirmed.

Definition of “seller” for LVG purposes

The definition of a seller for LVG purposes has been amended to also include a person that sells LVG on any online platform, in addition to selling via an “online marketplace” (OMP). An online platform refers to a platform that provides facilities for the sale and purchase of LVG, which includes a marketplace operated via a website, internet portal, or gateway.

The amended definition also clarifies that sellers that sell LVG via their own online platform and not just via an OMP, which is typically operated by a third party, also will need to register for and charge sales tax on LVG.

The LVG guide further clarifies that local and foreign OMP operators will be treated as the sellers of LVG if any of the following conditions are met:

- They are authorized to charge the customer;
- They are authorized to deliver the LVG to the customer;

- They set the terms and conditions under which the sale transaction is effected;
- Documentation issued to the customer states that the sale transaction is effected by the marketplace; or
- The marketplace and the merchant contractually agree that the marketplace is responsible for the sales tax on LVG obligations.

Import clearance procedures for LVG

The LVG guide clarifies certain procedures for the import clearance of LVG to identify whether sales tax has been charged on the goods or whether import sales tax should apply.

The key points are as follows:

- The customs value to be declared on the import of LVG should be: cost (excluding sales tax on LVG) + insurance + freight (i.e., CIF) value.
- Sales tax on LVG will apply based on the sales price of each item, and not on a per-line basis as displayed on the import invoice.
- Where both LVG and non-LVG items are imported from the same RS and shipped in a single consignment to a recipient/importer in Malaysia, the shipment can be declared in a single K1 form. However, the goods must be itemized on a per-line basis and the value of each line item declared as a CIF value.
- The customs authorities will not charge sales tax on imports for line items with a total CIF value of MYR 500 or less. Line items with a total CIF value greater than MYR 500 will be subject to import sales tax based on the applicable tax rate for the harmonization system (HS) code of the goods.
- To avoid double taxation, the importer/customs agent is required to inform, and provide supporting documentation to, the proper customs officer for any line item with a CIF value greater than MYR 500 on which sales tax on LVG has already been charged by the RS.
- K1 declarations that are not itemized clearly on a per-line basis may be subject to sales tax on imports (if applicable) upon importation.
- In the event that the actual sale value of line items does not exceed MYR 500 and sales tax on LVG has been charged at the point of sale but the CIF value of the line items exceeds MYR 500 (due to foreign exchange differences or insurance and freight costs, for example), then the importer/customs agent must provide supporting documentation to the customs officer for further assessment. The calculation of the sales tax may be amended if it can be proven to the satisfaction of the customs officer that the sales tax on LVG has been imposed.
- The LVG guide advises that the following specific details have to be declared in the system when importing LVG consignment or a consignment containing both LVG and non-LVG items:
    - Transaction type: “LG”;
    - Sales tax and service tax (SST) exemption type: “LG”; and
    - LVG registration number under the exporter/consignor column/field.

The above procedures are aligned with the changes to the Sales Tax Act, 2018 (STA 2018) and aim to avoid potential double taxation by providing that no sales tax will be levied on LVG at the point of import if it is proven to the proper sales tax officer that sales tax has been charged by the RS and is being paid on the LVG.

Issuance of credit or debit notes for LVG

An RS that sells LVG will issue a credit note (CN) or debit note (DN) in the following situations, if there is a deduction or addition to the amount of sales tax payable on LVG after the sales tax on LVG return (Form LVG-02) for a particular taxable period has been submitted:

- Any changes in the sales tax rate on LVG; or
- Financial adjustments made in the course of a business transaction.

The CN/DN must contain the following information:

- The words “credit note” or “debit note” clearly stated;
- The note’s serial number;
- The date of issuance;
- The name, address, and registration number of the RS;
- The name and address of the person to whom the LVG is sold;
- The reason for the issuance;
- The description, quantity, and amount of LVG for which the CN or DN is issued;
- The total sales amount, excluding sales tax;
- The rate and amount of sales tax; and
- The number and date of the issuance of the original invoice.

