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New investment regime enacted

The Federal Executive enacted a new promotional regime for investments in exports of "knowledge economy" activities. The regime is intended for foreign and domestic entities that invest in projects intended to increase the export of knowledge economy activities.

Oman

Amendments to VAT executive regulations

The VAT executive regulations have been amended with effect from 17 October 2022. The main changes relate to tax invoice requirements, e-invoicing, the financial services exemption, VAT refunds, and the place of supply for telecommunication services.

Poland

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The final version has been published of the Tax Explanations regulating the creation of VAT groups in Poland, which will enter into force on 1 January 2023. The Explanations aim to clarify, with practical examples, the provisions of the law.

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Argentina: New monitoring systems for imports of goods and services introduced.

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Belgium: Key tax measures in Federal Budget 2023.

Belgium: Finance minister prepares first set of tax measures as part of broader tax reform.

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Malaysia: Amendments to Sales Tax Regulations 2018 in effect.

Malaysia: Sales tax exemption is available for drop shipment activities.

Mexico: Uncertainty over IVA exemption applicable to the sale of residential property remains.

Poland: Proposal to extend reduced VAT rates until 31 December 2022.

United Kingdom: Chancellor brings forward further Medium-Term Fiscal Plan measures.

United States: State Tax Matters (7 October 2022), including indirect, sales and use tax developments in California and Texas.

United States: State Tax Matters (14 October 2022), including indirect, sales and use tax developments in California, Iowa, Mississippi, New York and Texas.

United States: State Tax Matters (21 October 2022), including indirect, sales and use tax developments in Texas.

United States: State Tax Matters (28 October 2022), including indirect, sales and use tax developments in Illinois and Washington.

Vietnam: Ministry of Finance revises tariff classifications.

I. Normativa

1. Real Decreto-ley 17/2022, de 20 de septiembre, por el que se adoptan medidas urgentes en el ámbito de la energía, en la aplicación del régimen retributivo a las instalaciones de cogeneración y se reduce temporalmente el tipo del Impuesto sobre el Valor Añadido aplicable a las entregas, importaciones y adquisiciones intracomunitarias de determinados combustibles.

Con fecha 21 de septiembre de 2022 se publicó en el Boletín Oficial del Estado el Real Decreto-ley 17/2022, de 20 de septiembre, por el que se adoptan medidas urgentes en el ámbito de la energía, en la aplicación del régimen retributivo a las instalaciones de cogeneración y se reduce temporalmente el tipo del Impuesto sobre el Valor Añadido aplicable a las entregas, importaciones y adquisiciones intracomunitarias de determinados combustibles.

En relación con el Impuesto sobre el Valor Añadido se establece la aplicación temporal, desde el 1 de octubre y hasta el 31 de diciembre de 2022, del tipo impositivo del 5 por ciento –anteriormente tributaban al 21 por ciento– a las entregas, adquisiciones intracomunitarias e importaciones de:

- gas natural –abarcando también todos los componentes de la factura que guarden relación directa con el suministro de gas– y
- briquetas y pellets procedentes de la biomasa y madera para leña, utilizados en sistemas de calefacción.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de septiembre de 2022. Asunto C-98/21, W GmbH.

Directiva 2006/112/CE —Artículos 2, apartado 1, 9, apartado 1, 167 y 168, letra a) — Deducción del impuesto soportado —Concepto de "sujeto pasivo" — Sociedad holding — Desembolsos vinculados a una aportación social en especie a filiales — No integración de los desembolsos en los gastos generales — Actividades de las filiales en su mayor parte exentas del impuesto.

W es una sociedad cuya actividad consistía en la adquisición, administración y explotación de bienes inmuebles, así como al diseño, saneamiento y ejecución de diferentes proyectos de construcción. Además, ostentaba participaciones mayoritarias en las sociedades X e Y, las cuales realizaban mayoritariamente operaciones exentas del Impuesto.

W prestó, a título oneroso, servicios de contabilidad y gestión en relación con la construcción de bienes inmuebles a las sociedades X e Y. Además, W acordó realizar aportaciones en favor de ambas sociedades, consistentes en prestar, con carácter gratuito, servicios de arquitectura y acondicionamiento de una serie de bienes inmuebles que debían construir X e Y.

W dedujo todo el IVA soportado para la prestación de los citados servicios, prestados a X e Y; deducción que fue rechazada parcialmente por las autoridades fiscales, al considerar que las aportaciones a X e Y, consistentes en servicios prestados con carácter gratuito, no constituían actividades sujetas al impuesto, al no ser imputables a la actividad empresarial de W.

Señala el Tribunal, por una parte, que W puede ser considerado sujeto pasivo a efectos del IVA al prestar servicios a sociedades participadas por ella misma y, por otra, que los servicios prestados en virtud de aportación social no se encuentran sujetos al impuesto, al derivar de la mera tenencia de participaciones; en consecuencia, solo podrá entenderse sujeto pasivo respecto de los servicios prestados a título oneroso. Así, establece el Tribunal que W no puede deducirse el IVA soportado por las prestaciones que adquiere de terceros y que aporta a las filiales a cambio de una participación en los beneficios generales, cuando (i) las prestaciones por las que soporta el IVA no guardan una relación directa e inmediata con las operaciones propias de la sociedad holding, sino con las actividades en gran medida exentas de sus filiales, (ii) estas prestaciones no tienen incidencia en el precio de las operaciones sujetas al impuesto realizadas a favor de las filiales, y,(iii) las referidas prestaciones no forman parte de los gastos generales de la actividad económica propia de la sociedad holding.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de septiembre de 2022. Asunto C-368/21, R.T.

Directiva 2006/112/CE — Artículo 30 — Artículo 60 — Artículo 71, apartado 1 — Devengo y exigibilidad del IVA a la importación — Lugar de nacimiento de la deuda tributaria — Constatación de infracción de la legislación aduanera de la Unión — Determinación del lugar de importación de los bienes — Medio de transporte matriculado en un tercer país e introducido en la Unión Europea infringiendo la normativa aduanera.

R.T. es un residente alemán que adquirió en 2019 un vehículo en Georgia, donde procedió a matricularlo. Una vez matriculado viajó hasta Alemania entrando en la Unión Europea a través de Bulgaria, y transitando por diferentes Estados Miembro de la Unión, sin llegar a declarar su importación en ninguna aduana. Tras detectar la ausencia de declaración, las autoridades alemanas procedieron a regularizar la situación considerando que tanto el IVA a la importación como los derechos de aduanas se localizaban en Alemania. Frente a dicha liquidación, R.T. presentó recurso alegando que el IVA a la importación se debía entender localizado, al igual que la deuda aduanera, en Bulgaria, como Estado Miembro de entrada de los bienes.

Señala el Tribunal que, para el caso concreto de introducción de un vehículo de transporte, el IVA a la importación no puede entenderse automáticamente localizado en el lugar de entrada en el territorio aduanero de la Unión Europea, si no que ha de atenderse al Estado Miembro en el que se encuentra establecida la persona que cometió la infracción aduanera, por ser el territorio donde va a producirse el uso y disfrute efectivo del vehículo.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 15 de septiembre de 2022. Asunto C-227/21 UAB «HA.EN.».

Directiva 2006/112/CE — Derecho a la deducción del IVA soportado — Venta de un bien inmueble entre sujetos pasivos — Vendedor que es objeto de un procedimiento de insolvencia — Práctica nacional consistente en denegar al comprador el derecho a deducción debido a que tenía o debería haber tenido conocimiento de las dificultades del vendedor para abonar el IVA repercutido — Fraude y abuso de Derecho — Requisitos.

Medicinos Bankas era un banco establecido en Lituania que concedió un préstamo a la sociedad Sostines Bustai, respecto del cual se constituyó una garantía hipotecaria sobre terrenos propiedad de la sociedad. Todos los créditos existentes en virtud de dicho contrato así como el propio inmueble, fueron adquiridos por la sociedad HA.EN, la cual era consciente de la situación de insolvencia que atravesaba Sostines Bustai. Posteriormente, la sociedad Sostines Bustai fue declarada en quiebra, frente a lo que HA.EN solicitó la devolución del excedente del IVA soportado. Dicha solicitud fue rechazada por las autoridades fiscales, bajo la consideración de que la compañía había actuado de mala fe, al conocer de forma previa a la adquisición del bien inmueble la situación de insolvencia del vendedor y que por lo tanto no sería capaz de ingresar el IVA devengado.

Concluye el TJUE que no se puede considerar fraude fiscal o abuso de derecho la deducción del IVA soportado como consecuencia de la adquisición de un bien en el marco de un procedimiento de insolvencia, ya que es un mecanismo legal directamente orientado a regular situaciones excepcionales de empresas con dificultades económicas, respecto de los que la posibilidad de impago es un riesgo inherente. De esta forma, en la medida en que el sujeto pasivo ha cumplido de forma correcta con sus obligaciones declarativas, no puede considerarse el impago como un resultado artificioso del que va a obtenerse una ventaja fiscal, puesto que de otra manera el riesgo de insolvencia de los deudores abarcaría también obligaciones fiscales que en principio corresponden a la Hacienda Pública.

4. Tribunal de Justicia de la Unión Europea. Sentencia de 22 de septiembre de 2022. Asunto C-330/21, The Escape Center BVBA.

Directiva 2006/112/CE — Artículo 98 — Facultad de los Estados miembros de aplicar un tipo reducido de IVA a determinadas entregas de bienes y prestaciones de servicios — Anexo III, punto 14 — Concepto de "derecho de utilizar instalaciones deportivas" — Gimnasios — Acompañamiento individual o grupal.

The Escape Center, sociedad belga dedicada a la prestación de servicios de acceso a gimnasios. El uso de aparatos de gimnasia en sus locales se realizaba, bien de forma individual, bien en grupo, sin acompañamiento o con acompañamiento limitado. También ofrecía entrenamiento personal y clases grupales. La compañía repercutía el IVA de todos estos servicios al tipo general del 21%.

Sin embargo, tras la publicación de jurisprudencia a través de la cual se establecía que servicios similares debían de ser gravados al tipo reducido del 6%, procedió a solicitar la devolución de los ingresos indebidos por una mayor repercusión respecto del periodo comprendido entre 2015 y 2018. Dicha solicitud fue rechazada por las autoridades belgas, bajo la consideración de que no quedaba acreditada la aplicación del tipo reducido.

Concluye el Tribunal que no existen dudas respecto de la aplicación del tipo impositivo reducido a los servicios de acceso al gimnasio y establece que los servicios de acompañamiento personalizado y clases grupales se ofrecen de forma conjunta con los servicios de acceso, no pudiendo diferenciarse la intencionalidad o uso que los clientes dan de forma aislada a estos servicios, razón por la cual se desprende que se ofrecen de forma accesoria con el objetivo de permitir un mejor disfrute del acceso a las instalaciones y, por tanto, han de considerarse como un conjunto de servicios respecto de los que se ha de aplicar en su totalidad el tipo reducido.

5. Tribunal de Justicia de la Unión Europea. Sentencia de 29 de septiembre de 2022. Asunto C-235/21, Raiffeisen Leasing.

Directiva 2006/112/CE — Artículo 203 — Contrato de venta y arrendamiento financiero — Persona deudora del pago del IVA — Posibilidad de asimilar un contrato escrito a una factura.

La sociedad RED era propietaria de un terreno y un edificio de viviendas en Eslovenia, respecto de los cuales formalizó un contrato de venta y posterior arrendamiento financiero con la entidad Raiffeisen Leasing, la cual no emitió ninguna factura respecto de los posteriores servicios de arrendamiento financiero. En este sentido, RED solicitó la deducción del IVA soportado en la adquisición de tales servicios, alegando que el contrato formalizado entre ambas partes podía ser considerado como factura y, por su parte, Raiffeisen solicitó la deducción del IVA soportado como consecuencia de la compraventa.

Establece el Tribunal, que, con independencia de la voluntad de las partes de considerar o no un contrato como factura a efectos del IVA, no puede denegarse la deducción del IVA, bajo la pretensión de la ausencia de emisión de factura, en tanto las autoridades cuenten con los datos necesarios, que pueden estar dentro del propio contrato, para verificar el cumplimiento de los requisitos materiales de la deducción. Así, de cumplirse estos requisitos, dicho contrato puede tener la consideración de factura a los efectos de lo dispuesto en el artículo 203 de la Directiva del IVA.

III. Doctrina Administrativa

1. Dirección General de Tributos. Contestación nº V1819-22, de 1 de agosto de 2022.

Sujeto pasivo - Realización de importaciones y deducción de las cuotas devengadas.

Entidad mercantil titular de un régimen de perfeccionamiento que realiza operaciones de transformación de materia prima que llega a España y se vincula a dicho régimen. Tanto la materia prima como el producto resultante, es propiedad de una empresa suiza del mismo grupo.

Realizadas dichas operaciones, las mercancías son despachadas a consumo como consecuencia de la ultimación del régimen, apareciendo la consultante en la documentación aduanera pertinente como importador.

De forma posterior, la consultante repercute dichas cuotas del IVA soportadas con motivo de las importaciones a la entidad suiza, propietaria de las mercancías.

La consultante desea conocer quién ostenta la condición de sujeto pasivo del IVA sobre las referidas importaciones y, si corresponde ejercitar el derecho a la deducción de dichas cuotas.

Respecto a la condición de sujeto pasivo, la DGT trae a colación el criterio manifestado en la contestación vinculante V2097-18 de 16 de julio de 2018, por el cual la consultante tendrá la condición de sujeto pasivo de la importación a efectos del Impuesto sobre el Valor Añadido en la medida que actúa como consignataria en nombre propio en la importación de dichos bienes.

Del mismo modo, en la medida que la consultante actúa como importadora en nombre propio, y realiza operaciones de transformación sobre los bienes importados, podrá ejercitar el derecho a la deducción de las cuotas soportadas con independencia de que de acuerdo con sus acuerdos comerciales proceda expresamente a la inclusión de dichas cuotas en la contraprestación de sus servicios, o a la repercusión directa de las mismas a la entidad suiza, propietaria de los bienes.

2. Dirección General de Tributos. Contestación nº V1822-22, de 1 de agosto de 2022.

Tratamiento a efectos del IVA - Comercio electrónico – Expedición y reintroducción de libros.

La consultante es una asociación sin ánimo de lucro que engloba universidades españolas, tanto públicas como privadas.

Dichas universidades, facilitan y reciben un servicio de préstamo bibliotecario con universidades no pertenecientes a la Unión con fines de estudio e investigación. Como consecuencia de dicho servicio se produce la salida física de libros del territorio de aplicación del Impuesto con destino fuera de la Comunidad que posteriormente son objeto de reintroducción, así como una entrada física de libros procedentes de fuera de la Comunidad que luego vuelven a ser objeto de salida.

Desde la entrada en vigor de las nuevas normas sobre el comercio electrónico, tantos los libros solicitados en préstamo como aquellos prestados que son objeto de devolución están quedando retenidos en la Aduana, aplicándoles el arancel y el Impuesto sobre el Valor Añadido.

En primer lugar, la DGT hace referencia al código aduanero para indicar que, pese a ostentar el estatuto aduanero de mercancía perteneciente a la Unión, la salida de los libros del territorio aduanero de la Unión les hizo perder tal condición, haciendo que en el momento del retorno debiesen ser declarados para el régimen de despacho a libre práctica.

Así, y en relación con la exención de los derechos de importación, establece la DGT que en la medida en que se pueda acreditar que la mercancía retorna en el mismo estado en el que fue enviada y que ese retorno se produce en los tres años siguientes a la exportación, puede despachar las mercancías a libre práctica con exención de los derechos de importación.

En segundo lugar y, en relación con la llegada de los libros enviados desde bibliotecas situadas fuera del Territorio aduanero de la Unión Europea, la DGT concluye que el régimen de importación temporal sería aplicable en la medida en que los libros están destinados a usarse temporalmente en el territorio aduanero de la Unión y a continuación reexportarse en el mismo estado en que se encontraban.

