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## Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

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# I. Normativa

## 1. Lista de monedas que se consideran oro de inversión a efectos del régimen especial del oro de inversión.

La lista publicada en el Diario Oficial de la Unión Europea de 24 de noviembre de 2023, serie C/2023/854, viene a recoger aquellas monedas de oro que durante el año 2024 se consideran oro de inversión a efectos del régimen especial aplicable al oro de inversión contemplado en los artículos 140 y siguientes de la Ley del IVA.

# II. Jurisprudencia

## 1. Tribunal de Justicia de la Unión Europea. Sentencia de 23 de noviembre de 2023. Asunto C-532/22 (Westside Unicat).

*Directiva 2006/112/CE — Artículo 53 — Prestaciones de acceso a manifestaciones recreativas — Lugar de realización de las prestaciones de servicios — Difusión de sesiones de vídeo interactivas en streaming — Puesta a disposición de un local y del material necesario para la captura en video de espectáculos y provisión de acompañamiento con el fin de proporcionar espectáculos de calidad.*

Westside Unicat (WU) es una sociedad rumana cuya actividad consiste en la explotación de un estudio de grabación de video, vendiendo contenidos digitales de carácter erótico a StreamRay. StreamRay es una sociedad registrada en Estados Unidos que difunde en su página web los videos y videochats eróticos, poniendo además a disposición de sus clientes, la interfaz necesaria para interactuar con las modelos.

La Administración tributaria rumana abrió inspección a WU, de los ejercicios 2019 y 2020, al entender, basándose en la Directiva del IVA y en la Sentencia del TJUE, asunto Geelen, que el lugar de prestación de los servicios relacionados con el acceso a manifestaciones culturales es aquel dónde se encuentre situada la sede del prestador, es decir, Rumanía. Sin embargo, WU recurrió el resultado de la inspección, al entender que efectivamente StreamRay era el organizador de las sesiones, ya que los clientes podían acceder desde la plataforma.

Señala el Tribunal que la posesión y manipulación de equipos para grabar las sesiones eróticas no implica necesariamente que las sesiones filmadas sean presentadas al público. Por lo tanto, la actividad desarrollada por WU, consistente en grabar sesiones de vídeo interactivas de carácter erótico, con el objetivo de ponerlas a disposición de un operador de una plataforma de difusión por Internet, no se encuentran comprendidas en el ámbito de aplicación del artículo 53 de la Directiva del IVA, relativo al acceso a manifestaciones culturales, artísticas, deportivas, científicas, educativas, recreativas o similares, como las ferias o exposiciones, y los servicios accesorios en relación con el acceso.

Es importante destacar que, en esta sentencia, el TJUE analiza el concepto de “prestación de acceso a una manifestación”, tal y como se recoge en el artículo 53 de la Directiva del IVA, entendiendo por tal aquellas prestaciones de servicios que tienen lugar después de la organización de lo que es objeto de dicha manifestación o presentación al público, y cuya finalidad es conceder el acceso del público a esta última.

# III. Doctrina Administrativa

## 1. Tribunal Económico-Administrativo Central. Resolución nº 6065/2021, de 24 de octubre de 2023.

*Deducción — Artículo 99.Tres Ley del IVA — El ejercicio del derecho a la deducción es un derecho del empresario o profesional, y no una opción tributaria.*

Una empresa municipal, sociedad anónima con capital íntegramente municipal, solicitó la rectificación de sus autoliquidaciones del IVA correspondientes a los periodos de liquidación del año 2017, con devolución de ingresos indebidos, a fin de solicitar a la Administración tributaria que se incluyeran las cuotas del IVA soportado, que no incluyó en las mismas al no haberlas considerado deducibles de forma incorrecta.

La Administración tributaria deniega dicha solicitud de devolución de ingresos indebidos, en lo que aquí interesa, al considerar que el mecanismo de deducción del IVA soportado es una opción, por lo que, en virtud de la aplicación de la doctrina de los actos propios al ámbito tributario, los empresarios o profesionales no pueden rectificar sus autoliquidaciones para modificar el importe de la cuota deducible, incrementándolo con cuotas que en su día no se aplicaron, ya que no se puede modificar la opción ejercitada en este sentido.

Esta misma interpretación, respecto de la rectificación de autoliquidaciones del IVA para incluir en ellas cuotas del IVA soportadas no consignadas inicialmente, había sido mantenida por el TEAC en anteriores resoluciones, al entender que la inclusión de las cuotas del IVA soportadas en una autoliquidación del Impuesto constituye una opción, que no es susceptible de modificación una vez vencido el plazo de presentación de dicha autoliquidación correspondiente a un determinado periodo de liquidación.

Sin embargo, en esta Resolución que estamos comentando, el TEAC modifica su criterio interpretativo a raíz de dos sentencias del Tribunal Supremo de fecha 23 de febrero de 2023 (recursos de casación nº 6007/2021 y 6058/2021) en las que el Alto Tribunal establece que "*el ejercicio del derecho a la deducción de cuotas soportadas de IVA es un derecho del contribuyente, y no una opción tributaria del artículo 119.3 LGT* (…)".

Entendiendo el TEAC que el criterio fijado por el Tribunal es de carácter general, y no limitado únicamente al supuesto concreto que el Tribunal Supremo dirimió en ambos litigios, modifica su anterior criterio interpretativo, en el sentido de considerar que la deducción de las cuotas del IVA soportado es un derecho del empresario o profesional, y no una opción tributaria, por lo que confirma las pretensiones de la empresa municipal.

## 2. Tribunal Económico-Administrativo Central. Resolución nº 272/2021, de 24 de octubre de 2023.

*Compensación de cuotas — Artículo 99.Cinco Ley del IVA — La compensación de cuotas en autoliquidaciones posteriores es un derecho del empresario o profesional, y no una opción tributaria.*

Una empresa presenta en el mes de junio de 2020, en plazo, la autoliquidación del IVA correspondiente al periodo de liquidación del mes de mayo de 2020. En dicha liquidación, cuyo resultado es a devolver, se incluye un determinado importe de cuotas a compensar de periodos anteriores.

Posteriormente, la empresa presenta una autoliquidación complementaria de la anterior en la que, además de rectificar algunos datos correspondientes al IVA devengado y soportado deducible, no incluye el importe correspondiente de cuotas a compensar de periodos anteriores, dando como resultado un importe a ingresar, y girando la Administración tributaria el recargo por presentación extemporánea.

Contra la liquidación de dicho recargo por presentación fuera de plazo de autoliquidación recurre la empresa, alegando, en lo que aquí concierne, su improcedencia debido a que la autoliquidación complementaria presentada fuera de plazo fue incorrecta al no incluir la aplicación de las cuotas a compensar.

El TEAC analiza si la compensación del exceso de cuotas soportadas sobre las repercutidas no deducido en periodos anteriores constituye o no un derecho de opción. A estos efectos, el TEAC asume el criterio interpretativo marcado por las dos sentencias del Tribunal Supremo de fecha 23 de febrero de 2023 (recursos de casación nº 6007/2021 y 6058/2021) en las que el Alto Tribunal, respecto de la deducción de las cuotas del IVA soportado, establece que "*el ejercicio del derecho a la deducción de cuotas soportadas de IVA es un derecho del contribuyente, y no una opción tributaria del artículo 119.3 LGT* (…)".

Atendiendo a este criterio, el TEAC considera que la compensación del exceso de cuotas de IVA soportadas sobre las repercutidas no deducido en periodos de liquidación anteriores constituye un derecho, y no una opción tributaria.

Es por ello por lo que concluye que la modificación llevada a cabo por la empresa en la autoliquidación complementaria presentada, en el sentido de no aplicar los saldos a compensar de ejercicios anteriores, fue válida, lo que lleva al TEAC a concluir que el recargo exigido por la Administración tributaria es procedente.

## 3. Dirección General de Tributos. Contestación nº V2657-23, de 2 de octubre de 2023.

*Deducción — Artículos 94, 95 y 108 de la Ley del IVA — Cuotas del IVA soportadas en los suministros de una vivienda que está afecta parcialmente a la actividad económica de un empresario individual.*

De acuerdo con lo previsto en los artículos 94, 95 y 108 de la Ley del IVA, la DGT ha venido manteniendo, de forma reiterada, entre otras, en la contestación vinculante de 16 de febrero de 2021, número V0257-21, que no serán deducibles en medida o cuantía alguna las cuotas del IVA soportado por la adquisición de bienes o servicios que no se afecten, directa y exclusivamente, a la actividad empresarial o profesional del empresario o profesional, salvo en el supuesto de que se trate de bienes de inversión, según la definición contenida en el artículo 108 de la Ley del IVA, en cuyo caso la afectación parcial de tales bienes permitirá la deducción parcial de las cuotas soportadas conforme a las reglas establecidas en el apartado tres del artículo 95 de esa Ley.

Es por ello por lo que, en lo que se refiere a la posible deducibilidad de las cuotas soportadas por los suministros contratados en la vivienda, como el agua, la luz o el acceso a internet, la DGT ha venido considerando que, del mismo artículo 95 de la Ley del IVA, se deriva que no podrán ser deducidas en ninguna medida ni cuantía, toda vez que se prevé su utilización simultánea para satisfacer necesidades de la parte del edificio destinada a vivienda. En caso de tratarse de suministros destinados en exclusiva a la actividad empresarial o profesional, sí serán deducibles las cuotas soportadas por dichas adquisiciones.

No obstante, respecto de las cuotas soportadas por los suministros contratados en una vivienda parcialmente afecta a la actividad empresarial o profesional, el Tribunal Económico-Administrativo Central se ha pronunciado recientemente en unificación de criterio en su resolución de 19 de julio de 2023 (resolución 06654/2022), lo que, a la postre, supone la modificación del criterio expuesto, tal y como reconoce la propia DGT.

Es por ello por lo que considera la DGT que serán deducibles las cuotas del Impuesto soportadas por los gastos de suministros, como el gasto de luz, agua o internet vinculado a su vivienda siempre que la misma se encuentre afecta parcialmente a su actividad empresarial o profesional y dicha deducción deberá realizarse de forma proporcional a su utilización en dicha actividad económica.

Este criterio relativo a la deducibilidad parcial de los gastos de suministros en la vivienda afecta parcialmente a la actividad supone un cambio de criterio respecto a la reiterada doctrina de ese Centro directivo recogida, entre otras, en la referida contestación vinculante de 16 de febrero de 2021, número V0257-21.

## 4. Dirección General de Tributos. Contestación nº V2659-23, de 2 de octubre de 2023.

*Exención — Artículo 20.uno.16º Ley del IVA — Servicio de mediación en operaciones de seguro — Actividad consistente en la generación de clientes potenciales ("Leads") a través de perfiles en redes sociales o páginas web, que son transmitidas a empresas de seguros, agentes de seguro o intermediarios de seguro.*

El artículo 20.uno.16º de la Ley del IVA dispone la exención de las operaciones de seguro, reaseguro y capitalización, así como los servicios de mediación, incluyendo la captación de clientes, para la celebración del contrato entre las partes intervinientes en la realización de las anteriores operaciones, con independencia de la condición del empresario o profesional que los preste.

Se consulta a la DGT sobre la exención de los servicios de generación de "leads", que serán prestados a empresas o intermediarios de seguros, entendiendo que el término "lead" se refiere a un posible consumidor de un producto o servicio que ofrece sus datos a través de un canal determinado como pueden ser una página web o redes sociales. En definitiva, la generación de un "lead" es la obtención de cierta información de un potencial cliente de una empresa.

La DGT, tras analizar el concepto de mediación de acuerdo con la Directiva del IVA y la jurisprudencia del TJUE, considera que, en cuanto al posible acceso a la contratación de un seguro a través de Internet, ya se ha pronunciado en relación con la contratación de forma indirecta de un producto financiero, en la contestación vinculante de 24 de mayo de 2019,

número V1138-19, estableciendo unos criterios que, entiende, son también de aplicación a la contratación de seguros y que permiten aclarar cuando se produce la contratación indirecta de un seguro.

De esta forma, la aportación de la información relativa a uno o varios contratos de seguros de acuerdo con los criterios elegidos por los clientes a través de un sitio web o de otros medios, y la elaboración de una clasificación de productos de seguros, incluidos precios y comparaciones de productos, o un descuento sobre el precio o tipo de interés de un contrato financiero, será considerado mediación siempre y cuando el cliente pueda celebrar el contrato directa o indirectamente al final del proceso en el propio sitio web o medio empleado. En este supuesto se entendería que existiría un elemento adicional al suministro de información en la medida en que la misma página permite la conclusión del contrato.

A estos efectos se considerará que el cliente puede celebrar el contrato de forma indirecta cuando es redirigido a la página web de la entidad aseguradora o mediador para la contratación desde la página del colaborador externo, siempre que este último incluya un elemento adicional que ayude o contribuya a la conclusión del contrato.

Por el contrario, considera la DGT que no estará amparado por la exención la aportación de la información relativa a uno o varios productos de seguro de acuerdo con los criterios elegidos por los clientes a través de un sitio web o de otros medios, y la elaboración de una clasificación de productos, incluidos precios y comparaciones de productos, o un descuento sobre el precio o tipo de interés de un contrato de seguro, cuando no tenga por objeto la celebración de contrato alguno, sino que se limite a comparar los productos disponibles en el mercado incluso aunque el mismo medio o sitio web permita directamente enlazar o acceder a los sitios web o medios de un mediador o de una empresa aseguradora para la celebración del contrato. En este supuesto se entiende que la labor desarrollada por el portal no incorpora ese elemento adicional necesario para su calificación como mediación.

De acuerdo con lo anterior, la DGT concluye que la generación de "leads", al consistir en obtener ciertos datos sobre posibles clientes potenciales de un seguro, no es una operación exenta del IVA, puesto que se trata de una mera obtención de información sobre potenciales tomadores de seguro para ser entregada a intermediarios de seguros mediante contraprestación. De esta forma, el empresario o profesional que efectúe estas operaciones deberá repercutir el IVA al tipo general del 21 por ciento.

## 5. Dirección General de Tributos. Contestación nº V2709-23, de 6 de octubre de 2023.

*Hecho imponible — Artículo 4 de la Ley del IVA — Base imponible — Artículo 78 Ley del IVA — Refacturación de gastos — Servicio de "cook working", consistente en ceder cocinas con toda la infraestructura y servicios a clientes relacionados con la distribución de comida a domicilio, en el que se refacturan a los clientes determinados gastos relacionados con el suministro (luz, agua y gas).*

Una sociedad mercantil se dedica a la actividad de "cook working". Esta consiste básicamente en ceder cocinas con toda la infraestructura y servicios a clientes relacionados con la distribución de comida a domicilio. Posteriormente, la sociedad mercantil refactura a sus clientes determinados gastos relacionados con el suministro, tales como el luz, agua y gas.

Se cuestiona acerca de la determinación de la base imponible del IVA de dicha refacturación.

La DGT comienza por analizar si, y en qué condiciones, el pago de una cantidad por la sociedad mercantil tendría la naturaleza de suplido, de acuerdo con lo previsto en el artículo 78.Tres.3º de la LIVA. De considerarse un suplido, señala la DGT, la operación estará no sujeta al IVA.

Por lo que respecta a la refacturación de gastos es necesario distinguir cuando ésta se refiere única y exclusivamente a un gasto soportado por el sujeto pasivo que se refactura a su cliente o, por el contrario, la refacturación del mencionado gasto se realiza en el marco de una entrega de bienes o de una prestación de servicios respecto de los que podría tener la consideración de accesorio. Respecto de esta última posibilidad, tras analizar la jurisprudencia del TJUE sobre esta materia, la DGT considera que cuando los gastos refacturados formen parte de una prestación de servicios o entrega de bienes que constituye una prestación o entrega única para su destinatario, los gastos refacturados serán accesorios de la prestación principal y recibirán el mismo tratamiento en el Impuesto sobre el Valor Añadido que la prestación o entrega principal.

Por el contrario, cuando los gastos refacturados no formen parte de una prestación de servicios o entrega de bienes en los términos señalados, los mismos constituirán prestaciones independientes, que deberán tributar por separado.

Pues bien, a juicio de la DGT, parece deducirse que los gastos refacturados se realizan en el marco del arrendamiento o cesión de cocinas que la sociedad mercantil consultante ofrece a sus clientes completamente equipadas con todo lo necesario para su uso, siendo por tanto esos gastos accesorios al referido arrendamiento o cesión de las cocinas, debiendo tributar conforme a esta operación principal.

## 6. Dirección General de Tributos. Contestación nº V2795-23, de 16 de octubre de 2023.

*Base imponible — Reducción base imponible por deudor en situación de concurso de acreedores — Artículo 80.Tres Ley del IVA — Cobro parcial del crédito concursal ordinario.*

Una profesional, dedicada a la procura, es acreedora de una empresa declarada en concurso de acreedores. La primera comunicó su crédito al Juzgado de lo Mercantil siendo reconocido el mismo posteriormente por la Administración Concursal.

Dicha profesional procedió a modificar la base imponible presentando el correspondiente escrito ante la Agencia Estatal de Administración, enviando las correspondientes facturas a la concursada y al administrador concursal. Estos hechos acaecieron en el ejercicio 2012. En noviembre de 2021 el juzgado mercantil que tramita el concurso autorizó a la administración concursal, a proceder al pago parcial del 10% del importe de los créditos concursales ordinarios, entre los que se encuentra el de esa profesional, por lo que ha conseguido cobrar parte de su crédito, pero aún no ha terminado el concurso.

Se consulta sobre la obligación de la profesional, en su caso, de expedir una nueva factura por el importe percibido, repercutiendo la cuota del IVA correspondiente.

El artículo 80.Tres de la Ley del IVA establece que solo cuando se acuerde la conclusión del concurso por las causas expresadas en el artículo 176.1, apartados 1.º, 4.º y 5.º de la Ley Concursal, el acreedor que hubiese modificado la base imponible deberá modificarla nuevamente al alza mediante la emisión, en el plazo que se fije reglamentariamente, de una factura rectificativa en la que se repercuta la cuota procedente.

A estos efectos, señala la DGT que las referencias a la conclusión del concurso señaladas anteriormente deben entenderse realizadas actualmente al artículo 465, apartados 1º, 6º y 7º del Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal, que dispone lo siguiente:

*"La conclusión del concurso con el archivo de las actuaciones procederá en los siguientes casos:*

*1.º Cuando alcance firmeza el auto de la Audiencia Provincial que, estimando la apelación, revoque el auto de declaración de concurso.*

*(…)*

*6.º Cuando se hayan liquidado los bienes y derechos de la masa activa y aplicado lo obtenido en la liquidación a la satisfacción de los créditos.*

*7.º Cuando, en cualquier estado del procedimiento, se compruebe la insuficiencia de la masa activa para satisfacer los créditos contra la masa, y concurran las demás condiciones establecidas en esta ley.".*

Por lo tanto, concluye la DGT que, dado que no se habría producido la conclusión del concurso por ninguna de las causas contenidas actualmente en el artículo 465, apartados 1º, 6º y 7º del Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal, la profesional consultante no tendrá que modificar nuevamente la base imponible, en el caso del cobro de la deuda acordada en el concurso. No habiéndose concluido el concurso por estas causas específicas, no se deberá rectificar (al alza) la modificación de la base imponible efectuada ni reembolsar cantidad alguna a la Hacienda Pública.

## 7. Dirección General de Tributos. Contestación nº V2846-23, de 23 de octubre de 2023.

*Artículo 8 bis Ley del IVA — Concepto de "proveedor asimilado" que facilita ventas a través de una interfaz digital.*

El artículo 8 bis de la Ley del IVA establece que cuando un empresario o profesional facilite ventas a través de una interfaz digital el mismo se convertirá en "proveedor asimilado" y participará así en la recaudación del IVA correspondiente a dichas ventas. Es decir, se entenderá que ha recibido dichos bienes y al mismo tiempo los ha vendido a los consumidores finales debiendo, por tanto, ingresar el Impuesto correspondiente.

Esta condición está limitada a los supuestos previstos en el propio artículo 8 bis de la Ley del IVA, es decir, en casos de:

a) venta a distancia de bienes importados de países o territorios terceros en envíos cuyo valor intrínseco no exceda de 150 euros, o de

b) entrega de bienes en el interior de la Comunidad por parte de un empresario o profesional no establecido en la Comunidad a una persona que no tenga la condición de empresario o profesional actuando como tal.

En esta contestación a consulta se plantea la cuestión de la interpretación de este precepto en un supuesto en el que una entidad se dedica a la prestación de servicios logísticos a clientes empresariales. Los clientes envían las mercancías a los almacenes de la entidad. Una vez que tales clientes a través de sus propias páginas web venden sus productos a consumidores finales, la entidad, a través de un software conectado a las páginas web de sus clientes vendedores, recibe una orden de los productos que tiene que empaquetar y dejar preparados para que una compañía de transportes (ajena a la entidad) recoja el pedido y lo entregue al consumidor final.

Cuando la compañía de transportes entrega la mercancía recibe el dinero de la venta y se lo transfiere a la entidad, la cual, tras detraer sus honorarios por sus servicios logísticos, transfiere el importe restante al vendedor.

La cuestión radica en considerar si la entidad que presta servicios logísticos se entiende que, a través de esa operativa, está facilitando las ventas realizadas entre proveedores y clientes y por tanto, podría considerarse que, como titular de la interfaz digital que presta los servicios logísticos y recibe el precio de la venta, ha recibido y entregado por sí mismo los correspondientes bienes y puede tener la consideración de "proveedor asimilado" en los términos previstos en el artículo 8 bis de la Ley del IVA.

Señala la DGT, acudiendo a lo previsto en el artículo 14 bis de la Directiva del IVA y 5 ter del Reglamento de Ejecución (UE) nº 282/2011, que el concepto de "facilitar" se sustenta en la existencia de una interfaz electrónica que permita establecer un contacto entre el vendedor y posible comprador de una mercancía de modo que a través de esta interfaz se materialice dicha venta.

Es un requisito necesario, por lo tanto, que la plataforma suponga un punto de contacto entre vendedor y comprador. El concepto engloba situaciones en las que los clientes inician un proceso de compra o realizan una oferta para adquirir bienes y los vendedores aceptan la oferta a través de la interfaz electrónica. En líneas generales, en transacciones de comercio electrónico, esto se refleja en que el proceso de realización del pedido y de pago se lleve a cabo por la interfaz electrónica o a través de esta.

Pues bien, entiende la DGT que en el caso planteado parece deducirse que la entidad, titular de una interfaz digital, no facilita las ventas en la medida en que no cumple el requisito necesario de poner en contacto a vendedor y comprador para la realización de una venta. Dicha entidad no interviene en el proceso de compra entre vendedor y comprador, sino que su actuación se limita a la prestación de servicios logísticos y de empaquetado, así como del cobro del precio de la venta.

De esta forma, la DGT concluye que, en tales condiciones, la entidad que presta servicios logísticos no facilita las ventas en los términos señalados, por lo que no tendrá la consideración de "proveedor asimilado" a los efectos del artículo 8 bis de la Ley del IVA.

## 8. Dirección General de Tributos. Contestación nº V2851-23, de 23 de octubre de 2023.

*Artículo 69.Tres Ley del IVA — Concepto de establecimiento permanente — Artículo 70.uno.1º Ley del IVA — Lugar de realización de prestación de servicios — Servicios de almacenamiento y logísticos de mercancías prestados a una entidad sueca.*

Una sociedad mercantil, establecida en el territorio de aplicación del Impuesto, presta servicios de almacenamiento y logísticos a una entidad sueca que comprenden, entre otros: el almacenamiento y recepción de las mercancías, cuya propiedad mantiene la entidad sueca hasta que las vende a sus clientes en el territorio de aplicación del impuesto; el mantenimiento de un volumen de almacenamiento concreto en sus instalaciones para garantizar el stock necesario. Esta actividad no supondrá el arrendamiento de un espacio concreto en las instalaciones de la sociedad mercantil a favor de la entidad sueca, ni existirá acceso libre a dichas instalaciones por parte de esta última; la contraprestación por estos servicios no es fija. La sociedad no actúa como agente de la entidad sueca, ni se encuentra autorizada para contratar en nombre ni por cuenta de ella.

Sobre estos hechos, se consulta sobre la posible existencia de un establecimiento permanente a efectos del IVA por parte de la entidad sueca en el territorio de aplicación del Impuesto, así como la sujeción, en su caso, al IVA español de los servicios logísticos prestados por la sociedad mercantil.