An RS may apply to the Director General (DG) of the RMCD for any of this information to be excluded from the CN/DN, subject to the DG’s approval.

The above additions to the LVG guide aim to reflect the amendments to the STA 2018, which allows sellers of LVG to issue CNs and/or DNs to their buyers to adjust any previous sales tax charged on LGV sales.

Discounts and monetary vouchers

The LVG guide provides examples of the application of discounts and monetary vouchers. In summary:

- A discount will directly reduce the price of the goods, and the discounted value will be used to determine whether the goods meet the MYR 500 LVG threshold.
- The example provided for a voucher is in the form of a monetary voucher that is treated as a cash equivalent, used as payment by the buyer. The voucher will not reduce the sales price of the good for the purpose of the MYR 500 LVG threshold.

The limited and non-exhaustive examples above imply that the nature and terms of the various types of discounts, vouchers, special offers, etc., may need to be clearly defined to determine their impact on the price of LVG.

Deloitte Malaysia's comments

It is expected that the 1 January 2024 effective date for the imposition of sales tax on LVG will be officially gazetted before the end of 2023.

In the meantime, the updated LVG guide and FAQs provide some clarity on certain practical and operational issues to assist taxpayers in implementing the tax.

Nevertheless, the short implementation timeframe likely will affect businesses' level of readiness in preparing their systems and processes to comply with the new rules to charge and account for the tax. If there is no further postponement of the implementation date, affected businesses will need to urgently assess what measures they need to put in place or the potential implications of non-compliance.

Malaysia

Guide available on applications for extension of export period for sales tax purposes

The Royal Malaysian Customs Department (RMCD) released a guide (currently available in the Bahasa Malaysia language only) on 1 November 2023 that provides the procedures to apply for an extension of export periods prescribed under the Sales Tax Act 2018 and the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ("exemption order") in relation to a drawback of sales tax or certain sales tax exemptions.

To qualify for a drawback of sales tax paid in relation to certain goods that are subsequently exported or for a sales tax exemption in relation to certain goods to be exported, there is a general requirement to ensure that the relevant goods are exported within the prescribed period, as indicated in the table below.

Sales tax provision	Current prescribed period
Section 40 (drawback of sales tax) of the Sales Tax Act 2018	Three months
Item 57 of schedule A of the exemption order	Six months
Item 4 of schedule B of the exemption order	12 months
Item 1 of schedule C of the exemption order	
Item 3 of schedule C of the exemption order	

However, in instances where goods cannot be exported or transported within the specified period, the prescribed timeline may be extended, subject to approval from the Director General of the RMCD. Applications seeking an extension of the export period, particularly regarding the drawback of sales tax and sales tax exemptions, should be directed to the Internal Tax Division of the RMCD in the zone or state corresponding to the location of the applicant's operations or business premises.

The procedure for submitting an application to extend the export period is outlined in detail in the new guide released by the RMCD.

Deloitte Malaysia's comments

The release of the guide is a welcome move to provide more clarity regarding the administrative requirements to apply for an extension of time in relation to the drawback and exemptions described above. It is important for companies to familiarize themselves with the documentation requirements, to reduce the likelihood of delays or obstacles when applying for an extension. Aside from the administrative aspects of the drawback or exemption, it is also critical to adhere to the relevant legal requirements. Noncompliance with the conditions for a drawback or an exemption may lead to the "clawback" of sales tax, even if approvals for the drawback or exemption have been granted previously.

Philippines

Legislation to enhance tax compliance and improve tax administration enacted

On 5 January 2024, the Philippine president signed into law Republic Act (RA) No. 11976 (the Ease of Paying Taxes (EOPT) Act), which aims to enhance tax compliance and improve tax administration by simplifying tax requirements and procedures and modernizing tax systems. The EOPT Act generally applies as from 22 January 2024, other than the amendments to VAT and other percentage taxes with which taxpayers have six months from the effective date of the relevant implementing rules and regulations to comply.

