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Enero 2023

Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

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2023 fiscal package

Legislation implementing the changes in the 2023 fiscal package has been published in the official gazette, with application as from 1 January 2023. Key measures include limits on cash at hand, changes to the penalty regime, and an increase in the scope of VAT exemptions.Other news

India

GST Council recommends changes

At its December 2022 meeting, the GST Council made various recommendations with respect to changes to certain GST rates, trade facilitation measures (including issuing circulars to clarify certain issues), and measures to streamline GST compliance.

Japan

2023 tax reform proposals

Japan’s ruling party has announced the 2023 tax reform proposals, including Japanese Consumption Tax transitional measures regarding the qualified invoice system. The government is also considering measures in relation to platform operators.

United Kingdom

VAT penalty and interest regime

The tax authorities have published guidance on the new VAT penalty regime for the late submission and late payment of VAT returns, and the new VAT interest regime. The new rules apply for accounting periods starting on or after 1 January 2023.

Other news

Botswana: Extension of temporary reduced VAT rate

Brazil: Provisional measure amends law on temporary 0% tax rate for tourism industry

Brazil: Normative ruling consolidates and provides new rules on PIS and COFINS

Brazil: Provisional measure changes PIS and COFINS input credit calculation

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Ghana: Relief from import VAT and levies available on raw materials for manufacturers

Ghana: Changes to VAT and e-levy rates effected and benchmark discount value policy reversed

Greece: COVID-19 vaccines and diagnostic medical devices subject to super-reduced VAT rate

Guatemala: General VAT regime taxpayers may use electronic tax book system from 1 January 2023

India: Global Trade Advisory Newsletter (October–December 2022)

Ireland: Irish Revenue releases VAT Notes for Guidance to Finance Act 2022

Ireland: Tax and Duty Manual on Betting Duty Return and Payments Compliance Procedures updated

Ireland: Tax and Duty Manual on Electronic Relevant Contracts Tax System updated

Ireland: Irish Revenue updates Tax and Duty Manual on Importation of Motor Vehicles from UK

Ireland: New Tax and Duty Manual on VAT treatment of dental services

Ireland: Tax and Duty Manuals updated with VAT changes introduced by Finance Act 2022

Ireland: Irish Revenue updates procedures to prepare for new AES system

Ireland: Tax and Duty Manual on VAT and Employer Direct Debit Guidelines updated

Ireland: Debt warehousing scheme updated

Ireland: Irish Revenue updates Tax and Duty Manual on Review of Opinions or Confirmations

Ireland: Irish Revenue removes Vietnam as a qualifying beneficiary under the GSP scheme

Japan: Tax audits and controversy are returning in 2023

Italy: 2023 budget law enacted, including certain measures relevant to multinational groups

Norway: Government committee publishes report recommending various tax change

Philippines: Guidelines issued on the online registration of books of accounts

Poland: Restricted deduction of input tax related to certain passenger cars extended

Switzerland: VAT registration annual turnover threshold increased for certain institutions

Thailand: Tax incentives provided for donations to certain medical foundations

United States: State Tax Matters (6 January 2023), including indirect, sales and use tax developments in Florida, Kentucky, Massachusetts, North Carolina, and Ohio

United States: State Tax Matters (13 January 2023), including indirect, sales and use tax developments in Missouri, Texas and Washington

United States: State Tax Matters (20 January 2023), including indirect, sales and use tax developments in Oklahoma

United States: State Tax Matters (27 January 2023), including indirect, sales and use tax developments in California, Rhode Island, and Texas

I. Normativa.

1. Ley 31/2022, de 23 de diciembre, de Presupuestos Generales del Estado para el año 2023.

Con fecha 24 de diciembre de 2022 se publicó en el Boletín Oficial del Estado la Ley 31/2022, de 23 de diciembre, de Presupuestos Generales del Estado para el año 2023.

En relación con el Impuesto sobre el Valor Añadido, dicha Ley contempla en los artículos 72 a 79 así como en las disposiciones transitorias quinta y sexta y la disposición final trigésima sexta, las siguientes modificaciones que se aplicarán desde el 1 de enero de 2023 y con vigencia indefinida, salvo las correspondientes a la letra A) siguiente que se aplicará desde el 1 de julio de 2022 y con vigencia indefinida, y la letra I) siguiente que se aplicará desde el 1 de enero de 2023 hasta el 31 de diciembre de 2025:

A) Esfuerzo de defensa en el marco de la Unión Europea (artículo 72).