Respecto de la primera cuestión, recuerda la DGT que es criterio manifestado, entre otras, en la contestación vinculante de 6 de junio de 2019, consulta V1301-19, en relación con el mantenimiento de bienes en almacenes situados en el territorio de aplicación del impuesto que el simple hecho de que una empresa coloque bienes de su propiedad en almacenes o instalaciones sitas en dicho territorio, o sea destinataria de servicios logísticos, no implica necesariamente que dicha empresa posea un establecimiento permanente ni, en consecuencia, esté establecida en el territorio de aplicación del impuesto.

No obstante, respecto del arrendamiento de instalaciones o almacenes en el territorio de aplicación del impuesto por un no residente, debe señalarse que la DGT ha señalado en reiteradas ocasiones (por todas, contestación vinculante de 12 de mayo de 2017, consulta V1145-17), que un empresario o profesional dispondrá de un establecimiento permanente en el caso de que disponga de las instalaciones (almacenes) en calidad de propietario, titular de un derecho real de uso o arrendatario de la totalidad o de una parte fija y determinada del mismo y explote dichas instalaciones con los medios técnicos y humanos necesarios para ello, propios o subcontratados.

Aplicando lo anterior al supuesto objeto de consulta, y teniendo en cuenta que la entidad sueca no parece ostentar la titularidad de una parte concreta de ningún almacén, limitándose a contratar con la sociedad la prestación de servicios de logística, incluido el almacenamiento, no parece que dicha circunstancia confiera a la entidad sueca la condición de entidad establecida en el territorio de aplicación del impuesto.

Por lo que se refiere a la segunda pregunta, recuerda la DGT que es criterio reiterado (por todas, la contestación vinculante de 20 de febrero de 2019, número V0373-19), que cuando el servicio de almacenamiento prestado implique la cesión de uso, por cualquier título, de un espacio físico específico y de su uso exclusivo, dicho servicio tendría la

naturaleza de arrendamiento o cesión de uso la totalidad o parte de un bien inmueble calificable, por tanto, de servicio directamente relacionado con un bien inmueble y sujeto al Impuesto sobre el Valor Añadido cuando dicho bien inmueble se encuentre en el territorio de aplicación del impuesto.

Sin embargo, si los servicios de almacenamiento no se realizan en un espacio reservado exclusivamente a la destinataria, como parece ser el supuesto de hecho planteado, así como los demás servicios logísticos, concluye la DGT que no se calificarán como servicios relacionados con bienes inmuebles y, por tanto, no estarán sujetos al IVA, toda vez que la entidad sueca no está establecida en el territorio de aplicación del Impuesto.

## 9. Dirección General de Tributos. Contestación nº V2888-23, de 26 de octubre de 2023.

*Concepto de bono — Resolución DGT 28 de diciembre de 2018 — Bono polivalente — Determinación de la base imponible del servicio subyacente — Servicio subyacente consistente en el acceso mensual a instalaciones deportivas de gimnasios y centros de "fitness".*

Una sociedad mercantil, establecida fuera de la Comunidad que no dispone de medios materiales ni humanos en el territorio de aplicación del Impuesto, ni dispone de establecimiento permanente, gestiona una plataforma en línea que ofrece acceso a gimnasios y otros servicios relativos a la salud, pudiendo estar situados en diversos países de todo el mundo.

Estos servicios son ofrecidos a particulares y consisten en ofrecer diversos tipos de planes mensuales cuyo precio varía en función del número de servicios a los que se puede acceder. La selección de un plan mensual por el usuario se traduce en la emisión de un bono por parte de la sociedad mercantil que pueden redimir los usuarios para el acceso a instalaciones de cualquier gimnasio o "centro de fitness" asociado al programa. También puede canjearse por otros servicios como los de nutricionistas, meditación, sesiones pregrabadas y en línea que ofrecen los gimnasios, fisioterapia o entrenadores personales.

La sociedad mercantil acuerda con los gimnasios y centros asociados el pago mensual por aquélla de un importe por cada validación que realicen los usuarios que accedan a sus instalaciones, acordándose un precio por cada validación realizada por los usuarios y un importe máximo mensual que la sociedad abonará a cada centro.

Sobre estos hechos, la sociedad mercantil pregunta acerca la consideración de esos bonos como bonos polivalentes a efectos del IVA y sobre la determinación de la base imponible de los servicios subyacentes prestados por los gimnasios y centros asociados.

Tras repasar el contenido de la Directiva 2016/1065 del Consejo, por la que se modifica la Directiva 2006/112/CE en lo que respecta al tratamiento de los bonos, y la Resolución de 28 de diciembre de 2018, de la Dirección General de Tributos, sobre el tratamiento de los bonos en el IVA que constituye la transposición en el ámbito interno de la mencionada norma comunitaria, considera la DGT que, de la información aportada por la sociedad consultante, resulta que los bonos que va a vender a sus clientes darán derecho a acceder a gimnasios y "centros de fitness" así como a distintos tipos de servicios en cualquiera de los centros asociados al programa, que se encuentran distribuidos por diversos países, tanto dentro como fuera de la Comunidad.

De esta forma, no existe certeza acerca de la tributación a efectos del IVA de los servicios subyacentes a dichos bonos en el momento de su entrega.

En consecuencia, la DGT entiende que los bonos reúnen la condición de bono polivalente, en los términos previstos en la Directiva 2016/1065 y en la Resolución de 28 de diciembre de 2018.

En relación con el régimen de tributación de los bonos polivalentes, recuerda la DGT que la transmisión de un bono polivalente por su emisor o su poseedor no se encontrará sujeta al Impuesto, sin perjuicio de la tributación que corresponda a la operación subyacente cuando dicho bono se redima.

No obstante, cuando la transmisión de un bono polivalente la efectúe un empresario o profesional distinto del empresario o profesional que esté obligado a entregar los bienes o a prestar los servicios a que se refiere el bono cuando sea canjeado por su tenedor, deberá entenderse que el empresario o profesional que lo transmite, ya sea su emisor u otro empresario o profesional que actúe en nombre propio, efectúa un servicio de distribución o promoción a efectos del IVA.

El servicio de distribución o promoción solo quedará sujeto al IVA en el territorio de aplicación del Impuesto cuando el empresario o profesional que lo realice se encuentre establecido en dicho territorio por contar en el mismo con la sede de su actividad económica o con un establecimiento permanente desde el que preste el servicio.

De esta forma, considera la DGT que los servicios que presta la sociedad mercantil consultante, emisora de los bonos que no se encuentra establecida en el territorio de aplicación del impuesto, en la transmisión de los mismos a sus clientes tendrían la consideración de servicios de distribución o promoción a efectos del Impuesto pero no se encontrarían sujetos al mismo, en el entendimiento de que no tiene su sede de actividad económica, ni un establecimiento permanente en el territorio de aplicación del impuesto.

Por lo que se refiere a la prestación de servicios subyacentes de gimnasio y demás que pueden adquirirse con los bonos, y a la determinación de su base imponible del IVA, comienza la DGT por señalar que el destinatario de los servicios subyacentes de gimnasio y el resto de los servicios incluidos en bono correspondiente será el cliente tenedor del bono que lo presente para su canje y la base imponible del referido servicio será igual a la contraprestación pagada por el bono o, a falta de información sobre dicha contraprestación, al valor monetario indicado en el propio bono polivalente o en la documentación asociada al mismo, menos la cuota del Impuesto correspondiente a los servicios prestados.

Ahora bien, señala la DGT que, en el supuesto objeto de consulta, por un bono único mensual se permite a su tenedor la utilización de los servicios de gimnasio y el resto de los posibles servicios incluidos en el mismo no en un único centro sino en distintos centros asociados en un mismo mes, de manera que la base imponible de cada uso diario del bono no podría corresponder con el importe total del bono mensual satisfecho por su tenedor.

En estas circunstancias, para el cálculo de la base imponible del Impuesto de estos servicios subyacentes de manera individualizada cada día o validación que sean utilizados por el tenedor del bono deberá utilizarse un criterio homogéneo y razonable que permita individualizar la parte del importe total mensual del bono satisfecho por su tenedor que se corresponde con ese uso o validación diario individual.

En este sentido, entiende la DGT que un criterio razonable podría ser atribuir a cada validación diaria realizada por el usuario en cualquiera de los centros asociados o por servicios recibidos la parte proporcional que corresponda al importe total del bono mensual en función del número de día del mes correspondiente (o de los días totales que abarque el bono si no coincide con un mes natural).

Es decir, si el bono comprende treinta días, el importe teórico correspondiente para determinar la base imponible del impuesto por la validación de un día sería el resultado de dividir el importe total del bono mensual entre treinta, menos la cuota del Impuesto correspondiente a los servicios prestados.

Finalmente, la DGT analiza la posibilidad de que se produzca la circunstancia de que la sociedad mercantil satisfaga al gimnasio o centro correspondiente una cantidad superior a este precio diario teórico del bono canjeado calculado según lo expuesto anteriormente.

De ser así, entiende ese Centro directivo que dicho exceso tendrá la consideración de contraprestación de una prestación de servicios realizada por el gimnasio o centro asociado a favor de la sociedad mercantil. Prestación que, a juicio de la DGT, en caso de producirse, consistirá en el derecho de acceso a una instalación deportiva, por lo que, en atención a lo previsto en el artículo 70.Uno.3º de la Ley del IVA, estará sujeta al IVA cuando se produzca en el territorio de aplicación del Impuesto.

## 10. Dirección General de Tributos. Contestación nº V2922-23, de 31 de octubre de 2023.

*Artículo 88 de la Ley del IVA — plazo de caducidad para la repercusión del IVA — Artículo 89 de la Ley del IVA — Rectificación mediante la presentación de autoliquidación complementaria — Artículo 78 de la Ley del IVA — Determinación de la base imponible del Impuesto cuando se ha fijado el precio sin mención alguna del IVA.*

Una entidad mercantil firmó un contrato de arrendamiento de vivienda a un particular con prohibición expresa de subarriendo total o parcial, por lo que el arrendamiento quedó sujeto y exento del Impuesto, no repercutiendo dicha entidad el IVA ni expidiendo tampoco factura alguna. Posteriormente, la entidad mercantil presentó demanda judicial por incumplimiento de contrato de arrendamiento al entender que el arrendatario estaba procediendo a subarrendar el inmueble objeto de aquel.

El juzgado, en sentencia firme, determina que, aunque el contrato especificaba la prohibición del subarriendo, había existido consentimiento verbal por negociaciones realizadas en este sentido por parte del arrendador para que el arrendatario pudiera subarrendar parcial o totalmente el objeto del contrato.

En atención a estos hechos, se consulta esencialmente si la entidad mercantil debiera regularizar la situación mediante la presentación de autoliquidaciones complementarias y si debiera entenderse que la cuota del IVA correspondiente estaba incluida en el precio o contraprestación pactada por el servicio de arrendamiento.

Respecto de la primera cuestión, considera la DGT, con carácter previo, que dado que el arrendamiento de la vivienda pasó a destinarse al subarrendamiento por parte del arrendatario original, con conocimiento del arrendador según se ha acreditado judicialmente, no se encontraría exento del Impuesto en virtud de lo dispuesto en el artículo 20.Uno.23º.f) de la Ley del IVA.

Por otro lado, al no haber expedido la entidad mercantil las facturas correspondientes al arrendamiento en los términos previstos en el artículo 88 de la Ley del IVA, el plazo para repercutir el Impuesto mediante la expedición y entrega de la oportuna factura fue de un año contado desde la fecha de devengo del Impuesto correspondiente a la operación gravada.

Este plazo de caducidad del derecho al traslado por parte del sujeto pasivo de la cuota tributaria al destinatario de la operación ha de interpretarse, como ha señalado reiteradamente el Tribunal Supremo, entre otras, en sus sentencias de 5 de diciembre de 2011 y 18 de marzo de 2009, en el sentido de que la pérdida del derecho a repercutir se refiere a aquellos casos en los que la ausencia de repercusión se produce sin causa que lo justifique.

No obstante lo anterior, en el supuesto de que el destinatario de las operaciones no estuviera obligado a soportar la repercusión, por haber caducado el derecho de las entidades prestadoras a repercutir el mismo, no se impide que aquél pueda aceptar voluntariamente soportar la repercusión extemporánea del Impuesto, de acuerdo con la jurisprudencia del Tribunal Supremo establecida en la citada sentencia de 18 de marzo de 2009.

En todo caso, considera la DGT que la entidad deberá rectificar las cuotas no declaradas correspondientes al arrendamiento objeto de consulta en los términos previstos en el artículo 89.Cinco, párrafo primero, de la Ley del IVA, lo que le aboca a la presentación de declaraciones rectificativas de los períodos en los que no declaró dichas cuotas, con los recargos e intereses de demora que procedan según lo dispuesto en los artículos 26 y 27 de la 58/2003, de 17 de diciembre, Ley General Tributaria.

En segundo lugar, y respecto al importe de las cuotas que debe declarar la entidad mercantil, la DGT parte del principio básico de que el IVA es un impuesto sobre el consumo que debe soportar el consumidor final, siendo el sujeto pasivo un mero intermediario entre la Administración Tributaria y dicho consumidor a efectos de la recaudación del mencionado tributo. Así, en los casos en que las partes no hayan acordado expresamente que el precio pactado por una operación gravada por el IVA incluya la cuota devengada por el mismo, con carácter general debe entenderse que dicha cuota no se encuentra incluida en el mencionado precio cuando el sujeto pasivo pueda repercutir conforme a derecho la cuota impositiva al destinatario de la operación.

No obstante, en la medida en que, según parece, la entidad mercantil no va a tener la posibilidad de repercutir al destinatario la cuota del Impuesto correspondiente a los períodos en los que la vivienda estuvo destinada al subarrendamiento, deberá entenderse que dicha cuota sí estaba incluida en la contraprestación pactada.

### 11. Dirección General de Tributos. Contestación nº V2928-23, de 31 de octubre de 2023.

*Artículos 90 y 91.uno.2.2º de la Ley del IVA — Tipo impositivo — Entrega, mediante contraprestación, de un recipiente por parte de los empresarios de hostelería a sus clientes para que estos puedan llevarse los alimentos no consumidos del servicio de restauración.*

¿Qué tipo de gravamen del IVA resulta de aplicación cuando un empresario de hostelería, mediante precio, entrega a sus clientes un recipiente para que estos últimos puedan llevarse los alimentos no consumidos del servicio de restauración?

Esta es la pregunta planteada por una agrupación de empresarios de hostelería, a la que la DGT, para darle respuesta, analiza si dicha entrega de los envases por parte de los empresarios de hostelería constituye una operación independiente respecto del servicio de restaurante o se trata, por el contrario, de una operación accesoria de este último.

Recogiendo la jurisprudencia del TJUE existente en relación a cuando una operación está compuesta por un conjunto de prestaciones, la DGT concluye que la entrega de los envases mediante contraprestación a los clientes que así lo soliciten no constituye una operación accesoria respecto del servicio de hostelería, ya que para el destinatario tiene un fin en sí mismo y, por consiguiente, dichas entregas deberán tributar de forma independiente respecto de la prestación de servicios de restauración, siendo el tipo impositivo aplicable a la entrega de los envases el general del 21 por ciento, según lo previsto en el artículo 90, apartado uno, de la Ley del IVA.

## IV. Country Summaries

### Featured articles

European Union

### VAT in the Digital Age: Status of the proposal one year on

On 8 December 2023, the Economic and Financial Affairs Council (ECOFIN) reported on the progress made by the European Commission and the EU member states on the VAT in the Digital Age (ViDA) proposal that was published exactly one year earlier. This proposal contained the European Commission's ambitious vision for how VAT reporting should embrace digital opportunities, recommended changes to the VAT rules applicable to the platform economy and e-commerce, and presented steps towards a single VAT registration in the EU. Despite an intensive work program under successive EU presidencies, no agreement has yet been reached on any of the components of the ViDA package. However, this anniversary is an appropriate opportunity to take stock of how the proposed package of measures has evolved over the past year.

## Background

The ViDA package contained legislative proposals for:

- A single VAT registration for businesses across the EU;
- VAT rules for the platform economy related to passenger transport and rentals of short-term accommodation; and
- Digital reporting obligations based on e-invoicing for businesses operating within the EU.

To be adopted, the proposal requires the unanimous agreement of all 27 member states. Substantial work has been undertaken over the past year to allow national governments to define an informed position in respect of the broad set of technical measures included in the ViDA package. While most of the technical sessions focused on one of the three components, the three are still presented as a single package.

ECOFIN has a substantial level of authority to modify or only partially adopt the Commission's proposal, in order to achieve unanimity by compromise. As a result, there have already been some changes proposed to the initial ViDA package and these appear to have been incorporated into the further efforts in working towards an agreement. The main changes to the different parts of the proposal that have been identified so far, and topics that remain subject to further discussion, are detailed below.

## Single VAT registration

The element of the ViDA proposal with the largest support is the one proposing simplification measures, which would allow taxpayers to do business across borders within the EU using a single VAT registration, through the increased use of One Stop Shop (OSS) regimes. This includes firstly the setup of a new special scheme for transfers of stock across EU borders, whereby businesses could report transfers in their member state of identification under an OSS scheme instead of through the multiple VAT registrations currently required. Secondly, the scope of transactions covered by the Union One Stop Shop (UOSS) created as part of the 2021 e-Commerce VAT package would be increased to include all domestic business-to-consumer (B2C) supplies of goods. This would allow, for example, the reporting of sales made from stock held in the customer's country, or electronic vehicle charging transactions in multiple member states.

While the above rules mainly simplify the VAT obligations for businesses active in B2C transactions, an important step to reduce the need for taxpayers to register outside their country of establishment is the proposed domestic reverse charge for business-to-business (B2B) supplies of goods and services made by nonestablished (or non VAT-registered) taxable persons. This generalized regime would shift the VAT on transactions performed by nonestablished businesses to the recipient of that supply under the reverse charge mechanism if the recipient is already registered for VAT in that member state. Details on whether this would apply when the supplying business already has a VAT registration in the recipient's member state are still under discussion.

Several other changes that were originally part of the single VAT registration proposal do not seem to have been pursued, such as:

- The inclusion of cross-border sales of second-hand goods, works of art, collectors' items, and antiques within the scope of the special rules for distance sales;

- The extension of the deemed supplier rules for platform operators to include all supplies of goods (including by EU suppliers and with no distinction between B2B and B2C supplies) facilitated by platforms and marketplaces; or
- The mandatory application of the Import OSS by platform operators (which is incorporated as part of the pending EU customs reform package).

### Platform economy changes for accommodation and passenger transport services

While there is still support for a broader role for platforms in the collection of VAT on short-term accommodation rental and passenger transport services, the original proposal to levy VAT through deemed supplier arrangements across the EU has met significant resistance from individual member states. This part of the proposal seems to be moving towards a more tailored approach, particularly for short-term accommodation. The consensus view appears to prefer a high level of flexibility for national governments to define the services that would fall within the deemed supplier scope, and certain member states are even suggesting that the application of the deemed supplier rule be made optional. At this stage, there is significant uncertainty as to the method by which the platform liability for VAT would be determined in any final proposal.

Another measure that is part of the platform economy changes concerns the taxation of B2C facilitation services. These would no longer be considered as electronically supplied services (taxed in the customer's location) but would be taxed where the underlying transaction takes place. Businesses have recommended limiting this rule to the fees charged in relation to accommodation rental and passenger transport services, to avoid the complexities of having to determine the location of the underlying transactions in certain situations, such as supplies of goods sold by private individuals through platforms.

### Digital reporting requirements

The most ambitious part of the ViDA reform is the digital reporting requirements (DRR) initiative. In the initial proposal, the Commission combined a "quick fix" modification, creating a framework through which member states could require taxpayers to use e-invoicing and e-reporting for domestic transactions, with a flagship reform intended to be in place by 1 January 2028, implementing digital reporting by mandating e-invoicing for almost all cross-border supplies of goods and services in the EU. Negotiations over the past year have demonstrated the difficulties in achieving a harmonized approach, due in part to the choices already made by those member states that were early adopters of mandatory e-invoicing.

Several member states have requested a lower level of harmonization on domestic DRR regimes introduced after the entry into force of ViDA. Validation of data content by authorities or certified data providers has been considered, as well as the possibility of using pre-clearance, in which e-invoicing is conducted and validated through tax authority portals. The requirement that the e-invoicing mandate should allow the use of the EN 16391 invoicing standard has been questioned, with some suggestion that e-invoicing mandates could allow a wide variety of electronic invoice types. This diversity would likely also apply to the pan-EU regime, which would be based on national-level submissions of transactional data for further integration into the central VAT Information Exchange System (VIES) reporting at the EU level.

These developments have increasingly moved the proposal away from the original objective of e-invoicing and DRR harmonization, to the growing concern of business stakeholders. In this context, GENA (formerly the European E-Invoicing Service Providers Association (EESPA)) on 7 November 2023 called on the European Commission and member states to come together to find agreement around the

fundamental principles of the DRR proposal and implement a comprehensive, EU-wide real-time tax data reporting framework. Hopefully, the further technical discussions will progress towards a compromise that includes a significant level of harmonization and ideally also regulates the key variables in e-invoicing regimes such as e-invoice schema, security standards, e-invoice validations, and transmission through an interoperable network.

Regarding certain of the other components of the DRR proposals, it is becoming clear that the stricter invoicing requirements will not be pursued, the proposed abolition of summary invoices has apparently become obsolete, and the permitted timeframe to issue and communicate structured electronic invoices to national tax portals for intra-EU trade (originally two days plus two days) will be extended significantly. The additional invoice content requirements also appear to be under scrutiny.

### Impact on implementation timings

When the ViDA proposal was initially launched, it contained staged implementation dates between 2024 and 2028. It is clear that the delays in adopting the proposal will have an impact on these dates, although no new timelines have been put forward.

While implementation dates are typically a feature that is only decided at the time of effective agreement or adoption, the expectation is that the single VAT registration and platform economy changes could enter into force as from 1 January 2026 at the earliest. As both proposals require the setup or extension of new reporting modules by national tax authorities, a timeline of at least 18 months from the time of formal adoption could be expected. Such a delay would also allow businesses the necessary time to prepare.

The commencement date for the common framework under which member states can impose new domestic DRR is uncertain, as it will depend on the direction of the discussions. Until such date, member states can still implement domestic e-invoicing mandates through a derogation request, as is currently the case in Belgium, France, Germany, Poland, Romania, and Spain.

Although still some years ahead, the initial implementation date of 1 January 2028 for intra-EU DRR is largely viewed as unrealistic, and a shift towards 1 January 2030 has been rumoured. The convergence of various EU member states' existing domestic DRR to any harmonized requirements was originally anticipated to go live on the same date, but discussions have now considered allowing more time for this process.

## Egypt

### ETA releases guidelines on reverse charge mechanism for imported services

On 27 November 2023, the Egyptian Tax Authority (ETA) released guidelines on the implementation of the VAT reverse charge mechanism concerning imported services.

The key points of the tax guidelines are as follows:

1. **Mandatory registration:** Companies that are not registered for VAT, even if their activities are tax exempt, are obligated to register for VAT when engaging in import services transactions. This requirement applies irrespective of whether they meet the EGP 500,000 standard VAT registration threshold.

2. **Penalties for non-compliance:** Companies failing to register for reverse charge purposes or neglecting to declare transactions related to imported services, irrespective of their exempt status, will be treated as engaging in tax evasion. Penalties outlined in the VAT law will be enforced for non-compliance.

It is crucial for businesses to promptly review their current practices to ensure compliance with this updated guidance. Our experienced tax team is ready to support you in navigating these changes.

Ghana

## Potential measures to address the challenges of the taxation of the digital economy

The rapid pace of global digitalization has necessarily changed the way businesses operate, and consequently how tax revenues are generated. In the new digital landscape, businesses do not necessarily need to have a physical presence in a jurisdiction to operate and generate revenue there, and tax rules designed for the era of bricks-and-mortar businesses may no longer be fit for purpose. In Ghana where tax revenue contributes a relatively smaller percentage to the gross domestic product (GDP), this narrowing of the tax base is a concern that remains to be fully addressed.

This article provides an overview of the emergence of the digital economy, the global response to its taxation, and suggested approaches for Ghana to adopt a comprehensive policy for the taxation of the digital economy.

## Overview of the digital economy

Constant changes in technology have made it difficult to define what constitutes the "digital economy" as the space continues to evolve and new models are emerging all the time. However, in general, the digital economy can be broadly considered as all economic activities generated from the interaction of people, businesses, and systems through a digital infrastructure. This broad definition covers traditional business operations which may not ordinarily be seen as part of the digital economy, as it is increasingly difficult for businesses to operate in today's environment without the use of any digital tools.