Key features of the EOPT law

Simplified tax filing and payment process

The EOPT Act eliminates the requirement to file returns and pay taxes at a specific Bureau of Internal Revenue (BIR) office or authorized agent bank (AAB). Tax returns may be filed and tax payments made, either manually or electronically, at any AAB, Revenue District Office (through a revenue collection officer), or authorized tax software provider.

Printing and issuance of invoices

Invoices replace official receipts. The threshold for issuing invoices is increased from PHP 100 to PHP 500 and will be adjusted every three years based on the consumer price index.

No fees may be charged for securing authority to print invoices and the requirement to indicate "business style" in the invoice is removed.

Revised criteria for classifying taxpayers

Taxpayers are classified into micro, small, medium, and large taxpayers based on gross sales as set out in the table below:

Category of taxpayer	Gross sales
Micro	Up to PHP 3 million
Small	PHP 3 million up to PHP 20 million
Medium	PHP 20 million up to PHP 1 billion
Large	PHP 1 billion and over

Micro taxpayers are exempt from deducting or withholding creditable withholding taxes.

The income tax return for micro and small taxpayers will be a maximum of two pages and such taxpayers will be subject to reduced penalties.

Amendments to withholding tax

The obligation to deduct and withhold taxes arises at the time the income becomes payable. The requirement for the tax to be paid before an expense or income payment can be deductible is removed.

Amendments to VAT

The timing of recognition of VAT is changed so that:

- VAT is based on gross sales;
- Output VAT paid on uncollected receivables may be deducted in the quarter following the agreed period of payment, but will be added to the output VAT where uncollected receivables are recovered; and
- VAT invoices must be used to substantiate input tax.

A risk-based VAT refund system is introduced. VAT refund claims are classified as low-, medium-, or high-risk claims based on the amount of the VAT refund, and the taxpayer's tax compliance history and frequency of filing VAT refund claims. Claims must be dealt with by the Commissioner of Internal Revenue within 90 days from the submission of invoices and other documents. Medium- and high-risk claims will be subject to audit or other verification processes.

Business registration renewal

The EOPT law removes the requirement for business taxpayers to pay an annual registration fee (ARF) of PHP 500 and file BIR Form No. 0605 by 31 January annually.

For taxpayers with an existing certificate of registration (COR or BIR Form No. 2303) that includes the ARF, the COR will remain valid until 31 December 2024 and can then be surrendered to obtain an updated or replacement COR.

Refund of erroneously paid taxes

The EOPT Act imposes a 180-day period from the date of submission of all the required documentation for processing refunds of erroneously paid taxes. In the case of a full or partial denial of the refund or if the BIR fails to process the application within 180 days, the claimant may file an appeal with the Court of Tax Appeals within 30 days from receipt of the denial or after the 180-day period has expired, as appropriate.

Preservation of books of accounts

The period for which books of accounts and accounting records must be preserved is reduced from 10 years to five years.

Poland

Draft bills on JPK_V7 reporting scope and KSeF exceptions published

On 4 January 2024, a bill amending the Ministry of Finance decree on the scope of data included in the JPK_V7 reporting was published in Poland's official journal. JPK_V7 reporting is a Polish reporting requirement that combines periodic VAT returns with transaction level data. The draft regulation is expected to generally come into effect on 1 July 2024, with some minor exceptions.

The bill aims to align the JPK_V7 reporting regulations with the implementation of the mandatory National e-Invoicing System (KSeF) and structured e-invoicing in Poland. The final version of the bill has some changes compared to the draft version published previously. These include the following:

- The requirement to include the KSeF ID invoice number for sales invoices will be voluntary between 1 July 2024 and 31 December 2024, and mandatory as from 1 January 2025;
- The requirement to include the KSeF ID invoice number for purchase invoices has been dropped (but it may be added voluntarily);
- The proposed "OFF" flag for invoices issued during any KSeF system failures/maintenance periods, denoting a structured e-invoice which was not sent to KSEF, has been removed;
- The proposed "BFK" flag for invoices issued without using KSeF, applicable to entities raising sales invoices outside the system, has been removed; and
- The regulation has been amended to include changes to the VAT refund deadline (standard 60-day deadline reduced to 40 days).