Se establecen modificaciones en la Ley del IVA, que entrarían en vigor el día 1 de julio de 2022, para incorporar a dicha Ley los beneficios fiscales previstos en la Directiva (UE) 2019/2235 del Consejo de 16 de diciembre de 2019, por la que se modifican la Directiva 2006/112/CE, relativa al sistema común del impuesto sobre el valor añadido, y la Directiva 200/118/CE, relativa al régimen general de los impuestos especiales, en lo que respecta al esfuerzo de defensa en el marco de la Unión. Con ello se trata de poner en consonancia el tratamiento a efectos del IVA de los esfuerzos de defensa realizados en el marco de la Unión con el de los esfuerzos realizados al amparo de la Organización del Tratado del Atlántico Norte (OTAN).

B) Reglas de localización (artículo 73).

Se suprime la aplicación de la regla de cierre de utilización o explotación efectiva –artº 70.Dos de la Ley del IVA- en las prestaciones de servicios entre empresarios en aquellos sectores y actividades generadores del derecho a la deducción; se mantiene su aplicación en sectores que no generan tal derecho, como el sector financiero y el de seguros; y se extiende su aplicación a la prestación de servicios intangibles a consumidores finales no establecidos en la Comunidad cuando se constate que su consumo u explotación efectiva se realiza en el territorio de aplicación del Impuesto. Por otra parte, dicha cláusula será de aplicación también a los servicios de arrendamiento de medios de transporte con independencia de la condición del destinatario.

C) Adaptación a la normativa aduanera comunitaria (artículo 74).

Se realizan modificaciones en la normativa del IVA reguladora del hecho imponible importación de bienes, las operaciones asimiladas a las importaciones de bienes, las exenciones en las exportaciones de bienes, las exenciones en las operaciones asimiladas a las exportaciones, las exenciones relativas a las

situaciones de depósito temporal y otras situaciones, las exenciones relativas a los regímenes aduaneros y fiscales, la base imponible de las importaciones de bienes y la liquidación del impuesto en las importaciones.

D) Nuevos supuestos de inversión del sujeto pasivo (artículo 75).

Se introducen cambios en la regulación del mecanismo de inversión del sujeto pasivo extendiendo su aplicación a las entregas de desechos y desperdicios de plástico y de material textil, y se modifican las reglas referentes al sujeto pasivo para que sea de aplicación la regla de inversión de este a las entregas de estos residuos y materiales de recuperación.

También se excluye de la aplicación de la regla de inversión del sujeto pasivo a las prestaciones de servicios de arrendamiento de inmuebles sujetas y no exentas del Impuesto, que sean efectuadas por personas o entidades no establecidas en el territorio de aplicación del Impuesto. De esta forma, se facilita que puedan acogerse al régimen general de deducción y devolución establecido en la Ley del IVA, dado que en determinadas circunstancias habían quedado excluidas del régimen de devolución a no establecidos.

Por último, se excluye también de la aplicación de la regla de inversión del sujeto pasivo a las prestaciones de servicios de intermediación en el arrendamiento de inmuebles efectuados por empresarios o profesionales no establecidos.

E) Ajustes en las reglas de tributación del comercio electrónico (artículo 76).

Se realizan ajustes técnicos para, por una parte, definir de forma más precisa las reglas referentes al lugar de realización de las ventas a distancia intracomunitarias de bienes y el cálculo del límite que permite seguir tributando en origen por estas operaciones, cuando se trata de empresarios o profesionales que solo de forma excepcional realizan operaciones de comercio electrónico y, por otra, en relación con dicho límite, concretar que, para la aplicación del umbral correspondiente, el proveedor debe estar establecido solo en un Estado miembro y los bienes deben enviarse exclusivamente desde dicho Estado miembro de establecimiento.

F) Modificación de la base imponible (artículo 77 y disposición transitoria quinta).

Se incorpora la doctrina administrativa que permite la modificación de la base imponible en caso de créditos incobrables como consecuencia de un proceso de insolvencia declarado por un órgano jurisdiccional de otro Estado miembro

Por otra parte, en relación con los créditos incobrables, se rebaja –de 300 a 50 euros- el importe mínimo de la base imponible de la operación cuando el destinatario moroso tenga la condición de consumidor final; se flexibiliza el procedimiento incorporando la posibilidad de sustituir la reclamación judicial o requerimiento notarial previo al deudor por cualquier otro medio que acredite fehacientemente la reclamación del cobro a este deudor, y se extiende hasta 6 meses el plazo para proceder a la recuperación del IVA desde que el crédito es declarado incobrable. Esta última medida se acompaña de un régimen transitorio

para que puedan acogerse al nuevo plazo de 6 meses todos los sujetos pasivos del IVA cuyo plazo de modificación no hubiera caducado a la fecha de entrada en vigor de esta Ley.