Dicho lo anterior y, a efectos del Impuesto sobre el Valor Añadido, la DGT analiza ambos flujos físicos de mercancías:

- Libros prestados por Universidades españolas a Universidades establecidas fuera de la Comunidad: bajo la premisa de que mantenga su propiedad la universidad española que realiza el préstamo, dicha salida con destino a país o territorio tercero no determinaría la transmisión de su poder de disposición, y, por tanto, no se producirá hecho imponible alguno a efectos del Impuesto, sin perjuicio de su tratamiento de acuerdo con la legislación aduanera.

  Por otra parte, en relación con la reintroducción de dichos bienes procedentes de un país tercero tendrá la consideración de importación de bienes. Dicha importación estará exenta cuando los bienes fueran reimportados en el mismo estado en que éstos fueron exportados y se cumplan los requisitos establecidos reglamentariamente.

- Libros prestados por Universidades establecidas fuera de la Comunidad a Universidades españolas: la introducción de los bienes de países o territorios terceros producirá, a priori, el hecho imponible de importación a efectos del Impuesto sobre el Valor Añadido.

  No obstante, cabe plantearse que la entrada de los libros se efectúe al amparo del régimen de importación temporal con exención total de derechos de importación, en cuyo caso no se producirá el hecho imponible importación a efectos del IVA, ni siquiera en el momento en que dichos bienes se reexporten con destino su devolución a las universidades prestamistas situadas en terceros países. De lo contrario, dicha entrada estará sujeta al Impuesto.

  Finalmente, la DGT señala que, con independencia de lo anterior, cabría analizar quien tendrá la condición de sujeto pasivo del Impuesto acerca de la importación, pues bajo determinadas circunstancias, podrían ser las universidades no comunitarias.

3. Dirección General de Tributos. Contestación nº V1885-22, de 9 de agosto de 2022.

Adquisición y promoción de bienes inmuebles – Inversión del Sujeto Pasivo – Concurso de acreedores.

El consultante es una sociedad dedicada a la adquisición, urbanización, promoción y construcción de bienes inmuebles para su venta, alquiler y explotación que entró en concurso de acreedores y, respecto del que se formuló propuesta de convenio aprobada en sentencia.

El consultante se cuestiona la aplicación del mecanismo de inversión del sujeto pasivo previsto en el artículo 84.Uno.2º.e), primer guion, de la LIVA a la entrega de un bien inmueble, suelo edificable, que realice por importe superior a la deuda pendiente en convenio.

Señala la DGT que la regla de inversión del sujeto pasivo prevista en el artículo 84.Uno.2º.e), primer guion, de la LIVA debe interpretarse en el sentido de que resulta de aplicación a las entregas de bienes inmuebles efectuadas en el marco de un proceso concursal, en cualquiera de sus fases. Por tanto, concluye dicho Centro Directivo que en las entregas de bienes inmuebles realizadas por un empresario o profesional declarado en concurso de acreedores en la fase de convenio del proceso concursal, será sujeto pasivo el adquirente siempre que sea empresario o profesional actuando en su condición de tal.

4. Dirección General de Tributos. Contestación nº V1886-22, de 9 de agosto de 2022.

Operaciones entre casa central y sucursal – Sujeción al Impuesto.

La consultante es la casa central de una compañía establecida en el Reino Unido, la cual cuenta con un establecimiento permanente en forma de sucursal en el TIVA-ES. La entidad matriz posee un almacén en Países Bajos con la finalidad de almacenar las existencias. Ese inventario se traslada desde dichos almacenes o desde tiendas en otros Estados miembros a la sucursal en el TIVA-ES para su venta posterior a clientes finales en dicho territorio.

La consultante se plantea si las operaciones entre la casa central y la sucursal están sujetas al IVA.

La DGT analiza la jurisprudencia del TJUE a este respecto, de la que se deriva que las prestaciones de servicios o entregas de bienes realizadas entre una matriz y su sucursal en un Estado Miembro estarán sujetas al IVA cuando exista entre ellas una relación jurídica en cuyo marco se intercambian prestaciones recíprocas. Para ello es preciso analizar si la sucursal realiza una actividad económica independiente. Un indicio de ello podría ser que la sucursal asuma el riesgo económico derivado de su actividad.

Señala la DGT que en el presente supuesto la sucursal establecida en el TIVA-ES se dedica a gestionar las tiendas en dicho territorio mientras que a la casa central le corresponde la gestión del riesgo de inventario, la toma de decisiones ejecutivas y la aprobación de los acuerdos y contratos. Asimismo, se señala que los ingresos derivados de las ventas realizadas en el TIVA-ES se transfieren diariamente a una cuenta bancaria propiedad de la sede central. Por tanto, dicho Centro Directivo entiende que las operaciones entre sede central y sucursal serían operaciones internas no sujetas al IVA.

No obstante lo anterior, continúa la DGT indicando que la recepción de los bienes enviados por la consultante desde Países Bajos al TIVA-ES determina la realización de una operación asimilada a una adquisición intracomunitaria de bienes, por lo que la entidad británica deberá disponer de un número de identificación a efectos del IVA atribuido por la Administración tributaria española, a efectos de declarar dichas operaciones.

Finalmente, señala la DGT que, al disponer la consultante de un establecimiento permanente en el TIVA-ES que recibe y almacena las mercancías para su venta y que, por tanto, interviene en las operaciones, el número de identificación será el correspondiente a

la sucursal, que tendrá la condición del sujeto pasivo del IVA, tanto a efectos de las operaciones asimiladas a las adquisiciones intracomunitarias de bienes, como de las subsiguientes entregas.

5. Dirección General de Tributos. Contestación nº V1887-22, de 9 de agosto de 2022.

Adquisición de vehículos en cuya adquisición previa no se soportó IVA – Posible exención del Impuesto.

La consultante es una asociación que plantea la posibilidad de adquirir un vehículo a una sociedad (no revendedora) que, cuando lo adquirió, no soportó el IVA.

Dicha asociación se plantea si la operación de transmisión del vehículo que va a adquirir puede estar acogida a algún supuesto de exención del IVA.

Este Centro Directivo concluye que la exención técnica regulada en el artículo 20.Uno.25º de la Ley del IVA solo aplica en aquellas entregas de bienes en cuya adquisición previa se soportó IVA, el cual, además, no pudo deducirse. Continúa la DGT indicando que, si la vendedora afectó en alguna medida el vehículo a la realización de operaciones sujetas y no exentas del IVA, su transmisión estará sujeta y no exenta de dicho Impuesto.

Por último, este Centro Directivo dispone que el cálculo de la base imponible de la entrega del vehículo, siempre y cuando la vendedora lo hubiese afectado al patrimonio empresarial o profesional en un porcentaje determinado, por ejemplo, de un cincuenta por ciento, deberá computarse solo por el cincuenta por ciento de la contraprestación pactada, puesto que la transmisión del otro cincuenta por ciento se corresponde con la entrega de la parte del vehículo no afecta al patrimonio empresarial, el cual, por tanto, quedará no sujeto al Impuesto.

6. Dirección General de Tributos. Contestación nº V1893-22, de 16 de agosto de 2022.

*Determinación de la base imponible del IVA. **Contrato de renting de vehículos a motor.***

El consultante es arrendatario de un contrato de renting de vehículo a motor. Se cuestiona la inclusión en la base imponible del IVA de los siguientes importes: (i) prima de seguro, (ii) Impuesto especial sobre determinados Medios de Transporte y (iii) abono de la cuantía por exceso de kilometraje.

En primer lugar, la DGT alude al artículo 78 de la LIVA, que regula el concepto de base imponible a efectos del IVA, estableciendo que la base imponible del IVA estará constituida por el importe total de la contraprestación pactada entre el consultante y la empresa de renting en el contrato firmado.

En relación con la prima de seguro es necesario dilucidar si esta puede considerarse como un servicio independiente que pudiese resultar exento del Impuesto. En este sentido la DGT acude a la interpretación dada por el TJUE en diferentes asuntos, tales como “Card Protection Plan Ltd” y “BGZ Leasing” y el criterio reiterado por dicho Centro directivo, en el que se señala que el servicio de seguro no podría calificarse como independiente respecto del servicio de arrendamiento, cuando el arrendatario no tenga la facultad de asegurar el

bien con cualquier compañía, pueda negociar la cobertura del riesgo, ni pueda contratar el seguro de forma independiente. En dicho caso, el servicio de seguro, junto con el servicio de arrendamiento constituirían una única prestación de servicios sujeta y no exenta del IVA.

Por otra parte, en relación con la inclusión del Impuesto Especial sobre Determinados Medios de Transporte, la DGT señala que no la no inclusión de este Impuesto en la base imponible del IVA solo opera en los casos de ventas de vehículo nuevos, todavía no matriculados. Por lo tanto, si la entidad de renting debe incluir el Impuesto Especial sobre Determinados Medios de Transporte en la contraprestación de sus operaciones, según las condiciones establecidas sobre el precio del arrendamiento, este importe efectivamente formará parte de la base imponible del IVA.

Finalmente, en relación con el exceso de kilometraje, la DGT vuelve a incidir en reiterada doctrina por la cual se concluye que la contraprestación pactada por el uso del vehículo depende del número de kilómetros recorridos por lo que un exceso en la misma supone una mayor contraprestación que deberá incluirse en la base imponible.

7. Dirección General de Tributos. Contestación nº V1896-22, de 16 de agosto de 2022.

Sujeción al IVA - multa por falta de título valido de transporte que, a su vez, tiene la condición de título de transporte válido.

La consultante es una empresa pública cuyo objeto es la explotación de las líneas de red de metro.

En el marco de su actividad y cuando los viajeros no dispongan de título de transporte válido antes de iniciar su viaje, la entidad sanciona al viajero con el pago de una multa que varía entre los 40 y 80 euros, en función del momento en que se abona por parte del sancionado.

En este sentido, el documento emitido por la consultante en el que se impone la sanción tiene la consideración de título de transporte válido para el día de su emisión y para cualquier zona de la red de metro.

Comienza la DGT haciendo referencia a jurisprudencia reiterada del TJUE para enfatizar que aquellas indemnizaciones excluidas de la base imponible son aquellas que no se pueden considerar contraprestación de entregas de bienes o prestaciones de servicios.

Siguiendo lo anterior, el pago de la multa respondía al incumplimiento de una de las obligaciones que incumben a los usuarios del metro, pero a su vez, el documento que contiene la sanción también se configura como un título de transporte válido. Por tanto, entiende la DGT que nos encontraríamos ante dos negocios jurídicos distintos e independientes.

En conclusión, la consultante únicamente deberá repercutir el IVA sobre el importe que constituya el contravalor efectivo del servicio de transporte, mientras la cuantía restante tendrá carácter indemnizatorio, quedando ésta no sujeta al Impuesto.

IV. Country Summaries

Featured articles

Argentina

New regime to promote investments to increase exports in knowledge economy enacted

On 6 October 2022, Argentina's Federal Executive published Decree No. 679/2022 (available only in Spanish) enacting a new promotional regime for investments in exports of "knowledge economy" activities and issued new guidelines for the regime for the promotion of the knowledge economy.

The regime will include investments in infrastructure, capital goods, and human capital intended for new projects or the expansion of existing ones, provided they involve the development of activities of the knowledge economy according to article 2 of Law No. 27,506.

The promotional regime is intended for foreign and domestic legal entities that invest in projects intended to increase the export of knowledge economy activities, subject to a minimum investment threshold of USD 3 million across all qualifying projects. The relevant authority may reduce or increase the minimum amount, depending on the activity promoted, its geographical location, and the scale of the project. Any reduction in the amount may not exceed 20%, i.e., the minimum threshold may not be less than USD 2.4 million. Applications for the regime must be submitted by 30 June 2023.

The main benefit granted by the regime consists of an exemption from the requirement to exchange foreign currency in the foreign exchange market of up to 20% of the direct investment involved. The exempt amount will have to be deposited in a special account under the terms established by the enforcement authority and the Central Bank of the Argentine Republic. The intention is that the amounts are used for repayment of capital and interest on commercial or financial liabilities abroad, repatriation of profits and dividends that correspond to closed and audited balance sheets, or repatriation of foreign currency of nonresidents.

The decree also determines that entities registered in the national registry of beneficiaries of the regime for the promotion of the knowledge economy will be able to keep an amount equal to 30% of their proceeds in foreign currency from incremental exports to pay the salaries of employees engaged in knowledge economy activities.

Companies subject to the regime may transfer once the tax credit certificate in respect of social security paid.

Oman

Amendments to VAT executive regulations

The Oman Tax Authority (OTA) has issued Ministerial Decision 456/2022 (available in Arabic only), amending the Oman Value Added Tax (VAT) executive regulations. The ministerial decision was published in the official gazette No. 1463 dated 16 October 2022, and is effective as from 17 October 2022. This article provides a summary of the key changes.

Time limit for issuing tax invoices

The executive regulations have been amended to specify a time limit for issuing tax invoices. Article 143 states that a tax invoice must be issued within 15 days after:

- Making a supply, including a supply to a nontaxable person or to a taxable person allocating the supplies for personal use;
- Making a "deemed" supply; and
- Receiving advance payment for a supply, whether in full or in part.

Failure to issue a valid tax invoice within this deadline could give rise to a penalty of OMR 500 to OMR 5,000. Businesses may wish to review invoicing, procurement, sales, and order-to-cash processes, and assess the impact of the time of supply rules for VAT, while taking these new provisions into consideration.

Electronic invoicing

Oman is preparing to introduce electronic invoicing ("e-invoicing"), which is understood to be intended to be compulsory for all VAT registrants after an initial period of voluntary compliance. Formal dates for implementation are expected to be announced shortly.

"Electronic tax invoice" has been defined to mean "a tax invoice that is generated in a structured format through electronic means." These invoices must include the details specified in the executive regulations, and must comply with requirements imposed by the tax authorities.

Businesses may wish to consider undergoing an impact assessment exercise, to assess whether current systems and processes are capable of handling e-invoicing and to develop a roadmap to compliance.

Extension of VAT exemption for financial services provided by nonfinancial institutions

Article 79 of the executive regulations has been amended to extend the VAT exemption for financial services to those provided by unlicensed and nonfinancial institutions. Previously, only financial services provided by banks and financial institutions licensed by the Central Bank of Oman, or any other competent authority, were exempt from VAT.

Businesses may wish to consider their financing and treasury arrangements to assess the implications of the broadened scope of the exemption, and whether there is any potential impact on existing partial exemption calculations or intragroup recovery of input VAT.

Documentation required for recovery of input VAT

Article 55 of the executive regulations has been amended to provide that businesses may recover input VAT using various types of tax invoices as documentation (e.g., simplified tax invoices, summary tax invoices), provided that the other conditions for input VAT recovery are met. Previously, article 55 stated that businesses were only eligible to recover input VAT based on a full tax invoice issued in accordance with article 144.

Businesses may wish to review documentation carefully to ensure that they have the correct documents in place and that they are recovering all applicable input VAT.

Clarification on refunds to specified persons (e.g., foreign diplomats, international organizations)

The amended executive regulations now clarify the conditions that need to be met by foreign governments; diplomatic, consular, and military bodies or missions; international organizations; and members of diplomatic and consular corps to claim VAT refunds.

Refund requests are based on conditions and controls determined by the OTA in co-ordination with the Foreign Ministry of Oman. They also require the approval of the Ministry of Finance.

Further details are provided in articles 188 and 189 of the executive regulations.

Place of supply rules for provision of telecommunication services

Article 28 of the executive regulations, which sets out the provisions for determining "actual usage or enjoyment" of telecommunication services, has been amended.