As originally drafted, the bill required entities that generally would not be affected by the KSeF obligations for sales (e.g., foreign entities with a VAT registration but no fixed establishment in Poland) to have additional obligations for purchases if receiving invoices raised via KSeF (including collecting and reporting the KSeF ID numbers from purchase invoices). The published version of the bill removes these requirements, limiting the KSeF related obligations for affected entities. However, it is important to note that the obligation to include the KSeF ID number assigned to a purchase invoice when processing a payment still applies for all entities.

Exemptions from KSeF

On 11 December 2023, the Ministry of Finance published a draft decree providing exceptions from the obligation to issue structured invoices. The bill is currently in the legislative process.

The new version of the bill contains some new provisions, including specifying that structured invoices are not required in the following situations:

- For supplies of VAT exempt services based on articles 43(1)(7) and 43(1)(37)—43(1)(41) of the Polish VAT Act, if evidenced with invoices or other documents by a supplier authorized to provide such services, or by other entities acting on behalf of such suppliers; and
- For supplies of goods or services which are invoiced by the purchaser under a self-billing arrangement, provided that the purchaser does not have a Polish tax identification (NIP) number.

These changes mean that entities issuing invoices for financial and insurance services will generally be exempt from the obligation to issue them using the KSeF system (although they still may be issued voluntarily). This seems to be in line with the financial sector's initial expectations; however, based on previous communications by the Ministry of Finance indicating that such transactions would be subject to KSeF requirements, further procedural changes may be foreseen.

In terms of self-billing, the Ministry of Finance has acknowledged one of the key issues raised by taxpayers. For self-billing arrangements where the invoice is raised by a purchaser without a NIP number, the invoice will remain outside of the KSeF system.

Portugal

Highlights of indirect tax measures in 2024 budget law and other recent legislation

Portugal's state budget law for 2024 (Law No. 82/2023, available in the Portuguese language only), which includes indirect tax measures as well as a variety of other tax measures, was published on 29 December 2023. The law entered into force on 1 January 2024 and its measures generally are effective as from the same date.

The purpose of this article is to complement the related tax@hand article published on 18 October 2023 that addresses the main indirect tax measures that were included in the draft state budget law. Those measures generally were enacted without significant changes, and this article focuses mainly on additional indirect tax measures in the enacted budget law, including certain modifications to VAT rates and exemptions.

In addition, this article covers Law No. 81/2023 (available in the Portuguese language only), dated 28 December 2023, which entered into force on 1 January 2024 and transposes into Portuguese law the provisions of Council Directive (EU) 2020/284 regarding the introduction of certain obligations applicable to payment service providers, with the aim of combating VAT fraud in e-commerce. As described further below, payment service providers will be required to keep records and report details relating to certain cross-border payments, which will be stored in the Central Electronic System of Payment information (CESOP).

Law No. 82/2023

VAT exemptions

In addition to the VAT exemption measures covered in the related article published on 18 October 2023, taxpayers may wish to consider the VAT exemption measures in the enacted budget law that are described below.

The VAT exemption in article 9(11) of the Portuguese VAT Code is expanded to cover all services provided in the form of lessons for school or subjects of higher education.

The VAT exemption for supplies of goods provided free of charge for subsequent distribution to people in need, the state, private social solidarity institutions, and nonprofit nongovernmental organizations (NGOs) is expanded to include the supply of goods free of charge for subsequent distribution to abandoned or endangered animals, made to the state, private social solidarity institutions, and nonprofit NGOs.

The VAT exemption with the right to deduct input VAT (i.e., zero rate) for certain goods, when generally used in the context of agricultural activities, is extended until 31 December 2024 (as mentioned in the related article published on 18 October 2023) and also is expanded to include the sale of glass bottles when they are normally used in agricultural production activities.