G) Tipos impositivos (artículo 78).

Se rebaja -del 10 por ciento al 4 por ciento- el tipo impositivo aplicable a las entregas, adquisiciones intracomunitarias e importaciones de tampones, compresas y protegeslips así como de preservativos y otros anticonceptivos no medicinales.

H) Regímenes especiales (artículo 79 y disposición transitoria sexta).

Se contempla el mantenimiento para el año 2023 de los mismos límites o magnitudes, tanto de volumen de ingresos como de volumen de compras y servicios, que delimitan la aplicación del régimen especial simplificado y el régimen especial de la agricultura, ganadería y pesca en el IVA, al igual que en los ejercicios 2016 a 2022, es decir, dichos límites quedan fijados en 250.000 euros para 2023.

Esta Ley incluye, como en otros años, un nuevo plazo para presentar las renuncias o revocaciones a los citados regímenes especiales, como consecuencia de las prórrogas que se introducen en los límites excluyentes del régimen simplificado y del régimen especial de la agricultura, ganadería y pesca del IVA.

I) Beneficios fiscales del acontecimiento "XXXVII Copa América Barcelona" (disposición final trigésima sexta).

La disposición final trigésima sexta de esta Ley regula el régimen fiscal aplicable al acontecimiento "XXXVII Copa América Barcelona", que se aplicará desde el 1 de enero de 2023 hasta el 31 de diciembre de 2025. En relación con el IVA, en su apartado Cuatro, establece lo siguiente:

- No se exigirá el requisito de reciprocidad, previsto en el artº 119 bis.Uno.2º de la Ley del IVA, en la devolución a empresarios o profesionales no establecidos en la Comunidad que soporten o satisfagan cuotas del IVA como consecuencia de la realización de operaciones relacionadas con la celebración de la final de la "XXXVII Copa América Barcelona".

- Los empresarios o profesionales no establecidos en el territorio de aplicación del IVA que soporten o satisfagan cuotas como consecuencia de la realización de operaciones relacionadas con la "XXXVII Copa América Barcelona", tendrán derecho a la devolución de dichas cuotas al término de cada periodo de liquidación.

  Para dichos empresarios o profesionales, el período de liquidación coincidirá con el mes natural, debiendo presentar sus declaraciones-liquidaciones durante los 20 primeros días naturales del mes siguiente al periodo de liquidación. Sin embargo, las declaraciones-liquidaciones que se indican deberán presentarse en los plazos especiales que se mencionan:

- La correspondiente al periodo de liquidación del mes de julio, durante el mes de agosto y los veinte primeros días naturales del mes de septiembre inmediatamente posteriores.

- La correspondiente al periodo de liquidación del mes de diciembre durante los treinta primeros días naturales del mes de enero.

Lo anterior será igualmente aplicable a la entidad organizadora del acontecimiento, a los equipos participantes y a las personas jurídicas a que se refiere el número 1 del apartado dos de la mencionada disposición final.

- Respecto a las operaciones relacionadas con los bienes vinculados al régimen de importación temporal con exención total de derechos, resultará aplicable lo dispuesto en el artículo 24 de la Ley del IVA.

- El plazo a que se refiere el artº 9.3.g) de la Ley del IVA –no aplicación de un supuesto de transferencia de bienes: operación asimilada a una entrega intracomunitaria de bienes–, será, en relación con los bienes que se utilicen temporalmente en la celebración y desarrollo de la "XXXVII Copa América Barcelona", como máximo de 10 años.

- La regla establecida en el artº 70.Dos.1º de la Ley del IVA –desde 1-1-2023 debe referirse al número 2º no al 1º, en base a la nueva redacción del artº 70.Dos realizada por la Ley 31/2022- no resultará aplicable a los servicios referidos en dicho precepto cuando sean prestados por las personas jurídicas residentes en España constituidas con motivo del acontecimiento, por la entidad organizadora de la final de la "XXXVII Copa América Barcelona" o por los equipos participantes, y estén en relación con la organización, la promoción o el apoyo de dicho acontecimiento.

2. Real Decreto-ley 20/2022, de 27 de diciembre, de medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania y de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad.

Con fecha 28 de diciembre de 2022 se publicó en el Boletín Oficial del Estado el Real Decreto-ley 20/2022, de 27 de diciembre, de medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania y de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad.