Businesses engaged in the provision of telecommunication services may wish to assess the implications this will have on their transaction flows and make the necessary changes to their systems and processes, to ensure the place of supply is correctly determined.

Poland

Clarifications for VAT grouping regime published

On 14 October 2022, Poland's Ministry of Finance published the final version of the Tax Explanations regulating the creation of VAT groups in Poland, which will enter into force on 1 January 2023. The explanations address additional issues that were flagged during public consultations and aim to clarify (with practical examples) the complex provisions of the Polish VAT law. Taxpayers that follow the guidance provided in the document are protected from suffering any negative tax consequences as a result.

The explanations address the following topics, among others:

- The financial, economic, and organizational relationships between VAT group members that need to be in place throughout the VAT group's existence (with practical examples);
- The VAT group registration process;
- The VAT treatment of transactions between a central office as VAT group member and a branch in another EU country;
- VAT group settlements and, in particular, detailed commentary on the input VAT recovery issues when applying partial exemption pro-rata calculations;
- VAT import procedures, as well as cross-border intra-EU transactions during the VAT group's existence; and
- Other issues, such as invoicing, reporting, and details regarding the interim period before or after the VAT group's establishment or dissolution.

The Ministry of Finance also confirmed in the Tax Explanations that, in general, the creation of a VAT group is not a tax scheme subject to mandatory disclosure rules (MDR) reporting. However, if one of the members of the VAT group is using a relevant tax scheme, the whole VAT group will fall within the scope of MDR reporting.

Vietnam

Mandatory data storage regulations issued for foreign digital service providers

On 15 August 2022, Vietnam's government released Decree No. 53/2022/ND-CP, which will be effective as from 1 October 2022. The decree provides guidance on the protection of national security and public order in cyberspace, as well as the responsibility of relevant organizations and individuals. The decree could have an impact on Circular No. 80/2021/TT-BTC, relating to the tax administration of e-commerce transactions and digital businesses.

This article highlights some notable requirements regarding data storage and establishment of a branch or office in Vietnam that may impact foreign digital service providers having business activities in Vietnam.

Business activities subject to mandatory data storage

Foreign digital service providers carrying out the following business activities in Vietnam will be required to store certain data in Vietnam:

- Telecommunications services and services that store and share data in cyberspace;
- The provision of domestic or international domain names to service users in Vietnam;
- E-commerce;
- Online payments or payment intermediary;
- Transportation connection services through cyberspace;
- Social networks and social media;
- Online video games; or
- Services of providing, managing, or operating other information in cyberspace in the form of messages, voice calls, video calls, e-mail, or online chats.

Data required to be stored

The data that will be required to be stored in Vietnam (for at least 24 months) includes:

- Personal information of service users;
- Data generated by service users (e.g., account name/identity, service usage time, credit card information, e-mail, access IP, phone number); and
- Data on the relationships of service users (e.g., friends, interactive groups).

Requirement to set up a branch or a representative office

Apart from data storage requirements, foreign digital services providers may be required to set up a branch or a representative office in Vietnam if they receive a request from the Ministry of Public Security (e.g., where services violate cybersecurity regulations and the providers cannot provide sufficient prevention or protection upon notification and request from the relevant authorities).

Other news

OECD

Reports released regarding "Tax Administration 3.0," digital services, bilateral APAs

The OECD Forum on Tax Administration (FTA) released several reports during its 15th plenary meeting held from 28-30 September 2022, attended by commissioners from advanced and emerging tax administrations and representatives from international organizations and regional tax administration bodies. The reports relate to topics including "Tax Administration 3.0," digital services and support for small and medium-sized enterprises (SMEs), and bilateral advance pricing arrangements (BAPAs).

In December 2020, the FTA *published Tax Administration 3.0: The Digital Transformation of Tax Administration, a d*iscussion paper that "sets out a vision for the digital transformation of tax administration, under which taxation becomes more of a seamless and frictionless process over time." The discussion paper identifies certain core "building blocks" of future tax administration, as well as projects for further exploration. Three new reports published by the FTA on 28 September 2022 relate to these topics:

- *Tax Administration 3.0 and the Digital Identification of Taxpayers: Initial Findings* covers the current "state of play" regarding digital identity, different domestic solutions adopted by jurisdictions, and some of the cross-border challenges relating to digital identity and tax, as well as laying the groundwork for future collaborative work in this area with business and other stakeholders;

- *Tax Administration 3.0 and Connecting with Natural Systems: Initial Findings* covers the automated connection of systems between tax authorities and taxpayers in the context of sharing and gig economy platforms and identifies key questions for businesses and tax authorities to consider, as well as laying the groundwork for future collaboration by identifying a possible technical framework to support such connections; and

- *Tax Administration 3.0 and Electronic Invoicing: Initial Findings* covers the current state of play regarding electronic invoicing and identifies some items that tax authorities may wish to take into account in considering the potential implementation or reform of electronic invoicing systems.

The FTA also released the following two publications on 28 September 2022:

- *Digital Services: Supporting SMEs to Get Tax Right* considers how tax authorities' digital services can assist SMEs in complying with their tax obligations and includes a number of examples from tax authorities, along with two detailed case studies; and

- The *Bilateral Advance Pricing Arrangement Manual* is intended as a guide to streamline the BAPA process. The manual provides information for tax authorities and taxpayers on the operation of BAPAs and identifies 29 "best practices," without imposing a set of binding rules.

New monitoring systems for imports of goods and services introduced

Argentina's Federal Administration of Public Revenue (AFIP) and the Secretariat of Commerce (SC) have jointly created, by means of Joint General Resolution 5271/2022 the Import System of the Argentine Republic (SIRA), the Import System of the Argentine Republic for Payments of Services Abroad (SIRASE), and the monitoring service for exchange operations ("FX Current Account").

The joint general resolution replaces both Joint General Resolutions No. 4,185 (the prior SIMI system for imports of goods) and No. 5,135 (the prior SIMPES regime for imports of services).

SIRA

The SIRA system applies to imports of goods. The AFIP will analyze the situation of the applicant based on the information available in its records and where the applicant has failed to comply with any of the relevant requirements, will request them to correct the errors prior to proceeding with the processing of the SIRA declaration.

The AFIP also will analyze the risk profile of the importer, taking into account whether the importer has been involved in overvaluation or undervaluation schemes or an alleged abuse of injunctions aimed to overcome prior import licensing requirements.. The economic and financial capacity of the importer will be taken into account to carry out the operation through the "System of Financial Economic Capacity" (CEF system).

The resolution determines that the importer must inform an estimated date of access to the Free Exchange Market (MLC). The SC in conjunction with the Central Bank of the Argentine Republic (BCRA) will analyze the information provided to confirm the period between customs clearance and the date on which access to the MLC will be allowed to obtain foreign currency to pay the foreign supplier.

SIRASE

This is an advance declaration that must be completed by legal entities, undivided estates, and individuals who would access the MLC to pay directly for services rendered from foreign suppliers, either on their own behalf or on behalf of a third party.

The information provided in the SIRASE is to be shared with the SC and the BCRA. The AFIP also will analyze the situation of the applicant based on the information available in its records, request corrections, and check the financial economic capacity in the same manner as in the SIRA declarations.

FX Current Account

Finally, a service for monitoring and validating foreign exchange operations has been created through the FX Current Account. Prior to selling foreign currency to importers, financial entities will have to check and register the amount in Argentine pesos of the total of each of the operations destined to pay for operations that had been previously registered through the SIRA and SIRASE systems. After cross-validation, the entities will be able to carry out the operations with their clients.

Importers will be able to consult, prior to carrying out the exchange operation, the result of the validation in the FX Current Account service.

Australia

GST: More onerous and prescriptive requirements for margin scheme valuations

On 14 September 2022, the Australian Taxation Office (ATO) published for public consultation a proposed new goods and services tax (GST) margin scheme valuation requirements determination (draft MSV determination).

If implemented in its current form, the draft MSV determination would:

- Repeal the current margin scheme valuation requirements determination, MSV 2020/1, subject to a brief transition period;
- Substantially increase the detail and scope of information that a valuer's written valuation report will be required to include in order to qualify as an "approved valuation" for margin scheme purposes (i.e., where method 1 is used); and
- Otherwise substantively replicate the other aspects of MSV 2020/1.

Key changes

Currently for method 1 under MSV 2020/1, to be an approved valuation, a valuation is required to be "made in a manner **that is not contrary** to the professional standards recognised in Australia for the making of real property valuations" (emphasis added). Under the terms of the draft MSV determination, to be an approved valuation a valuation will be required to be made:

"…in a manner **and in the form** that **complies with all legal and** professional standards recognised in Australia for the making of real property valuations **as identified and advised by the valuer's accrediting professional industry body (or bodies) and that are effective at the date of issue of the valuation**…"(emphasis added)

Coupled with this change will be the requirement for more expansive information to be included in the valuation report prepared by the valuer. The requirements beyond those that currently apply under MSV 2020/1 are shown in bold below:

- A full description of the property being valued;
- The applicable valuation date;
- The date the valuer provides the valuation to the supplier;
- The market value of the property at the valuation date;
- The valuation approach **and the rationale for its selection**;
- **A full description of methodology, inputs, and assumptions used in the valuation approach and the rationale for their selection**;
- **The conclusions of value and principal reasons for any conclusions reached**;
- The valuation calculations;
- The name and the qualifications of the valuer;

- The name and effective date of all professional standards recognized in Australia for the making of real property valuations as advised by the valuer's accrediting professional industry body and that were complied with by the valuer; and

- A signed declaration that the valuation has been undertaken in accordance with all the legal and professional standards in Australia for the making of real property valuations, that are effective at the date of issue of the valuation.

Impact of the additional requirements

Although the additional requirements might be said to be aimed simply at ensuring that a valuation has been arrived at in compliance with all prevailing relevant standards, they also may be viewed as giving the Commissioner of Taxation more scope to find fault with a valuer's approach and the conclusion reached about the value of a particular property in cases where the Commissioner considers that value to be too high.

Under MSV 2020/1, the Commissioner has demonstrated a willingness to reject method 1 valuations as approved valuations because he regards the reported valuation of a taxpayer's land as too high. Absent fraud or negligence on the part of a valuer, or a failure to include all the required information in the valuation report, the legal basis for the Commissioner challenging valuations that he considers to be too high has long been an issue of contention for taxpayers.

It is doubtful that the additional requirements in the draft MSV determination, as to detailing of the valuer's choices, reasoning, assumptions, calculations, etc., would, in themselves, provide the Commissioner with a legal basis for challenging a valuation simply because he disagrees with the valuation figure reached. The courts have long recognized that valuations involve matters of subjective judgment based on a valuer's expertise and experience, and that different valuers valuing the same property might commonly form materially different conclusions about its value. Further, the GST margin scheme rules look to the existence of an approved valuation, not to the identification of the correct market value of the property.

Impacts for taxpayers

The draft MSV determination includes limited transitional arrangements whereby, despite MSV 2020/1's repeal, the requirements in MSV 2020/1 will continue to apply to valuations that a margin scheme taxpayer already has when the new determination takes effect, for a period of three months. This will allow taxpayers to continue to use such a valuation if they make a supply of the real property it concerns within three months after the date of effect of the new MSV determination.

Taxpayers already holding currently complying valuations but supplying property after the three-month transition period will need to have those valuations reviewed and reprepared to ensure full compliance with the new MSV determination, resulting in additional cost to these taxpayers.

Further, the cost of obtaining a valuation under the new MSV determination will likely be considerably higher compared to the cost of obtaining one under MSV 2020/1, due to the additional information that the valuer will need to include.

Consultation

The Commissioner has invited feedback from stakeholders about the draft MSV determination by 12 October 2022, although we understand that all submissions received by 21 October 2022 will be considered.

Belgium

Draft bill would extend investigation and assessment periods as from tax year 2023

On 3 October 2022, the Belgian Federal Government introduced a draft bill containing various tax and financial provisions to the Chamber of Representatives. The government is seeking through the bill to implement the "Second Action Plan for a coordinated anti-fraud policy" launched by the minister of finance and the bill includes a wide range of tax measures, primarily affecting procedural aspects.

The primary aim of the bill is to extend tax investigation, assessment, objection, and retention periods to better align them with international standards, simplify the tax procedure, and increase their enforceability. New penalties for obstructing a tax investigation also would be introduced.

The bill is expected to be adopted by the Chamber of Representatives shortly with its provisions taking effect from various dates as specified in the bill once enacted via publication in the official journal. Amendments to the investigation, assessment, objection, and retention periods would enter into force as from tax year 2023.

This alert addresses the most important proposed procedural changes with respect to direct taxes.

Extension of investigation, assessment, objection, and retention periods

The amendment of the investigation, assessment, objection, and retention periods is the primary focus of the draft bill's procedural measures.

Assessment periods

The most notable changes are those relating to the assessment periods. In all cases, the assessment period starts from the end of the relevant financial year.

The three-year assessment period would be retained for situations when the tax administration wishes to amend a tax return filed on a timely basis. When a taxpayer either fails to file or files a late return, a new extended four-year assessment period is proposed.

According to previous media reports, the government also had intended to create a 10-year assessment period for “complex tax returns.” This intention apparently has evolved and the draft bill proposes two different periods, a six-year period and a 10-year period. The six-year period would apply when the tax return includes certain international elements (e.g., transfer pricing documentation, payments to tax havens, or relief for foreign tax). Such returns are deemed “semi-complex.” A 10-year period is foreseen for “complex” tax returns. A return is deemed complex when it involves the use of legal constructions, hybrid mismatches, or controlled foreign companies.

When a return contains one of the three elements necessary to be deemed complex, the tax administration could use the six- or 10-year period to amend any element of the return. The bill aims to reduce the impact by not allowing certain "easily auditable" disallowed expenses to be taxed within these new periods (e.g., nondeductible car expenses or nondeductible reception expenses). However, there are numerous elements that are equally easily auditable but remain liable to taxation in the new extended periods (e.g., depreciation expenses and general professional expenses).

The assessment period for tax fraud is extended from seven to 10 years.

Investigation and retention period, and notification of simplified income tax fraud investigation

Linked to the modification of the assessment periods, the draft bill also proposes modified investigation periods, with a parallel investigation period for each new assessment period. The tax administration would be able to conduct an investigation for four years when a tax return is either not filed or filed late; for six or 10 years when the tax return is semi-complex or complex, respectively; and for 10 years in the case of tax fraud. The tax administration would be able to apply the extended investigation periods to semi-complex or complex returns without prior notice to the taxpayer.

The so-called "fraud notification" would be necessary to apply the extended investigation period in the case of tax fraud and is likely to be the most controversial proposal. Under the current regime, before the extension of the investigation period, the tax administration must notify the taxpayer "accurately" of "the indications of tax fraud." The draft bill aims to simplify this and proposes that it would be sufficient for the tax administration to "give notice of fraud suspicion and of its intention to apply this extended period." This is a further erosion of taxpayers' procedural rights, since assessments during the fraud period could no longer be annulled on procedural grounds, as stated in the explanatory memorandum. The "simplified" prior notification would be obligatory and if not provided, the assessment issued following the investigation would be invalid.

The retention period for which taxpayers are required to retain documentation also would be extended to 10 years to ensure that a taxpayer still has all relevant documentation when potentially subject to a 10-year period of investigation and assessment.

Objection period

In order to "compensate" for the extension of the investigation and assessment periods, the draft bill also proposes to extend the taxpayer's objection period from six months to one year. In practice, the relevance of this extension probably would be limited, since the payment period has not been correspondingly extended. Taxpayers wishing to file an objection notice could therefore be forced by the collector to do so sooner in order to suspend collection of the tax.