Reduced VAT rate on supplies of electricity

Until 31 December 2024, the reduced VAT rate (currently 6% in mainland Portugal, 5% in Madeira, and 4% in the Azores) will remain in force for the supply of electricity for consumption (excluding the fixed components of electricity supplies) in relation to contracted power not exceeding 6.90 kVA, for the portion of the supply not exceeding the following:

- 100 kWh per 30-day period; or
- 150 kWh per 30-day period when purchased for consumption by large families (i.e., households including five or more persons).

In addition, the reduced VAT rate will apply to the acquisition, delivery and installation, maintenance, and repair of machinery and other equipment intended exclusively or mainly for the capture and utilization of renewable energy (e.g., solar, wind, and geothermal energy).

Reduced VAT rate for other goods

The reduced VAT rate is now applicable to spreads made from tuna, mackerel, and sardines, as well as to chairs and seats suitable for transporting children on bicycles.

Intermediate VAT rate for certain food, food and beverage services

In addition to the measures covered in the related article published on 18 October 2023, the intermediate VAT rate (currently 13% in mainland Portugal, 12% in Madeira, and 9% in the Azores) is now applicable to the following:

- Sausages made from animal casings or synthetic casings, based on bread, composed of meat or other types of stuffing and preserved by a smoking process;

- Edible vegetable oils and mixtures thereof (edible oils); and
- The supply of food and beverage services, excluding alcoholic beverages and soft drinks.

Refund of amount corresponding to VAT on certain expenses incurred by some NGOs, armed forces, security forces and services, and firefighters

Some NGOs, armed forces, security forces and services, and firefighters are now able to benefit from a refund (partial or total) of an amount equivalent to the VAT paid on certain expenses incurred, under the regime provided for in Decree-Law 84/2017 or other refund schemes. This mechanism is applicable only to the extent of input VAT that was not deductible or refunded under another scheme.

Tobacco tax (IT)

As mentioned in the related article published on 18 October 2023, in 2024, a tax of EUR 0.175 per milliliter is due on liquid without nicotine in containers used for charging and recharging electronic cigarettes. In addition, the scope of the tax is adjusted to include liquids in containers used for nonreusable electronic cigarettes.

Law No. 81/2023

As noted above, Law No. 81/2023, which entered into force on 1 January 2024, transposes into Portuguese law the provisions of Council Directive (EU) 2020/284 regarding the introduction of certain obligations applicable to payment service providers (commonly referred to as “CESOP” obligations).

Law No. 81/2023 provides that payment service providers must keep detailed records of payees and payments for the payment services they provide and report a set of information on certain transactions carried out by their customers.

These transactions must be reported electronically to the Portuguese tax authorities on a quarterly basis, by the end of the month following the relevant quarter.

The content and structure of the electronic form to be used by payment service providers to communicate the data on the transactions covered by the new reporting obligations, as well as the conditions for the electronic submission of such data, are yet to be set forth in an ordinance to be issued by the division of the government responsible for the area of finance.

Singapore

GST error correction threshold revised

If an error made in a goods and services tax (GST) return is identified after the return has been submitted to the Inland Revenue Authority of Singapore (IRAS), the error should be corrected by filing a GST F7 form. As an administrative concession, the IRAS permits a taxpayer to amend errors in the next GST return submission (GST F5 form) if the net amount of any GST error, and the total amount of any non-GST error, are below specified thresholds. The GST error threshold value was previously SGD 1,500.

Recognizing that the GST rate is now 9% and therefore GST errors may be higher in value, the IRAS has announced that the GST error threshold has been increased as from 1 January 2024. This means that for errors arising where the next GST return would be due after 1 January 2024, the correction can be made in the subsequent GST return, as long as both of the criteria below are met:

1. The net GST amount in error (i.e., any output tax error less any input tax error) in total for all affected prescribed accounting periods is not more than SGD 3,000; and

2. The total of any non-GST amounts in error for each affected accounting period to be corrected is not more than 5% of the total value of supplies declared in the submitted GST return (i.e., box 4). If no supplies were made in the affected accounting period, the 5% rule will be calculated on the total value of the taxable purchases declared in the submitted GST return (i.e., box 5) instead.