En relación con el Impuesto sobre el Valor Añadido, dicho Real Decreto-ley contempla en los artículos 1, 2 , 3 y 72 las siguientes modificaciones en relación con los tipos impositivos aplicables a determinados bienes:

- Se prorrogan, para los periodos que se indican, los tipos impositivos aplicables a las entregas, importaciones y adquisiciones intracomunitarias de los siguientes bienes:

  - Gas natural, briquetas y "pellets" procedentes de la biomasa y a la madera para leña -desde 1-1-2023 hasta 31-12-2023-. Tipo del 5 por ciento.

Durante ese periodo temporal, el tipo del recargo de equivalencia aplicable a las entregas de briquetas y "pellets" procedentes de la biomasa y a la madera para leña, será el 0,625 por ciento.

- Mascarillas quirúrgicas desechables -desde 1-1-2023 hasta 30-6-2023-. Tipo del 4 por ciento.

- Bienes y determinados servicios para combatir los efectos del SARS-CoV-2 -desde 1-1-2023 hasta 30-6-2023-. Tipo del 0 por ciento.

- Suministro de energía eléctrica -desde 1-7-2022 hasta 31-12-2023-. Tipo del 5 por ciento.

- Aplicación temporal -desde 1-1-2023 hasta 30-6-2023- de tipos reducidos y tipo cero a las entregas, importaciones y adquisiciones intracomunitarias, de los siguientes alimentos:

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

    Durante ese periodo temporal, el tipo del recargo de equivalencia aplicable a las entregas de dichos bienes será el 0,625 por ciento.

  - Tipo del 0 por ciento a:

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

    - Las harinas panificables.

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

    - Los quesos.

    - Los huevos.

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

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

  No obstante, a partir del día 1 del mes de mayo de 2023, en el caso de que la tasa interanual de la inflación subyacente del mes de marzo, publicada en abril, sea inferior al 5,5 por ciento, se aplicarán los tipos impositivos previstos en los artículos 91.Uno.1.1º y 91.Dos.1.1º de la Ley del IVA, respectivamente, para dichos bienes, así como los respectivos tipos del recargo de equivalencia previstos en el artículo 161 de la Ley del IVA.

3. Orden HFP/1245/2022, de 14 de diciembre, por la que se modifica la Orden HAC/3625/2003, de 23 de diciembre, por la que se aprueba el modelo 309 de declaración-liquidación no periódica del Impuesto sobre el Valor Añadido.

Esta Orden recoge la modificación del modelo 309 *"declaración-liquidación no periódica"*, para contemplar la declaración de las operaciones sujetas al tipo impositivo del 5 por ciento.

4. Medidas para adaptar el IVA a la era digital:

Propuesta de Directiva que modifica la Directiva 2006/112/CE sobre el IVA.

Propuesta de Reglamento de ejecución que modifica el Reglamento de ejecución (UE) nº 282/2011.

Propuesta de Reglamento que modifica el Reglamento (UE) nº 904/2010 sobre cooperación administrativa.

Con fecha 8 de diciembre de 2022, la Comisión Europea ha propuesto una serie de medidas destinadas a modernizar el IVA para adaptarlo a la era digital. Estas propuestas podemos resumirlas en las siguientes:

- Notificación digital en tiempo real basada en la facturación electrónica para las empresas con actividad transfronteriza en la UE.

  La propuesta contempla que las citadas empresas tendrán que emitir una factura electrónica que enviarán a las autoridades fiscales de cada país cuando vendan un bien o un servicio en otro país de la UE. Esto sustituiría a la actual "declaración recapitulativa de operaciones intracomunitarias".

- Actualización de las normas del IVA en relación con el transporte de viajeros y las plataformas de alojamiento de corta duración.

  A tal efecto, los operadores de la economía de plataformas de esos sectores –tales como Airbnb y Uber- serán responsables de recaudar y remitir el IVA a las autoridades tributarias cuando los proveedores se servicios no lo hagan, por ejemplo, porque sean pequeñas empresas o proveedores individuales.

- Introducción de un registro único a efectos del IVA en toda la UE.

  En este caso, sobre la base del modelo ya existente de "ventanilla única del IVA" para las empresas de compras en línea, la propuesta permitirá a las empresas que vendan a consumidores de otro Estado miembro registrarse una sola vez a efectos del IVA en toda la UE y cumplir sus obligaciones en la materia a través de un portal en línea único en una sola lengua. Por otra parte, también se propone la obligatoriedad de la "ventanilla única de importación" para determinadas plataformas que facilitan las ventas a los consumidores en la UE.