Current regime versus proposed regime

The table below summarizes the current and proposed investigation, assessment, objection, and retention period regimes. In each case, the period starts from the end of the relevant financial year:

Relevant procedure	Current regime	Proposed regime
General assessment period	Up to 30 June of the following tax year	Up to 30 June of the following tax year
Amendment of the tax return	3 years	3 years
Late return or failure to file a tax return	3 years	4 years
Semi-complex tax return	Not applicable	6 years
Complex tax return	Not applicable	10 years
Fraud	7 years	10 years
Retention period	7 years	10 years
Investigation period	3 or 7 years plus indication of tax fraud notification	3, 4, 6, or 10 years plus suspicion of tax fraud notification
Objection period	6 months	1 year

Penalty payment in case of tax investigation obstruction

The tax administration would be entitled to impose a penalty payment when the taxpayer, or a third party, obstructs a tax investigation (in the broad sense of the term). This would include noncompliance with the provisions regarding an onsite audit of the books or a request for information, or the refusal to allow a tax visit to take place.

Moreover, the draft bill clarifies that penalty payments also may be imposed where when the tax investigation is carried out at the request of a foreign tax authority, to facilitate the imposition of penalties in such cases.

The tax administration would be required to obtain approval from the court to impose a penalty on the taxpayer. This ensures judicial oversight. The claim would be brought before the tax chambers of the Court of First Instance. Cases would be dealt with similarly to preliminary relief proceedings and heard as soon as possible. The court's ruling on the penalty payment would be considered as a final judgement on the merits of the case.

Entry into force

The draft bill does not provide for a specific date of entry into force for the penalty payment provisions. Therefore, these rules will enter into force on the 10th day after the law's publication in the Belgian official journal.

The amendments to the investigation, assessment, objection, and retention periods would enter into force as from tax year 2023. The draft bill further clarifies that the provisions regarding the objection period would apply as from 1 January 2023.

The bill also provides for a transitional regime for tax years prior to tax year 2023 which would remain subject to the current legislation. Therefore, the new or amended terms could not be applied to tax years preceding tax year 2023, even if the statute of limitations had not expired. For example, for tax year 2022, the assessment period in the case of tax fraud would be a maximum of seven years, despite the fact that the statute of limitations would not have expired at the time the new legislation (including the 10-year assessment period in cases of tax fraud) entered into force.

This would create an important degree of legal certainty for taxpayers which would be welcomed, having regard to the significant impact the proposed changes could have on taxpayers.

Next steps

This draft bill is expected to be adopted shortly, since the fight against tax fraud is seen as important and is high on the legislator's agenda. Once adopted by the Chamber of Representatives, the bill will need to be published in the official journal.

Some may question whether the provisions of the draft bill are proportionate to its aim. After all, many of the extended assessment and investigation periods are directly linked to obligations imposed on taxpayers by the legislator. No distinction is made, however, between taxpayers who comply with the legislation, making complete and transparent declarations, and those who do not. This seems unusual for legislation supposedly intended to combat tax fraud.

The proposed changes indicate that in the coming years, taxpayers should anticipate more tax audits and sanctions in the form of penalties, resulting in it becoming even more important to prepare thoroughly for a possible tax audit.

Belgium

Key tax measures in Federal Budget 2023

On 11 October 2022, the Belgian federal government reached an agreement on the Belgian Federal Budget for 2023 and 2024. The measures agreed upon must be transformed into (pre-) draft legislation, adopted by parliament, and published in the state gazette before they are enacted.

This article provides an overview of some of the key tax and social security proposals but it should be noted that many aspects and details of the measures are yet to be confirmed.

Direct taxation

Temporary "Belgian minimum tax"

In anticipation of the introduction of the global minimum tax of Pillar Two (which is expected to enter into effect on 1 January 2024), the government has decided to amend the current "basket limitation" rule, so that the relevant set of tax attributes would be deductible from taxable profits only up to 40% instead of 70% (as is currently the case) over the threshold of EUR 1 million. This amendment would apply as from tax year 2024 (linked to taxable periods starting on or after 1 January 2023). It is expected that measures would be taken to address changes to the closing date of the annual accounts. The "Belgian minimum tax" is intended to be temporary, in the sense that it would be abolished once the Pillar Two rules enter into force in Belgium.

Notional interest deduction

The notional interest deduction (NID) regime would be abolished for financial years closing after 30 December 2022. It is expected that measures would be taken to address changes made to the closing date of the annual accounts. At this stage it is unclear whether the regime would be abolished for large companies only or also for small and medium-sized enterprises.

Nondeductibility of financial sector levies

The annual taxes levied on credit institutions, insurance undertakings, and undertakings for collective investment which are due after 1 January 2023 would be subject to an 80% deductibility limitation for corporate income tax purposes (including for nonresidents).

Foreign tax credit for royalties

The current lump sum regime would be transformed into a credit for actual (withholding) taxes paid abroad.

Authors' rights

The tax (and social security) regime applicable to authors' rights income would be reformed as from 1 January 2023, with transitional rules that would apply during a two-year period. While only the broad principles of the reform have been agreed upon, the reform would lead to (i) a restriction of the scope of application of the regime to align it with historic legislative intent and (ii) a threshold/cap above which the beneficial regime no longer would apply.

Reduction of tax burden on labor

The government also agreed to bring forward a tax reform which is intended to reduce the tax burden on labor. The finance minister has been asked to prepare an ambitious project for a first phase of the tax reform, the implementation of which would start in the current legislative term. At this stage, no specific details are available, although it is expected that the finance minister would proceed along the lines set out in his blueprint for a broad tax reform, published in July 2022 (Dutch | French).

Tax reduction for long-term savings

The tax reduction for "long-term savings," which concerns repayments of mortgage loans taken out to build, acquire, or renovate a home in the European Economic Area (other than a taxpayer's private dwelling), would be abolished for loans taken out after 1 January 2024.

Energy measures

Temporary excess profits tax

A revenue cap would be introduced for companies that produce electricity using technologies with lower marginal costs. The cap would be based on Council Regulation (EU) 2022/1854 published in the EU's official journal on 7 October 2022, which entered into force as from 8 October 2022. Under the regulation, revenues in excess of EUR 180 per megawatt hour (MWh) would be subject to an "excess profits tax" for the period between 1 December 2022 and 30 June 2023.

However, the Belgian government has reportedly decided to modify the excess profits tax in two ways; (i) the revenue cap of EUR 180 per MWh would apply retroactively from 1 January 2022 through 30 November 2022 and (ii) from 1 December 2022 through 30 June 2023 (with a possible extension), the revenue cap would be reduced to EUR 130 per MWh (subject to certain increases for certain technologies).

Temporary solidarity contribution for fossil fuel companies

A solidarity contribution for fossil fuel companies would be imposed, in line with Council Regulation (EU) 2022/1854.

Indirect taxes and excise duties on gas and electricity

The 6% VAT rate on natural gas and electricity on residential contracts would become a permanent measure. Once energy prices return to lower levels, an increase of the excise duties on these products would be implemented through a more substantial reform, supporting the energy transition, and considering the European developments in respect of the revised Energy Taxation Directive.

Social security contributions

Employers' social security contributions and indexation

To reduce the economic burden associated with the significant increase in wage costs due to indexation, a (definitive) reduction of 7.07% of net employers' social security contributions on the element of wage increases due to indexation would apply for quarters one and two of 2023. In addition, for quarters three and four of 2023, employers would be able to obtain a payment deferral through 2025 for this part of the contributions. This measure would be subject to similar restrictions as the ones imposed for COVID-19-related aid measures, namely that it would not be available to companies which hold a participation in, or have made qualifying payments to, a series of "tax havens."

Indexation of company contribution

The company contribution ("vennootschapsbijdrage/cotisation à charge des sociétés") would be indexed as from 2023 (not retroactively).

Belgium

Finance minister prepares first set of tax measures as part of broader tax reform

The Belgian finance minister in mid-October 2022 produced proposals for the first phase of measures intended to form part of the "broader tax reform" mandated following the government agreement on the Federal Budget 2023. The measures are intended to strengthen the purchasing power of consumers and increase the employment rate, and would be implemented over a three-year period. The second phase measures of the broader tax reform are to be prepared by September 2023.

The intention is for the government to discuss and reach a political agreement on the measures during November and December 2022. This article provides an overview of the most significant business, individual, and indirect tax measures as currently proposed but it is important to keep in mind that these may be amended or ultimately not adopted.

Business taxation

Dividend taxation

The dividends received deduction (DRD) regime, which currently provides for a 100% "deduction" of eligible dividend income, would reportedly be transformed into a genuine "exemption," to be effected via an increase in the opening balance of taxed reserves.

While the quantitative condition of a participation of at least 10% would apparently remain unchanged, the alternative rule that a participation with an acquisition value of at least EUR 2.5 million also suffices would be linked to the condition that the participation is a "financial fixed asset" as defined in the royal decree implementing the Code of Companies and Associations. A similar amendment would be made to the conditions to qualify for the exemption from dividend withholding tax.

It is understood that the "DBI-BEVEK/RDT-SICAV" regime would be abolished. It is a popular investment vehicle, allowing the investing company to benefit from the DRD on dividends received without having to meet the holding period and minimum participation conditions.

Costs relating to the acquisition, holding, and disposal of shares

Costs relating to the acquisition, holding, and disposal of shares would apparently become nondeductible, although no further details currently are available.

Individual tax measures

Harmonization of tax and social security treatment of benefits in kind

It is understood that the tax treatment of benefits in kind, other than company cars, would be aligned with their social security treatment for both employers and employees.

For existing company cars with fuel or charge cards, the current system of taxation under which 40% of the benefit in kind value must be treated as a disallowable expense for (corporate) income tax purposes at the level of the employer, would be maintained for a further five years. For new company cars with fuel or charge cards, this system would be replaced by a benefit in kind for private use.

Stock option plans, carried interest, and management incentive schemes

It is understood that the tax regime applicable to stock option plans would be reformed and restricted along the following lines:

- The scope of plans would be limited to shares of the employer company or a parent company of the employer company;
- The current rule allowing the employer to bear the tax charge where the option is not exercised would be amended; and
- The scope of plans would be restricted to nontransferable and nonredeemable options.

In addition, a new tax regime reportedly would be developed for employees to participate in a financially beneficial way in the equity of their employer under which tax would be payable only upon realization (not in advance) and only in the case of what is referred to in the draft text as an "effective" capital gain.

Income obtained from a carried interest scheme or another management incentive scheme reportedly would be qualified, at least in part, as taxable professional income in the hands of the person who is directly or indirectly professionally active in the entity to which the scheme applies. The income would be taxable to the extent that it exceeds the amount that a passive investor would have received.

Deductibility of premiums payable towards second pillar pension

The tax deductibility of premium payments in the context of second pillar pension schemes (pension schemes funded by both the employer and the employee) reportedly would be further restricted.

The so-called "80% rule" (which broadly provides that employer pension contributions are tax-deductible if the sum of statutory and supplementary pension benefits does not exceed 80% of gross annual wages) would remain intact, but in addition, premiums would only be deductible to the extent that they do not exceed 10% of the gross periodic annual remuneration paid during the year to which the premium payments relate. The portion of the premium payments in excess of this 10% would be treated as a benefit in kind in the hands of the beneficiary.

Abolition of various individual tax benefits

To simplify the individual income tax return, the reforms are understood to propose the abolition of a number of individual tax benefits including the:

- Tax exemption for the employer's contribution towards the purchase of a personal computer for an employee (subject to certain conditions) under the "Plan PC privé;"
- Tax exemption for additional personnel or an internship bonus;
- Lump sum deduction (tax-free allowance) for long business trips where the distance between the employee's home and required place of work exceed 75 kilometers;
- Tax credit for individuals making equity investments in their own business;
- Tax reduction for the purchase of electric vehicles;
- Tax reduction for domestic servants;
- Tax reduction for investment in shares of development funds, the acquisition of employer shares, and investment in growth companies (tax shelter start-up and scale-up);
- Tax reduction for premiums in respect of legal assistance insurance;
- Tax reduction for capital losses on privak/pricaf investments (a form of alternative investment fund);
- Exemption of innovation premiums (amounts paid to employees for developing an innovation that generates added value for the employer);
- Third pillar pension related tax benefits in respect of long-term savings (life insurance premiums) and the increased ceiling for pension savings.

Partial wage tax exemption regimes

Expenditure related to the various partial wage tax exemption regimes is expected to be frozen, i.e., retained at the 2022 level for 2023, 2024, and 2025.

Family-related tax benefits

A number of family-related tax benefits are expected to be abolished or aligned, with a view to achieving greater tax neutrality across various forms of cohabitation. For example:

- The marital quotient would be abolished over a period of 10 years;
- The taxation and deduction of alimony payments would be extinguished over a period of 10 years; and
- The supplements to the tax-exempt sum for single parents and parents not living together would be aligned.

Tax-free sum

The tax-free sum of EUR 9,270 for tax year 2023 is expected to be raised to the level of the living wage for a single person (EUR 13,660). A number of specific technical measures would be required to be taken to avoid unintended effects. For example, the ordinary tax reduction for replacement income would need to be phased out accordingly, and the special scale for calculating the tax on the tax-free sum abolished.

The wage tax scales would need to be adjusted accordingly as from 1 April 2023.

Indirect tax measures

VAT e-invoicing and e-reporting

In 2021, the finance minister presented plans to introduce mandatory e-invoicing for domestic business-to-business (B2B) transactions by Belgian established taxpayers. Following the European Commission's position on the e-invoicing project, these plans are expected to be extended with the introduction of an e-reporting obligation. This likely would result in transactional reporting of B2B transactions subject to the e-invoicing obligation, as a measure to reduce the "VAT gap." The e-invoicing obligation is expected to apply as from July 2024; no date has yet been announced for the e-reporting obligation.

Excise taxes on tobacco and new products

Following the example of other European Union member states, Belgium also is preparing to introduce excise taxes on new tobacco products and e-liquids, as well as increasing existing excise taxes on tobacco products.

As part of the Federal Budget 2023 agreement, the finance minister was mandated to prepare a 'healthy tax shift' by the beginning of 2023. The aim would be to discourage the consumption of unhealthy products and encourage healthy products (e.g., fruit and vegetables). No related proposals are included in this first set of broader tax reform measures.

Cyprus

VAT reverse charge applies to unprocessed and semi-processed precious metals

Decree No. 152(I)/2022 (available in Greek only) was published on 7 October 2022 in Cyprus' official gazette providing that purchasers of certain unprocessed and semi-processed precious metals, as defined in the Cypriot VAT law, must account for VAT in Cyprus based on the reverse charge provisions.

Sellers are therefore not required to charge VAT on the sale of these goods, provided that both the seller and the purchaser are taxable persons for VAT purposes, and the latter acquires the goods for business purposes.

Purchasers must maintain written records of all purchases of used goods for six years, as specified by the Cyprus Organization of Marking of Articles of Precious Metals Law. The standard VAT deduction rules apply.

El Salvador

Tax code revised to include provisions on electronic tax documents

A legislative decree (No. 487) that revises El Salvador's tax code to include provisions relating to the issuance and use of electronic tax documents was approved by the legislative assembly on 30 August 2022, published in the official gazette in the 20 September 2022 edition that was made available on 4 October 2022 (i.e., the date of effective publication is 4 October 2022), and will become effective eight calendar days after the date of effective publication. The legislative decree amends some existing articles of the tax code, incorporates some new provisions, and provides for certain transition rules. Although the legislative decree sets forth a framework for the mandatory rollout of electronic invoicing in El Salvador, the decree does not specify the dates as from which taxpayers will be required to adopt electronic invoicing and begin issuing electronic tax documents, which will be established by additional guidance from the tax authorities.

The main provisions included in the legislative decree are described below.

New provisions incorporated into tax code

A first subsection titled "Electronic Tax Documents" is added to title III, chapter I, section five of the tax code (which relates to tax obligations regarding the issuance of documents), and the provisions added include the following new articles:

- Regarding the powers of the tax authorities: The tax authorities are authorized to issue regulations to ensure taxpayers' compliance with the obligations related to electronic tax documents (article 119-A).