Aside from the traditional income streams of selling goods and providing services, the digital economy may generate revenue from other sources such as advertising, sales of digital content, subscriptions, content or technology licensing, and exploitation of user data.

Due to these new revenue sources and the lack of a physical presence, the digital economy can create a gap in the taxation of income. Traditional income tax rules which rely on physical presence as the basis for allocating taxing rights may overlook digital income streams because a physical presence is either not created, or is created in a location separate from where the income generating activities occur ("the nexus"). This poses a challenge to tax authorities everywhere who may still be relying on traditional tax rules.

## Global responses to the taxation of the digital economy

To address the tax challenges posed by the emergence of the digital economy, the OECD/G20 Inclusive Framework on BEPS ("inclusive framework") proposed the two-pillar solution. Pillar One allocates the taxing rights of profits from multinational cooperations to the markets where the revenue generating activities are carried out, regardless of whether the entity has a physical presence in that jurisdiction. This is to address the challenge of a business operating and earning income from a jurisdiction, but without

creating any physical presence in that jurisdiction. Pillar Two includes provisions to ensure that multinational corporations are subject to at least a 15% effective tax rate on corporate profits in all jurisdictions in which they operate.

Aside from the inclusive framework, individual jurisdictions have introduced policies and new taxes targeted at bringing the profits derived through the digital economy within the scope of their domestic tax regime. Popular among the fiscal responses to the digital economy is the amendment of national VAT rules to tax the consumption of digital services, and new digital services taxes (DSTs), which have been introduced in many jurisdictions, including several African nations. For jurisdictions that are part of the inclusive framework initiative, DSTs and similar taxes are merely temporary measures, required to be repealed (subject to certain transitional provisions) as part of the implementation of “Amount A" of Pillar One.

## Ghana’s framework for taxing the digital economy

Ghana’s Value Added Tax Act, 2013 (Act 870) requires nonresident suppliers of telecommunications services and electronic commerce to register for VAT to the extent that such services are provided for use or enjoyment in Ghana and not made through a VAT-registered agent in Ghana. Although this provision was effective as from 2014, it was only in April 2022 that the Ghana Revenue Authority (GRA) provided administrative guidelines for its implementation. Ghana’s parliament also passed the Value Added Tax Amendment Act, 2022 (Act 1082) in September 2022 to provide further clarity on the services covered for the purpose of registration by these nonresident suppliers. Act 870 treats all business transactions that take place through the electronic transmission of data over the internet as e-commerce, and this includes services such as social networking, online gaming, cloud services, video or audio streaming, digital marketplace operations, and online advertising services.

Implementation of this provision in Ghana imposes a consumption tax on domestic consumers of such services; however, a tax gap remains for the income generated by nonresident companies. Implementation of VAT on digitally supplied services gives the GRA an overview of businesses operating within the Ghanaian digital economy and how much revenue is generated from their activities subject to VAT. With an increasing number of jurisdictions implementing measure to tax profits derived from the digital economy, it is time for Ghana to take the next step and propose legislation that would tax the income generated by these entities from their activities conducted in Ghana, despite the lack of a physical presence.

A DST on income could take the form of a withholding tax, requiring residents making payments to nonresidents for telecommunications and e-commerce services to withhold a certain percentage of the gross payment. Alternatively, nonresident companies that generate income from the digital economy could be directed to pay a percentage of their gross income as income tax. The design of a DST regime in Ghana would require a careful review and targeted amendment of the existing income tax legislation or the introduction of specific new laws.

## Conclusion

Although Ghana is not part of the inclusive framework, instead taking a “wait and see” approach on adopting the two-pillar solution, the government’s revenue demands and current economic pressures make it necessary to consider how income generated in Ghana through digital activities can be brought within the scope of the Ghanian tax system in the shorter term.

Ghana has a target to achieve a tax-to-GDP ratio of 18%-20% by 2027. Achieving this target requires that Ghana captures every possible revenue stream, and digital economy activities remain a largely untapped sector for income tax. Instead of focusing solely on taxing the consumption of digital services, the burden of which primarily falls on already heavily taxed entities, in Deloitte Ghana's opinion, the government should join its regional peers and introduce a comprehensive policy to bring nonresident telecommunications and e-commerce service providers into the tax net, and tax its fair share of the income generated from the country.

## Luxembourg

### A director is not a VAT taxable person
### 21 December 2023

This decision will have a substantial impact on directors and the companies they are directors of in Luxembourg. They should also examine the impact in other EU Member States where they have subsidiaries or directorships.

### A closer look

On 21 December 2023, the Court of Justice of the European Union (CJEU) ruled in its "TP" case (C-288/22) that a natural person acting as a director of a commercial company is not a taxable person for VAT. This decision contradicts the position of the Luxembourg VAT authorities and will have a substantial impact on directors and the companies they are directors of in Luxembourg. They should also examine the impact in other EU Member States where they have subsidiaries or directorships.

### Background

On 30 June 2016, the Luxembourg VAT authorities issued its circular 781 to clarify that a director of company is a VAT taxable person. Therefore, their fees are subject to VAT unless they could benefit from an exemption, such as the small undertaking regime (with turnover of less than €35,000) or the fund management exemption in article 44.1.d) of the Luxembourg law. This clarification implies different administrative obligations, such as registering for VAT, filing VAT returns and issuing compliant invoices. It also implies a financial cost for companies which have no, or a limited, right to VAT deduction (e.g., banks, insurances, management companies of investment funds, some professionals of the financial sector, and real estate companies).

This clarification was necessary because, at that time, different approaches were being applied in Luxembourg. Some companies were considering the director as the "organ" of the company, and thus not a VAT taxable person; this approach can be found in Belgium and France. At the same time, others were considering a director's activity as a service subject to VAT as this is generally the case of services, and in light of the fact that, in 2015, the European Commission questioned Belgium about its interpretation.

The need for a clearer definition resulted when a Luxembourgish lawyer, Mr. TP, who is also non-executive director of different companies in Luxembourg decided not to apply the VAT on fees he received as a director. The VAT authority assessed him, which he refused; the case was brought to the Luxembourg Civil Tribunal, which then referred the case to the CJEU. The Tribunal asked to the Court to clarify if a natural person who is a member of the board of directors of a public limited company ("société

anonyme") in Luxembourg is considered to carry out his or her activity "independently," and if percentage fees received for this activity must be regarded as remuneration paid in return for the services provided to that company.

### Decision of the Court

On 21 December 2023, the Court decided that "the activity of member of the board of directors of a public limited company under Luxembourg law is not exercised independently, within the meaning of this provision, when, despite the fact that this member freely organizes the terms of execution of his work, he himself receives the emoluments constituting his income, acts in his own name and is not subject to a link of hierarchical subordination, he does not act on his own behalf or under his own responsibility and does not bear the economic risk linked to his activity".

### Impact in Luxembourg

The decision of the Court contradicts the position of the Luxembourg VAT authorities and has substantial consequences for both directors and companies.

Generally speaking, directors would, be able to deregister for VAT and stop issuing invoices, collect VAT from companies and remit it to the VAT authorities; and stop filing returns; their administrative tasks would thus be reduced. On the other hand, they will no longer be able to deduct VAT on their costs and they might even be obliged to reimburse the VAT authorities with any VAT they have deducted in the past years.

Directors of investment funds and similar entities addressed in article 44.1.d) of the Luxembourg VAT law ("fund management exemption") should not be affected by the decision because their remuneration is already not subject to VAT as a result of this exemption, implying that they are, in principle, not obliged to register for VAT or file VAT returns.

Excluding investment funds, companies with zero, or limited, right to VAT deduction will likely welcome the decision; as they will no longer have to pay and incur the VAT on director fees, their burden of non-deductible VAT will decrease.

### Impact in other EU Member States

Due to the diverging interpretations in the EU Member States, they may have to adapt their position to comply with the CJEU's decision which is directly and immediately applicable throughout the EU.

**This decision will certainly have a substantial impact in Luxembourg. Directors will see their administrative tasks decrease, and companies with zero, or limited, right to deduct VAT (excluding investment funds) will get relief from the non-deductible VAT tax burden. Some practical aspects, such as the potential refund of VAT paid in the past, remain to be answered. Due to the divergent interpretations in the different EU Member States before this decision, directors and companies should examine the impact in other EU Member States where they have subsidiaries or directorships.**

**The Deloitte Luxembourg Indirect Tax team remains at your disposal to discuss the potential impact on your organization.**

## Other news

OECD

### 2023 report on effective carbon rates published

On 27 November 2023, the OECD announced the publication of *Effective Carbon Rates 2023: Pricing Greenhouse Gas Emissions through Taxes and Emissions Trading*, a report that covers 72 jurisdictions that collectively account for approximately 80% of global greenhouse gas (GHG) emissions. The report examines fuel excise taxes, carbon taxes, and emissions trading systems through 2021, and includes updates reflecting developments up to 2023.

According to the report, "The use of a common methodology to track carbon pricing efforts ensures comparability across countries and sectors. Providing comprehensive and comparable information on the current state of GHG emissions pricing can assist policymakers in establishing priorities and improving carbon mitigation policies."

The findings in the report that are highlighted in the OECD announcement include that effective carbon tax rates in the road transport sector decreased in a majority of OECD and G20 jurisdictions between 2021 and 2023; rates decreased more between 2021 and 2022 than between 2022 and 2023. In contrast, emission trading permit prices increased or remained stable in most jurisdictions. In addition, emissions trading systems are being introduced in more jurisdictions and being expanded in certain jurisdictions where they are already established.

Additional information relating to the report is available through the OECD website, including jurisdiction-specific summaries.

OECD

### 2023 report on revenue statistics released

On 6 December 2023, the OECD announced the release of *Revenue Statistics 2023*, a report that provides internationally comparative data on tax levels and tax structures in OECD member jurisdictions and includes a special feature on tax buoyancy.

*Revenue Statistics 2023* includes final data on tax revenues from 1965 to 2021, and provisional estimates of tax revenues in 2022 for most OECD jurisdictions. Data is provided on taxes that are classified according to the tax base, as follows: income and profits, compulsory social security contributions paid to the general government that are treated as taxes, payroll and workforce, property, goods and services, and other.

According to the report, "In 2022, a majority of OECD countries observed a decline in their tax-to-GDP ratio and the average OECD tax-to-GDP ratio declined by 0.15 percentage points (p.p.) to 34.0%. While revenues from corporate income tax (CIT) rose as a share of GDP in over three-quarters of OECD countries in 2022 on the back of higher profits (especially in the energy and agriculture sectors), revenues from excises declined in 34 out of the 36 OECD countries for which preliminary data for 2022 is available as sharp increases in global energy prices led to lower demand and prompted many countries to reduce energy taxes."

Regarding tax buoyancy, the OECD announcement indicates that the special feature "examines the extent to which tax revenues in OECD countries have kept pace with economic growth in recent decades by analysing tax buoyancy for different tax types for the period from 1980 to 2021. The study finds that tax revenues typically increased at the same rate as GDP over this period; revenues from CIT were the most buoyant over the long run – increasing faster than economic growth – while revenues from excise taxes were the least buoyant, increasing at a slower rate than GDP."

## European Union

### VAT on company cars: Overview of application of landmark CJEU case

Following a 2021 decision by the Court of Justice of the European Union (CJEU), the VAT treatment of the private use of company cars by employees changed significantly, especially when the employee resides in an EU member state other than the one of his employer. These changes are particularly relevant in Luxembourg, where almost half of the workforce commutes from neighboring countries. This article will examine where and how this decision has been implemented in Luxembourg and its neighboring countries.

### Background

Generally, within the EU, providing a car to an employee who uses it at least partly for private purposes was considered a "self-supply" by the employer, and subject to VAT in the employer's member state. However, in its decision in case C-288/19 of 20 January 2021, the CJEU ruled that when an employee sacrifices a part of their remuneration or renounces other advantages to benefit from a company car that may be used for private purposes (a "salary sacrifice" policy), the employer is considered to provide a service (the hiring of a means of transport) for remuneration. This supply is generally taxable in the member state of the employer; however, when the employer and employee are resident in different member states, the supply is taxable in the employee's member state of residence, which imposes some additional obligations on the employer in that member state. The tax base for the salary sacrifice arrangement is generally the employer's cost in providing the car. When the employee is not forced to sacrifice salary or benefits for the car, there is no supply for consideration, and the original VAT treatment as a "self-supply" of the private use of company assets by the employer remains valid. In this case, the tax basis is usually calculated using a lump-sum method (e.g., a percentage of the expenses in providing the car reflecting the nonbusiness use).

### Luxembourg

The complexity of the new rules is likely to have caused delays in their application to company cars provided to Luxembourg residents. In situations within the scope of the CJEU ruling, the VAT due on the private use may increase, as it would be calculated on the full cost of providing the car to the employee, instead of the lump-sum (i.e., a percentage) basis. Employers in Luxembourg should also consider their position in relation to that of the Luxembourg VAT authorities, who have issued two circulars (Circular No. 807 of 11 February 2021 and Circular No. 807 bis of 28 April 2023 (both in French only)) acknowledging the principles of the decision and providing further guidance, as follows:

- The taxable basis is, generally, the "normal value," i.e., the price that would be paid between unrelated parties in normal market conditions and is not lower than the costs borne by the employer. When the employer rents the car, the normal value would therefore be the rent paid by the employer to the leasing company, plus ancillary costs. When the employer owns the car, the taxable basis would be 20% of the depreciation value of the car, plus ancillary costs.

- This taxable basis could be decreased by a professional use quote. In contrast to the position in Belgium (see below), which accepts a 35% lump-sum quote, there is no guidance from the Luxembourg VAT authorities on how to compute the proportion of professional use. Methods such as an (electronic) logbook or any other justifiable method reflecting the professional use could be valid.

- The determination of a professional use quote will have consequences for a taxpayer without the right to a full input VAT deduction, such as banks or insurance companies.

- The Luxembourg VAT authorities have agreed to reimburse any Luxembourg VAT paid on the private use if the employer demonstrates that they have paid foreign VAT as a result of regularizing their situation in another member state. This is to avoid double taxation. However, this is limited to the five-year statute of limitations period under Luxembourg VAT law while, as mentioned below, VAT may have been due in Germany as from 2014.

### Belgium

On 1 September 2023, Belgium issued Circular 2023/C/72 (Dutch | French) acknowledging the principles of the CJEU decision and providing detailed guidance. The main points are:

- While the Belgian VAT authorities consider that, from a strict legal interpretation, VAT would be due as from 2013, they accept that, for the purposes of good governance, VAT is due for in-scope transactions as from 1 July 2021.

- The use of this date avoids affected foreign employers from having to register for VAT in Belgium as they could use the one-stop-shop (OSS) simplification mechanism, available as from 1 July 2021, which allows VAT to be paid though the website of the VAT authorities of the employer's member state without needing to register in multiple jurisdictions.

- Rules regarding taxable basis are similar to the ones in Luxembourg, and are based on the costs incurred by the employer in relation to provision of the car (see above).

- The Belgian VAT authorities accept a set 35% reduction for business use. Belgian VAT would therefore be due on only 65% of the taxable basis.

### France

Currently, there is no official position on the implementation of the CJEU decision by the French VAT authorities. A request for clarification has been raised with them, but there is no guaranteed timeline for a response. Hopefully, questions such as the date of entry into force, the taxable basis, the administrative procedure (i.e., VAT registration and VAT returns to be filed for past periods, or use of the OSS), and the absence of penalties and interest for past due payment in case of regularization will be clarified.

### Germany

Germany was one of the parties involved in the CJEU decision, and therefore the German VAT authorities require registration and filling of VAT returns as from 2014. Some uncertainties remain over the type of car policy concerned, the applicability of German VAT, and the taxable basis (i.e., the costs incurred by the employer, or the special lump-sum method based on the number of kilometers supposed to be for private use).

### Penalties and interest for past due payments

Based on our experience to date, neither the Luxembourg VAT authorities nor the Belgian or German VAT authorities have imposed penalties or interest for past due payment on employers regularizing their past situation, but there is no visibility on how long these conciliatory attitudes are likely to last.

### Deloitte Luxembourg comments

In summary, despite the remaining uncertainties, employers should consider the CJEU decision, determine whether their car policies could be affected, both in Luxembourg and abroad, and take necessary actions to address any VAT obligations in other member states. This may include contacting foreign authorities, filing VAT returns abroad or using the OSS, and correcting Luxembourg VAT returns. The CJEU decision was issued almost three years ago, and further delays could increase the risk of an employer being considered a bad faith taxpayer and thus facing penalties and interest for past due payment.

## European Union

### CESOP Implementation Monitor - update 7 December 2023

Across the EU, more and more countries are implementing the EU CESOP Directive into their local legislation.

We have bundled information from all EU member states on the status of the implementation as well as information on the penalty provisions into our CESOP Implementation Monitor, available on this page.

We will update the CESOP implementation monitor on a monthly basis.

Please reach out to any of your usual Deloitte advisors, or contact one of our specialists below for support on making your organization CESOP-compliant.

## Argentina

### Extension of the transitory "FX rate" for exporters

Decree No. 597/2023, published in Argentina's official gazette on 23 November 2023, extends through 10 December 2023, the provisions of Decree No. 549/2023, which provided temporary modifications to the obligation to enter and settle into pesos (ARS) foreign currency collections from the export of goods and services. Decree No. 549/2023 determined that exporters of goods or services, including cases of pre-financing and/or post-financing of exports from abroad or advanced collections, must enter and settle in ARS 70% of their collections through the foreign exchange market, while the remaining 30% should be converted into ARS through operations with securities (commonly known as “blue chip swap”).

In addition to extending the validity of this mechanism through 10 December 2023, Decree No. 597/2023 modifies the percentages described above. As from 21 November 2023, 50% of the value of collections from exports of goods and services must be settled into ARS through the foreign exchange market and the remaining 50% must be converted to ARS through operations with securities.

In the case of exports of goods, exporters must pay before 31 December 2023, the value corresponding to the export duties and other taxes that may apply to these exports, relative to the highest value obtained via the temporary mechanism of trading currencies through the stock market.

## Changes to import and foreign exchange regulations

On 13 December 2023, Decrees 28/23, 29/23, and General Resolution AFIP 5424/23 were published in Argentina's official gazette, and additionally the Central Bank of the Argentine Republic (BCRA) published on its website Communication “A” 7917, containing important amendments to import and foreign exchange regulations. All provisions are effective as from 13 December 2023.

## Decree 28/23

Decree 28/23 establishes (now indefinitely) that exporters of goods or services, including cases of pre-financing and/or post-financing of exports from abroad or advanced collection, must enter and convert into pesos (ARS) 80% of foreign currency collections through the foreign exchange market, while the remaining 20% must be converted into ARS through operations with securities (commonly known as “blue chip swap”). The export of services is as defined in article 10, section 2.c) of the Customs Code, i.e., the provision of services carried out in Argentina, whose effective use or exploitation is carried out abroad. Additionally, in the case of goods, exporters must pay export duties and other taxes that may apply to the exports based on the highest value obtained by this mechanism of converting foreign currency into ARS through the stock market.

## Decree 29/23

Decree 29/23 increases the rate of the "tax for an inclusive and solidarity Argentina" *(Impuesto Para una Argentina Inclusiva y Solidaria*, PAIS) applicable to the importation of non-luxury goods and to the acquisition of freight services and other transport services from nonresidents. A PAIS rate of 17.5% applies to the purchase of foreign currency to pay for both operations. General Resolution (AFIP) 5424/23 increases the payment on account received at the time of importation of these goods to 16.625%, thus maintaining the proportion of 95% of the total tax.

## Communication “A” 7917

Through Communication “A” 7917, the BCRA makes important modifications to the conditions to access the foreign exchange market to make payments abroad.

In relation to payments for imports of goods that are made on or after 13 December 2023, it no longer is necessary to have a SIRA (“Import System of the Argentine Republic”) in “exit” status or the validation of the CCUCE (“Single Foreign Trade Current Account”), and imports may be paid for based on a schedule of deadlines determined based on the imported tariff code. As a result, there is no deadline for payment for imports of electrical energy and hydrocarbon derivatives, for pharmaceutical products and their inputs and fertilizers the payment period is 30 days from import, for automobiles and luxury goods the payment period is 180 days from import, and for other assets, payment of 25% every 30 days must be made, until the amount due is paid in full.

Advance payments for imports, payments for imports made after 13 December 2023 but requested prior to that date, and cancelation of outsanding amounts due for imports prior to 13 December 2023, will require prior authorization from the BCRA, unless the importer simultaneously enters and converts into ARS funds obtained from some type of financing from abroad. Payments related to the Incremental oil and/or natural gas Production Program, and the Knowledge Economy Promotion System, are also exempt from this limitation.

Regarding imports of services, an approved SIRASE ("System of Imports of the Argentine Republic and Payments for Services Abroad") or validation of the CCUCE are no longer required, and payments may be made without limitation for some concept codes (passenger services, travel, health services, audio visual services, government services, credit card consumption), while for the rest the term will be 30 days or 180 days from the provision or accrual of the service, depending on whether the provider is a third party or related party, respectively. As in the case of the importation of goods, where services are provided or accrued prior to 13 December 2023, or the importer requires access to the exchange market before the authorized payment period, prior authorization from the BCRA is required, unless the importer simultaneously enters and converts into ARS funds obtained from foreign financing.

Finally, Communication "A" 7917 determines that for the payment of letters of credit or guaranteed bills issued or granted as at 13 December 2023, or for lines of credit from abroad applied as at the same date, access to the credit market changes for its cancelation will be conditional on the financial entity having documentation that demonstrates that, on the date of issuance or grant, the guaranteed transaction was compatible with the terms and conditions provided for the payment of the guaranteed imports.

## Argentina

### New financial alternative for cancelation of debt for import of goods or services

On 13 December 2023, the Central Bank of the Argentine Republic (BCRA) published on its website Communication "A" 7918, establishing the guidelines for the creation of the "Bond for the Reconstruction of a Free Argentina" (BOPREAL). The bond will take the form of BCRA notes in US dollars (USD), with a redemption option, for importers of goods and services pending payment and is currently the only alternative to cancel the stock of debt for imports of goods and services through the exchange market, unless expressly authorized by the BCRA. The maximum period for the bond expires on 31 October 2027.

The guidelines explain that only importers of goods and services for up to the amount of their outstanding imports may subscribe for these instruments. To subscribe, the value in pesos (ARS) will be taken at the reference exchange rate published by the BCRA according to Communication "A" 3500 corresponding to the business day prior to the bidding date. Payment will be in USD upon amortization and/or with early redemption option(s) in favor of the holders (the cancelation of such option exercise may only be in USD-linked ARS) and there will be the possibility of full redemption at maturity or with a partial redemption schedule as defined.

Additionally, early redemption clauses in favor of the holders may be considered, which may only be exercised at nominal value payable in ARS considering the reference exchange rate of Communication "A" 3500, in which case the bondholder will have to give notice five business days prior to the expiration of such option.

This bond will accrue interest based on a 360-day year comprised of 12 months of 30 days each, at a maximum annual rate of 5% to be defined in the bid announcement, which may be payable on a quarterly or semi-annual basis in USD.

It is also yet to be confirmed whether these instruments will be traded on the Argentine stock exchange (Bolsas y Mercados Argentinos, BYMA) or electronic securities and foreign-currency trading market (Mercado Abierto Electrónico S.A., MAE, and euroclearable markets, as well as whether they can be used as collateral for repurchase (REPO) operations.

## Decree of public emergency: Customs code and foreign trade modifications

The new decree of necessity and urgency published on 21 December 2023 in Argentina's official gazette introduces various amendments to the Customs Code in section "Title V–Foreign Trade."

## Key amendments

Key amendments to the Customs Code include the following:

## Customs broker figure

The obligation to have a customs broker to carry out the clearance and destination of the goods is modified. In this sense, the activity of customs brokers is completely deregulated.

## Register of importers and exporters

The requirement to register in the register of importers and exporters to apply for customs destinations is removed, leaving open the possibility for all individuals and legal entities to apply for these destinations and carry out foreign trade operations.

Along these lines, article 93 of the Customs Code, which details the beginning of the procedure for registration in the register, is repealed, and article 94 is modified, eliminating the requirements for economic solvency and prior registration with the federal tax authority (AFIP), and of maintaining details of which individuals or legal entities may not carry out import or export operations.

As a consequence, all articles relevant to the registration process, requirements, and suspension in the register indicated by the Customs Code are repealed (namely articles 95, 96, 97, 98, 99, and 107).

## Customs control

Article 119 of the Customs Code, which describes part of the general provisions of customs control, is amended to include that customs officers, security forces, and police forces shall endeavor to preserve the activity and continuity of import or export operations in progress.