The concession is only allowed for errors made in boxes 1 through 7 of the GST F5 returns. Errors affecting any of the remaining boxes must be adjusted using a GST F7 corrective return for the affected period(s).

Spain

New requirements for electronic systems and programs for invoicing processes

On 6 December 2023, Royal Decree 1007/2023 was published in the Spanish official gazette, approving regulations setting forth the requirements to be adopted by computer or electronic systems and programs that support the invoicing processes of certain entrepreneurs and professionals ("regulations"). The regulations establish the requirements and technical specifications that must be met by any computer system that supports billing processes, with the aim of ensuring the integrity, conservation, accessibility, traceability, and inalterability of billing records without omissions or alterations.

The subject matter regulated in Royal Decree 1007/2023 is different from (although compatible with) the regulations on electronic invoicing, whose development for business-to-business (B2B) transactions is currently being carried out by the Ministry of Economy.

The new regulations are applicable throughout the Spanish territory, except in the territories covered by the "foral" tax regime (the Basque Country and the Autonomous Community of Navarra).

The regulations are applicable to the following taxpayers:

a. Taxpayers subject to corporate income tax, except for fully exempt entities;

b. Taxpayers subject to personal income tax who carry out economic activities;

c. Taxpayers subject to nonresident income tax operating in Spain through a permanent establishment;

d. Entities subject to a tax transparency regime that carry out economic activities; and

e. Producers and marketers of computer systems that are made available to taxpayers referred to in letters a) to d) above, in matters related to their respective activities of production and marketing of the computer systems.

The regulations are not applicable to entrepreneurs or professionals that are required to keep VAT record books through the "Immediate Supply of Information" system (SII).

The regulations enter into force on 7 December 2023. However, the following deadlines must be taken into account:

- The taxpayers referred to in letters a) to d) above must adapt their operational computer systems to the characteristics and requirements established in Royal Decree 1007/2023 and its implementing regulations before 1 July 2025.

- Producers and marketers of information technology (IT) systems must offer products that are fully compliant with the regulations, with certain exceptions, within a maximum period of nine months from the entry into force of the ministerial order that will technically implement the regulations.

- Within a maximum period of nine months from the entry into force of the ministerial order referred to above, a service for the receipt of billing records sent by "verifiable invoice issuance systems" will be available through the Spanish tax authorities' online portal.

The main aspects of the regulations are briefly set out below:

- To comply with the obligations established in the regulations, taxpayers may use either a private computer system that meets the requirements established in the General Tax Law and in the related regulations, or the computer application that may be developed for this purpose by the tax authorities.

- Computer systems must ensure the integrity, conservation, accessibility, traceability, and inalterability of invoicing records, as well as having the ability to send to the tax authorities by electronic means—continuously, securely, correctly, completely, automatically, consecutively, instantaneously, and reliably—all the billing records generated.

- Billing systems must automatically generate a registration billing record simultaneously with or immediately prior to the issuance of each invoice, as well as, where appropriate, a cancellation billing record.

- The computerized records of registration and cancellation billing will include detailed information on the content of the invoice and the transaction, similar to the information required for the purposes of the SII, as well as a series of additional fields (e.g., date, hour, minute, and second at which the billing record is generated).

- Computerized billing systems must add a "fingerprint" or "hash" to the registration and cancellation billing records, which must be electronically signed (the electronic signature requirement will not be applicable to verifiable invoice issuance systems).

- Taxpayers that use a private computer system may voluntarily submit their invoicing records to the tax authorities, automatically and electronically. In these cases, their IT systems will be considered to be verifiable invoice issuance systems.

- The computer application developed by the tax authorities to comply with the provisions of the regulations will be considered to be a verifiable invoice issuance system.

- Upon request, the tax authorities may authorize an exception from the application of the regulations for taxpayers that demonstrate certain exceptional circumstances. These may be circumstances of a technical nature that make it impossible to comply with the provisions of the regulations, situations where an exception is justified by the commercial or administrative practices of the sector, or situations where an exception is justified to avoid disturbances in carrying out economic activities.

- Invoice recipients are granted the ability to voluntarily submit certain invoice information to the tax authorities.