- Definition of electronic tax document (DTE): A DTE is a tax document generated, signed, and transmitted electronically to the tax authorities and that has the receipt stamp granted by the tax authorities (article 119-B).

- Regarding the issuance of DTE: As a general rule, the issuance of DTEs includes their generation and electronic signature, transmission to the tax authorities for the granting of the receipt stamp, and delivery to the recipient in electronic format. DTEs will be treated as having been issued when the tax authorities grant them a receipt stamp, without prejudice to the general rule (article 119-C).

- Regarding transmission and receipt stamp: DTEs must be transmitted through the online platform established by the tax authorities. Once the electronic documents have obtained the receipt stamp, their transmission will be considered as complete and they will acquire the character of DTEs. The granting of the receipt stamp will not imply any validation or authorization of the transaction being documented; it will confirm only the transmission and receipt of the documents (article 119-D).

- **Invalidation of DTE:** Invalidation of a DTE may occur if, after the issuance of the DTE, errors in its content are discovered that do not affect the transaction (based on the rules described in article 119-E). Invalidated documents will not provide support for the income tax deduction for the corresponding expenses; similarly, the graphic representation associated with the documents that have been delivered will have no value.

- **Contingencies:** In the event of "force majeure" situations that make the transmission of DTEs to the tax authorities impossible, the issuance of the DTEs must be made in accordance with the rules of article 119-F. A data message called a "contingency event" must be transmitted within the period established by the tax authorities, to obtain the receipt stamp.

- **Requirements of DTE:** Article 119-G specifies the formal requirements to be met by the different types of DTEs: electronic tax credit vouchers, electronic invoices, electronic export invoices, electronic remittance notes, electronic credit and debit notes, electronic settlement vouchers, electronic withholding vouchers, electronic accounting settlement documents, electronic excluded subject invoices, and electronic donation vouchers.

Amendments to existing articles of tax code

Additions and amendments have been made to some existing articles of the tax code, including the following provisions:

- **Safekeeping of DTE:** DTEs must be retained by taxpayers for a period of 10 years, as from the date of their generation, in the same form in which they were received, to be available for consultation if needed and to support the integrity of the DTEs (article 147).

- **Deductions:** Income tax deductions for expenditures that are supported by a DTE will be allowable as long as the DTE complies with the formal requirements of the law and has obtained the receipt stamp granted by the tax authorities. The graphic representation that corresponds to a DTE may support a deduction, as long as the DTE has not been invalidated (article 206).

- **Infractions and penalties related to DTE:** Article 239-A is added, which sets forth specific violations involving noncompliance in relation to the obligation to issue DTEs and the corresponding penalties, some of which are listed in the table below.

Violation	Penalty
Failure to issue or deliver DTEs	50% of the amount of the transaction for each document
Issuance of DTEs without complying with the requirements established in article 119-G	30% of the amount of the transaction for each document
Failure to transmit the DTEs through the online platform established by the tax authorities	100% of the amount of each transaction
Failure to deliver the graphic representation associated with the DTEs	30% of the amount of the transaction for each document
Failure to transmit a contingency event or invalidation message	Nine monthly minimum wages
Transmitting a contingency event or invalidation message after the deadline established by the tax authorities	Nine monthly minimum wages
Failure to comply with the regulations on electronic documents issued by the tax authorities	Nine monthly minimum wages

Transition rules

The legislative decree provides for some transition rules, including the following:

- The tax authorities will establish the dates as from which taxpayers will be required to issue DTEs and will specify the physical or printed documents and the electronic or computerized systems that will cease to be used and whose authorizations will become void after specified dates. If appropriate, the tax authorities will provide the necessary transition rules for these purposes.
- If, upon the entry into force of the legislative decree, taxpayers have an existing supply of documents related to VAT control, they may continue to use these documents until their supply is exhausted or until the tax authorities issue a resolution informing taxpayers of the obligation to issue DTEs.

Finland

Amendments to VAT rates proposed for sales of electricity and passenger transport

A Finnish government proposal (HE 194/2022 vp) published on 29 September 2022 is pending that would temporarily amend specific VAT rates for energy and passenger transportation, in response to inflation and increased energy prices. According to the proposal, the VAT rate on sales of electricity would be reduced to 10% from the general 24% rate from 1 December 2022 to 30 April 2023. The VAT rate on passenger transport would be reduced to a zero rate (i.e., an exemption with the right to deduct input VAT) from the existing 10% rate from 1 January 2023 to 30 April 2023.

Finland

Temporary VAT exemption for certain supplies to displaced persons enacted

A Finnish government proposal (HE 77/2022 vp) was passed into law on 30 September 2022 that amends the VAT Act to grant a temporary VAT exemption for intra-Community acquisitions of goods, domestic sales of goods, and services relating to such goods if the goods are provided free of charge to displaced persons due to Russia's invasion of Ukraine. Input VAT on acquisitions of such goods is deductible. According to the enacted legislation, the temporary VAT exemption applies retroactively from 24 February 2022 to 31 December 2022.

Finland

Updated guidance issued on VAT treatment of tax warehouses

The Finnish Tax Administration issued updated official guidance (VH/5079/00.01.00/2022) in relation to the VAT treatment of tax warehouses on 7 October 2022, which is effective retroactively as from 20 June 2022. The updated guidance was provided to reflect changes in the Finnish VAT legislation that were made through an amendment (134/2022) that is effective as from 25 February 2022. Due to the changes in the law, goods can be sold from a tax warehouse at airports to private travelers who arrive in Finland or depart from Finland.

France

Law and regulations on e-invoicing and e-reporting requirements published

Article 26 of France's Amending Finance Law 2022, published in the official gazette on 17 August 2022 (in French only), contains the legal provisions for the new e-invoicing and e-reporting requirements that generally will apply as from 1 July 2024. The regulations concerning the new obligations are set out in

Decree No. 2022-1299 and a Ministerial Order, both dated 7 October 2022 (in French only). The scope of mandatory e-invoicing in France was extended under the Finance Law 2021 to transactions carried out between taxable persons. At the same time, companies will be required to transmit the invoice data to the French tax authorities (FTA) (e-reporting).

The FTA, assisted by the Agency for State Financial Information (AIFE), is reviewing the practical considerations of implementation, and an English version of the external specification file for electronic invoicing has been published on the FTA's website.

A summary of the upcoming requirements is provided below.

Scope of the e-invoicing/e-reporting requirements

The e-invoicing rules will apply to transactions between taxable persons established in France (including the French branches of foreign entities) and within the territorial scope of the French invoicing obligations.

The e-reporting rules will apply specifically to:

- Taxable persons established in France (including the French branches of foreign entities) for business-to-business (B2B) cross-border transactions, other than those physically taking place wholly outside of France, and business-to-customer (B2C) transactions; and
- Taxable persons not established in France for transactions carried out in France that are subject to French VAT. Examples include B2C transactions when the customer is located in France, or B2B transactions performed with a foreign company not registered for VAT in France.

The e-invoicing and e-reporting rules will not apply to the following operations:

- Transactions that are outside the scope of French VAT;
- Imports of goods (other than imports from Martinique/Guadeloupe/Réunion, where a specific regime is applicable);
- VAT-exempt transactions where the issuance of an invoice is not compulsory; and
- Transactions related to defense or security.

Obligations for taxable persons

Taxable persons subject to the e-invoicing rules will have to use a private certified platform, or the public electronic portal (Chorus Pro), to issue, transfer, and receive their invoices. E-invoices will have to be issued and transferred using a specific structured file format, such as XML UBL, XML CII, or Factur-X.

During a transitional period, submitting invoices in PDF format on these platforms will be permitted; however, these will have to be converted into one of the approved structured files before being sent to customers.

All taxable persons subject to the e-invoicing and e-reporting obligations will have to transfer the following data to the FTA using specified processes:

- Transaction data: This will primarily include the current mandatory statements required in both the tax and commercial regulations; however, four new pieces of information also will have to appear on the invoice. These are:
    - The SIREN number of both the taxable person and the customer;
    - The nature of the transaction (i.e., whether a supply of goods or services, or both);
    - Notification of an election for the VAT accrual regime, if applicable; and
    - As from 1 January 2026, the ship-to address, if different from the customer's address.

  For e-invoicing, this data will be extracted from the electronic invoices and transmitted to the tax authorities by the invoicing platforms. For e-reporting, the data also will be extracted and transmitted if the taxable person has issued electronic invoices to customers; otherwise, the platforms will transmit information provided directly by the taxable person.

- Status of the invoice and payment data: When a taxable person has created an electronic invoice, the status of the invoice will have to be updated by indicating either submitted, rejected, refused (only for e-invoicing), or payment received. The payment status (and corresponding payment data) will only be required for supplies of services, unless the transaction is subject to the reverse-charge mechanism, or if the supplier has elected for the VAT accrual regime.

The implementation of the e-invoicing and e-reporting rules has been postponed until 1 July 2024 and will follow the following timeline:

- As from 1 July 2024, all companies, regardless of their size, will be required to receive invoices in electronic form for transactions where the supplier is required to issue them.
- Then, mandatory implementation of e-invoicing and e-reporting obligations will be applied gradually, in three steps:;
    1. As from 1 July 2024 for large companies (greater than 5,000 employees and at least either EUR 1.5 billion turnover or EUR 2 billion balance sheet);
    2. As from 1 January 2025 for medium-sized companies; and
    3. As from 1 January 2026 for small businesses (less than 250 employees and not greater than either EUR 50 million turnover or EUR 43 million balance sheet).

Guernsey

Tax highlights of 2023 budget

Guernsey's 2023 budget was published on 3 October 2022 and opens with comments on the structural deficit that will limit Guernsey's capital spending if not addressed in the very near future. The budget foreword warns that this budget is "presented against a longer-term backdrop of a significant imbalance in the States' finances" with "little scope for raising additional revenues through the existing tax system."

Looking forward to the future shape of Guernsey's tax system, the foreword acknowledges that "small incremental changes to existing taxation will not address the challenges that are being and will be faced. There needs to be a fundamental change in our taxation system giving a significant and ongoing upwards shift in the amount of revenue raised."

The budget report confirms that the Tax Review is approaching its conclusion and proposals will be published for consideration at the January 2023 States of Guernsey meeting: "The Assembly will need to make difficult decisions about the future management of the States' finance. If this is not done, each successive budget will become more difficult to balance."

Therefore, this budget does not redress much of the structural deficit at this stage and many of the measures outlined below focus more on the rising cost of living and the ongoing housing crisis in Guernsey.

The following is a summary of the key tax changes in the 2023 budget.

Rental property: Mortgage interest relief

With effect from 1 January 2023, the percentage of mortgage interest paid that will be eligible for relief against rental income received will be restricted to 75%, reducing by a further 25% in each subsequent year until 2026 when no relief will be due. It is estimated this could raise at least GBP 180,000 per annum.

Principal private residence: Mortgage interest relief

As a measure to support people during this time of high inflation and rising interest rates, the phasing out of mortgage interest relief on a principal private residence will be extended by one year; the interest cap will now remain at GBP 3,500 for 2023, reducing in subsequent years until 1 January 2026 when it will be fully withdrawn.

Pension schemes

The introduction of a penal tax rate of 50% on unauthorized payments made from Guernsey pension schemes is proposed; these are payments which are ultra vires or breach the conditions for the pension scheme's approval for tax purposes.

Formal legislation is to be introduced so that no new 157E pension schemes can be approved; these schemes were introduced in 2012 in an attempt to retain qualifying recognized overseas pension scheme status for relevant Guernsey pension schemes but were immediately blocked by UK HM Revenue & Customs regulations. No such schemes have been approved since June 2012.

Personal allowances

A 7% increase in personal income tax allowances is proposed, increasing an individual's allowance by GBP 850 to GBP 13,025 for 2023. This is to be balanced by the lowering of the threshold for the withdrawal of personal allowances from GBP 100,000 to GBP 90,000.

The annual tax-free lump sum for a pension scheme of up to 30% of the fund value is to remain at its 2022 level of GBP 203,000 for 2023.

Tax cap

The maximum Guernsey tax liability (the "tax cap") will increase from GBP 130,000 to GBP 150,000 a year for non-Guernsey source income and Guernsey bank interest, and from GBP 260,000 to GBP 300,000 a year for worldwide income. There are currently 25-30 individuals or couples who benefit from the tax cap.

Referring to the recent announcement that independent taxation also will take effect in 2023, it should be noted that as from 1 January 2023, each spouse or civil partner will be liable to pay the tax cap, if applicable, rather than a single cap covering the couple as is currently the case.

Unoccupied property

There is an intention to introduce at the next budget an enhanced tax on real property (TRP) charge on unoccupied property, envisaged at this stage, broadly, to be property that has not been occupied for at least six months in the previous calendar year.

Document duty

A reduction in the document duty to encourage "downsizing" is proposed by way of charging 0% duty on the first GBP 400,000 of any new property cost, a reduction in document duty of up to GBP 10,875.

For second properties, that are not to be the principal private residence of the purchaser, an additional 2% on each document duty band is proposed.

Other taxes and duties for 2023

Other taxes and duties	Duty/rates	Comments
Tobacco	Cigarettes, cigars and other tobacco products—an increase of 11%	This will add an average of 69p onto the cost of a packet of 20 cigarettes
Alcohol	Alcohol duty—an increase of 7.5%	This increases the price of a pint of beer/cider by 3.9p, bottles of wine by 17p, and bottles of spirits by GBP 1.17 (raising GBP 250,000 in real terms)
Petrol	Motor fuel—an increase of 4.6p to 80.9p per liter (a 6% increase) Petrol for marine use—55p per liter (a 6% increase) Concessionary rate of duty for biodiesel—70.9p per liter (a 6.9% increase)	Diesel for marine (and other non-road) use would remain exempt from duty The increases should raise GBP 1.2 million in real terms
TRP	TRP on commercial buildings and land—an increase of 7.5% TRP on domestic buildings and land—increases averaging 8%, but no increase for properties with a TRP rating under 200	These changes are expected to raise GBP 300,000 and GBP 200,000 respectively in real terms

Deloitte Guernsey comments

The 2023 budget notes that some difficult fiscal questions will need to be answered in the near future and makes limited budgetary changes in the meantime. The forthcoming results of the Tax Review take on an increased significance as the cost of living increases at the same time as a growing structural deficit in the island's finances.

The budget attempts to address some of the issues in the housing market with the introduction of the downsizing document duty incentive coupled with additional document duty on second homes, the withdrawal of mortgage interest relief for residential property letting, and a penal TRP charge for unoccupied property. It will be interesting to see how effective these measures are in leveling the property playing field. It also is vital that these measures contribute in a positive way to the island's plans to attract more people to live and work in Guernsey—where quality, affordable housing is a primary consideration.

India

Round-up of indirect tax rulings and other developments, July-August 2022

This article provides an overview of some important rulings reported in July and August 2022 concerning India's goods and services tax (GST), customs duty, central excise duty, and service tax laws, and various other indirect tax developments.

GST

Union of India v. Filco Trade Centre Pvt. Ltd.
2022-TIOL-57-SC-GST

The Supreme Court has directed the Goods and Service Tax Network (GSTN) to open the common portal for filing of forms for claiming transitional credit through Forms TRAN-1 and GST TRAN-2 for two months as from 1 September through 31 October 2022. The GSTN must ensure that there are no technical glitches during the said period. The tax authorities must verify the veracity of the claims within 90 days and pass the appropriate orders. Subsequently, the transitional credit granted must be reflected in the electronic credit ledger (ECL) of the assessee.

Union of India v. Bharat Forge Ltd. and Ors.
2022-TIOL-67-SC-GST

The respondent was one of the bidders (suppliers) for a global tender for the procurement of turbo wheel impeller balance assemblies put out by the Railway Board (purchaser) in 2019.