In addition, article 120 bis on the simplification, computerization, and automation of customs procedures and article 120 ter, relating to the publication of foreign trade regulations are both incorporated within the code.

Articles 245 and 343 relating to complaints made by the customs service agent in the course of import or export clearance, respectively, also are amended, incorporating the obligation to grant the release of the goods once the complaint has been made. In the same vein, the wording of article 453, referring to the guarantee regime, is adapted.

## Early resolution

Articles 226 and 323 of the Customs Code are replaced, incorporating the possibility of consulting, prior to the import or export of the goods, respectively, on the criteria that the customs service may adopt with respect to the tariff classification, origin, or valuation of the goods, or in relation to the elements that are necessary for the correct application of the tax regime, prohibitions, or restrictions.

This resolution will be valid and binding for the customs service as long as the regulatory and factual context is maintained.

### Import and export prohibitions

Article 609 is amended, eliminating the possibility for the executive branch to establish prohibitions or restrictions on exports or imports for economic reasons, which can only be determined by law. In the same vein, Law 25,626, which established prohibitions on the importation of certain goods, was repealed.

At the same time, by replacing article 610 of the Customs Code, the reasons for which non-economic prohibitions may be established are modified.

### Specific import duties; price equalization tax regime; export duties

Decree 70/23 repeals articles 663, 665, and 666 of the Customs Code, taking away the power of the executive branch to establish specific import duties. It also repeals articles 673 through 686, which established the regime applicable to the price equalization tax.

It also eliminates article 756, which obliges the executive branch to respect international conventions in force in the exercise of its power to modify export duties, and repeals articles 757 and 758, which provide the possibility of granting total or partial exemptions from the payment of export duties.

### Procedures

Article 1024 is amended, updating the minimum value for appealing customs decisions in court, setting it at 1,000 UVA (units of purchasing value).

Finally, paragraphs (m) and (n) relating to the issuance of the order ordering the opening of the investigation and the issuance of the conviction decision at customs headquarters are incorporated into article 1037, which refers to the acts that must be notified in the proceedings for challenge, repetition, and infringements.

## Australia

### Mid-Year Economic and Fiscal Outlook (MYEFO) tax summary

On 13 December 2023, the Australian treasurer released the 2023-24 MYEFO along with a media release.

The underlying cash balance is forecast to be a much smaller deficit of AUD 1.1 billion in 2023-24, an improvement of AUD 12.8 billion compared to the estimates in the May 2023 Budget.

The government has advised it has returned 92% of upward revisions to revenue since the May 2023 Budget, and 88% of revenue upgrades since coming to office.

The MYEFO budget figures also include AUD 2.4 billion of revenue decisions taken but not yet announced and not for publication, and AUD 4.67 billion of payment decisions taken but not yet announced.

Key tax-related announcements

- Australian Taxation Office (ATO) interest charges: The government will deny deductions for ATO interest charges, specifically the general interest charge and shortfall interest charge incurred in income years starting on or after 1 July 2025. This measure is estimated to increase receipts by AUD 500 million in 2026–27.

- Penalty units: The government will increase the amount of the Commonwealth penalty unit from AUD 313 to AUD 330, commencing four weeks after the passage of the legislation. The amount will continue to be indexed every three years in line with the consumer price index (CPI) as per the pre-existing schedule. Penalty units are relevant to a number of tax related matters, including failure to lodge penalties, with such penalties being multiplied by 500 for significant global entities. This increase is on top of previous increases in January 2023 (announced in the October 2022 Federal Budget) and July 2023 (scheduled indexation rise). When legislated, this will mean that the penalty unit has increased by 49% since the current government has been in office.

- Foreign resident CGT withholding: The government will increase the foreign resident capital gains withholding tax rate from 12.5% to 15% and reduce the withholding threshold from AUD 750,000 to AUD 0. The changes will apply to real property disposals with contracts entered into as from 1 January 2025. This measure is estimated to increase receipts by AUD 150 million and increase payments by AUD 5.9 million over the four years to 2026–27.

- Foreign investment—raising fees for established dwellings: As previously announced on 10 December 2023, the government will adjust the foreign investment framework by the following measures, estimated to increase receipts by AUD 525 million and increase payments by AUD 3.5 million over the five years from 2022–23:

    - Tripling the foreign investment fees for the purchase of established homes;

    - Doubling the vacancy fees for all foreign-owned dwellings purchased since 9 May 2017; and

    - Providing AUD 3.5 million to enhance the ATO's compliance regime to ensure foreign investors comply with fee, notification, and other regulatory requirements such as selling their residence when required.

- Foreign Investment—lower fees for Build to Rent projects: As previously announced on 10 December 2023, the government will apply the lower commercial foreign investment application fee to foreign investments in Build to Rent projects where investors are proposing to acquire residential land or agricultural land.

- Luxury car tax (LCT): The government will tighten the definition of a fuel-efficient vehicle and update the indexation rate for the LCT value threshold for all-other luxury vehicles, as from 1 July 2025. This measure will tighten the definition of a fuel-efficient vehicle for the LCT by reducing the maximum fuel consumption from seven liters per 100 kilometers (km) to 3.5 liters per 100 km and will update the indexation rate of the LCT value threshold for all-other luxury vehicles from the headline consumer price index (CPI) to the motor vehicle purchase subgroup of the CPI, aligning it with the indexation of the LCT value threshold for fuel-efficient vehicles.

- Changes to the "Streamlining excise administration for fuel and alcohol" reforms: Due to design complexities identified during implementation, the government will no longer proceed with the uniform business experience component of the streamlining excise administration for fuel and alcohol package, which was due to commence on 1 July 2024. The government will consult on draft legislation for the following remaining components ahead of the 1 July 2024 start date:
  - Streamline license application and renewal requirements;
  - Remove regulatory barriers for excise and excise-equivalent customs goods (including lubricants, bunker fuels for commercial shipping industries, and vapor recovery units); and
  - The ATO will publish on its website a public register of entities that hold excise licenses to store or manufacture excise and excise-equivalent customs goods.
- Goods and services tax (GST) "No Worse Off Guarantee": As announced on 6 December 2023, the National Cabinet agreed to extend the GST No Worse Off Guarantee, which was due to expire in 2026–27, for three years from 2027–28 to 2029–30. This measure is estimated to increase payments by AUD 11.1 billion over three years from 2027–28.
- Tax related funding: The government will provide:
  - AUD 22.2 million over four years from 2023–24 (and AUD 1.1 million per year ongoing) to the Treasury, the Department of Finance, the ATO, and the Attorney-General's Department to strengthen the integrity of the tax system;
  - AUD 9.2 million (over four years) towards Treasury and the ATO to engage in treaty negotiations to improve international trade and investment;
  - AUD 3.6 million (over two years) to the Australian Securities & Investments Commission and the Treasury to develop and commence implementation of legislative requirements for relevant companies to collect, verify, and make available information about individuals who benefit from or control the company, as the first stage of increased transparency of beneficial ownership of Australian private and public unlisted companies;
  - AUD 11.5 million (over two years) to the ATO to rebrand myGovID and deliver ICT updates to enable choice of identity service provider when accessing business services;
  - AUD 21.8 million (over two years) for the Administrative Appeals Tribunal (AAT) to support transition to the new Administrative Review Tribunal (ART); and
  - AUD 18.5 million (over four years) for the AAT to continue to develop and expand the new case management system for use by the ART.

Australia

### GST: ATO says super funds should review claiming RITCs for member advice services

On 13 December 2023 the Australian Taxation Office (ATO) published a notice to superannuation funds and investor-directed portfolio services (IDPS) investment platforms (collectively, funds) about the ATO's

approach to claims made by funds for goods and services tax (GST) reduced input tax credits (RITCs) in respect of advisor services fees paid on behalf of fund members/investors under certain tripartite arrangements.

The notice sets out the ATO's view that funds are not eligible to claim RITCs for the advisor services fees under such arrangements, while also acknowledging that past private rulings issued by the ATO may have contributed to some funds considering they are entitled to claim them.

The notice urges funds to review their arrangements for the payment of advisor fees to check that RITCs are not being claimed where there is no entitlement.

### Affected tripartite arrangements

According to the notice, the ATO has recently improved its understanding of the commonly occurring contractual arrangements that apply when a fund member/investor (member) obtains personal advice services from a financial advisor, in circumstances where the member authorizes their fund to pay the advisor's fee on the member's behalf using the interest or assets held for the member in the fund.

Broadly, the affected arrangements have the following features:

- The member engages an advisor to provide them with personal financial advice relating to the member's interest (or prospective interest) in the fund, under an agreement between the member and the advisor.
- The member completes a request authorizing the fund to pay the advisor's fees to the advisor.
- If the fund does not pay the fees (e.g., insufficient funds/assets held for the member) the member remains liable to pay the advisor.
- While the advisor may also provide other services to the member, such as providing instructions to the fund on the individual's behalf, the advisor is not involved in executing any of the underlying transactions.
- The advisor may be required to be registered with the fund and agree to certain terms and conditions, in order to receive payment from the fund.

The ATO's position is that such arrangements simply involve a supply of financial advice by the advisor to the member, and do not result in a second supply to the fund. This is on the basis that the advisor is not under an obligation to the fund to provide advice to the member, nor is the advice provided in satisfaction of an obligation owed by the fund to the member. Since the fund is not the recipient of a supply for which the advisor fees are consideration, the ATO contends the fund is not eligible to claim RITCs for those fees. The fund's payment to the advisor occurs because of an administrative arrangement between the fund and the member for the fund to make the payment (i.e., the fund provides third party consideration).

### Next steps for funds

In light of the notice, funds should review their specific circumstances and current contractual arrangements in relation to payment of advisor fees for personal advice obtained by members, to clarify whether they are entitled to claim RITCs.

In Deloitte Australia's view, there may be circumstances that are not affected by the ATO's latest guidance and an entitlement to RITCs may be preserved.

If a fund has previously received a private ruling about RITC entitlements in the context of the published guidance, the fund should check whether the scheme underpinning that ruling accurately reflects their current contractual arrangements and if so, take necessary steps to ensure they no longer seek to rely on the private ruling.

### Which tax periods are affected?

The notice indicates that the ATO is taking a prospective compliance approach to this issue. More particularly, the ATO says that it will "not be devoting compliance resources" to reviewing RITC claims by funds for advisor services fees paid under such arrangements for tax periods that end before 1 April 2024. However, this compliance approach is stated to not apply if:

- "A fund changes its prior treatment by now claiming RITCs for past or future tax periods in relation to affected arrangements;
- There is evidence of avoidance, fraud or evasion; or
- The fund otherwise takes inappropriate advantage of the prospective compliance approach."

The notice also indicates that if a fund asks for a GST assessment to be issued or amended, or seeks the ATO's view about the fund's eligibility to claim RITCs for advisor services fees, the ATO will respond in line with its view of how the GST law applies to the fund's arrangements, including as set out in the notice.

It remains unclear from the notice whether the ATO intends to withdraw private rulings previously issued to funds in relation to arrangements of the kind addressed in the notice, to prevent reliance on them for tax periods ending on or after 1 April 2024, or even sooner.

Further, the notice does not specifically address the approach the ATO intends to take in relation to RITCs claimed by a fund that is subject to a combined assurance review covering tax periods that end before 1 April 2024.

## Denmark

### Reverse charge VAT to apply to B2B telecommunication services as from 1 January 2024

As from 1 January 2024, as a measure to prevent VAT fraud, Denmark is introducing the domestic reverse charge VAT mechanism on business-to-business (B2B) supplies of telecommunication services purchased by a Danish taxable person (i.e., an entity registered for VAT in Denmark) whose primary activity is reselling those services to other Danish taxable persons and the purchaser's own use of the services is insignificant. The primary activity will be deemed to be resale when more than 50% of the purchased services are resold.

Under the reverse charge mechanism, the Danish VAT due will be settled by the initial Danish purchaser of the services. The mechanism is being introduced in line with provisions of the EU VAT directive. Article 6A of the regulation implementing the directive (Council Implementing Regulation (EU) No 282/2011) provides a nonexhaustive list of services specifically viewed as telecommunication services including:

- Fixed and mobile telephone services for the transmission and switching of voice, data, and video, including telephone services with an imaging component (videophone services);

- Telephone services provided through the internet, including voice over Internet Protocol (VoIP);
- Voicemail, call waiting, call forwarding, caller identification, three-way calling, and other call management services;
- Paging services;
- Audiotext services;
- Facsimile, telegraph, and telex;
- Access to the internet, including the World Wide Web; and
- Private network connections providing telecommunications links for the exclusive use of the client.

The result of the new rule is that the reverse charge mechanism is expanded to apply to local supplies of telecommunication services.

## France

### 2024 finance bill adopted by Parliament

On 21 December 2023, France's 2024 finance bill was adopted by Parliament. It is now expected to be published without modification by 31 December 2023, following a review by the French Constitutional Council, and then enacted at that time.

This article summarizes the law's key tax provisions, some of which are the same as those included in the draft bill released in September 2023.

### Corporate income tax

### Transposition of the EU Pillar Two directive

The 2024 finance law includes the draft legislation for the implementation of Council directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation (15%) for multinational enterprise (MNE) groups and large-scale domestic groups within the EU ("Pillar Two directive").

As expected, the legislation reflects the provisions of the Pillar Two directive with the additional guidance issued by the OECD, such as the transitional safe harbor rules.

The scope of the rules is in line with the Pillar Two directive and the rules apply to companies located in France that are part of a multinational group whose consolidated turnover is EUR 750 million or more over at least two of the four preceding fiscal years.

The 15% global minimum level of taxation is achieved in France through the introduction of an income inclusion rule (IIR), an undertaxed profits rule (UTPR), as well as a qualified domestic top-up tax (QDMTT), the latter being an election left to the member states by the Pillar Two directive.

The IIR and QDMTT are applicable as from 1 January 2024, and the UTPR is applicable as from 1 January 2025.

As provided for in the directive, a global anti-base erosion (GloBE) information return is required to be filed within 15 months of the end of the fiscal year (18 months for the first fiscal year the group enters the scope of Pillar Two) with the associated payment, if any.

Late filing of those documents or failure to file will result in a EUR 100,000 fine. Any other filing breach will result in a fine not to exceed EUR 50,000. The total amount of fines that may be imposed on French constituent entities of the same MNE group cannot exceed EUR 1 million in a single fiscal year.

For the purpose of tax audits regarding the top-up tax, the statute of limitations of the French tax authorities (FTA) runs until the end of the fifth year following the year during which taxation is due (instead of three years usually).

The legislation authorizes the government to adopt any subsequent measures relating to the filing, collection, audit, and penalties for taxes due in application of the Pillar Two rules through ordinances, in order to take into account any additional guidance by the OECD/G20 Inclusive Framework on BEPS issued at a later date.

### Extension of the cap on market revenue of electricity producers

The law extends through 31 December 2024 the cap on the market revenue of electricity producers prescribed by Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.

As a reminder, from 1 July 2022 through 31 December 2023, the cap on market revenue applies to 90% of a company's market revenue exceeding a specific threshold based on the source of electricity: for example, the threshold is EUR 90 per megawatt hour (MWh) for electricity produced via nuclear energy, EUR 100 per MWh for electricity produced via wind energy, and EUR 130 per MWh for electricity produced via biomass combustion.

For 2024, the scope of the mechanism remains the same; however, the revenue cap is considerably reduced as it only applies on 50% excess revenue. The various caps per MWh according to the energy source are adjusted to take into account the 4.8% rate of inflation.

### New "tax credit for investment in green industries" (crédit d'impôt au titre des investissements en faveur de l'industrie verte, C3IV)

The finance law creates a new tax credit to boost investment in the green industry sector. The C3IV will only be granted, subject to prior approval by the Minister in charge of the budget, for certain specific investments such as investments in the production of batteries, photovoltaic panels, wind turbines, and heat pumps (the list of equipment, sub-components, and raw materials used for these activities is to be determined by ministerial order).

The new tax credit is only available to industrial and commercial enterprises meeting specific criteria. For example, to be eligible, a company must commit to operate eligible investments in France for at least five years and not to transfer its activity outside of France for at least five years. Enterprises that are considered to be in difficulty according to EU Regulation 651/2014 are not eligible.

Depending on the location of the investment, the rate of the tax credit will vary between 20% and 40% of the investment. These rates are increased by 10 percentage points (i.e., between 30% and 50%) for investments made by medium-sized enterprises and by 20 percentage points (i.e., between 40% and 60%) for investments made by small enterprises.

The total amount of tax credit is capped at EUR 150 million per enterprise.

The tax credit is applied in fractions at the rate at which eligible investments are committed and is set off against the enterprise's corporate income tax.

Enterprises can submit early application as from 27 September 2023, and the tax credit will benefit projects approved through 31 December 2025.

The entry into force of the measure is subject to the European Commission's approval.

### Tax consolidation and changes to the distribution regime

Under French law, dividends eligible for the domestic participation exemption regime are 95% tax exempt. The remaining 5% is deemed to represent nondeductible costs relating to the exempt dividends and is added back to the taxable result, to be taxed at the standard corporate income tax rate. The 95% exemption applies regardless of whether the dividends are received from a domestic or foreign subsidiary.

For fiscal years commencing prior to 1 January 2016, the 5% lump sum add-back was "neutralized" within tax consolidated groups by allowing the 5% deemed expense to be deducted from profits, resulting in a full exemption for intragroup dividends. However, as only a French parent company and its French resident 95% held subsidiaries were permitted to be members of a French tax consolidated group, the Court of Justice of the European Union (CJEU) ruled in case C-386/14 (2 September 2015, *Groupe Steria)* that this regime violated the freedom of establishment principle in the Treaty on the Functioning of the European Union.

The lump sum add-back was later reduced to 1% (i.e., 99% participation exemption) and extended to dividends paid by companies that are part of a tax consolidated group or by EU/European Economic Area (EEA) companies which, if established in France, would meet the conditions required to belong to a tax consolidated group (other than being subject to corporate income tax in France), to:

- Companies that are part of the tax consolidated group; or
- Companies that are not part of the tax consolidated group, provided the group does not have, in France, subsidiaries eligible for the tax consolidation regime.

The 2024 finance law draws the consequences of the recent CJEU decisions (11 May 2023, C-407/22 and C-408/22) in which the CJEU ruled that the pre-2016 French legislation infringed on the freedom of establishment in that it did not provide for the possibility for a parent company to neutralize the lump sum add-back applicable to dividends paid by subsidiaries located in another EU member state that meet the conditions required to belong to a tax consolidated group, when the parent company is not part of a tax consolidated group–despite the fact that the shareholding structure allowed for the set-up of such a group.

The 1% lump sum add-back is extended to dividends received by a company that is not part of a tax consolidated group by choice and paid by an EU/EEA subsidiary, provided that the company and its subsidiary meet, for more than one fiscal year, the conditions required to belong to a tax consolidated group, if the company had been established in France.

Furthermore, the finance law reinstates the requirement that a company receiving dividends should belong to the tax consolidated group of the distributing company for more than one fiscal year in order to benefit from the 1% lump sum add-back. Thus, to receive this benefit, the distributing company must have belonged to the group for more than one fiscal year (in the case of a French company that is part of a tax consolidated group) or have fulfilled the conditions required to belong to such a group for more than one fiscal year (in the case of a company resident in another EU member state).

Finally, the finance law extends the 99% tax exemption to dividends that do not benefit from the participation exemption regime but that are received by a French company that is not part of a tax consolidated group (whether or not by choice) from an EU/EEA subsidiary, provided that both companies have fulfilled the conditions required to belong to such a group for more than one fiscal year.

These measures apply to fiscal years ending on or after 31 December 2023.

### New tax on the exploitation of long-distance transport infrastructures

As from 1 January 2024, a new tax will be imposed on the exploitation of long-distance transport infrastructures such as airports and highways (mainly large airports and large highway construction/maintenance companies; urban transport is excluded).

The tax will be subject to a turnover threshold and a profitability threshold and will apply if:

- The operating income for a given calendar year is greater than EUR 120 million; and
- The average level of operating profitability (net income to turnover ratio) is greater than 10%.

If both these thresholds are exceeded, the portion of operating income above EUR 120 million will be subject to a 4.6% tax rate.

The tax will not be deductible from corporate income tax. The taxable event is the end of the calendar year, and the tax will be paid in installments.

## Transfer pricing

### Transfer pricing audits

The 2024 finance law provides for several changes to the transfer pricing rules currently applicable in France, to strengthen the FTA's capacity to detect and sanction abuse of the transfer pricing rules.

These transfer pricing measures apply to fiscal years beginning on or after 1 January 2024.

### Transfer pricing documentation

As a reminder, large companies with an annual turnover or gross balance sheet assets exceeding EUR 400 million must provide specific documentation on their transfer pricing policy within 30 days upon request of the FTA. The EUR 400 million threshold is lowered to EUR 150 million.

If the company fails to provide this documentation, it is currently subject to a minimum fine of EUR 10,000. The finance law increases that minimum amount to EUR 50,000.

Furthermore, the company is now bound by its own transfer pricing policy.

### Transfer of hard-to-value intangibles

The 2024 finance law grants the FTA the right to correct the value of a transferred hard-to-value intangible (within the meaning of hallmark E.2 of the French DAC 6 legislation, which refers to the work of the OECD) based on income after the fiscal year during which the transaction took place.

The transfer of hard-to-value intangibles is subject to an extended statute of limitations, which runs until the end of the sixth year following the year during which taxation is due (instead of three years).

## Local taxes/business tax

### Postponement of the removal of the added value contribution (CVAE) and territorial economic contribution (CET) cap adjustment

As a reminder, the 2023 finance law reduced the CVAE rates by 50% and provided that the CVAE was to be fully abolished as from 2024.

The CVAE will not be abolished in 2024. Instead, the 2024 finance law provides for its gradual phasing out, over four years, for a complete removal in 2027.

### Phasing out of the CVAE over four years

The CVAE applies at a single rate of 0.375% to the added value produced by a company. However, a digressive allowance is available depending on the company's turnover, impacting the CVAE's effective tax rates (ETRs).

The law gradually lowers these ETRs, as illustrated in the table below:

| Turnover (excluding taxes) | 2023 ETR | 2024 ETR | 2025 ETR | 2026 ETR |
|---|---|---|---|---|
| < EUR 500,000 | 0% | 0% | 0% | 0% |
| EUR 500,000 ≤ turnover ≤ EUR 3 million | 0.125% x ((turnover - EUR 500,000) / EUR 2,500,000) | 0.094% x ((turnover - EUR 500,000) / EUR 2,500,000) | 0.063% x (turnover - EUR 500,000) / EUR 2,500,000 | 0.031% x ((turnover - EUR 500,000) / EUR 2,500,000) |
| EUR 3 million < turnover ≤ EUR 10 million | 0.125% + 0.225% x ((turnover - EUR 3,000,000) / EUR 7,000,000) | 0.094% + 0.169% x ((turnover - EUR 3,000,000) / EUR 7,000,000) | 0.063% + 0.113% x ((turnover - EUR 3,000,000) / EUR 7,000,000) | 0.031% + 0.056% x ((turnover - EUR 3,000,000) / EUR 7,000,000) |
| EUR 10 million < turnover ≤ EUR 50 million | 0.35% + 0.025% x ((turnover - EUR 10,000,000) / EUR 40,000,000) | 0.263% + 0.019% x ((turnover - EUR 10,000,000) / EUR 40,000,000) | 0.175% + 0.013% x ((turnover - EUR 10,000,000) / EUR 40,000,000) | 0.087% + 0.006% x ((turnover - EUR 10,000,000) / EUR 40,000,000) |
| > EUR 50 million | 0.375% | 0.28% | 0.19% | 0.09% |

The CVAE's effective tax rates are thus gradually reduced for 2024, 2025, and 2026, with maximum CVAE rates of 0.28%, 0.19%, and 0.09%, respectively. As from 1 January 2027, the CVAE will be abolished.

Although the changes to the CVAE rules apply as from 2024, they could impact consolidated financial statements for the fiscal year ended on 31 December 2023 if enacted before 31 December 2023. To the extent that CVAE is considered an income tax (optional under IFRS and mandatory under US GAAP), the associated deferred tax will need to be adjusted as soon as the change in the tax rate is enacted.

### Adjustments to the CET cap mechanism

The CET is composed of two different taxes: the immovable property contribution (CFE) and the CVAE. The CET is capped at 1.625% of the added value generated by an enterprise (cap mechanism).

The finance law lowers the cap to 1.531% for CET due in 2024, to 1.438% for 2025, to 1.344% for 2026, and to 1.25% as from 2027.