- Ministerial orders may provide technical details of necessary aspects of the regulations.

United States

State Tax Matters (5 January 2024)

The 5 January 2024 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Administrative
  - New York: Newly enacted LLC Transparency Act creates limited access database of beneficial owners
- Income/Franchise:
  - California: Franchise Tax Board (FTB) asks superior court to narrow recent judgment declaring its P.L. 86-272 guidance invalid
  - California: FTB reminds taxpayers of state nonconformity to federal Internal Revenue Code (IRC) section 174 R&D deduction changes under Tax Cuts and Jobs Act
  - Hawaii: Department of Taxation updates guidance on elective passthrough entity-level tax
  - Indiana: Updated Department of Revenue guidance reflects newly enacted 30-day mobile workforce rule
  - New Jersey: Tax Court says P.L. 86-272 protections do not apply to out-of-state service provider
  - New Jersey: New bulletin addresses conformity with IRC section 174 and recent R&D credit law changes
  - New York: Department of Taxation and Finance adopts new article 9-A rules addressing 2014-2015 and 2015-2016 budget reforms
  - Oregon: Amended rule reflects extension of elective passthrough entity-level taxation through to 2026
  - Texas: Court of Appeals upholds personal property apportionment regulation
- Gross receipts:
  - Ohio: Updated information releases address 2023 law changes to commercial activity tax (CAT) exclusion and annual minimum tax
  - Washington: Amended rule addresses additional 1.2% business and occupation (B&O) tax on certain banks
  - Washington: Subsidiary deemed to have pre-merger B&O tax nexus but no filing requirement post-merger
- Sales/Use/Indirect:
  - Illinois: Appellate court affirms supplier’s sales of products to managed care organizations are not exempt

- **Massachusetts:** Department of Revenue proposes rule on accelerated sales tax remittance with public hearing on 18 January 2024
- **Michigan:** Bulletin explains sourcing sales of certain purchases made from out of state
- **New Mexico:** New and amended rules provide that digital advertising is subject to gross receipts taxation

The newsletter also features recent Multistate Tax Alerts:

- "New York corporate income tax regulations published December 27, 2023"
- "Pennsylvania changes treatment of certain grantor trusts"

United States

State Tax Matters (12 January 2024)

The 12 January 2024 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Administrative:
  - **Maryland:** Bulletin provides guidance and procedures for submitting petitions for private letter rulings
- Income/Franchise:
  - **Illinois:** Department of Revenue denies alternative apportionment request to include royalties in sales factor
  - **Massachusetts:** Draft release summarizes newly enacted single sales factor and financial institution apportionment provisions
  - **Michigan:** Appellate court says holding company has nexus for City of Detroit income tax purposes
  - **New York:** Department of Taxation and Finance provides list of states with taxes substantially similar to passthrough entity tax
  - **Pennsylvania:** Department of Revenue addresses corporate income tax sourcing of other than tangible personal property and services
  - **South Carolina:** Administrative law judge denies second motion for reconsideration of ruling mandating combined return
- Sales/Use/Indirect:
  - **Colorado:** Department of Revenue adopts rule on refund claims and potential penalties on incomplete claims
  - **Illinois:** Department of Revenue addresses retail delivery fees and taxation of Internal Revenue Code section 336 liquidations and nonfungible tokens (NFTs)

- **Indiana:** Tax Court says auto finance company may claim bad debt deductions despite repossessions
- **Texas:** Comptroller of Public Accounts adopts changes to local tax situsing rule

- **Unclaimed property:**
  - **Delaware:** Invitations for 2024 unclaimed property voluntary disclosure agreement coming soon

United States

State Tax Matters (19 January 2024)

The 19 January 2024 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- **Income/Franchise:**
  - **Missouri:** Department of Revenue rescinds special industry and optional single sales factor apportionment rules due to law changes
  - **Washington:** US Supreme Court denies individuals' request to rule on validity of capital gains tax
  - **Wisconsin:** Department of Revenue issues updated guidance reflecting increase in refundable portion of research and development credit
- **Sales/Use/Indirect:**
  - **Colorado:** District court grants Department of Revenue's motion to dismiss in dispute between taxpayer and locality
- **Property:**
  - **Montana:** Department of Revenue addresses changes to business equipment reporting requirement for tax year 2024