The respondent approached the Allahabad High Court requesting the issue of a writ of mandamus on the grounds that neither the notice inviting tender nor the bid document mentioned the relevant harmonized system of nomenclature (HSN code) so as to identify the GST rates applicable to each product and service. The respondent had quoted GST at the rate of 18%, whereas the other bidder had quoted GST at the rate of 5%, and as a result, the petitioner's bid was not selected. The High Court held that where the bid quotation is inclusive of GST, it is the duty of the party issuing the tender to provide the details of the applicable GST rates and HSN codes in the bid document.

The Supreme Court observed that a writ of mandamus only may be issued in cases where the authority having discretion fails to exercise that discretion and acts under the "dictation of another authority." Further, it reversed the High Court's decision and held that appropriate classification of goods/services and payment of GST liability is the sole responsibility of the supplier (bidder) (except in case of the reverse charge mechanism) and held that there was no public duty upon the purchaser to indicate the HSN code so as to ensure that the successful bidder pays the appropriate tax. The Supreme Court further ordered that in all cases where a contract is awarded by the railways, a copy of the document by which the contract is awarded containing all material details must be forwarded immediately to the relevant jurisdictional officer.

Vodafone Idea Ltd. v. Union of India
2022-TIOL-997-HC-MUM-GST

The petitioner is engaged in providing telecom services including international inbound roaming services and international long-distance services to foreign telecom operators (FTOs). The petitioner classified such services as "export of services" under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and filed an application for a refund of the IGST paid on such exports. The refund application was rejected on the grounds that the customers of FTOs make calls within the territory of Maharashtra and also the roaming services which were provided to customers (visiting India from abroad) were consumed within India. Therefore, the place of supply of the services is within Maharashtra and not outside India and the services provided by the petitioner do not qualify as exports of services

The High Court observed that in the present case the petitioner is the "supplier of services" and the FTOs are the "recipients of the service." The petitioner had issued invoices to the FTOs and not to any individuals, which substantiates that the services were provided to FTOs and not to an individual. Thus, the High Court held that the place of supply of the services supplied by the petitioner is the "location of recipient of the service," i.e., the location of the FTOs, which is outside India. Also, the relationship between the FTO and the subscriber is on principal-to-principal basis and not on a principal-to-agent basis. As such, if the subscriber notices any discrepancy in the service, they cannot talk directly to the petitioner as the representative of the FTO; therefore, the subscriber is not the representative or agent of the FTO.

Basanta Kumar Shaw Proprietor of M/s N.M.D. Engineering Works v. The Assistant Commissioner of Revenue
2022-VIL-529-CAL

The petitioner was issued a show cause notice (SCN) alleging that there was a mismatch between the petitioner's input tax credit (ITC) on Form GSTR-2A (autopopulated details of receipt of goods or services) versus the details of outward supplies provided by the suppliers on their Forms GSTR-1 and GSTR-3B for tax periods as from April 2018 through March 2021 and such mismatched credit was inadmissible. The petitioner did not respond to the SCN; therefore, the authorities passed the order to initiate recovery proceedings and blocked the ITC shown in the ECL of the petitioner. A writ petition was filed against the impugned order and the petitioner contended that on the date when the proper officer invoked the blocking of the ECL, the ECL must have a positive balance. Where the credit is nil, this rule cannot be invoked.

The High Court relied on the decision of the Allahabad High Court in the case of M/s R M Dairy Products LLP, in which it was held that the word "available" occurring in rule 86A(1) cannot be read in isolation, but has to be read together with the remaining words "in the electronic credit ledger has been fraudulently

availed or is ineligible." The words "has been fraudulently availed "clearly denote a situation which has occurred in the past. The High Court opined that, to state that rule 86A can be invoked only if there is a positive balance available in the credit ledger would be tantamount to making the rule redundant and defeating the very purpose of enacting such a rule. The High Court refused to interfere with the impugned order.

Baker Hughes v. Union of India and Ors.
2022-VIL-449-RAJ

The petitioner procures specified goods, materials, and equipment from India as well as overseas for onward dispatch to its customer situated in India, for carrying out petroleum exploration and production operations. It procured goods by paying GST from 5% to 28% (input tax) and supplied the same to the customer at the concessional GST rate of 5% (output tax). Accordingly, the petitioner claimed a refund of the unutilized accumulated ITC arising from the inverted duty structure. The jurisdictional authorities issued a SCN challenging the refund claim quoting a Central Board of Indirect Taxes and Customs (CBIC) circular stipulating that a refund under the inverted duty structure is not available where the input and output supplies are the same. Rejecting the submission made by the petitioner, the refund rejection order was passed, against which the writ petition was filed.

Admitting the writ, the High Court observed that the applicable provision under the Central Goods and Services Act, 2017 (CGST Act) is unambiguous and does not carve out any exception that a refund of ITC under the inverted duty structure would not be available where the input and the output goods are the same. Further, the High Court opined that the circular quoted by the authorities, being subordinate legislation, conflicts with the parent legislation, and directed the respondent to grant the refund.

KPH Dream Cricket Pvt. Ltd.
2022-TIOL-28-AAAR-GST

The appellant operates a cricket team in the Indian Premier League (IPL) and has entered into a franchise agreement with the Board of Control for Cricket in India. The appellant also distributes IPL tickets free of cost to local governmental authorities and officials, consultants, etc. to promote business and goodwill. The appellant approached the Authority for Advance Rulings (AAR) for a ruling on the issue of whether distribution of free complimentary tickets falls within the ambit of "supply." The AAR held that the distribution of such tickets constitutes a supply and the appellant is eligible to claim ITC in relation to such activity.

The appellant filed an appeal against the AAR's decision before the Appellate Authority for Advance Rulings (AAAR), which held that the activity of providing free complimentary tickets does not fall within the definition of supply as there is no element of consideration. However, where such complimentary tickets are provided by the appellant to a "related person" or a "distinct person," that falls within the ambit of "supply" on account of schedule I of the CGST Act and the appellant would be entitled to claim ITC attributable to the supply.

M/s Medha Servo Drives Pvt. Ltd.
2022-VIL-64-AAAR

The appellant is involved in the supply of design, development, manufacture, supply, testing, and commissioning of microprocessor sets to India Railways in accordance with prescribed specifications. The price is agreed between the appellant and its client for each set separately. The appellant approached the AAR to determine the nature of the supply.

The AAR held that the supplies by the appellant qualify as a “mixed supply” because such items are supplied at individually designated separate prices with individually designated separate HSN codes and GST rates. The appellant challenged the AAR’s ruling and appealed before the AAAR.

The AAAR upheld the AAR’s decision and opined that breaking down the price of individual items does not necessarily imply that other items are being separately supplied for separate prices. Further, the purchase order specified that one single payment was to be made for the complete set. Therefore, it was held that the supply qualified as a mixed supply and not as a composite supply as supplies are not naturally bundled and no individual item qualified as the principal supply.

M/s Toplink Motorcar Pvt. Ltd.
2022-VIL-176-AAR

The applicant is an authorized dealer of Hyundai Motor India Limited and purchases vehicles to be used as demonstration vehicles. The vehicles are purchased against tax invoices which are reflected in its books of accounts as “capital assets” and ITC is claimed on the purchases. The demonstration vehicles are sold after a certain period of time. The applicant sought an advance ruling as to whether the outward GST liability payment on the sale of such vehicles could be discharged by utilizing the ITC claimed at the time of purchasing the vehicles and on other related expenses such as repairs and maintenance, insurance, etc.

The AAR commented that the demonstration vehicles are not used for transportation of passengers by the applicant. It held that the purchase of the vehicles is for further supply, hence the applicant is entitled to claim ITC on demonstration vehicles (subject to satisfaction of the necessary provisions and conditions under the CGST Act) and can offset the ITC against output GST payable.

Customs

M/s. Divine Chemtee Limited v. Principal Commissioner of Customs, Vishakhapatnam
2022-TIOL-745-HC-AP-CUS

The petitioner is a unit within the Visakhapatnam special economic zone (SEZ). The petitioner has been undertaking authorized operations, namely the manufacture and export of biodiesel and also trading in such goods from outside the SEZ area in a bonded warehouse as permitted under a license. The petitioner imported four consignments into the unit, undertook certain operations on the consignments, and subsequently exported them. The petitioner thereafter filed a shipping bill with the Visakhapatnam SEZ for export of the consignment of biodiesel.

The Directorate of Revenue Intelligence (DRI) officials visited the bonded warehouse and took samples of the material said to have been exported on the premise that the petitioner was attempting to export without undertaking any process and without even bringing the material to the factory premises within the SEZ. Accordingly, the DRI officials alleged undervaluation of imports and detained the exported material under the Customs Act, which action subsequently was converted into a seizure. The petitioner filed a writ petition before the Andhra Pradesh High Court against the order imposing penalties and the seizure of goods under the Customs Act.

The High Court observed that DRI officials have no power or jurisdiction to inspect or seize goods in respect of units situated in an SEZ area. The High Court held that the power to investigate offenses in SEZ areas is conferred through the SEZ Act and considering the non-obstante clause in the SEZ Act, the SEZ Act would prevail over the Customs Act.

Central excise

M/s Reliance Jio Infocomm Ltd. v. Assistant Commissioner, CGST & Central Excise, Belapur
2022-VIL-287-CESTAT-MUM-CE

The appellant is a telecom operator and installed telecom towers to offer LTE 4G wireless telecommunication services. It was alleged by the adjudicating authorities that the telecom towers on which a central value added tax (CENVAT) credit of excise duty had been claimed did not qualify either as a ”capital good” or “input” under the applicable credit rules, since they are attached to the earth and are “immovable structures” fixed to the ground.

The tribunal admitted submissions of the appellant that 4G towers are more mobile compared to traditional towers used for 3G/2G telecom services. The tribunal observed that if the towers were immovable property, they would not have qualified as excisable goods. The tribunal further held that the towers were merely attached to foundations above the ground using nuts and bolts, they were not embedded in earth, and hence were not immovable structures.

M/s Neel Metal Products Ltd. v. Commissioner of CGST, Dehradun
2022-TIOL-686-CESTAT-DEL

The appellant is a manufacturer of automotive parts and supplies the finished goods to its customer. The customer amended the purchase order with retroactive effect, modifying the prices downwards and issued debit notes to the appellant. As a result of the issuance of the debit notes, the appellant paid excess excise duty and hence filed for refund claim for a refund of the excess excise duty. The refund claim was rejected by the adjudicating authority as well as the Commissioner (Appeals) on the grounds that it was hit by unjust enrichment. The appellant appealed to the tribunal.

The tribunal observed that appellant had reconciled the debit notes and their composition with the invoices and there was, therefore, no reason to doubt the transaction between the appellant and the buyer. Further, since the buyer of the goods was operating under an “area based exemption” during the relevant period it could not have claimed and utilized the CENVAT credit. Adequate entries had been made by the appellant in its books of accounts and the amount of the refund claim also had been shown as duty recoverable from the government in the financial statements; hence, the appellant was entitled to a refund of the excess excise duty.

Service tax

Commissioner of Service Tax Delhi v. Quick Heal Technologies Ltd.
2022-TIOL-65-SC-ST

The respondent is engaged in the development of antivirus software which is supplied along with a code either online or on a CD/DVD to end consumers in India. An inquiry was raised against the respondent following which the Directorate General of Central Excise Intelligence (DGCEI) adjudicated that the respondent failed to pay service tax on the supply of the code to the end consumer. The demand was set aside by the tribunal and the tax authorities appealed before the Supreme Court.

The Supreme Court upheld the tribunal’s order and referred to the ratio in the BSNL case that a contract cannot be split into two. Once a lump sum has been charged for the sale of the CD and sales tax has been paid thereon, the revenue cannot subsequently impose service tax on the entire sale consideration once again on the grounds that updates are being provided. In essence, it is one transaction of “sale of

software" and once it is accepted that the software put on CD is "goods," there cannot be any separate service element in the transaction. In any event, the user has possession or full control of the software and the transaction amounts to a "deemed sale" which would not attract service tax.

M/s Anglo Eastern Maritime Services Pvt. Ltd. v. Commissioner of CGST, Mumbai East 2022-TIOL-586-CESTAT-MUM

The appellant had provided independent services of recruitment of ship's crew members to its associated overseas company based in Hong Kong. The foreign associate was undertaking the full management of ships for different ship owners. The appellant treated these services as the export of a service and filed a refund claim for unutilized accumulated CENVAT credit. The refund claim was rejected by the adjudicating authority and the Commissioner on the grounds that the exporter is an intermediary and the place of provision of the service is in India.

The tribunal observed that the agreement clearly contains a provision that it is an agreement on a principal-to-principal basis. The tribunal held that the appellant is not an intermediary, since it provided trained manpower to its overseas customer who recruited the individuals and engaged them in the ship owned by others through a separate ship management agreement.

The tribunal further held that it is erroneous to hold that the foreign associate had outsourced crew management services to the appellant whereas, in reality, it picked up trained crew members from the appellant selected at its instance and recruited them in its own company for providing crew management services to ship owners.

The tribunal concurred with the stand taken by the appellant that in view of the decision in the case of Eastern Pacific Shipping India Pvt. Ltd., a seafarer's recruitment service provider who processes the entire selection, medical test, insurance, transportation, training, etc. to the overseas client and receives convertible foreign exchange, is not an intermediary.

Other updates

47th GST council meeting held on 28-29 June 2022

In the 47th GST council meeting held on 28-29 June 2022 which coincided with the fifth anniversary of the implementation of GST, the council's discussions were focused on the reports tabled by various groups of ministers on GST rate rationalization, fixing GST rates for online gaming, and information technology reforms. Key recommendations of the council were directed towards reducing exemptions and providing a package of measures to facilitate trade.

Extension of period to impose and collect compensation cess through 31 March 2026

On the recommendation of the GST council, the central government has invoked the Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022 and on 24 June 2022 issued Notification No. 1/2022-Compensation Cess to extend the period for the imposition and collection of compensation cess through 31 March 2026.

Exemption on renting of residential dwelling withdrawn

Notification No. 5/2022-Central Tax (Rate) dated 13 July 2022 provides that as from 18 July 2022, the exemption on renting of residential dwelling to registered persons is withdrawn and the tax on the rental income is payable under the reverse charge mechanism. This means that renting of residential dwellings

up to 17 July 2022 is exempt from GST regardless of the status of the tenant, i.e., whether the service provider or service recipient is registered or unregistered. However, as from 18 July 2022, a tenant who is GST registered is liable to GST on renting for residential purposes under the reverse charge mechanism.

CBIC issues circulars clarifying various GST-related issues

On 6 July 2022, in furtherance of the recommendations made at the 47th GST council meeting, the CBIC issued various clarificatory circulars addressing:

- Changes to the provision of information on Form GSTR-3B (Circular No. 170/02/2022-GST);
- The applicability of demand and penalty provisions in respect of transactions entailing issuance of tax invoices without actual supply of goods or services or both (Circular No. 171/03/2022-GST);
- Clarification in respect of ITC claimed by a deemed exporter, blocked credit in terms of section 17(5) of the CGST Act, the taxability of perquisites provided by an employer to its employees, etc., and directions regarding the utilization of amounts available in the ECL (Circular No. 172/04/2022-GST); and
- The restriction for inverted duty structure refunds in the case of traded goods (Circular No. 173/05/2022-GST).

GST council seeks representation from stakeholders on comprehensive changes to Form GSTR-3B

As discussed at the 47th GST council meeting, a proposal has been published for public consultation, seeking input and suggestions from stakeholders on the concept paper formulated on comprehensive changes to Form GSTR-3B. Stakeholders are requested to provide their views, comments, or suggestions by 15 September 2022 via email to: gstpolicywing-cbic@gov.in to facilitate the finalization process.