### Miscellaneous provisions

### Electronic invoicing

The finance law postpones the general roll-out of electronic invoicing in France. Implementation will take place in two stages:

- 1 September 2026 (with a possible three-month deferral): mandatory issuance of electronic invoices for large companies and medium-sized enterprises, and mandatory receipt of electronic invoices for all companies.
- 1 September 2027 (with a possible three-month deferral): mandatory issuance of electronic invoices for small and medium-sized enterprises (SMEs) and micro-businesses.

E-reporting requirements will follow the same timetable.

### New criminal offense regarding the facilitation of tax evasion

The 2024 finance law introduces a new criminal offense for the provision of tools that facilitate tax fraud (article 1744 of the French Tax Code).

The provision of one or more legal, tax, accounting, or financial means, services, acts, or tools (opening accounts abroad; interposing a person, legal entity, organization, or trust established abroad; providing a false identity; providing an artificial tax domiciliation abroad; etc.), free of charge or for a fee, the purpose of which is to enable one or more third parties to fraudulently evade the assessment or payment of all or part of a tax will be punishable by three years' imprisonment and a EUR 250,000 fine.

The penalties are increased to five years' imprisonment and a fine of EUR 500,000 when the offense is committed using an online public communication service.

The measure will apply as from 1 January 2024.

## Direct claim for input VAT valid if refund from supplier is time barred by civil law

On 7 September 2023, the Court of Justice of the European Union (CJEU) ruled that a recipient of a supply that had overpaid VAT as a result of receiving an incorrect invoice from a supplier has the right to make a claim for the excess VAT directly to the national tax authorities (i.e., a direct claim) if the recipient is not involved in fraud, abusive practices, or negligence, and cannot claim the refund from its supplier because the claim is time-barred under national civil law (C-453/22). The possibility that the supplier could subsequently correct the affected invoices and claim reimbursement of the overpaid VAT from the tax authorities does not prevent the taxpayer's direct claim.

### Background

Under EU VAT law, if a recipient of a supply pays an incorrect amount of VAT due to an error on the supplier's invoice, the recipient generally is not entitled to an input tax deduction for the incorrect amount and must instead reclaim any excess VAT paid from the supplier under civil law. However, if it is impossible or excessively difficult to enforce the recipient's civil claim against the supplier (e.g., if the supplier is insolvent), the recipient may request a refund from the tax authorities under principles established in the CJEU judgment in C-35/05. The German Federal Fiscal Court adopted these principles; however, the German tax authorities have interpreted the case law restrictively, requiring a supplier to be insolvent before a direct claim would be valid. The Muenster Fiscal Court questioned whether this interpretation was aligned with EU VAT law and asked the CJEU for a preliminary ruling.

### Facts of the case

A German taxpayer was engaged in timber trading and purchased wood from suppliers that had issued invoices with a 19% VAT rate. The taxpayer paid the invoices and claimed an input tax deduction. After a tax audit, the tax authorities determined that the supplies should have been subject to the reduced 7% VAT rate and denied a proportion of the taxpayer's input tax deduction relating to the difference between the standard and reduced VAT rates. They also issued a demand for the proportion of over reclaimed VAT in previous years. The taxpayer therefore asked the suppliers to correct the relevant invoices to show the reduced VAT rate, and refund the difference, so that he could pay this onwards to the tax authorities. However, the suppliers argued that the claim was time-barred under civil law. The taxpayer then applied to the tax authorities to waive the amounts due and the associated interest on the grounds of equity under principles previously established in C-35/05. The tax authorities rejected the application, arguing that if the taxpayer had paid more than was legally due, this was a civil matter to be resolved between the parties, and the taxpayer should have taken steps to secure his claim against the suppliers within the permitted time limits. Finally, the taxpayer brought the case before the Muenster Fiscal Court.

The Muenster Fiscal Court considered the case, but also questioned whether there was a risk of double reimbursement on the part of the tax authorities that could prohibit the taxpayer's direct claim, as the supplier could still correct the invoices and claim back the overpaid VAT amount from the tax authorities. The tax authorities would then have refunded the VAT twice and would be obliged to demand repayment from the taxpayer. The Muenster Fiscal Court referred the case to the CJEU.

### Question referred

Under the principles of fiscal neutrality and effectiveness, is the recipient of a supply entitled to make a direct claim to the national tax authorities for reimbursement of VAT overpaid to suppliers, including any interest, even where the tax authorities may be liable to refund that amount to the supplier based on a subsequent invoice correction at a later date?

### Decision of the CJEU

The CJEU ruled that the recipient of a supply has the right to make a direct claim against the national tax authorities for reimbursement of incorrectly invoiced VAT paid to a supplier and paid onwards by the supplier to the state, with related interest, if the recipient is not involved in fraud, abuse, or negligence, and cannot claim reimbursement from the supplier due to the limitation period under national law.

According to the CJEU, denying the direct claim solely based on the supplier's argument that the civil law limitation period had expired involves a disproportionate sanction contrary to the principle of fiscal neutrality. By contrast, a direct claim may be denied if it is fraudulent or is an abuse of rights.

Further, the CJEU clarified that a supplier's insolvency is only one of the situations (still to be conclusively defined by the CJEU) that represents an impossible or excessively difficult enforcement of the claim for reimbursement. A supplier's solvency should therefore not impede a direct claim.

The CJEU rejected the risk of the double reimbursement of VAT. By asserting the statute of limitations defense against the recipient's claim for reimbursement under civil law, the suppliers had expressed their de facto unwillingness to correct the invoices. If the suppliers subsequently corrected their invoices and demanded a repayment from the tax authorities, after the amount had been refunded by the tax authorities to the recipient, those claims would have no other objective than obtaining an advantage contrary to the principle of fiscal neutrality. Such a practice would therefore be abusive and could not result in reimbursement to that supplier.

### Deloitte Germany comments

In conclusion, a taxpayer has the right to make a direct claim if the refund claim against the supplier is time-barred under national civil law. The narrow interpretation taken by the German tax authorities is no longer valid, and the German Federal Ministry of Finance letter of 12 April 2022 must be amended as a result. Affected taxpayers may refer directly to the relevant CJEU case law in comparable scenarios.

## Greece

### Guidance issued regarding myDATA platform data transmission process, e-invoicing

In relation to the implementation of the project for taxpayers to transmit data electronically to the myDATA platform, Greece's Independent Authority of Public Revenue (IAPR) published Decision 1170/01.11.2023 on 1 November 2023, amending Decision 1138/2020 and providing, inter alia, various clarifications regarding the current framework as well as the process and deadlines for the transmission of various data to the platform.

In addition, on 11 December 2023, Greece's Ministry of Finance published Law 5073/2023, "Measures to Combat Tax Evasion." The law includes additional guidance regarding the electronic data transmission requirement, provisions regarding the fines and other penalties applicable in case of non-compliance with this requirement, and guidance regarding e-invoicing.

## IAPR Decision 1170/2023

The IAPR decision provides the following:

- All relevant legal entities must transmit to the IAPR's myDATA platform certain data from transportation/delivery documents. Ministerial decisions are expected to be released clarifying how these new provisions should be implemented.
- All entities issuing retail receipts through electronic cash registers (FHMs) will have the relevant records' data automatically transmitted to the myDATA platform via the IAPR's "esend" application as from 1 April 2024. Until then (i.e., up to 31 March 2024), the relevant data should be transmitted to the myDATA platform either through the entity's enterprise resource planning (ERP) program or via a special form provided by IAPR, depending on the case.
- For the period through 31 December 2025, the transmission of relevant data from entities involved in the sale of electricity, gas, water, telecoms, operating tolls, etc., that issue their records through licensed e-invoicing service providers should be effected within two days as from the date they issue their records.
- The analytical transmission of invoices' data by entities operating in businesses related to the sale of electricity, gas, water, telecoms, operating tolls, etc., was enacted as from 1 July 2023; however, in case the issuer fails to transmit the data, the recipient is required to transmit it with invoice type 14.30 for the period through 31 December 2024.
- In case the issuer fails to transmit the relevant transactions' data, the recipient should do so by the deadline for the submission of the relevant entity's VAT return, depending on the accounting system maintained (either double-entry or single-entry). Further, in case the transmission contains various discrepancies, the recipient should transmit the correct data within the same deadline, with a notification regarding those discrepancies.
- As from 1 January 2024, a QR code is required to be included in the body of sales tax records that are issued either via ERP programs or through the IAPR's "timologio" platform. This also applies to all issued documents listed in article 2(3)(d) of Decision A.1138/2020 (ordering forms for online sales, receipts of payments via point-of-sale (POS) systems, etc.).
- In case of technical connection problems with the IAPR system (e.g., loss of connection), the relevant data must be transmitted no later than one day from the transmission deadline.
- In the case of retail transactions, liable entities using a licensed e-invoicing provider are required to have a network provider's subscriber identity unit, be it a SIM card or other equivalent means of coverage through similar services. Certain relevant details should be included in the declaration that must be filed with the tax authorities regarding the collaboration with the licensed e-invoicing provider.
- The decision provides new deadlines for data transmission, as follows:
  - For data relating to 2022:
    - By 31 December 2023 for invoiced expenses, self-invoicing revenue, and payroll expense data.

- By 31 January 2024 for any discrepancies and omissions related to the issuer's transmission process (i.e., data should be transmitted by the recipient).
- By 31 January 2024 for revenue and expense adjusting entries, either in detailed or summary form.

- For data relating to 2023:
  - By 28 February 2024 for invoiced revenue, self-invoicing expenses, and proof of expenditure records.
  - By 31 March 2024 for invoiced expenses, self-invoicing revenue, and payroll expense data.
  - By 30 April 2024 for any discrepancies and omissions related to the issuer's transmission process (i.e., data should be transmitted by the recipient).
  - By the deadline to file the corporate income tax return for revenue and expense adjusting entries, either in detailed or summary form.
- For data relating to 2024:
  - The transmission of tax documents with a null value is not mandatory.
  - In any case, the net value of a tax document should be accurately transmitted.
  - Regarding any transaction data subject to VAT, a general requirement is introduced whereby all revenue data declared in an entity's VAT return should not be less than the data transmitted to the myDATA platform. Accordingly, expenses declared in an entity's VAT return should not exceed the amount of expenses transmitted to the myDATA platform.
  - The transmission of data regarding other taxes and charges (withholding tax, other taxes, stamp duty, etc.) is not mandatory.
  - As from 1 January 2024, invoice data issued through ERP platforms should be transmitted on a real-time basis (i.e., at the time of issuance).
- For data as from 1 January 2025: All relevant data stipulated in article 15A of the Greek Tax Procedures Code (GTPC, L. 4987/2022) should be transmitted to the myDATA platform without any deviations.

### Ministry of Finance Law 5073/2023

The Ministry of Finance's Law 5073/2023 on measures to combat tax evasion provides the following electronic data transmission guidance:

- Amending the previous relevant provisions, the law requires the electronic transmission to the myDATA platform of an entity's data related to: (i) issued tax documents (irrespective of the issuance method), (ii) accounting books and files, (iii) relevant FHMs and tax records, and (iv) files and data created by these FHMs.

- The value of an entity's taxable transactions/data and revenue considered by the tax administration for the purpose of determining the entity's VAT and income tax position should not be less than those derived from the tax documents transmitted to the myDATA platform.
- Any tax and expense deduction for the determination of income should not be taken into account, unless the data based on which the deduction is claimed has been electronically transmitted to the myDATA platform.
- Exceptions to the adoption and application of the provisions are expected to be published in a ministerial decision that will further stipulate the acceptable limits of discrepancies and differences concerning the value of taxable transactions and revenue taken into account by the tax administration. In any case, these deviations cannot exceed 30% of the value of tax documents electronically transmitted to the myDATA platform.

In addition, Law 5073/2023 provides for the following penalties in case of non-compliance with the myDATA platform submission requirement:

| | Type of data transmissions infringements (related to the issuer of tax documents) | Penalties |
|---|---|---|
| 1 | Failure to transmit:<br>• Summaries of invoiced revenue<br>• Self-invoicing expenses<br>• Proof of expenditure records<br>• Tax documents issued under special tax provisions | 10% of the net value of each non-transmitted document, not to exceed EUR 250 per day |
| 2 | Failure to transmit:<br>• Payroll records, depreciation, and relevant revenue and expense adjusting entries that determine an entity's accounting and tax results<br>• Characterization of revenue data, from the issuer's viewpoint or the recipient of the self-invoice, resulting in the characterization not being included in the relevant annual income tax return | EUR 250 or EUR 500 per fiscal year (FY) for each infringement, depending on the entity's accounting system (either single-entry or double-entry, respectively) |
| 3 | The issuer of a tax document transmits tax document data following a recipient's initial data transmission due to failure or discrepancy, provided that the initially transmitted value is less than the actual value | 5% of the net value of each non-transmitted tax document data |
| 4 | Failure to transmit delivery notes' data | EUR 100 per infringement, not to exceed EUR 500 per day and EUR 20,000 per FY |
| 5 | Failure to transmit other tax documents related to sales tax receipts, returns, or sale orders | EUR 100 per infringement but no penalty is imposed if the tax document that correlates to the sales tax receipt has been issued before any tax audit |

Further, the tax law provides that:

- In case of late transmission in scenarios 1, 2, and 4 discussed above, a penalty equal to 50% of the respective non-compliance penalty will be imposed.
- In case the same violation occurs within five years of the tax authorities' notification of the imposition of a penalty, the penalties discussed above will be doubled; for each new identical violation within the five-year period, they will be quadrupled, subject to the limits per FY discussed in scenarios 1, 2, and 4.

Finally, the tax law provides guidance regarding e-invoicing. Specifically, it states that the existing tax incentives for entities that opt to implement electronic invoicing exclusively through licensed e-invoicing service providers, as stipulated in paragraphs 2 and 3 of article 71ΣΤ of Law 4172/2013, can be provided until FY 2024 (the statute of limitations period during which the tax authorities may conduct a tax audit and assess tax will be reduced; twice the amount of expenses incurred to acquire the initial technical equipment and software required for e-invoicing will be depreciable in full, for tax purposes, in the fiscal year incurred; etc.). For FY 2023 and 2024, adoption of electronic invoicing and all the necessary actions related to the implementation of the e-invoicing process through licensed suppliers should be completed no later than 31 December 2023 and 31 December 2024, respectively.

### Comments

Entities should waste no time in taking all the appropriate actions to be compliant with the IAPR's myDATA platform data transmission requirement so as to mitigate the risk of penalties from the Greek tax authorities. In this respect, entities would be wise to reconcile their VAT returns subject to the submission with their prepopulated VAT returns to timely detect any discrepancies and omissions and take the appropriate remedial measures before their final submission to the tax administration.

## Guatemala

### Summary of main tax-related tasks to prepare for 2023 fiscal year-end close

The end of the 2023 fiscal year for Guatemalan companies is approaching and, as usual, the year-end closing brings with it questions regarding whether the transactions that were carried out during the year fully complied with the criteria established in the current laws, including the relevant tax laws. In particular, it is necessary for companies to perform a detailed analysis of any extraordinary transactions, to ensure that they comply with the quantitative and qualitative requirements regulated in each of the relevant laws that are applicable in Guatemala, and that there is appropriate documentation to support their compliance.

The following are some of the main tasks that each company should perform prior to the close of the fiscal year:

- For intragroup service transactions, review the economic substance (commercial benefit of the service) with respect to the activities carried out between related companies.
- Reconcile the income reported under the provisions of the VAT law and the income reported under the provisions of the income tax law.
- Ensure that the company has complied with obligations with third parties (e.g., withholding).

- Identify transactions between related parties and review their reporting in bank balance reconciliations required by the tax authorities.
- Analyze the movement in profits from previous periods and the supporting documentation.
- Review the expenses related to employee benefits and their basis of application.
- Validate the support for payments of bonuses based on productivity.

Guatemala

## Expectations regarding SAT's investigation and audit approach for 2024

Guatemala's Superintendency of Tax Administration (SAT) made announcements in December 2023, in various forums, regarding its investigation and audit approach for 2024. The approach will maintain the trend of risk-based inspections from the SAT´s point of view. This article describes some of the factors that the SAT analyzes to identify potential risks, which may be considered in the selection of companies for tax investigations and audits.

The SAT has explained that its risk model is based on technology: its databases and the tools to analyze the data in them.

The following are among the factors on which the SAT bases its analysis and identification of risks:

- Industries and/or economic activities: The SAT's databases and tools allow it to carry out a specialized analysis by industry and/or economic activity, evaluating the taxpayers grouped by each industry or economic activity based on the amount and composition of tax payments that they make. This includes direct taxes (income tax (ISR), solidarity tax (ISO), indirect taxes (VAT on imports, domestic VAT, consumption taxes, etc.), withholding taxes for nonresidents (which are a reflection of payments abroad that are claimed as tax deductions), and domestic withholding taxes. Where the amount or composition of taxpayers' tax payments differs from the average behavior of taxpayers in their sector, this triggers a risk alert for potential investigations and inspections by the SAT.
- Economic trends: For exporters, importers, and taxpayers in industries for which the market price of goods and services or information on economic performance is monitored and published by specialized institutions at a global level, the SAT analyzes whether tax payments are consistent with the economic trends reported for the industry. Behavior that is not consistent raises a risk alert.
- Tax behavior: Taxpayers that make certain changes to their tax behavior, qualitatively or quantitatively, based on a year-on-year comparison or between tax periods, trigger a risk alert.
- Financial statement analysis: An analysis of a taxpayer's financial statements is carried out by the SAT, in comparison to taxpayers in its industry and in comparison to itself in other fiscal years. Atypical variations are considered a risk factor.
- Relationships and supply chain: Through technological solutions that identify different relationship points (common shareholders, common legal representatives, common tax domiciles, etc.), the SAT identifies domestic related parties. When these parties are linked by their supply chain, a risk alert is generated to verify that the transactions have economic reality.

- Inconsistencies: Certain inconsistencies within and between tax regimes raise an alert that is first investigated by the revenue branch of the SAT. If the taxpayer does not provide satisfactory clarifications, the case is transferred to audit/inspection.

These are only some of the types of analyses based on technological tools that the SAT is carrying out and that will be the basis for continuing its risk-based inspections during 2024. From the perspective of companies and groups of companies, it is important to be aware of the SAT's approach to be able to understand potential investigation and inspection actions, and to interact appropriately with the SAT by providing quality information and documentation to support the taxpayer's tax compliance.

### Hungary

#### New eVAT system to be available as from 1 January 2024

Hungary is set to introduce a new reporting mechanism, referred to as the "eVAT system," as from 1 January 2024. Although the intention is for the new system to be made available to all Hungarian VAT registered taxpayers as from that date, it will not be mandatory for 2024 and possibly not until 2026 at the earliest.

During this time, companies may register on the new platform and test the eVAT system, while continuing to use the current ANYK system to submit VAT data to the Hungarian tax authorities. The ANYK system is expected to remain operational until at least 2026 or 2027, so that the two systems would exist in parallel, allowing taxpayers to gradually transition to the new system at their own pace. At the end of the transition period, the eVAT system will be the only way to submit VAT data to the tax authorities.

The intention was for the eVAT system to be made available to a select group of taxpayers for pilot testing as from 1 October 2023. However, as the result of technical issues, it is not yet fully operational. As the system is still under development, the full extent of its functionality and exactly what requirements the XML file will need to meet are not yet certain. Based on the information currently available from the Hungarian tax authorities, the key features of the new system will include the following:

- All Hungarian VAT registered taxpayers will be within the scope of the eVAT system.
- The eVAT system will be used for submitting VAT returns, not EC sales and purchase lists and local purchase listings. Intrastat reporting will continue to be carried out via the Elektra portal and real-time reporting obligations will also remain in place. Although real-time reporting is a completely separate obligation, it appears that a common technology platform will be used, potentially allowing the eVAT system to be accessible from the website of the online invoice system.
- Data will need to be provided to the Hungarian tax authorities in a fully automated way via an application programing interface and manual uploads will not be possible.
- The data will need to be provided in a predetermined XML format but the exact structure of this file has not yet been finalized. The tax authorities are currently publishing new updates and details regularly on the GITHUB portal.
- An important feature of the new system will be the validation of data which will be carried out both during and after submission, although the full details of the validation process have not yet been finalized. The information currently available is published on GITHUB.

- If optional accounting data is included in the XML file, this would replace the obligation of providing VAT ledgers during VAT audits.
- The draft returns would be prepared automatically by the tax authorities, based on the XML file submitted by the taxpayer in the eVAT system.
- Taxpayers will need to confirm if they agree with the VAT figures generated by the tax authorities; if they do not, they may resubmit the XML file with corrected data. Modifications may be made to the website for the other module of eVAT applicable only to small companies, in accordance with which the tax authorities prepare a draft return based on the data already available. If an XML file is submitted to the tax authorities, any subsequent amendments by the taxpayer must be made by resubmitting the file.
- Although data submitted via real-time reporting will be a source of information that the tax authorities may seek to reconcile with the data submitted via the eVAT system, it is not anticipated that there will be any automatic adjustments based on real-time reporting. The available information suggests that instead warning messages will be generated in the event of any inconsistencies.
- Where self-revisions are required, this will only be possible in the eVAT system as from the reporting period for the third quarter of 2024. In this case, a new return will need to be submitted. Under the current system, VAT returns revised by the taxpayer must be completed in full and not include just those amounts that are different from the original return. This is expected also to be the case under the eVAT system.

India

### Online gaming industry: GST laws amended to incorporate GST Council proposals

Pursuant to the amendments prescribed in the Central Goods and Services Tax (Amendment) Act, 2023 (CGST Amendment Act) and the Integrated Goods and Services Tax (Amendment) Act, 2023 (IGST Amendment Act), India's Central Board of Indirect Taxes and Customs (CBIC) issued various notifications on 29 September 2023 to implement various changes regarding the taxation of online gaming with effect as from 1 October 2023. These notifications are aligned with the recommendations made at the 50th GST Council meeting held on 11 July 2023 and the 51st GST Council meeting held on 2 August 2023.

The amendments clarify the GST laws relevant to the online gaming sector, address the valuation and taxation of online money gaming, and include overseas online gaming operators within the scope of the rules.

### Key amendments

The key amendments are as follows:

- Changes in GST rate: Serial no. 227 A is added to Notification 1/2017 – Central Tax Rate dated 28 June 2017 and Notification 1/2017 – Integrated Tax Rate dated 28 June 2017 to tax specified actionable claims, including online money gaming, at the rate of 28% with effect as from 1 October 2023. Entries 228 and 229 in the respective notifications for lottery and game of chance have been deleted.
- Implementation of CGST Amendment Act and IGST Amendment Act: The effective date for implementation of the amendments is 1 October 2023.

- Definition of online gaming, online money gaming, specified actionable claims, and virtual digital assets:
    - "Online gaming" is defined as offering a game on the internet or an electronic network and includes online money gaming (section 80A of the CGST Act, 2017 (CGST Act));
    - "Online money gaming" is defined as an online game "in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including [a] game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force" (section 80B of the CGST Act);
    - "Specified actionable claim" is defined as an actionable claim involved in, or by way of: (i) betting; (ii) casinos; (iii) gambling; (iv) horse racing; (v) lottery; or (vi) online money gaming.
    - "Virtual digital asset" has the same meaning assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961 (section 117A of the CGST Act).
- Exclusion of specified actionable claims from schedule III of the CGST Act: Schedule III of the CGST Act is amended to exclude "specified actionable claims" involved in online money gaming and, accordingly, these claims should be taxed as a supply of goods.
- Exclusion of online money gaming from the definition of online information and data access retrieval (OIDAR) services: This distinction ensures that online money gaming activities, where participants deposit funds in the anticipation of winning money or equivalent assets, are treated separately from digital service offerings covered under OIDAR as online gaming.
- Definition of "supplier" amended to add the following proviso:
    - "Provided that a person who organises or arranges, directly or indirectly, [the] supply of specified actionable claims, including a person who owns, operates or manages [a] digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims."
- Requirement of mandatory registration for overseas online money gaming service provider: A proposed amendment to section 24 of the CGST Act would require persons providing online money gaming services from a location outside of India to get registered for Indian GST law purposes.
- Simplified registration for overseas online money gaming operators: Other changes to the IGST Act, 2017 (IGST Act) include the introduction of a new section 14A to define the taxability and simplified registration requirement for overseas gaming operators, and the ability to block a supplier's online money gaming-related information on any publicly-accessible computer resource in India in case of non-compliance.