The newsletter also features a recent Multistate Tax Alert: "New York adopts final corporate income tax regulations"

United States

State Tax Matters (26 January 2024)

The 26 January 2024 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- **Administrative:**
  - **Michigan:** Governor's executive order says Michigan Tax Tribunal to function as independent agency

- Income/Franchise:
  - Georgia: Proposed rule changes reflect state law permitting some affiliates to file consolidated income tax return
  - New Jersey: Updated bulletin reflects corporation business tax (CBT) law changes involving bright-line economic nexus
  - Pennsylvania: Philadelphia Department of Revenue issues wage tax refund guidance for nonresidents required to work remotely
  - Vermont: Feedback sought on draft combined reporting and apportionment regulations
  - Virginia: Department of Taxation issues guidance on passthrough entity tax
- Gross receipts:
  - Washington: Merchants owe taxes on online marketplace transactions fulfilled using third-party's service program
- Sales/Use/Indirect:
  - California: 31 January 2024 tax workshop seeks public input on technology transfer agreements
  - South Carolina: Appellate court affirms online marketplace owes tax on third-party sales

The newsletter also features a recent Multistate Tax Alert: "Delaware – Invitations for 2024 unclaimed property voluntary disclosure agreement"

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

Deloitte.
Legal

Deloitte hace referencia, individual o conjuntamente, a Deloitte Touche Tohmatsu Limited («DTTL»), a su red global de firmas miembro y sus entidades vinculadas (conjuntamente, la «organización Deloitte»). DTTL (también denominada «Deloitte Global») y cada una de sus firmas miembro y entidades vinculadas son entidades jurídicamente separadas e independientes que no pueden obligarse ni vincularse entre sí frente a terceros. DTTL y cada una de sus firmas miembro y entidades vinculadas son responsables únicamente de sus propios actos y omisiones, y no de los de las demás. DTTL no presta servicios a clientes. Para obtener más información, consulte la página www.deloitte.com/about

Deloitte presta los más avanzados servicios de auditoría y assurance, asesoramiento fiscal y legal, consultoría, asesoramiento financiero y sobre riesgos a casi el 90% de las empresas de Fortune Global 500® y a miles de empresas privadas. Nuestros profesionales ofrecen resultados cuantificables y duraderos que contribuyen a reforzar la confianza de la sociedad en los mercados de capital, permiten que los negocios de nuestros clientes se transformen y prosperen, y lideran el camino hacia una economía más sólida, una sociedad más justa y un mundo sostenible. Con una trayectoria de más de 175 años, Deloitte está presente en más de 150 países y territorios. Para obtener información sobre el modo en que los cerca de 415.000 profesionales de Deloitte de todo el mundo crean un verdadero impacto, visite la página www.deloitte.com.

Esta publicación contiene exclusivamente información de carácter general, y ni Deloitte Touche Tohmatsu Limited («DTTL»), ni su red global de firmas miembro o sus entidades vinculadas (conjuntamente, la «organización Deloitte») pretenden, por medio de esta publicación, prestar un servicio o asesoramiento profesional. Antes de tomar cualquier decisión o adoptar cualquier medida que pueda afectar a su situación financiera o a su negocio, debe consultar con un asesor profesional cualificado.

No se realiza ninguna declaración ni se ofrece garantía o compromiso alguno (ya sea explícito o implícito) en cuanto a la exactitud o integridad de la información que consta en esta publicación, y ni DTTL, ni sus firmas miembro, entidades vinculadas, empleados o agentes serán responsables de las pérdidas o daños de cualquier clase originados directa o indirectamente en relación con las decisiones que tome una persona basándose en esta publicación. DTTL y cada una de sus firmas miembro, y sus entidades vinculadas, son entidades jurídicamente separadas e independientes.

Deloitte Legal