Introduction of GST on prepackaged and labeled commodities

Notification No. 06/2022–Central Tax (Rate) issued on 13 July 2022 provides that as from 18 July 2022, GST applies on supplies of prepackaged and labeled commodities subject to the provisions of the Legal Metrology Act (LMA), with conditions that such goods must be packed in a package of predetermined quantity whether sealed or not, and the package must bear declarations as required under the LMA and rules.

Further, a clarificatory circular (Circular No-F. No. 190354/172/2022-TRU dated 17 July 2022) has been issued by the CBIC on the applicability of GST on prepackaged and labeled commodities, clarifying aspects such as the stage at which GST is payable, the scope of goods, exclusions, weight thresholds, etc.

Introduction of new rule in relation to work from home provision in SEZs

The Department of Commerce on 14 July 2022 issued Notification No. F. No. K-43013(12)/1/2021-SEZ to amend rule 43 and insert a new rule 43A in the SEZ Rules, 2006, laying down the provisions to be followed by SEZ units to permit a maximum of 50% of total employees (including contractual employees) to work from home.

A clarificatory circular (Circular No. F. No. DC/NSEZ/2022/WFH/5936, dated 19 July 2022) has been issued prescribing the procedure for seeking permission to work from home, followed by the issuance of standard operating procedures for harmonized implementation of the new rule by SEZ units and Development Commissioners (Instruction No. 110- F. No. K-43013(12)/1/2021-SEZ dated 12 August 2022).

CBIC issues circulars clarifying applicability of GST on liquidated damages, compensation, and penalties

The CBIC issued Circular No. 178/10/2022-GST on 3 August 2022 to ensure uniformity in the application of provisions related to GST on payments in the nature of liquidated damages, compensation, penalties, cancellation charges, late payment surcharges, etc.

Reduction in the turnover threshold for generation of an e-invoice under GST

Notification No. 17/2022-Central Tax issued on 1 August 2022 amends Notification No. 13/2020-Central Tax dated 21 March 2020 to implement e-invoicing for taxpayers with aggregate turnover exceeding INR 100 million as from 1 October 2022.

CBIC issues guidelines for arrest and bail

On 17 August 2022, the CBIC issued Instruction No. 2/2022-23-[GST-Investigation] providing guidelines for arrest and bail in relation to punishable offences under the CGST Act. The instruction discusses the conditions under which the approval to arrest can be granted, the procedure for arrest, and post-arrest formalities, and confirms that the arrest report is to be sent to the relevant member (compliance management) and the zonal member within 24 hours of the arrest.

CBIC issues circular on customs duty applicable on display assembly of a cellular mobile phone

In Circular No. 14/2022-Customs issued on 18 August 2022, the CBIC has clarified that the import of the display assembly of a cellular mobile phone along with the back support frame of metal/plastic is eligible for the concessional rate of customs duty (basic customs duty (BCD)) at the rate of 10% as per Sr. No 5D of exemption Notification No. 57/2017-Customs dated 30 June 2017. However, for other items such as the antenna pin, power key, etc. that are fitted along with a display assembly with or without a back support frame, BCD at the normal rate of 15% applies.

Luxembourg

2023 budget law submitted to parliament

On 12 October 2022, Luxembourg's finance minister presented the draft 2023 budget law to parliament, including direct and indirect tax measures. As indicated in the draft law, the government currently does not have sufficient visibility and budgetary margin to implement the major tax reform that had been expected. However, the draft budget law would provide some relief measures and clarify certain tax provisions, such as the reverse hybrid rule (article 168quater of the Luxembourg Income Tax Law (LITL)). The main proposals are described below.

Deadline for tax returns

The draft law proposes that the deadline for filing certain tax returns, as specified in the tax law, be extended from 31 March to 31 December following the tax year. This measure would relate to personal income tax, corporate income tax, municipal business tax, and wealth tax returns and would apply to 2022 tax returns to be filed (in principle) in 2023. The extension also would apply in cases where spouses have made an irrevocable election to be taxed separately.

Personal income tax

The existing law allows employers to grant a profit-sharing bonus ("prime participative") to their employees, based on the employer's financial results (i.e., profits). The granting of the bonus is subject to certain conditions at both the employer and employee levels. One of the employer-level conditions is that the total amount of the bonus (i.e., the bonus pool) that may be granted to employees is limited to 5% of the employer's profits for the fiscal year immediately preceding the fiscal year in which the bonuses are granted. The draft law includes a proposal that would allow the 5% limit for companies that are part of a fiscal unity to be computed as the total of the companies' net profits, upon the election of the head of the fiscal unity and all of its integrated companies. The application of this provision would be subject to an election that could be made each year.

Until further possible changes, any "group" context consideration is excluded, meaning that each eligible employer has to be registered in the files of the Luxembourg tax authorities (i.e., the one whose national identification number appears in the "Employment" section of the tax deduction form or "electronic tax card" for any given employee eligible for a profit-sharing bonus).

The draft law also proposes reducing the threshold for the application of the "inpatriate" regime from EUR 100,000 to EUR 75,000, which would extend the scope of application of the regime. The inpatriate regime provides certain tax exemptions for highly skilled executives hired in or assigned to Luxembourg (subject to certain conditions).

The draft law proposes other amendments covering the determination of the rental value of real estate, the definition of a paying agent for the application of the 20% final taxation on interest income of individuals, and the benefit of the special property allowance.

In addition, a grand-ducal decree amending the conditions for the application of 4% accelerated depreciation of property used for home rentals is expected.

Reverse hybrid rule

Article 168quater of the LITL would be amended to specify that the net income of a reverse hybrid entity that is attributable to associated enterprises and that is not taxed in Luxembourg or in another jurisdiction would be subject to corporate income tax only if the non-taxation of the net income of the associated enterprise is due to a mismatch in the characterization of the entity. Based on this clarification, the net income of a reverse hybrid entity attributable to exempt investors would not be subject to corporate income tax. The change would apply as from the 2022 taxable year, which is the first year of application of article 168quater.

Indirect taxes

The budget law and an additional draft law include some measures regarding indirect taxes.

The first measure is a proposed reduction of 1% in the standard VAT rate of 17%, the intermediate rate of 14%, and the reduced rate of 8% (to 16%, 13%, and 7%, respectively) in 2023, while the super-reduced rate of 3% would remain unchanged.

The application of the 8% VAT rate (7% in 2023) would be extended to the following:

- Repair services for household appliances; and
- Supplies of bicycles, including electric bicycles, and rental and repair services for such bicycles.

The application of the 3% VAT rate would be extended to the supply and installation of solar panels on and adjacent to private dwellings, housing, and public and other buildings used for activities in the public interest.

An exemption from the additional "CO_2" excise tax for biofuels and bioliquids, as defined in EU directive 2018/2001, is included in the draft law.

A modification of the rates of excise duties applicable to cigarettes is expected.

Lastly, some changes are introduced regarding the financial compensation that aims to reduce the sales price of gasoil and liquified petroleum gas. The most important change is the extension of the measure until 31 December 2023.

Next steps

The parliament will review, potentially modify, and vote on the draft budget law before the end of 2022.

Malaysia

Service tax updates (September 2022)

This article summarizes some recent service tax updates in Malaysia as at September 2022, which include the release by the Royal Malaysian Customs Department (RMCD) of an amendment to the service tax policy granting service tax exemptions for certain digital payment service providers; a new service tax policy that appears to require companies operating in the Malaysia–Thailand Joint Development Area (JDA) to pay service tax on taxable services up front, with the option to request a refund; and an updated guide on customs agent services.

Service tax exemptions for digital payment services

Following the publication of the RMCD's Service Tax Policy No. 1/2022 ("STP 1/2022"), which introduced a service tax exemption that is effective from 1 August 2022 up to 31 July 2025 for digital payment services supplied by certain non-bank service providers, the RMCD released an amendment to STP 1/2022 that is effective as from 1 August 2022 (both documents are available in the Bahasa Malaysia language only).

The original policy stated that local (i.e., Malaysian) non-bank service providers eligible for the service tax exemption are those ***governed and licensed*** by Bank Negara Malaysia (BNM) under the Financial Services Act 2013 or the Islamic Financial Services Act 2013.

The amendment removes the words "and licensed" from the requirements, i.e., those without a license from the BNM but that are governed under one of the relevant acts are eligible for the service tax exemption.

Deloitte Malaysia's comments

The effect of the amendment is that the exemption applies to a broader range of entities, i.e., companies do not need to be licensed by the BNM to enjoy the benefit of the exemption.

However, non-bank digital payment service providers should still exercise caution by ensuring that they are governed (or regulated) by the BNM in the manner specified in the policy, and that their services fall within the scope of exempt digital payment processing services.

Lists of bank and non-bank service providers regulated by the BNM are available on the BNM's website.

Service tax exemption and refunds in the JDA

Effective as from 15 August 2022, the Minister of Finance has prescribed that companies operating in the JDA are approved for a refund of service tax paid on all taxable services listed in the Service Tax Regulations 2018. This was given effect by way of the RMCD's Service Tax Policy No. 2/2022 ("STP 2/2022") dated 8 September 2022. Previously, an upfront service tax exemption had been available as from 1 May 2021 under Service Tax Policy No. 1/2021 ("STP 1/2021").

The modified exemption and refund are subject to the following conditions:

- The services acquired must be used entirely for the official business of a company operating in the JDA, and must serve a primary need that is vital in the running of daily operations at the JDA. Services acquired for non-official business or for personal use will not be eligible for the refund.
- For the purposes of control and uniformity, the operator company must make a declaration and the Malaysia-Thailand Joint Authority (MTJA) must verify that the service was acquired entirely for the official business of the company operating in the JDA.
- The acquisition of the services must be paid for by the company operating in the JDA.
- The refund application must be submitted to the Director General (DG) of the RMCD within the period set by the DG.
- It is necessary to comply with any other conditions or procedures set by the DG.

The refund application must be submitted by the end of the month following the quarterly period in which the services are acquired, as indicated below.

Period in which service is acquired	Deadline to submit refund application
15 August 2022–30 September 2022	31 October 2022
1 October 2022–31 December 2022	31 January 2023
1 January 2023–31 March 2023	30 April 2023
Subsequent three-month periods	Last day of the month following the end of the three-month period

Refund applications submitted late will not be processed by the RMCD.

The service tax exemption *does not* extend to imported taxable services acquired from foreign vendors or digital services acquired from foreign registered persons.

With the issuance of STP 2/2022, the upfront service tax exemption under STP 1/2021 was valid only until 14 August 2022.

Deloitte Malaysia's comments

With STP 2/2022 replacing STP 1/2021, it appears that companies operating in the JDA now have to first pay service tax to service providers, and then request a refund from the RMCD. This is in stark contrast to STP 1/2021, under which there was no requirement for such companies to pay service tax to service providers. Companies operating in the JDA should take note and ensure they submit applications for service tax refunds in a timely manner, for purposes of managing cash flow.

Updated guide on customs agent services

The RMCD released an updated guide on customs agent services ("customs agent guide") dated 9 August 2022, which supersedes the previous customs agent guide dated 5 March 2019 ("superseded guide"). The salient updates are as follows:

- The definition of a customs agent now includes freight forwarders, in addition to shipping agents and forwarding agents.
- The services of shipping agents and freight forwarders are ***not*** subject to service tax because these services fall under the category of logistics management services, which were removed from taxable services in 2019.
- There is now a deadline for customs agents to register for service tax, which is ***14 days*** from the date of approval as a customs agent under subsection 90(2) of the Customs Act 1967.
- Some examples of services provided by a customs agent that were considered taxable (listed in paragraph 13 of the superseded guide) have been removed from paragraph 12 in the customs agent guide.
- A new example 6 is inserted to explain that a customs agent providing advice on the import and export of goods would be liable to add consultancy services to its service tax registration and charge service tax accordingly.

Deloitte Malaysia's comments

The updated customs agent guide provides welcome clarity that the services of shipping agents and freight forwarders are not subject to service tax. Customs agents also should take note of the new 14-day deadline to register for service tax once they have obtained approval to be a customs agent.

Malaysia

Amendments to Sales Tax Regulations 2018 in effect

Malaysia's Sales Tax (Amendment) Regulations 2022, which amend the Sales Tax Regulations 2018, have been gazetted and came into operation on 15 August 2022. The key points of the amending regulations are summarized below, which relate to the submission of returns and payments and the conditions for claiming a drawback of sales tax paid on taxable goods that are exported.

Submission of returns

Sales tax returns must be submitted to the Royal Malaysian Customs Department (RMCD) through electronic service, or in any manner that the Director General (DG) of the RMCD may determine.

Submission of payments

The payment of sales tax, surcharges, penalties, fees, or any other amount of money payable under the Sales Tax Act 2018 must be made by electronic banking, or in any manner that the DG of the RMCD may determine.

Drawbacks

The conditions to claim a sales tax drawback have been updated, as follows:

- The three-month period to export the goods is calculated from the date of issuance of the invoice for the taxable goods purchased from the *registered manufacturer* (the reference to a registered manufacturer has been added); and
- The taxable goods must not be used after importation or *purchase* (instead of after importation or the payment of sales tax).

Deloitte Malaysia's comments

It appears that provisions permitting physical (i.e., non-electronic) methods of submitting returns and making payments of sales tax were removed in the amendment. There also is ambiguity regarding the "manner" of submitting returns or payments allowed by the DG of the RMCD, and similar amendments have not yet been released in the case of service tax. To reduce the likelihood of last minute surprises or delays in filing sales tax returns or making sales tax payments, taxpayers should consider seeking clarification from their controlling RMCD station on whether the amendments would affect their existing method of filing sales tax returns or making sales tax payments.

Regarding the changes to the drawback provisions, although these do not appear to be significant, the amendments clarify the requirements to claim a sales tax drawback. As a precaution, businesses should review their existing practice of claiming sales tax drawbacks and consider if the amendments could affect their eligibility to claim drawbacks.

Malaysia

Sales tax exemption is available for drop shipment activities

The Royal Malaysian Customs Department (RMCD) issued Sales Tax Policy No. 2/2022 ("STP 2/2022," currently available in the Bahasa Malaysia language only) on 24 August 2022, indicating that a sales tax exemption is available in relation to drop shipment arrangements under certain conditions where goods purchased by a local (i.e., Malaysian) trader from a registered manufacturer are exported directly to the local trader's customers overseas by the registered manufacturer.

A sales tax-registered manufacturer ("registered manufacturer") that exports its manufactured goods and supports the exports with Customs Form No. 2 (the "Form K2" for the declaration of goods exported) is exempt from the payment of sales tax under item 56 of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ("item 56").

Item 56 does not specifically cover drop shipment arrangements, where a local trader buys from the registered manufacturer and arranges for the registered manufacturer to export the goods from the manufacturer's premises directly to the local trader's customer overseas, and the registered manufacturer is exempt from the payment of the sales tax.

To facilitate drop shipment export arrangements, the RMCD issued STP 2/2022, indicating that the sales tax exemption under item 56 also will apply to drop shipment arrangements, subject to the following conditions:

- The registered manufacturer must issue an invoice containing all the prescribed information (as per regulation 7 of the Sales Tax Regulations 2018) to the local trader without imposing sales tax, and must include the following details:
    - Bill to: The local trader in Malaysia; and
    - Ship to: The overseas buyer.
- The sales tax exemption is granted only at a single stage, i.e., the exemption applies only where the local trader purchases manufactured finished goods from the registered manufacturer and has instructed the registered manufacturer to export the goods directly to the trader's customer overseas. The exemption does not apply for any subsequent sale by the first local trader to a second local trader, even if the registered manufacturer will export the goods to the second trader's customer overseas.
- The following criteria must be complied with when preparing the Form K2:
    - The consignor/exporter of record must be the name of the registered manufacturer;
    - The consignee/importer of record must be the name of the overseas buyer; and
    - The words "Care of" must be listed with the name and address of the Malaysian trader and stated at the left side of the Form K2, next to the column for "Forwarding Agent."
- The bill of lading (BL) also must indicate the same details as the Form K2 (i.e., the consignor must be the registered manufacturer; the consignee must be the overseas customer). Additionally, the BL must state the "Notify Party," which would be the trader.
- For compliance purposes, the registered manufacturer must declare the value of finished goods exported on behalf of the trader under item 18(a) (i.e., Export/Special Area/Designated Area) of the sales tax return form (Form SST-02).