- Value of supply: Pursuant to the authority granted to it under section 15(5) of the CGST Act, the government, on the recommendation of the GST Council, notifies the value of supply for the following:
    - Online money gaming;
    - Online gaming (excluding online money gaming); and
    - Actionable claims in casinos.
        - Based on GCGST rule 31B, the value of supply of online gaming, including the supply of actionable claims involved in online money gaming, is the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player, provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including the player not using the amount paid or deposited with the supplier for participating in any event, is not deductible from the value of supply of online money gaming.
        - Based on the explanation for rule 31B, any amount received by the player by winning any event, including game, scheme, competition, or any other activity or process that is used for playing by the player in a further event without withdrawing, is not considered the amount paid to or deposited with the supplier by or on behalf of the player.
- Advance receipts to be taxable: It is notified that a registered person undertaking supplies of specified actionable claims are required to pay GST as the time of supply, which is the earlier of:
    - The supply of goods and the issuance of the invoice; or
    - The receipt of payment.
        - The exemption relating to taxability of advances is not available to suppliers of specified actionable claims including online money gaming.
        - The relevant extract from the amendment is notified as follows: "Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act other than the registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act, as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act."
- Imports are outside the purview of customs:
    - The import of online money gaming is removed from the scope of the Customs Tariff Act, 1975 and only IGST is levied in accordance with section 5(1) of the IGST Act.
    - "Council, notifies the supply of online money gaming as the goods on import of which the proviso to sub-section (1) of section 5 of the said Act shall not apply, but on which integrated tax shall be levied and collected under sub-section (1) of section 5 of the said Act."

- Procedural amendments to be effective as from 1 October 2023:

  - Rule 8 is amended to exclude persons supplying specified actionable claims involving online money gaming from a location outside of India from the requirement to submit their permanent account number (PAN)/state or union territory before applying for a registration. This amendment is to align with the simplified registration scheme proposed by the CBIC for overseas service providers so as to bring parity between domestic and overseas suppliers.

  - Rule 14 is amended to allow a simplified registration scheme (application through Form REG-10) for persons supplying online money gaming from a location outside of India to a person in India. (The rule prescribes a revised Form REG-10 to align with the amendment.)

  - Rule 46 is amended to make it mandatory for online money gaming service providers providing services to unregistered customers to mention the name of the state of the recipient on the face of the invoice.

  - Rule 64 is amended to prescribe GSTR-5A as the GST return applicable to overseas online money gaming service providers. (The rule prescribes a revised Form GSTR-5A to align with the amendment.)

  - Rule 87 is amended to allow overseas online money gaming service providers to make the deposit under sub-rule (2) through an international money transfer using the Society for Worldwide Interbank Financial Telecommunication (SWIFT) payment network, as from the date to be notified by the CBIC.

- Appointment of jurisdictional authority: The Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him are authorized to grant registration in case of the supply of online money gaming provided or agreed to be provided by a person located in a non-taxable territory and received by a person in India, with effect as from 1 October 2023.

Comments

The amendment provides significant clarity regarding the taxability of both domestic and overseas suppliers of online money gaming, in particular with respect to the applicable rate of tax as well as the time and value of supply. However, clarity is still needed regarding the following:

- The applicability of transitional provisions due to the change in taxability and the GST treatment of money already in players' wallets on 1 October 2023;

- The applicability of GST on bonuses or other incentives given by online money gaming suppliers to players to play online money games;

- The valuation and taxability of player deposits in a common wallet used for online money gaming, online gaming, and merchandise; and

- An assessment of the amendments' impact and the alignment of technology systems with the amendments.

Indonesia

## Regulation grants eligibility for preliminary VAT refunds on BEVs

To expedite the transition from fossil fuel to electric energy usage and increase public interest in buying battery-based electric vehicles (*Kendaraan Bermotor Listrik Berbasis Baterai* (BEVs)), Indonesia's Minister of Finance (MoF) issued Regulation Number 116 of 2023 (PMK-116) on 22 November 2023. PMK-116, which came into effect upon issuance, provides a preliminary VAT refund facility in addition to the existing VAT facility program for certain qualifying BEVs under MoF Regulation Number 38 of 2023 (PMK-38).

In addition to the existing VAT facility where a portion of VAT due on the sale of qualifying BEVs (i.e., BEVs that are newly registered and meet the domestic requirements) is borne by the government between April and December 2023, a VAT-able entrepreneur (*Pengusaha Kena Pajak* (PKP)) delivering such qualifying BEVs is now provided with a low-risk PKP status and thus eligible for a preliminary VAT refund. As such, there is no requirement for a low-risk PKP status determination either by the Directorate General of Taxation (ex-officio) or the taxpayer (by request).

The request for the refund must be made by choosing the option for a preliminary VAT refund in the VAT return. This refund facility is available for VAT returns submitted through 31 January 2024, including any amendments, and may include VAT overpayments carried over from previous fiscal periods. If, during the refund facility period, the PKP only delivers BEVs for self-use or as free gifts, the preliminary VAT refund facility would not apply.

Under PMK-38, VAT invoices with transaction code "01" (for the portion of VAT not borne by the government) and transaction code "07" (for the portion of VAT borne by the government) must be issued by the seller to determine which part of the VAT payable is borne by the government. To satisfy the VAT invoice requirements for certain types of BEV recipients, the transaction code used for the portion of VAT not borne by the government must be changed to one of three new transaction codes introduced by PMK-116, as follows:

| Transaction code | Type of BEV recipient |
|---|---|
| 02 | VAT collectors that are government agencies |
| 03 | VAT collectors that are nongovernmental agencies |
| 04 | For BEVs delivered using other value as the VAT base as stipulated in article 8A(1) of the VAT Law |

Indonesia

## Government to bear VAT on sales of certain residential properties

To support the national economic development in the property sector, Indonesia's Minister of Finance issued Regulation Number 120 of 2023 (PMK-120) on 21 November 2023 stating that the government will bear all or part of the 11% VAT payable on sales of certain residential properties, as opposed to the general treatment whereby the VAT is borne by the purchaser.

PMK-120, which came into effect upon issuance, introduces a government-borne VAT facility on the sale of landed houses (broadly defined as residential properties with some surrounding land or a garden and including houses used as shops and offices) and residential units by a VAT-able entrepreneur (*Pengusaha Kena Pajak* (PKP)) to an individual homeowner (buyer) for the fiscal periods of November through December 2023. The property has to be newly built, ready-to-use, not handed over previously, and registered with the Ministry of Public Works and Housing and/or the People's Housing Savings Management Body (*Badan Pengelola Tabungan Perumahan Rakyat*).

The government will bear 100% of the VAT if the transfer of the rights to the property occurs between 1 November 2023 and 30 June 2024 (50% of the VAT if the transfer of the rights to the property occurs between 1 July 2024 and 31 December 2024), provided that the VAT base is up to IDR 2 billion with a selling price of up to IDR 5 billion.

The facility is available for delivery of landed houses and residential units between 1 November 2023 and 31 December 2024, evidenced by the issuance of minutes of handover (*berita acara serah terima*).

If the buyer made an advance payment or installment payment in respect of the acquisition before 1 November 2023, the facility would be available subject to the following conditions:

- The initial advance payment or installment payment is made no earlier than 1 September 2023;
- The date of sale (as evidenced by the minutes of handover) falls between 1 November 2023 and 31 December 2024; and
- The facility will be provided on the remaining installments and settlements that are paid between 1 November 2023 and 31 December 2023.

The PKP selling the property must issue a VAT invoice and disclose certain information on the invoice as required by PMK-120 using transaction codes "01" (for the portion of VAT borne by the buyer) and "07" (for the portion of VAT borne by the government). The VAT invoice must be reported in the respective VAT return and the returns will serve as the facility realization reports provided that they are submitted to the tax office by 31 January 2025 (including amendment reports).

VAT that has been borne by the government must be repaid if the tax authorities discover that:

- The property sold or the delivery process does not meet the requirements for the facility;
- The individual does not qualify for the facility or owns more than one property that has benefitted from the facility;
- The VAT period is not between 1 November 2023 and 31 December 2023;
- Any of the requirements related to the VAT invoice or VAT return are not met;
- The property is transferred within one year after the initial sale; or
- The minutes of handover have not been registered with the MPWH.

PMK-120 stipulates that properties that have obtained VAT exemption facilities cannot utilize the VAT facility under PMK-120. However, an individual who has utilized the government-borne VAT facility on housing deliveries prior to PMK-120 can utilize the VAT facility as stipulated in this regulation.

Japan

## Podcast: Are you ready for the new Electronic Record Retention Law?

Amendments to Japan's Electronic Record Retention Law (ERRL) making the digital storage (to prescribed standards) of electronic transaction records compulsory as from 1 January 2024 have implications for all businesses operating in Japan.

In this episode of *The Japan Perspective*, David Bickle, partner in Deloitte Japan's Business Tax Services team, discusses the updates to the ERRL and explains what the changes mean in practice. He emphasizes the importance of integrity and readability in stored data, and the risks of noncompliance. Taxpayers are advised to understand which documents fall within the ERRL definition of electronic transaction record and how these documents are stored in their current systems, to identify and remediate any gaps to ensure compliance before the deadline.

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

Japan

## Podcast: Key insights into the qualified invoice system

Japan has implemented a qualified invoice system (QIS) as from 1 October 2023, which imposes new documentation requirements on businesses operating in Japan. Failure to comply with the QIS rules may affect an entity's ability to claim an input Japanese consumption tax (JCT) deduction.

In this episode of *The Japan Perspective,* host Joanna Hazel and guest Nicole Baxter, a senior manager in Deloitte Japan's Indirect Tax group, discuss the effect of the QIS on businesses operating in Japan, providing valuable insights into the challenges faced by buyers and suppliers, and detailing the potential consequences of not holding valid qualified invoices under the new QIS rules. This episode also explores the range of preparation undertaken by affected businesses, from those with a full 12 months of review and planning, to others, particularly in the digital services sector, that are only now reviewing their supply chains.

The conversation then shifts to recent developments in online platform taxation in Japan. Nicole shares insights from a Ministry of Finance study group, which indicates that platform operators are likely to be responsible for collecting JCT on business-to-consumer sales of digital services made by foreign suppliers through online platforms. Other key points include deeming the platform operator as the seller and not imposing a sales threshold on the seller.

The podcast concludes with a brief update on changes to eligibility around claiming import JCT. Nicole explains a clarification issued in June 2023 as to the determination of the importer when there is no underlying import transaction and emphasizes the retroactive application of this clarification to open fiscal years.

The podcast offers valuable insights into these tax developments, ensuring businesses stay informed about the evolving Japanese indirect tax landscape.

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

## Domestic reverse charge mechanism could be extended to certain goods as from 2024

On 3 November 2023, the Luxembourg government submitted a draft bill (N° 8399, in French only) to parliament to modify the Luxembourg VAT law. The bill's aim is to combat VAT fraud in certain domestic supplies of goods sensitive to such fraud, such as laptops and mobile phones. The proposed change primarily concerns businesses in these sectors, but also any other businesses purchasing these types of goods. The law is expected to be enacted by and apply as from 1 January 2024.

### Background

In principle, suppliers are required to collect VAT from their clients and remit it to the authorities (article 61 of the Luxembourg VAT law (VATL) and article 193 of the EU VAT directive (Council Directive 2006/112/EC (VATD)). However, some fraudulent suppliers collect VAT from their clients but fail to remit it to the VAT authorities. The purchasers then claim the reimbursement of this unpaid VAT.

### The domestic reverse charge mechanism

Some sectors are particularly subject to VAT fraud and EU member states are authorized by article 199a of the VATD, but not obliged, to introduce a "domestic reverse charge" mechanism for a number of transactions listed in the directive. The domestic reverse charge rule implies that the payment of VAT is shifted from the supplier to the client. This payment obligation may be imposed only on VAT taxable persons because its application supposes that the client is registered for VAT.

In practice, clients receive an invoice without VAT but stating "reverse charge" (article 63.8.14° of the VATL and article 226(11)(a) of the VATD). Thus, they must pay the VAT due on the transaction to the authorities via their VAT returns and are simultaneously entitled to deduct the VAT based on their VAT deduction right. For VAT taxable persons, such as retailers, that have a full VAT deduction right, the VAT is fully and immediately deductible. The VAT due and the VAT deductible in fact offset one another. This mechanism obviates the need to make an actual payment, thereby easing the taxable person's cash flow position. It also prevents situations where the supplier collects VAT but fails to remit it to the tax authorities, thereby limiting possibilities for fraud.

### Application in Luxembourg

Currently, article 61.3 of the VATL provides that the domestic reverse charge mechanism is applicable to two categories of transactions: (1) some carbon credits and climate rights[1], and (2) gas and electricity certificates.

The draft bill would extend the mechanism to four new categories of transactions, including:

a. The supply of mobile telephones, i.e., devices designed or adapted to be used in connection with a licensed network operating on specific frequencies, whether or not they have any other use;

b. The supply of integrated circuits, such as microprocessors and processing units power plants, before their incorporation into end-user products;

c. The supply of game consoles, tablet computers, laptops, and headphones; and

d. Raw or semi-finished metals, as referred to in annex F of the VATL (annex VI of the VATD[2]), including precious metals.[3]

We should mention that member states have the possibility to introduce the domestic reverse charge for other transactions, including the supply of gas and electricity to taxable dealers, telecommunication services, cereals, and industrial crops. Luxembourg has not yet implemented the local reverse charge mechanism for these categories of goods and services.

### The EUR 10,000 threshold

For these new four categories of goods, the reverse charge mechanism would apply only if the value of the transaction exceeds EUR 10,000 before VAT and without taking into account any subsequent reduction of the price of the transaction.

This EUR 10,000 threshold would add complexity to the rule because it implies that the domestic reverse charge mechanism would not apply to all transactions involving the concerned goods. Thus, depending on the value of a transaction, businesses would have to apply either the "normal rule," i.e., the supplier would collect the VAT from the client and remit it to the VAT authorities, or the reverse charge rule.

In this respect, suppliers would have to properly check the identity, VAT status and number, good faith, and solvability of their clients. Indeed, article 67 of the VATL provides for joint liability by all persons, except individuals, that are parties to a taxable transaction. On this basis, the Luxembourg VAT authorities could require a business that rightly issued an invoice without VAT to pay the VAT due on the transaction by the purchaser pursuant to the reverse charge rule if the latter has failed to pay it.

### Next steps

These proposed changes must be communicated to the EU VAT Committee and are subject to the approval of the Luxembourg State Council and a vote in the Luxembourg parliament. Given the bill's objective to prevent VAT fraud and the fact that the domestic reverse charge mechanism already applies in Luxembourg and other EU member states, it is likely that the law will be enacted and come into force as planned, as from 1 January 2024.

### Deloitte Luxembourg comments

Businesses active in the concerned sectors should be aware of the proposed changes and adapt their enterprise resource planning (ERP) systems and their accounting, invoicing, and payment processes accordingly. This is especially crucial as there is little time left before the anticipated effective date. This applies both to suppliers and purchasers.

In addition, any business (e.g., bank, insurance, industry) would be affected when making purchases of mobile phones or computers exceeding EUR 10,000. Thus, they should adapt their accounting systems to process this new category of invoice and pay the VAT that is due.

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*End notes:*

[1] These rights are defined as "transfer of allowances, emission reduction units or emission reductions certified within the meaning of Article 3(a), (m) and (n) of Directive 2003/87/EC of European Parliament and of the Council of 13 October 2003 establishing a trading system greenhouse gas emission allowances in the Union and amending the Directive 96/61/EC, or mutually recognized instruments pursuant to Article 96/61/EC 25 of that directive."

[2] The annex includes: "(1) Supply of ferrous and non-ferrous waste, scrap, and used materials including that of semi-finished products resulting from the processing, manufacturing or melting down of ferrous and non-ferrous metals and their alloys; (2) supply of ferrous and non-ferrous semi-processed products and certain associated processing services; (3) supply of residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash, scale and industrial residues containing metals or their alloys and supply of selection, cutting, fragmenting and pressing services of these products; (4) supply of, and certain processing services relating to, ferrous and non-ferrous waste as well as parings, scrap, waste and used and recyclable material consisting of cullet, glass, paper, paperboard and board, rags, bone, leather, imitation leather, parchment, raw hides and skins, tendons and sinews, twine, cordage, rope, cables, rubber and plastic; (5) supply of the materials referred to in this annex after processing in the form of cleaning, polishing, selection, cutting, fragmenting, pressing or casting into ingots; (6) supply of scrap and waste from the working of base materials."

[3] However, the following are excluded: precious metal items subject to the special profit margin taxation scheme applicable to second-hand goods, objects of art, collectibles, or antiques (articles 56ter to 56ter-3 of the VATL and article 314 of the VATD), or subject to the special tax regime applicable to investment gold (article 56quater of the VATL implementing article 344 of the VATD).

## Luxembourg

### VAT: Will the temporary 2023 rate reductions be extended?

In 2023, most Luxembourg VAT rates were reduced for one year. As 2024 approaches, the question has been raised whether this measure will be renewed. Below, we examine why it is unlikely.

Following an announcement on 21 September 2022 by the Luxembourg government, a law enacted on 26 October 2022 reduced most VAT rates for 2023 by one basis point as a measure to fight inflation. The VAT rates were reduced to 16%, 13%, and 7% (from 17%, 14%, and 8%, respectively) while the super-reduced rate of 3% remained unchanged.

### A closer look

The law of 26 October 2022 clearly stated that the reduction was for the period from 1 January 2023 through 31 December 2023. A new piece of legislation thus would be necessary to renew the reduction.

While this would still be possible from a technical standpoint, i.e., there is enough time before the parliamentary winter holidays, different factors indicate that it is unlikely that the measure will be extended:

- The law of 26 October 2022 was noticeably clear that the measure was for the period from 1 January 2023 through 31 December 2023. This is a first indication that the measure was meant to be temporary.
- The inflation has slowed down, making an extension less relevant.
- The government and the coalition of parties forming the government have changed.
- Neither of the two parties in the new coalition has mentioned any intention to renew the VAT rate reduction.

In 2022, we strongly recommended that businesses:

- Adapt their accounting systems to ensure a timely application of the correct VAT rates;
- Establish invoicing procedures to apply the correct VAT rates; and
- Review contracts and agreements to make amendments, as needed.

We also highlighted that, due to the temporary nature of the VAT rate reductions, the reverse exercise would be required when the rates are reinstated, which would most likely be as soon as 1 January 2024.

As a reminder, the following VAT rates *currently* apply to various categories of goods and services defined by law (non-exhaustive list):

| Super-reduced rate: 3% | Reduced rate: 7% (to be increased to 8%) | Intermediary rate: 13% (to be increased to 14%) | Standard rate: 16% (to be increased to 17%) |
|---|---|---|---|
| • Food for human consumption<br>• Books, newspapers<br>• Water supply<br>• Pharmaceutical products<br>• Personal transport | • Gas supply<br>• Electricity supply<br>• Plants<br>• Some labor-intensive services | • Some wines<br>• Management and safekeeping of securities<br>• Management of credit and credit guarantees by a person other than the one granting the credit | • All other goods and services (except those exempt) |

Businesses should consider, without delay, how to revert in the most efficient manner to the pre-2023 rates, as these likely will be back in effect on 1 January 2024.

## Malaysia

### Update on SOPs for completely built-up vehicles imported at licensed warehouses

The Royal Malaysian Customs Department (RMCD) has released updated standard operating procedures (SOPs) regarding customs control of completely built-up vehicles imported at a licensed warehouse (LW) under section 65 of the Customs Act 1965 ("Customs SOPs 2023"), which are effective as from 24 August 2023. The Customs SOPs 2023 supersede the previous SOPs, "Customs Control Over Vehicles (Completely Built-Up) Imported in Licensed Warehouse under Section 65 of the Customs Act 1967" dated 22 August 2022 and "Customs Control SOP Implementation Guide on Vehicles (Completely Built-Up) Imported in Licensed Warehouse Under Section 65 of the Customs Act 1967" dated 23 August 2022. Affected business should be aware that some new procedures have been introduced in the Customs SOPs 2023, while some procedures that previously applied have been modified or eliminated.

Among other things, the scope of the SOPs is expanded to cover the movement of vehicles out of an LW for the purpose of filming or advertising. Accordingly, the Customs SOPs 2023 now cover the movement of vehicles out of an LW for the following purposes or reasons:

- Exhibition;

- Maintenance;
- Filming or advertising (newly added);
- Test drives; or
- Due to a disaster.

Other salient updates reflected in the Customs SOPs 2023 relate to the following topics:

- Relevant terminology;
- The responsibilities of LW licensees; and
- Updates with respect to the following items:
    - Guarantee requirements for the transfer/movement out/in of vehicles from/to an LW;
    - Procedures for the transfer of vehicles from the country entry point to an LW;
    - Procedures for the transfer of vehicles from one LW to another LW;
    - Procedures for the outbound transfer of vehicles from an LW to a duty-free island for sales purposes;
    - Procedures for the movement of vehicles for exhibition purposes;
    - Procedures for the movement of vehicles for maintenance purposes;
    - Procedures for the movement of vehicles for filming or advertising purposes;
    - Procedures for transfers due to a natural disaster; and
    - Actions in response to violations of legal provisions, regulations, or licensing conditions.

### Deloitte Malaysia's comments

With the release of the Customs SOPs 2023, it is important for affected businesses to review the new guidance and become familiar with the new and modified procedures, as well as with the conditions regarding the importation of completely built-up vehicles at an LW, to facilitate compliance with effect from 24 August 2023.

## Malaysia

### Service tax proposals in Budget 2024 would expand scope, introduce increased rate

Malaysia's finance minister presented Budget 2024, which includes a variety of tax proposals, on 13 October 2023. From a service tax perspective, the most significant proposals would expand the scope of taxable services and increase the service tax rate from 6% to 8% (with an exception for specified taxable services). The changes described below are outlined in appendix 34 to the budget speech and are proposed to be effective as from 1 March 2024. To be enacted, the measures in the budget must be included in legislation that is passed by Malaysia's House of Representatives and Senate, receives royal assent from the king, and is published in the official gazette.

### Expansion of scope of taxable services

The scope of taxable services (specified in the first schedule to the Service Tax Regulations 2018) would be expanded to include the following new types of taxable services:

- Addition to group C (nightclubs, dance halls, cabarets, health and wellness centers, massage parlors, public houses, and beer houses): Karaoke center services; and
- Additions to group I (other service providers):
    - Delivery services (except for the delivery of food and beverages);
    - Brokerage and underwriting services for non-financial services activities, such as brokerage services relating to ship and aircraft space, commodities, and real estate; and
    - Logistics services.

### Deloitte Malaysia's comments

The expansion of the scope of service tax to include delivery services has been proposed a number of times, but its implementation previously had been postponed. In addition, "logistics management" was previously included within the scope of service tax and subsequently exempted. A challenge relating to both logistics services and delivery services is that such arrangements can include multiple levels of service providers that may carry out various aspects of the activities that make up the ultimate delivery or logistics service. As service tax is imposed on each in-scope transaction, this may result in multiple layers of tax, which would increase the overall cost of providing the service. Although there are existing business-to-business (B2B) exemption provisions, these are limited in scope and would not apply to delivery or logistics services unless the scope of the exemption is changed. Ideally, the scope of the B2B exemption should be expanded to include these activities, to mitigate the cost impact. From a classification point of view, it would be critical to have a detailed definition of what constitutes "logistics services," "delivery services," and "logistics management," given the potential difference in treatment and rates between the three types of services. In the absence of such guidance, we anticipate that there is a probable risk of divergent views between taxpayers, as well as between taxpayers and the Royal Malaysian Customs Department.

The expansion of the scope of service tax to cover brokerage and underwriting services would be limited to the additional non-financial services activities identified. Similar to the activities described above, such activities can involve multiple levels of services and there is a risk of multiple levels of tax being imposed. Ideally, the current B2B exemption should be broadened to address this. In addition, in terms of real estate brokerage, a clear and adequate distinction would need to be made between the existing taxable services of real estate agents and the real estate brokerage service.

### Changes to service tax rate

The service tax rate would be increased from 6% to 8% on all taxable services except for the following, which would be subject to the 6% service tax rate:

- Group B: Food and beverage services;
- Group I: Telecommunication services;

- Group I: Vehicle parking space services; and
- Group I: Logistics services.

### Deloitte Malaysia's comments

The introduction of multiple levels of tax rates into the service tax regime would increase the level of complexity, as classifying the nature of the service would become even more critical. We anticipate numerous challenges, for example:

- Providers of telecommunication services (which would be subject to the 6% rate) also may provide services that may be considered to be digital or information technology services (which both would be subject to the 8% rate);
- Logistics services (which would be subject to the 6% rate) would need to be distinguished from a delivery service (which would be subject to the 8% rate); and
- Food and beverage services (which would be subject to the 6% rate) provided in a hotel could be considered to be an accommodation service (which would be subject to the 8% rate).

In addition to classification matters, all taxpayers would need to manage the implications of the 1 March 2024 rate change. Currently, there is nothing to address this in the law or in a published guide. Accordingly, it appears necessary to wait until formal guidelines are published on this matter.

In the interim, taxpayers may wish to identify scenarios that would be affected by the changes, for example:

- Services performed during a period that spans 1 March 2024;
- Services performed prior to 1 March 2024, for which payment is received on or after 1 March 2024;
- Payments received prior to 1 March 2024, for services that commence on or after 1 March 2024;
- Partial payments received prior to 1 March 2024 and partial payments received on or after 1 March 2024 for services performed in the period prior to, on, or after 1 March 2024; and
- Adjustment, cancellation, and refund scenarios.

## Malaysia

### Tax highlights of Budget 2024 and Finance (No. 2) Bill 2023

Budget 2024, unveiled by Malaysia's finance minister on 13 October 2023, focuses on measures to broaden the tax base, such as the introduction of capital gains tax (CGT) on the disposal of certain capital assets (i.e., unlisted shares of Malaysian-incorporated companies, shares of foreign controlled companies with substantial real property holdings in Malaysia, and other foreign capital assets), a service tax rate increase and an expansion of the scope of the service tax, the introduction of luxury goods tax for certain high-value goods, and the introduction of electronic invoicing ("e-invoicing") with the aim of curbing the "shadow" economy in Malaysia. The budget also includes measures to support initiatives under the New Industrial Masterplan 2030 and to encourage businesses to adopt "green" practices, including tax incentive measures. On 7 November 2023, the Finance (No. 2) Bill 2023 ("bill"), which provides the

legislative basis for some of the tax measures announced by the finance minister in Budget 2024 and includes further details on many of the measures, as well as some measures not previously announced, was presented for its first reading in parliament.

The 231-page bill is a comprehensive piece of legislation that proposes significant changes to the tax legislation. As noted above, the bill contains tax measures and proposed amendments to the tax legislation that were not previously announced, including pertinent details of various tax reform measures such as the introduction of CGT on certain capital gains; the implementation of e-invoicing, starting with companies with annual turnover of MYR 100 million and above, which would be required to adopt e-invoicing as from 1 August 2024; the introduction of certain rules that generally would be in line with the global anti-base erosion (GloBE) or "Pillar Two" model rules published by the OECD/G20 Inclusive Framework on BEPS that are designed to ensure a global minimum level of taxation for large multinational enterprise (MNE) groups, which would be effective as from 1 January 2025; and the implementation of a self-assessment regime for real property gains tax (RPGT).

The budget, with the theme of "Economic Reform, Empowering the People," was crafted with the aim of strengthening the economy, raising the living standards of the population, and broadening the tax base. With a budget allocation of MYR 393.8 billion, around MYR 90 billion would be allocated toward development expenditure, which is slightly less than the allocation of MYR 96.3 billion announced in the previous budget. Revenue is expected to increase slightly compared to 2023, from measures that are anticipated to boost tax collection.

This article focuses on the key tax highlights of Budget 2024 and the bill for companies. A publication available on Deloitte Malaysia's website provides more detailed coverage of the salient tax-related budget proposals in respect of corporate tax, tax incentives, indirect tax, individual tax, stamp duty, RPGT, the Labuan tax regime, petroleum tax, tax administration, and other measures.

## Corporate income tax

- CGT would be imposed on the disposal of capital assets by companies (and certain other legal entities), at a rate depending on when the capital assets were acquired by the company and whether the capital assets are located in Malaysia or abroad (currently, capital gains are not taxed in Malaysia, except for gains derived from the disposal of real property located in Malaysia or from the sale of shares in a real property company). New provisions would be introduced into the Income Tax Act 1967 (ITA), and existing relevant provisions would be amended to legislate the implementation of the CGT.
    - With respect to capital assets located in Malaysia, only gains or profits from the disposal of unlisted shares of companies incorporated in Malaysia and shares of controlled companies incorporated outside Malaysia that hold real property located in Malaysia or shares of another controlled company would be subject to tax.
    - Although 1 March 2024 was announced in Budget 2024 as the effective date for the implementation of CGT, the bill reveals 1 January 2024 as being the effective date. Based on the bill, the applicable tax rates for CGT and the relevant dates would be as follows (however, as at the date of publication of this article, the government has unofficially mentioned that the effective date for the implementation of CGT could be 1 January 2024 for foreign assets and 1 March 2024 for assets located in Malaysia):

- Capital assets located in Malaysia that are acquired before 1 January 2024 would be taxed based on the taxpayer's election, at a rate of 10% on the chargeable income from the disposal or a rate of 2% on the gross disposal price;

- Capital assets located in Malaysia that are acquired on or after 1 January 2024 would be taxed at a rate of 10% on the chargeable income from the disposal; and

- Other capital assets (i.e., foreign capital assets) would be taxed at the prevailing rate for the taxpayer that is subject to the CGT (i.e., the company, limited liability partnership, trust body, or cooperative society) on the chargeable income from the disposal.

- The government confirms that the implementation of the global minimum tax (GMT) would be effective as from 1 January 2025, instead of the 2024 date announced in previous budget touchpoints. To legislate the GMT provisions, a domestic top-up tax (i.e., a qualified domestic minimum top-up tax) and a multinational top-up tax (i.e., an income inclusion rule), which are largely based on the OECD GloBE model rules released on 20 December 2021, would be introduced as part XI of the ITA. Under the GMT, large MNEs with global revenue of at least EUR 750 million in at least two of the four consecutive financial years immediately preceding the tested financial year would be subject to a minimum effective tax rate of 15% on income derived from every country in which they operate.

- Under certain conditions, preferential tax treatment would not be applicable to micro, small, and medium-sized enterprises (MSMEs)—which currently are generally defined as a company that has paid-up capital not exceeding MYR 2.5 million, that is not part of a group containing a company exceeding this capitalization threshold, and that has gross income from business sources not exceeding MYR 50 million for the year of assessment (YA)—with effect as from YA 2024. More specifically, if more than 20% of the paid-up capital in respect of ordinary shares of the MSME at the beginning of the basis period for a YA is directly or indirectly owned by one or more companies incorporated outside Malaysia or by one or more individuals who are not citizens of Malaysia, the following rules would apply:

  - The exemption from submitting an estimate of tax payable or making installment payments, which otherwise would apply for a period of two YAs beginning from the YA in which the MSME commences operations, would not be available; and

  - The 100% capital allowance for qualifying expenditure incurred in respect of "small-value assets" with an individual value not exceeding MYR 2,000, which otherwise would be available to the MSME without a maximum limit of total qualifying expenditure for each YA, would be subject to a maximum limit of MYR 20,000 of total qualifying expenditure for each YA.

- A tax deduction would be available for four years (from YA 2024 to YA 2027) for the following expenditure (up to MYR 50,000 for each YA) in relation to environmental, social, and governance (ESG) activities, to encourage more companies to comply with ESG standards:

  - Expenditure for the preparation of reports related to a tax corporate governance framework by companies;

  - Expenditure for the preparation of transfer pricing documentation by companies;

  - Consultation fees for implementing e-invoicing incurred by MSMEs; and

- Expenditure for certain reporting in relation to compliance with ESG standards.

- Effective as from YA 2024, the capital allowance rate applicable to capital expenditure incurred by companies for the purchase of information and communication technology equipment and customized computer software would be revised as follows:

  - The initial allowance would be 40% (currently 20%) of qualifying expenditure; and

  - The annual allowance would be 20% (remaining unchanged) of qualifying expenditure.

- An additional tax deduction (up to MYR 300,000) would be available for three years (i.e., with respect to applications received by the Malaysia Green Technology and Climate Change Corporation from 1 January 2024 until 31 December 2026) for costs incurred by companies for development and measurement, reporting, and verification in relation to the development of carbon projects, which could be deducted against the income earned from carbon credits traded on the Bursa Carbon Exchange. The development of carbon projects would have to be registered with an international standards body recognized by Bursa Malaysia, and expenditure for the development of carbon projects would have to be certified by the Malaysia Green Technology and Climate Change Corporation.

- The maximum tax-deductible rental expense of up to MYR 300,000 for a non-commercial electric vehicle (EV), which currently is available for three years (from YA 2023 to YA 2025), would be extended for another two years, until YA 2027.

- A number of existing measures with respect to sustainable and responsible investment (SRI) would be expanded and extended, including the following:

  - The tax deduction available from YA 2016 to YA 2023 for the issuance costs of SRI sukuk that is approved, authorized, or lodged with the Securities Commission Malaysia (SC) would be extended for another four years (from YA 2024 to YA 2027).

  - The income tax exemption for management fees received by companies providing SRI fund management services would be extended for another four years (from YA 2024 to YA 2027).

  - The income tax exemption available from 1 January 2018 until 31 December 2025 for grants received by a green SRI sukuk issuer under the SRI Sukuk Grant and Bond Grant Scheme would be expanded to include SRI-linked sukuk grants and bonds issued under the Association of Southeast Asian Nations (ASEAN) Sustainability-Linked Bond Standards approved by the SC. The expansion would be valid with respect to applications received by the SC from 1 January 2024 to 31 December 2025.

### Tax incentives

- The existing green technology tax incentives available to companies with respect to applications received by the Malaysian Investment Development Authority (MIDA) until 31 December 2023 would be revised as follows:

  - For companies undertaking green technology projects, with respect to applications received by the MIDA from 1 January 2024 until 31 December 2026:

- A green investment tax allowance of 100% would be allowed for qualifying capital expenditure incurred by companies undertaking qualifying activities in relation to green hydrogen, for a period of up to 10 years, which could be set off against up to 70% or 100% of statutory income for each YA.

- A green investment tax allowance of 100% would be allowed for qualifying capital expenditure incurred by companies undertaking qualifying activities in relation to integrated waste management and EV charging stations, for a period of five years, which could be set off against up to 100% of statutory income for each YA.

- A green investment tax allowance of 100% would be allowed for qualifying capital expenditure incurred by companies undertaking qualifying activities in relation to biomass, biogas, mini hydro, geothermal, solar, and wind energy, for a period of five years, which could be set off against up to 70% of statutory income for each YA.

- For companies consuming green assets, in respect of qualifying capital expenditure incurred from 1 January 2024 to 31 December 2026:

  - A green investment tax allowance of 100% would be allowed for qualifying capital expenditure incurred by companies undertaking qualifying activities in relation to a list of qualifying assets approved by the Minister of Finance, including battery energy storage systems and green buildings, which could be set off against up to 70% of statutory income.

  - A green investment tax allowance of 60% would be allowed for qualifying capital expenditure incurred by companies undertaking qualifying activities in relation to a list of qualifying assets approved by the Minister of Finance, including renewable energy systems and energy efficiency assets, which could be set off against up to 70% of statutory income.

- For companies undertaking solar leasing activities from 1 January 2024 to 31 December 2026:

  - A green income tax exemption of 70% of statutory income from qualifying activities would be available for five years if the installed solar capacity exceeds 3 megawatts (MW) and is up to 10 MW; and

  - A green income tax exemption of 70% of statutory income from qualifying activities would be available for 10 years if the installed solar capacity exceeds 10 MW and is up to 30 MW.

- To encourage existing companies that have exhausted their reinvestment allowance eligibility period to increase capacity and investment in high-value activities under the New Industrial Master Plan 2030, the following new incentives would be granted through an outcome-based approach:

  - An investment tax allowance of 100% for qualifying capital expenditure incurred, which could be set off against up to 100% of statutory income; or

  - An investment tax allowance of 60% for qualifying capital expenditure incurred, which could be set off against up to 70% of statutory income.

- To increase agricultural productivity and minimize dependency on foreign labor, the scope of the accelerated capital allowance for automation equipment in the manufacturing, services, and agriculture sectors would be expanded to include the commodity sector overseen by the Ministry of Plantation and Commodities (MPC), with respect to applications received by the MPC from 14 October 2023 until 31 December 2027.

- To maintain Malaysia's competitiveness as a key player in the global services sector in the region and to establish the country as a high-impact strategic services hub, a global services hub tax incentive would be introduced that would have an outcome-based approach, with respect to applications received by the MIDA from 14 October 2023 until 31 December 2027. The new incentive would be in the form of a tiered tax rate of 5% or 10% for a period of up to 10 years for a new company, and a tax rate of 5% or 10% on value-added income for a period of five years for an existing company (the general corporate income tax rate in Malaysia is 24%). Additionally, an exemption would be granted for services income, or services and trading income, derived by new or existing companies that qualify for the incentive. The incentive would be granted upon fulfilling certain conditions relating to the following, which are expected to be further elaborated when the law enacting the measures is gazetted:

  - Annual operating expenditure;
  - High value full-time employees;
  - "C-suite" positions with a minimum monthly salary of MYR 35,000;
  - Local ancillary services;
  - Collaboration with a higher education institution or an institution providing technical and vocational education training;
  - Training for Malaysian students or citizens;
  - ESG elements; or
  - Other conditions as determined by the Minister of Finance.

### Stamp duty

- Effective as from 1 January 2024, an instrument for foreign currency loans or Shariah-compliant financing in non-MYR would be subject to stamp duty at a flat rate of 0.5%, with no capped amount. Currently, an instrument for foreign currency loans or Shariah-compliant financing in non-MYR is subject to stamp duty at a rate of 0.5%, but the maximum stamp duty is capped at MYR 2,000.

- An instrument for the transfer of any property to a foreign company or a person who is a non-Malaysian citizen or non-Malaysian permanent resident would be subject to stamp duty at a flat rate of 4% on the consideration or the market value of the property (whichever is higher), as from 1 January 2024.

### Real property gains tax

- A self-assessment system (SAS) would be implemented for RPGT, effective as from 1 January 2025. Currently, an official assessment system is in place for RPGT, under which the Inland Revenue Board (IRB) of Malaysia will make an assessment of the RPGT returns submitted and issue a notice of

assessment or a certificate of non-chargeability to the taxpayer. New provisions would be introduced into the RPGT Act 1976, and relevant provisions would be amended to accommodate the SAS implementation.

- A new section (section 28C) of the RPGT Act 1976 would be introduced with effect from 1 January 2025, to require each person who is required to submit an RPGT return to retain records for a period of seven years from the end of the YA in which the person is required to submit the RPGT return.

- Effective as from 1 January 2024, a new paragraph (paragraph 34A(5A)) would be inserted in schedule 2 of the RPGT Act 1976, to exempt a disposal of shares of a real property company (RPC) from being subject to RPGT, given that such a disposal would be subject to CGT under the ITA. However, a Labuan entity carrying on a business activity, as defined in section 2B of the Labuan Business Activity Tax Act 1990 (LBATA), would still be subject to RPGT on the disposal of shares in an RPC.

### Labuan tax regime

The income tax assessment system under the LBATA would be changed from a preceding-year basis to a current-year basis, effective as from YA 2025. (This proposal is highlighted in the Budget 2024 touchpoints shared by the Ministry of Finance, but it is not included in the bill. The proposal, if enacted, would align the LBATA tax system with the general tax system under the ITA, in having a current-year basis tax assessment system.)

### Indirect tax

- The standard service tax rate (currently 6%) would be increased to 8%. However, the service tax rate increase would not apply to certain services, such as food and beverage and telecommunication services. Additional guidance is expected to be issued in due course on the scope of telecommunication services to be excluded from the rate increase.

- The scope of the service tax would be expanded to include logistics services, brokerage services, underwriting services, and karaoke services. No further details were provided on the scope of these services that would be subject to tax. It should be noted that logistics services were previously excluded from the category of taxable management services.

- Luxury goods tax would be introduced at rates ranging from 5% to 10%, which would apply to certain high-value goods such as jewelry and watches, based on value thresholds. The finance minister mentioned in his speech that a tourist refund scheme would be implemented for this tax.

- Import duty and sales tax exemptions would be granted to eligible manufacturers on the importation and local purchase of manufacturing aids, for predetermined types of industries and categories of goods, effective as from 1 January 2024.

### Other measures

- Effective as from 1 January 2024, the government will begin implementing e-invoicing in stages. The e-invoicing requirements ultimately will apply to all taxpayers undertaking commercial activities in Malaysia, to support the growth of the digital economy and enhance the efficiency of Malaysia's tax administration and management. All individuals and legal entities will be required to comply with the e-invoicing requirements, including entities that are subject to the LBATA or the Petroleum (Income Tax) Act 1967. Taxpayers with annual turnover or revenue of more than MYR 100 million will constitute the first group required to implement e-invoicing, effective as from 1 August 2024. The IRB

has issued the "e-Invoice Guideline" and the "e-Invoice Specific Guideline" to provide guidance and clarifications to taxpayers on the implementation of e-invoicing. A software development kit, which will provide the specifications for application programming interface configuration, is expected to be issued before the end of 2023. The timeline for the mandatory implementation of e-invoicing will be as follows:

  - Taxpayers with annual turnover or revenue of more than MYR 100 million (as recorded in the statement of comprehensive income in the audited financial statements for financial year 2022) will have to implement e-invoicing by 1 August 2024;

  - Taxpayers with annual turnover or revenue of more than MYR 25 million and up to MYR 100 million (as recorded in the statement of comprehensive income in the audited financial statements for financial year 2022) will have to implement e-invoicing by 1 January 2025; and

  - All other taxpayers will have to implement e-invoicing by 1 July 2025.

- A company, limited liability partnership, trust body, or cooperative society would be allowed to submit a revised estimate of tax payable in the 11th month of the basis period for a YA (in addition to the current option to revise the estimate of tax payable in the sixth and/or ninth month of the basis period for a YA), effective as from YA 2024.

- Effective as from YA 2024, the definition of "foreign tax" in the ITA would be updated in reference to a territory outside Malaysia, to mean any tax on income (or any other tax of a substantially similar character) chargeable or imposed by or under the laws of a territory outside Malaysia in which the income arose. Similarly, the definition of "foreign income" would be amended to mean income derived from outside Malaysia that is charged to foreign tax (in the case of unilateral credit relief) or to mean income derived from outside Malaysia and income derived from Malaysia that is charged to foreign tax (in the case of bilateral credit relief).

- Effective as from YA 2025, a person that has submitted a statutory return form to the IRB would be required to provide information and submit documents as determined by the Director General of Inland Revenue for the purposes of ascertaining the person's chargeable income and tax payable, through an electronic medium or by way of electronic transmission within 30 days from the date of submission of the return. (Currently, under the SAS, taxpayers are not required to submit any supporting documents or information upon filing a tax return. Information and documents are submitted only upon a request from the IRB, particularly for companies that are under a tax audit or investigation, which are encouraged to submit the requested documents electronically via the Malaysian Income Tax Reporting System (MITRS).) Based on the information shared at the National Tax Seminar 2023 (Budget 2024) held by the IRB, we understand that the submission of information and documents would be via the MITRS and may include tax worksheets and audited financial statements.

## Comments

The publication of the bill was the first significant step in the tax legislative process. On 28 November 2023, the House of Representatives passed the bill, which was tabled for its second reading on 28 November 2023. No changes are noted compared to the first reading on 7 November 2023. To be enacted, the bill must be presented to the Senate for review before it is sent to the Yang di-Pertuan Agong for royal assent and is published in the official gazette.

As noted above, overall, Budget 2024 strives to reform the Malaysian economic structure and propel Malaysia toward achieving the status of a key player in Asia, as well as safeguarding the wellbeing of the population and ensuring equitable distribution of the economic "pie." Some concerns regarding double taxation with the introduction of CGT were addressed by the proposed exclusion of the disposal of shares in an RPC by companies from the RPGT Act 1976 via the bill. Where CGT would apply, foreign taxpayers would need to assess whether an exemption under a relevant tax treaty would be applicable. Where Malaysian resident vendors would be subject to CGT in Malaysia as well as a foreign tax, a foreign tax credit could be available.

The deferral of GMT implementation to 1 January 2025 is a welcome move to provide taxpayers with more time to prepare. However, in the case of MNE groups that operate in countries implementing GMT in 2024, filing obligations and a top-up tax liability in respect of Malaysian entities could still arise in those countries. Although there is no indication as to when an undertaxed profits rule would be implemented in Malaysia, the draft legislation on the domestic top-up tax and multinational top-up tax that would be introduced in the ITA should be sufficient to protect Malaysia's taxing rights to collect top-up taxes.

## Malaysia

### Overview of new guides issued on import duty and sales tax matters

The Royal Malaysian Customs Department (RMCD) has issued several undated new guides relating to import duty and sales tax matters, including guides on the import duty exemptions for machinery and equipment under items 112 and 113 of the Customs Duties (Exemption) Order 2017; a guide on the import duty and sales tax exemptions granted by the Malaysian Investment Development Authority (MIDA) for raw materials, components, and accessories; and a guide on the import duty refund for importers entitled to preferential tariff rates under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). This article provides an overview of the key provisions of the new guides (which currently are available in the Bahasa Malaysia language only). In particular, it is worth noting that in a case where import duty was paid between 29 November 2022 and 30 December 2022 on goods originating from a CPTPP member jurisdiction, any refund applications must be made within one year of the date of the import of the goods.

### Guides on import duty exemptions for machinery and equipment under items 112 and 113 of Customs Duties (Exemption) Order 2017

Under item 112 of the Customs Duties (Exemption) Order 2017 ("item 112"), any manufacturer in the principal customs area endorsed by the MIDA may apply for an import duty exemption for the importation or purchase of machinery and equipment (excluding spare parts and consumables), subject to certain conditions.

Under item 113 of the Customs Duties (Exemption) Order 2017 ("item 113"), any company engaged in a hotel business endorsed by the MIDA may apply for an import duty exemption for the importation or purchase of machinery and equipment as approved by the Secretary General of the Treasury, subject to certain conditions.

The RMCD has issued guides with respect to applying for an exemption certificate under item 112 or item 113, to provide updates on the following:

- The conditions for utilizing the exemptions under item 112 and item 113;

- The procedures for applying for the exemptions under item 112 and item 113;
- The procedures for claiming the exemptions under item 112 and item 113;
- The responsibilities of the applicant;
- The templates for the application forms (SPM1/2022 for item 112 and SPM2/2022 for item 113);
- The list of qualifying machinery and equipment, as well as personal protective equipment, for the exemption under item 112 (Lampiran A); and
- The list of qualifying machinery and equipment for the exemption under item 113 (Lampiran B).

The salient updates are as follows:

- The guides list out the types of machinery and equipment that are eligible for the exemptions under item 112 and item 113. For item 112 specifically, there is a prescribed list of tariff codes under the Customs Duties Order 2022 for qualifying machinery and equipment.
- The application forms (SPM1/2022 and SPM2/2022) have been uploaded to the RMCD website.
- One of the conditions for the exemption under item 112 is that the machinery and equipment must be used directly in the manufacturing of finished goods in approved premises. The guide clarifies that the manufacturing process also includes the following permissible activities:
    - Research and development (R&D);
    - Testing and quality control;
    - Activities relating to control of pollution and the environment;
    - Activities carried out for safety purposes in relation to chemical plants; and
    - Activities relating to cleanroom environments.

### Deloitte Malaysia's comments

The RMCD has provided clarification on the utilization of the exemptions under item 112 and item 113. A notable addition is the list of machinery and equipment eligible for the exemptions under item 112 and item 113.

As more clarity on the conditions and relevant processes has been provided, it is important for companies to be aware of the guides and ensure that they comply with the conditions specified in relation to item 112 and item 113. This is especially important to reduce the risk of exemption applications being delayed or compliance being disputed by the RMCD at a later stage.

### Guide on import duty and sales tax exemptions granted by MIDA for raw materials, components, and accessories

Generally, the approval letters issued by the MIDA via the InvestMalaysia system on import duty and sales tax exemptions for raw materials, components, and accessories do not specify the controlling RMCD import station. The RMCD has issued a guide to explain the procedures to be followed after an approval letter is issued through the InvestMalaysia system.

The following is a summary of the relevant procedures:

- Once the approval letter is obtained, the company must allocate the quantity of items to be imported via each RMCD import station in a prescribed form obtainable through the RMCD website.
- The completed form must be submitted to the Industrial Section, State Customs Division that is nearest to the company's premises (referred to as the "controlling RMCD station"), to be validated.
- For any changes in the RMCD import station or quantity of goods, the company must obtain written approval from the RMCD officer at the original controlling RMCD station.

### Deloitte Malaysia's comments

It is critical for companies to stay up to date with the procedures that are required to be followed when applying for import duty and sales tax exemptions, to facilitate a smooth application and approval process. There is an increasing trend of RMCD audits in which imported goods are compared against the approved quantity in the sales tax and import duty exemption approval letters.