Deloitte Malaysia's comments

Based on a narrow interpretation of item 56, it appears that the sales tax exemption will apply only for transactions between two parties, i.e., the local trader and the sales tax-registered manufacturer that sells its manufactured goods and exports the goods to the local trader's buyers from overseas.

For commercial reasons, drop shipments are common and the sales tax exemption under item 56 should apply as long as the sales tax-registered manufacturer exports the goods directly from its premises to a place outside Malaysia and the export is supported by the relevant Form K2 and other relevant documents (e.g., the BL, commercial invoices, packing list, etc.) required by the Director General of the RMCD.

On a separate note, there was a judicial review decision by the High Court (HC) in August 2022 with respect to the drop shipment mechanism under the goods and services tax (GST) that was abolished and replaced by the sales tax and service tax as from 1 September 2018, where the HC decided that the goods exported to overseas buyers by the taxpayer should not be subject to GST.

In the case, the RMCD had argued that the supply of goods to the local trader should be subject to 6% GST based on the tax invoices issued by the taxpayer, despite the goods being shipped directly to overseas buyers by the taxpayer and the Form K2 being available to support the exportation. However, the HC set aside the RMCD's decision to issue a bill of demand in relation to goods that already had been exported from Malaysia, based on a view that GST should be imposed on the supply of the goods that were supplied overseas, and not based on the ownership of goods.

In light of the decision by the HC, it appears that the RMCD applied a similar position in STP 2/2022 for goods exported from Malaysia by the registered manufacturers, despite the fact that the ownership of the goods was transferred to local traders under the sales tax regime.

Mexico

Uncertainty over IVA exemption applicable to the sale of residential property remains

The Plenary Session of the Administrative Court of the First Circuit has issued a ruling that has mandatory application as from 1 August 2022 to the exemption related to value added tax (IVA) on the sale of residential housing in Mexico. The ruling comes six years after the Plenary Session of the Supreme Court issued a resolution determining to whom the exemption applied, but there are some points that have yet to be clarified.

Background

Article 9 of section II of the Value Added Tax Law (LIVA) provides an exemption from IVA on the sale of residential housing, while article 29 of the implementing regulations for the LIVA (RLIVA) specifies that the provision of construction services for real property intended as residential housing is not subject to IVA "as long as the service provider supplies the labor and materials." Both the sale of residential housing and the provision of construction services for real property intended as residential housing are therefore exempt from IVA in accordance with the LIVA and RLIVA, respectively.

However, based on the tax authorities' interpretation, the exemption for the provision of construction services is subject to the limitation that all the services must be supplied by a single provider. This interpretation was applied by the tax authorities in many cases, whereby the exemption was only deemed applicable when the two acts, i.e., the sale and provision of services, were provided in an interconnected manner by a single entity.

In 2016, this situation led the Supreme Court to issue a resolution specifying that, where a service provider outsources certain services "these services would not fulfill the exemption assumption," on the understanding that the exemption applies only when the construction services are provided in a comprehensive manner, i.e., including labor and materials. However, the resolution disregards the fact that, in this particular industry, the provision of services necessarily involves outsourcing other services. The court analyzed only the provision of construction services as part of the overall service, including the sale.

Notwithstanding the above resolution, in August 2022, the Plenary Session of the Administrative Court of the First Circuit in case 19/2018, was required to analyze and resolve two opposing criteria applied by two collegiate courts. One of the courts ruled that the tax exemption does not apply when a real estate company contracts the comprehensive provision of construction services in order to sell housing; while the other court held that the exemption did apply because it encompassed the two acts (sale and provision of services), both of which are tax-exempt according to the LIVA and RLIVA.

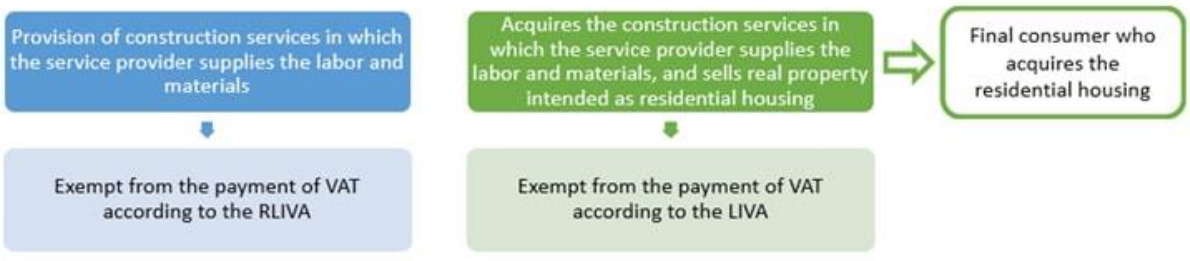
The Plenary Session of the circuit court concluded that the IVA exemption did not apply in cases where a real estate company contracts the provision of construction services for housing that subsequently will be sold because the provision of such services benefits the vendor as opposed to the final consumer.

Analysis

According to the Supreme Court resolution issued in 2016, exemption from IVA would apply only to taxpayers that in practice perform all the activities required to sell residential housing, i.e., in addition to performing the sale, they also must construct the housing, providing both the labor and other required inputs. However, this resolution demonstrated a lack of understanding of the manner in which the construction industry operates, and overlooked the fact that sales activities and the provision of construction services (including labor and materials) are not performed by a single person or entity. Although the 2016 resolution did not reflect the reality of construction industry operations, the judicial resolution of the Plenary Session of the Administrative Court of the First Circuit in August 2022 added an additional criterion that the beneficiary of the exemption must be the final consumer as opposed to a company that contracts construction services.

The exemption essentially is intended to avoid a situation in which the net worth of a final consumer acquiring residential housing is affected by the tax burden that would arise from taxing all the acts performed prior to the sale of the real property.

In this regard, the August 2022 resolution does not achieve the intention of the legislators to benefit the final consumer because, if the provision of construction services is subject to IVA, the effect of this taxation will necessarily be transferred to the final consumer. In order to uphold the legislators' intention, all acts related to the sale of residential housing would need to be exempt from IVA to benefit the final consumer, as illustrated in the following diagram:



A "Decree to grant support for housing and other tax purposes" published in the official gazette on 26 March 2015 established a tax incentive for taxpayers providing "partial" construction services for real property intended as residential housing equal to 100% of the IVA incurred on those services. The decree was enacted "to complement support for the housing construction sector due to its strategic role and prevent this tax [IVA] from increasing the final price." Accordingly, the decree analyzed the problem

arising for the real estate sector and offered the possibility of applying a tax incentive for construction services, albeit without specifying any prohibition for real estate companies, as was effectively the case in the resolution issued in August 2022.

Conclusions

Although different judicial thesis have been issued in relation to the IVA exemption applicable to the sale of residential housing, a clear criterion reflecting the intention of the legislators that could result in a true benefit for the final consumer remains pending. Nonetheless, the benefit will continue to exist based on the application of the 100% IVA incentive provided by the decree for partial construction services, until such time as the tax authorities may decide to repeal it.

Poland

Proposal to extend reduced VAT rates until 31 December 2022

On 7 October 2022, the Polish government on approved a bill to extend the reduced VAT rates introduced under the "anti-inflation shield" law until 31 December 2022 for certain listed products/groups of products (currently, the reduced rates are set to expire on 31 October 2022). The provisions are awaiting the president's signature.

The anti-inflation shield law reduced the Polish VAT rate for crucial products in order to counteract the effects of high inflation. The main changes were as follows:

- 0% VAT rate for:
    - Food products listed in paragraphs 1 through 18 of Annex 10 to the Polish VAT law (i.e., meat, dairy products, fruits, vegetables, cereals and cereal products, seeds, fats and oils, products for special medical purposes, etc.), except goods classified under Polish classification code PKWiU 56 (services related to catering);
    - Soil conditioners, growth promoters, and growing media;
    - Fertilizers and plant protection products (for agricultural production);
    - Garden soil; and
    - Natural gas (Combined Nomenclature code (CN) 2711 11 00 or CN 2711 21 00);
- 5% VAT rate for:
    - Electricity (CN 2716 00 00); and
    - Heat energy; and
- 8% VAT rate for:
    - Motor gasoline (CN 2710 12 45 or CN 2710 12 49) as well as certain related products derived from the mixture of motor gasoline and certain biocomponents;
    - Diesel oil (CN 2710 19 43 and CN 2710 20 11) as well as certain related products derived from the mixture of diesel oil and certain biocomponents;

- Biocomponents as self-contained fuels for combustion engines; and
- Natural gas for internal combustion engines (CN 2711, except for CN 2711 11 00 and CN 2711 21 00) as well as liquefied gaseous aliphatic hydrocarbons (CN 2901).

United Kingdom

Chancellor brings forward further Medium-Term Fiscal Plan measures

On 17 October 2022, the new UK Chancellor of the Exchequer, Jeremy Hunt MP, announced that he will be reversing almost all of the announcements made in his predecessor's "mini-budget" on 23 September 2022. The main exceptions are the 1.25% cuts to employer and employee national insurance contributions, increases to the stamp duty land tax thresholds, and the introduction of investment zones with tax reliefs. Smaller measures including increases to share option limits and a higher subscription limit for the Seed Enterprise Investment Scheme also survived.

In addition to earlier "U-turns" on 3 and 14 October 2022, respectively, abolishing the 45% additional rate of income tax and announcing that the corporation tax rate for companies with profits over GBP 250,000 will increase from 19% to 25% on 1 April 2023 (as originally announced in the Spring Budget 2021 and proposed to be reversed in the September 2022 mini-budget), the chancellor also confirmed that proposals for VAT-free shopping, the freeze on alcohol duty, and the repeal of IR35 reforms will not proceed.

The most significant U-turn was the announcement that the basic rate of income tax will not reduce from 20% to 19% in April 2023 and that the reduction has been postponed indefinitely. The chancellor claims this will claw back GBP 32 billion of tax revenue, undoing just over 71% of the GBP 45 billion of tax cuts in the mini-budget. The energy price guarantee also is scaled back; the support through April 2023 goes ahead, but there will then be a review and a focus on energy efficiency and insulation.

Dividend income tax rates will remain at their increased levels of 8.75%, 33.75%, and 39.35%. The rates were increased by 1.25% in 2022/23 (in parallel with the now reversed increase in national insurance contributions) as part of the funding for health and social care via the Health and Social Care Levy that no longer exists.

The Medium-Term Fiscal Plan still will be presented on 31 October 2022 as planned, with further tax and spending measures expected, including news of the bank surcharge and the plan for capital allowances.

United States

State Tax Matters (7 October 2022)

The 7 October 2022 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
  - Colorado: Proposed rules address treatment of foreign source income and net operating losses
  - Oregon: City of Portland council passes ordinance that includes market-based sourcing

- Sales/Use/Indirect:
    - California: New law requires some marketplaces to collect information from high-volume third-party sellers
    - Texas: High court denies reviewing case that exempts equipment used to excavate tangible personal property from realty

The newsletter also features a recent Multistate Tax Alert: "California enacts legislative fix for pass-through entity tax issue"

United States

State Tax Matters (14 October 2022)

The 14 October 2022 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
    - Iowa: New rule implements state law that contingently reduces corporate income tax rates
    - Louisiana: Department of Revenue proposes changes to rule on elective passthrough entity-level income tax
    - South Dakota: Supreme Court says bank miscalculated federal income tax deduction under franchise tax
- Sales/Use/Indirect:
    - California: Retailer that erroneously collected tax from out-of-state customers must remit to state
    - Iowa: Proposed rule incorporates Department of Revenue interpretations on taxation of digital-based services
    - Mississippi: Supreme Court affirms photographer does not owe tax on digital photo services
    - New York: Service provider deemed to sell nontaxable information services rather than software
    - Texas: Credit ratings of legal entities are taxable but credit ratings of debt obligations are not

The newsletter also features recent Multistate Tax Alerts:

- "Multiple states enact legislation addressing technologies specified in federal IRA and CHIPS Acts"
- "Portland, Oregon adopts market-based sourcing ordinances"

United States

State Tax Matters (21 October 2022)

The 21 October 2022 edition of State Tax Matters includes coverage of the following US state tax developments:

- Administrative:
    - Arkansas: Proposed rules reflect creation of independent tax tribunal to help resolve controversies
- Income/Franchise:
    - New York: Department of Taxation and Finance explains implementation of New York City passthrough entity (PTE) tax
    - Oklahoma: Emergency rules reflect option for immediate and full expensing of qualified property
- Sales/Use/Indirect:
    - Texas: Comptroller of Public Accounts clarifies policy on taxability of wrapping and packaging supplies
    - Texas: Letter ruling addresses car-sharing platform and motor vehicle gross rental receipts taxation
- Other/Miscellaneous:
    - Maryland: Circuit court strikes down novel gross receipts tax on digital advertising services

United States

State Tax Matters (28 October 2022)

The 28 October 2022 edition of State Tax Matters includes coverage of the following US state tax developments:

- Income/Franchise:
    - Illinois: Department of Revenue addresses tax treatment of R&D expenditures and cryptocurrency transactions
    - Illinois: Department of Revenue addresses use of alternative apportionment on sale of right to receive payments and goodwill
    - New York: Taxpayer must include royalty payments received from foreign affiliates in tax base
- Sales/Use/Indirect:
    - Illinois: Department of Revenue answers questions involving marketplace facilitator nexus and responsibilities
    - Washington: Advisory addresses taxation of international investment management services
- Property:
    - Michigan: Appellate court affirms reduced valuation of owner-occupied big-box retail store

The newsletter also features a recent Multistate Tax Alert: “Maryland circuit court strikes down tax on digital advertising services”

Ministry of Finance revises tariff classifications

On 8 June 2022, Vietnam's Ministry of Finance issued Circular No. 31/2022/TT-BTC (Circular 31), which revises the tariff classification of imported and exported goods under the ASEAN Harmonized Tariff Nomenclature (AHTN) 2022. The AHTN is revised every five years, based on the current version of the Harmonized Commodity Description and Coding System (HS) of the World Customs Organization (WCO). The HS is amended every five years to reflect technological, technical, and commercial changes in products. HS 2022 became effective on 1 January 2022 (replacing HS 2017), and WCO signatory jurisdictions may independently decide which date they will adopt HS 2022 within the current calendar year.

Circular 31 replaces Circular No. 65/2017/TT-BT (as amended by Circular No. 9/2019/TT-BTC and which had applied the provisions of AHTN 2017 in Vietnam). Key provisions of Circular 31, which are effective as from 1 December 2022, include:

- An updated list of imported and exported goods, which consists of 21 parts and 97 chapters; 1,228 headings at the 4-digit level; 4,084 subheadings at the 6-digit level; and are further detailed into 11,414 HS codes at the 8-digit level; all fully comply with AHTN 2022 (with an increase of 601 lines at the 8-digit level compared to AHTN 2017);

- Changes in classification related to the pharmacy industry with the supplement of COVID-19 related products, the manufacturing industry with the supplement of many new types of machinery, equipment with updated technology, and the automobile industry with the supplement of electric and gasoline hybrid types; and

- Appendix II containing six general rules on HS code classification (revisions of the Vietnamese translation of some contents without changing the basis of the rules).

Importers and exporters should take the following steps:

- Review the imported product lists to ensure appropriate HS codes are applied;

- Assess the necessity of HS code advance rulings to ensure proper classification; and

- Consider the impact HS 2022 will have on certificate of origin applications.

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

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

Atentamente,
Deloitte Legal