Maintaining accurate information in the approved documents is also crucial in facilitating a smooth clearance process at RMCD import stations.

### Guide on import duty refund for importers entitled to preferential tariff rates under CPTPP

The Customs Duties (Goods Under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Order 2022 ("CPTPP order") came into operation on 29 November 2022. However, the CPTPP order was not gazetted until 30 December 2022. As a result, there were imports made into Malaysia where import duty was paid between 29 November 2022 and 30 December 2022 on goods originating from CPTPP member jurisdictions.

In response to this, the RMCD issued a guide detailing the requirements and steps to be taken to allow affected companies to claim an import duty refund for such goods.

Broadly, the guide details the following:

- The procedures for applying for an import duty refund in such a case;
- A requirement that the refund application must be made within one year of the date of importation of the goods into Malaysia;
- The responsibilities of the applicant; and
- The templates for the relevant forms to be submitted when applying for the refund:
  - JKDM Form No. 2 (Appendix A of the guide);
  - Statement of import duty and sales tax refund claims (Appendix B of the guide); and
  - Checklist of supporting documents (Appendix C of the guide).

### Deloitte Malaysia's comments

It is important for businesses to be familiar with the relevant circumstances and documentation requirements for making a refund application. The deadline for making refund applications is approaching (with the latest deadline being 29 December 2023 for goods imported on 30 December 2022). Since the

power to grant approval for the refund lies with the RMCD, failure to comply with the documentation requirements may result in a delayed process for obtaining the refund, or even in a potential rejection of the refund.

## New Zealand

### Inland Revenue's spotlight on GST treatment of subdivision projects

In November 2023, New Zealand's Inland Revenue issued a draft 20-page "questions we've been asked" (QWBA), looking at the potential complexities surrounding the GST rules in subdivision projects. This document highlights the importance of understanding when a subdivision project qualifies as a taxable activity for GST purposes. The concept of taxable activity is important because it affects:

- The GST treatment of the property(ies) on acquisition;
- Whether a GST change in use might be required;
- The ability to claim (or not claim) GST on development costs; and
- The GST treatment once the project is complete and the subdivided lot(s)/property(ies) are sold.

It is therefore very important that property developers understand the GST and income tax implications at the commencement of a project and/or when intentions change. The guidance makes it clear that the outcome depends on the facts of a particular situation.

Many of the examples provided in the draft QWBA are for situations that are relatively clear from a GST perspective. Unfortunately, the draft QWBA does not provide much guidance for cases that are on the margin. For example, a single one-off small-scale subdivision is unlikely to be a taxable activity and a large commercial subdivision of six lots is almost certainly a taxable activity. Unfortunately, there is no real guidance as to what Inland Revenue considers to be the GST treatment for a three-lot subdivision.

The QWBA notes that if there is a change of intention during a development, the onus is on the taxpayer to prove that intention changed (and when), as with other factual matters. It would be helpful for Inland Revenue to provide more guidance here, especially in the context of properties that may be tenanted on acquisition but then subdivided at a later stage. The QWBA confirms that even if a subdivision activity is not a taxable activity for GST purposes, the resulting sale may still be subject to income tax, for example, under the bright-line tests.

Property developers may wish to seek guidance to ensure the GST (and income tax) implications of a development are understood before a transaction goes ahead.

### Understanding taxable activity in subdivision projects

A subdivision project is considered a taxable activity for GST purposes when it is conducted continuously or regularly, involving the supply of goods and services to another party in exchange for consideration. Various factors come into play when assessing the continuity or regularity of a subdivision project, including:

- The project's scale;
- Level of development work;

- Number of lots created and sold;
- Time and effort invested;
- Financial commitment;
- Repetition; and
- Whether the subdivision aligns with an existing taxable activity.

It is important to note that the list above is not exhaustive, and all relevant factors must be evaluated collectively to determine whether an activity is carried out continuously or regularly.

The general position is that larger scale subdivision projects involving extensive development work are far more likely to be considered a taxable activity. However, the construction and sale of a single house or residential dwelling within a subdivision project are generally insufficient to meet the criteria for continuous or regular activity. Each subdivision project must be assessed on a case-by-case basis, considering the actual circumstances, to determine its classification as a taxable activity.

It is also important to keep in mind that having the mere intention to engage in subdivision activities does not automatically qualify them as taxable activities. Intentions alone are generally inadequate, and this is something taxpayers often overlook in terms of holding evidence/detailed plans etc., as this is often an area of contention.

Other factors that are typically not relevant include the commercial nature of the activity, activities undertaken before the intention to make supplies has arisen, and actions related to subdivided land not used for making supplies. The courts have clarified that commerciality is not a significant factor in determining whether an activity is continuously or regularly carried out. The focus should primarily be on whether the activity falls within the definition of a taxable activity. As a result, an activity does not need to generate profit to be considered taxable for GST purposes.

### Mixed-use developments/change of use

If a developer originally intended to sell but decides to rent out residential properties (e.g., temporarily), it may lead to GST concurrent use rules and/or change in use adjustments for GST purposes. These scenarios often require careful consideration and expert advice to navigate potential GST complexities.

### Concluding comments

While the recent draft QWBA from the Inland Revenue aims to provide clarity on GST treatment in subdivision activities, the complex nature of the rules demands thorough consideration. Therefore, businesses/sole traders/individuals subdividing land are urged to review their activities to ensure compliance, and seek assistance with navigating potential pitfalls in property development ventures. By understanding the complexities surrounding GST in subdivision projects, developers will be able to make informed decisions and safeguard their projects from unforeseen tax implications.

## Netherlands

### New policy on calculation of VAT deduction threshold

On 16 October 2023, the Dutch secretary of finance published a policy notice dated 6 October 2023, announcing the removal of a statement on the tax authorities' website that an employee's personal contribution for personnel benefits, business gifts to customers, or other gifts may be deducted from the

expense total when calculating whether a threshold amount of EUR 227 is exceeded for purposes of determining whether the employer is entitled to a VAT deduction. The statement will be terminated with effect as from 1 January 2024.

### Background

The 1968 decree on the exclusion of deduction of VAT ("BUA") limits an employer's right to deduct VAT on expenses that provide a private benefit to an employee (e.g., personnel benefits, business gifts to customers). However, if the total of such expenses does not exceed EUR 227 per employee per financial year, then the employer may deduct the VAT on such expenses.

The first paragraph of article 4 of the BUA provides a method to calculate whether the threshold amount of EUR 227 is exceeded. The tax authorities had provided a statement on their website that amounts personally contributed by an employee for such expenses are not included in the expense total for purposes of the EUR 227 threshold; however, this is not provided for in the BUA.

### Practical implications

A possible explanation for the termination of the statement is that the secretary of finance does not want to diverge from the BUA, as it is a standstill provision (i.e., allowing for a derogation from EU law) and could result in a possible infraction procedure by the European Commission against the Netherlands.

Businesses may continue to exclude such employee contributions from the expense total for purposes of the threshold as provided for on the tax authorities' website in their final VAT return for 2023 but may not do so as from 2024.

## Netherlands

### Penalties imposed for voluntary corrections abolished

Following a Dutch Supreme Court ruling, the tax authorities' Administrative Penalties Policy Notice ("BBBB decree") has been amended with effect as from 2 June 2023. The BBBB decree now provides that statements supplied under a legal obligation and with the threat of a fine may not be used when imposing a penalty on a taxpayer.

### Supplementary obligation

In a penalty or criminal case, a suspect cannot be compelled to cooperate in their own conviction. This "right to silence" principle only applies to information provided voluntarily by a suspect, such as a statement. However, the principle may be seen to conflict with tax information obligations, such as the obligation to submit supplementary VAT returns. At the risk of a criminal penalty, a taxpayer must submit a supplementary VAT return as soon as it is determined that an incomplete or incorrect return has been filed for a period in the past five calendar years, resulting in an over- or under- payment of VAT.

### Voluntary information

In a judgment of 24 September 2021, the Supreme Court ruled that the obligation to provide supplementary information is not in conflict with the right to silence principle and, therefore, does not impede the obligation to provide information for tax purposes. Failure to comply may be penalized;

however, the information provided in compliance with the statutory obligation and under threat of a fine is, by its nature, voluntary. This means that the information may not be used to prove that the taxpayer has committed an offense.

### Amended rules

Paragraph 24(6) of the BBBB decree now provides that a default payment penalty must not be based on a statement made by the interested party in compliance with a legal obligation to notify and under threat of a fine. In paragraph 28, this provision similarly applies to penalties for noncompliance with tax returns under article 67f of the tax code (AWR). The legislator's focus is centered on the supplementary obligation for VAT, correction notices for payroll taxes, and the statutory obligation to improve withholding tax.

Paragraph 24(7) of the BBBB decree provides that a voluntary correction of a declaration no longer leads to a payment default penalty. This is an important change, as previously a default penalty of 5% was imposed as a base, unless the supplementary amount was less than 10% of the original tax amount, or the amount due was no more than EUR 20,000. This demonstrates that, for the sake of simplicity and consistency, no distinction should be made between taxes based on whether there is a legal obligation to amend returns.

The new rules can also be applied retroactively to offenses committed before the amended decree's effective date, provided that no penalty has yet been imposed or a fine has not yet been irrevocably determined.

## Paraguay

### E-invoicing regulations updated

The president of Paraguay on 18 December 2023 issued Decree No. 872/2023 entitled: "By which the electronic issuance of sales receipts and other tax documents is regulated, through the National Integrated Electronic Invoicing System (SIFEN)." The new regulations will be effective as from 1 January 2024.

The regulations replace Decree No. 7795/2017, which created the SIFEN. The 2017 decree will be valid until 31 December 2023, after which date it will no longer be effective.

The new SIFEN standard addresses several aspects of e-invoicing. The following highlights the most important ones:

- New types of electronic sales receipts are added, most notably:
    - Electronic exchange invoices;
    - Electronic export invoices;
    - Electronic RESIMPLE receipts (relating to the simplified domestic corporate income tax regime);
    - Individual income tax (IRP) electronic income documents;
    - Electronic donation documents;
    - Electronic import documents; and

- Electronic withholding and collection documents.

- Definitions in the VAT regulations related to the obligation to issue electronic invoices (FEs) are expanded, regardless of the provisions of article 83 and 92 of Law No. 6380/19, which refer to the time when the obligation to issue FEs arises and the documentation required, respectively.

- Regardless of the type of FE issued, in business-to-business (B2B), business-to-foreigners (B2F), and business-to-government (B2G) commercial operations, the FE must identify the recipient; otherwise, it will not be accepted.

- The regulations clarify that, in B2C commercial operations, the client must be identified when the operation exceeds the following amounts:

  - PYG 35 million, or its equivalent in foreign currency, as from 1 January 2024; and

  - PYG 7 million, or its equivalent in foreign currency, as from 1 January 2025.

- Electronic export invoices must be issued by the exporter prior to the officialization of the export clearance and before the departure of the goods from the national territory and will serve to support the cancellation of the final export clearance.

- Section II of the regulations establishes the use of complementary electronic documents, electronic credit and debit notes, the main change being the creation of the "consent event" by the recipient in the case of electronic credit notes.

- The IRP electronic income document is a new document that is intended for natural persons (i.e., individual IRP taxpayers) who are not required to issue invoices or register for other taxes. It is to be used to document income from the occasional sale of movable or immovable property and the receipt of profits or dividends, which are subject to the IRP but not creditable for VAT purposes.

- The regulations establish the definitions and scope of events relevant to the issuer, the recipient, the SIFEN, and the tax administration.

Finally, the tax administration will implement a free billing system for taxpayers, to allow them to issue and send electronic tax documents.

### Poland

#### Ex-officio VAT deregistration does not require notification

On 23 October 2023, the Poland Supreme Administrative Court (SAC) issued a resolution confirming that an ex-officio deregistration from the register of active VAT payers does not require the issuance of a tax decision or notification to the taxpayer.

The issue considered by the court relates to Polish VAT provisions in effect since 1 January 2017 allowing the head of a tax office to remove an entity from the register of active VAT taxpayers without any notification. This applies to entities that do not exist, cannot be contacted, provided incorrect data in their VAT registration files, or whose bank accounts are used for fraudulent activities.

In the case under consideration, the tax authorities were of the view that removing the taxpayer was of a technical nature and thus did not require tax proceedings and, consequently, the issuance of a tax decision. As a result, the taxpayer did not receive any notification about its deregistration, something that it could have discovered by checking the Ministry of Finance's online register of VAT payers in Poland (also known as the "white list").

The SAC's resolution confirmed that no notification or advance contact with the taxpayer is required. Once a taxpayer finds out that its VAT number has been deactivated by the Polish tax authorities, it may appeal to an administrative court. The resolution is binding on all Polish administrative courts.

It should be noted that the Polish VAT law also provides a number of other scenarios where the tax authorities may deregister a taxpayer ex officio, including the absence of VAT filings or the filing of nil VAT returns for a certain period of time, the suspension of business activity, etc. In these cases, the taxpayer is not notified about the VAT deregistration either (although this does not result from the literal wording of the applicable provisions). Although, formally, the SAC's resolution referred to a specific set of reasons for the VAT deregistration, its conclusions seem to be applicable to these other scenarios as well.

With the year end approaching, the tax authorities tend to review the register of active VAT payers and delete the entities within the scope of the provisions discussed above. Therefore, the taxpayers to which these provisions may apply should double check their status and, if needed, take the necessary steps to reinstate their VAT numbers.

Poland

## Reduced VAT rates extended into 2024

Poland's official journal published on 9 December 2023 a decree from the Minister of Finance providing the reduced VAT rates for 2024, most of which are an extension of the reduced rates applicable in 2023. The decree lists the goods and services that will be subject to the reduced VAT rates of 0% and 8% in 2024 and the conditions for the application of these rates. The regulations provide for, inter alia:

- A reduced 0% VAT rate for food products listed in paragraphs 1 through 18 of Annex 10 to the VAT Act:
    - Goods classified under Polish classification code PKWiU 56 (services related to catering) and distance sales of imported food products/goods settled under the EU IOSS (Import One-Stop-Shop) system are excluded;
    - The 0% rate will apply to food products that were subject to a 5% VAT rate before 1 February 2022 and then to a 0% VAT rate through 31 December 2022 under the "anti-inflation shield" law (subsequently extended through 31 December 2023); and
    - The 0% VAT rate will apply only through 31 March 2024, after which the previously applicable rates will be reinstated; and
- A temporary reduction, from 1 January 2024 through 31 December 2024, of the VAT rate to 8% for the following goods used in agricultural production:
    - Soil conditioners, growth stimulants, and growing media (as defined in the Polish regulations);

- Soil improvers, liming agents, biostimulators, growing media (as defined in the EU regulations), and mixed fertilizing products consisting solely of fertilizer and a liming agent; and
- Fertilizing microbiological products.

However, the 8% VAT rate will not apply to distance sales of imported products/goods settled under IOSS.

### Portugal

#### Updates regarding PDF invoices and other reporting measures

Following the 10 October 2023 publication of a draft of Portugal's state budget law for 2024 (Law No. 109/XV/2, available in the Portuguese language only), a proposal for an amendment (available in the Portuguese language only) to the draft state budget law was approved by the parliament on 28 November 2023. The proposed amendment includes a measure that would allow invoices issued in PDF format to continue to be considered as valid electronic invoices (even if they are not in compliance with certain electronic invoicing rules) through 31 December 2024 (extended from 31 December 2023).

In addition, the following measures would be introduced, which would make some taxpayers' reporting obligations more flexible and simplified:

- All taxable persons would be relieved of the obligation to notify the Portuguese tax authorities of the valuation of inventories, with respect to the first tax period starting on or after 1 January 2023. The relief also would apply to the first tax period starting on or after 1 January 2024 for taxable persons that are not required to have a permanent inventory system.
- The obligation to submit the accounting SAF-T (PT) file to the tax authorities would apply only to the 2025 tax period and subsequent periods, for files to be submitted in 2026 or in subsequent years.
- Micro, small, and medium-sized companies and public entities acting as co-contracting entities in the context of the execution of public contracts would be exempt from the requirement to issue electronic invoices through 31 December 2024.
- It would be clarified that the provision on the prohibition of the systematic printing and distribution of certain documents (e.g., receipts, loyalty cards, vouchers, and tickets), provided for in paragraph 3 of article 25 of Decree-Law No. 102-D/2020 of 10 December 2020, does not affect the obligation to print invoices and other tax-relevant documents.

The proposed amendment has been incorporated into the draft state budget law for 2024 approved by the parliament. It is expected that the promulgation and publication of the law will occur during December 2023, and that the law will enter into force on 1 January 2024.

### Switzerland

#### Interest rate for late federal tax payments increasing

Following a review of the interest rates for federal taxes, the rate for late payments to or from the Swiss Federal Tax Administration (SFTA) will increase from 4% to 4.75% per annum, with effect as from 1 January 2024, to align with the interest rates applied on the financial markets. This rate will apply to all federal tax payments, including VAT.

The ordinance on interest rates, issued by the Federal Department of Finance, requires an annual review of the interest rate on federal taxes to determine whether they should be adjusted in line with current market rates.

Historic late payment interest rates are shown in the table below:

| Date | Rate |
|---|---|
| 1 January 2024 or later | 4.75% |
| 1 January 2021—31 December 2023 | 4% |
| 20 March 2020—31 December 2020 (COVID-19) | 0% |
| 1 January 2012—19 March 2020 | 4% |

Given the increase in the interest rate as from 2024, businesses may wish to consider paying any VAT due on time, and regularizing any historic Swiss VAT liability with the SFTA as soon as possible, to avoid higher interest costs. It is important to note that any filing deadline extension granted does not extend the VAT payment deadline.

## Thailand

### Rules provided for tax exemptions relating to transfers of digital investment tokens

A notification from the Director-General of the Thai Revenue Department (No. 52) dated 26 October 2023 sets forth the rules, criteria, and conditions for corporate income tax and VAT exemptions for companies or juristic partnerships for income and amounts included in the tax base arising from a transfer of digital investment tokens offered to the public under the law regarding digital asset businesses ("digital tokens for investment") on or after 14 May 2018, pursuant to a royal decree (No. 779) dated 13 August 2023 that aims to promote investment in digital tokens. The salient features of the notification are as follows:

- Companies or juristic partnerships must not change the accounting classification or accounting principles that have been adopted with respect to the digital tokens for investment offered.
- If companies or juristic partnerships classify the income from digital tokens for investment as income from a capital-like investment, upon redemption of the digital tokens or distribution of profit sharing or other benefits to the holders of the digital tokens, the companies or juristic partnerships must not treat the amounts paid as expenses in their corporate income tax computation.
- If companies or juristic partnerships classify the income from digital tokens for investment as income from liabilities, upon redemption of the digital tokens from the holders of the digital tokens, the amounts paid must not be treated as expenses in the corporate income tax computation.
- If companies or juristic partnerships (i) fail to utilize the income from the offering of digital tokens for investment for the operations indicated in the offering registration or the prospectus, or (ii) have their permission to offer digital tokens for investment revoked, the income from the offering of such digital tokens (after deducting the amount already paid back to token holders) must be included as income in the computation of net profits for corporate income tax purposes. The inclusion must be made for the accounting period following the accounting period in which the circumstances described in (i) or (ii) above arise.

- Companies or juristic partnerships must maintain the approval documents relating to the digital tokens for investment offering that were issued by Thailand's Securities and Exchange Commission, the offering registration, and any other documents relating to the offering of the digital tokens, as well as information pertaining to the digital tokens that is required for public release, to be available for review by the tax authorities.

United States

State Tax Matters (1 December 2023)

The 1 December 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
  - California: Franchise Tax Board adopts rule changes on alternative apportionment petitions
  - Massachusetts: Department of Revenue explains 4% surcharge on individual income in excess of USD 1 million
  - Michigan: US Supreme Court denies petition for review in case on apportionment formula validity as applied to gain from deemed asset sale
  - Minnesota: Supreme Court affirms gain involving goodwill from unitary asset is business income
  - Pennsylvania: Supreme Court affirms Philadelphia validly denied wage tax credit for taxes paid to other state
- Gross receipts:
  - Washington: Department of Revenue posts guidance explaining that patent income may be subject to business and occupation (B&O) tax
- Sales/Use/Indirect:
  - Utah: Online streaming entertainment company owes tax on monthly subscription fees as bundled transactions
  - Washington: Proposed rule reflects expansion and extension of exemption for some international investment management companies

The newsletter also features a recent Multistate Tax Alert: "Delaware unclaimed property audit notices sent to companies that failed to respond to VDA invitations"

United States

State Tax Matters (8 December 2023)

The 8 December 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
  - Michigan: Department of Treasury comments on US Supreme Court's recent decision not to review apportionment case
  - Michigan: Court of Appeals affirms that audit did not extend statute of limitations on late unitary filing
  - Michigan: Newsletter addresses implementation of passthrough entity tax and tiered structures
  - New York: Administrative law judge denies refund request for remote work performed before and during COVID-19 pandemic
  - New York: No resident tax credit for taxes paid on carried interest income earned from out-of-state asset management firm
  - Oklahoma: Proposed rule amendments reflect new legislation to eliminate franchise tax beginning with tax year 2024
  - Oklahoma: Proposed rule amendments incorporate new legislation regarding election to expense qualified improvement property
  - South Carolina: Amended administrative law judge ruling still says taxpayer must file a combined return
- Gross receipts:
  - Ohio: Proposed commercial activity tax (CAT) rule changes reflect new law on CAT exclusion and annual minimum tax
- Sales/Use/Indirect:
  - Illinois: Telecom agrees to settle qui tam whistleblower suit alleging failure to collect taxes on cell phones
- Property:
  - Mississippi: Supreme Court holds locality has no grounds for assessment of back taxes based on freeport exemption

United States

State Tax Matters (15 December 2023)

The 15 December 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Administrative/Voluntary disclosure:
  - Pennsylvania: Philadelphia Department of Revenue issues voluntary disclosure agreement (VDA) program reminder allowing for potential six-year lookback

- Income/Franchise:
  - Indiana: Department of Revenue updates guidance on reporting partnership-level tax audit adjustments
  - Montana: Department of Revenue issues publication on newly enacted elective passthrough entity tax
  - New Jersey: Division of Taxation comments on individual income tax application of hedge fund legislation
- Gross receipts:
  - Ohio: Commercial activity tax (CAT) rule changes reflect new law on CAT exclusion and annual minimum tax
  - Washington: Department of Revenue proposes changes to rule addressing sourcing of services for business and occupation (B&O) tax purposes
  - Washington: Board of Tax Appeals addresses B&O tax sourcing methodology for IT service company
  - Washington: Department of Revenue explains taxation involving online fundraising through crowdfunding
- Sales/Use/Indirect:
  - North Carolina: Letter ruling addresses taxability of electronically transmitting reformatted messages
- Property:
  - Connecticut: Supreme Court upholds validity of taxing out-of-state registered vehicles based on in-state storage
  - Wisconsin: Department of Revenue explains new law eliminating taxes levied on personal property

United States

State Tax Matters (22 December 2023)

The 22 December 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
  - California: Superior court declares Franchise Tax Board's P.L. 86-272 guidance invalid
  - Illinois: Department of Revenue proposes rule amendments reflecting new law pertaining to investment partnerships

- Louisiana: Department of Revenue proposes rule changes reflecting newly enacted passthrough entity tax revisions
- Louisiana: Adopted rule reflects personal income tax exemption for some qualifying digital nomads
- Pennsylvania: New law modifies tax treatment of certain grantor trusts
- Tennessee: Updated tax manual reflects recent law changes including single sales factor adoption
- Tennessee: Letter ruling says corporate member may utilize single-member LLC's credits following merger

- Credits/Incentives:
  - Pennsylvania: New law restricts persons associated with Russia and Belarus from claiming tax credits
- Sales/Use/Indirect:
  - Florida: Department of Revenue warns of potential compliance issues for merchants making sales through delivery network companies
  - Iowa: Department of Revenue reminds taxpayers that exemption for certain purchases of computers and peripherals expires 31 December 2023
  - Iowa: Proposed rule changes address resale and manufacturing exemptions, remote and marketplace sales, and digital products
  - Tennessee: Updated tax manual reflects adoption of streamlined sales tax sourcing provisions
  - Tennessee: Customized software services deemed taxable and cannot be allocated to out-of-state users
- Other/Miscellaneous:
  - Tennessee: Updated tax manual addresses business tax law changes, case law, and nexus

The newsletter also features a recent Multistate Tax Alert: "California court declares Franchise Tax Board P.L. 86-272 guidance invalid"

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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,
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