Estas modificaciones, una vez aprobadas, entrarían en vigor el 1 de enero de 2024, el 1 de enero de 2025, el 1 de enero de 2026 y el 1 de enero de 2028, respectivamente, según los casos.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 1 de diciembre de 2022. Asunto C-141/20, Norddeutsche Gesellschaft für Diakonie mbH.

Directiva 77/388/CEE —Artículo 4, apartado 4, párrafo segundo — Sujetos pasivos — Facultad de los Estados miembros de considerar como un solo sujeto pasivo a entidades jurídicamente independientes pero firmemente vinculadas entre sí en los órdenes financiero, económico y de organización ("grupo a efectos del IVA") — Normativa nacional que señala a la entidad dominante del grupo a efectos del IVA como único sujeto pasivo — Concepto de "firme vinculación en el orden financiero" — Necesidad de que la entidad dominante posea la mayoría de los derechos de voto además de una participación mayoritaria en el capital — Inexistencia — Apreciación de la independencia de una entidad económica en función de criterios estándar — Alcance.

En primer lugar, el Tribunal señala que, de acuerdo con la Directiva del IVA, cuando se constituye un grupo de IVA, las sociedades dejan de ser consideradas sujetos pasivos distintos, para pasar a ser consideradas como un sujeto pasivo único a efectos de IVA. De esta forma, debe existir un único interlocutor, que asuma las obligaciones de IVA del grupo frente a la Administración tributaria, no siendo contrario a la Directiva señalar a la entidad dominante como dicho interlocutor y sujeto pasivo único, siempre que ello suponga asumir las obligaciones de declaración de todas las prestaciones realizadas y recibidas por las entidades que se integran en el grupo. No obstante, matiza el Tribunal que dicho señalamiento no puede implicar un riesgo de pérdida de ingresos fiscales, requisito que entiende cumplido siempre y cuando la entidad dominante pueda imponer su voluntad o reclamar los ingresos fiscales derivados de las actividades realizadas por las entidades dominadas.

En segundo lugar, establece el Tribunal que las relaciones de subordinación pueden presumir el cumplimiento de firmes vínculos entre entidades, pero no pueden ser requisito necesario para proceder a integrar una entidad en un grupo, siendo contrario a la Directiva la exigencia de una mayoría de los derechos de voto de forma adicional a una participación mayoritaria. Finalmente, concluye que la integración en un grupo no implica la automática consideración de entidad no independiente, pues todas las empresas integrantes del grupo mantienen su personalidad jurídica y realizan prestaciones de forma independiente, a la par que asumen el riesgo de estas.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 1 de diciembre de 2022. Asunto C-269/20, S.

Directiva 77/388/CEE —Artículo 4, apartado 4, párrafo segundo — Sujetos pasivos — Facultad de los Estados miembros de considerar como un solo sujeto pasivo a personas jurídicamente independientes, pero firmemente vinculadas entre sí en los órdenes financiero, económico y de organización ("grupo a efectos del IVA") — Normativa nacional que señala a la entidad dominante del grupo a efectos del IVA como único sujeto pasivo — Prestaciones intragrupo a efectos del IVA — Artículo 6, apartado 2, letra b) —Prestaciones de servicios a título gratuito — Concepto de "fines ajenos a la empresa"

S es una fundación de derecho público, que es a su vez es entidad dominante tanto de un centro médico universitario, como de U-GmbH (en adelante, "U"). U es sujeto pasivo a efectos del IVA únicamente respecto de los servicios de asistencia a pacientes, y no respecto de la actividad de formación realizada de acuerdo con sus funciones públicas. U prestó a S servicios de limpieza, higiene, lavandería y transporte de pacientes; los servicios de limpieza se prestaron en relación con la totalidad del centro médico, el cual comprendía tanto espacios hospitalarios, como espacios dedicados a la formación de los estudiantes universitarios. Las Autoridades Tributarias consideraron que las entidades formaban parte de un grupo de IVA, y con ello se debía haber llevado a cabo una única declaración de IVA, siendo los servicios de limpieza prestados por U; un autoconsumo del sujeto pasivo único.

En primer lugar, el Tribunal establece que, según la Directiva del IVA, al constituir un grupo de IVA, las sociedades dejan de ser consideradas sujetos pasivos diferentes, para considerarse como un único sujeto pasivo a efectos de dicho impuesto. De este modo, debe existir un único interlocutor que asuma las obligaciones de IVA del grupo frente a la Administración tributaria, no siendo contrario a la Directiva señalar como dicho interlocutor y sujeto pasivo único a la entidad dominante, siempre que ello suponga asumir las obligaciones de declaración de todas las prestaciones realizadas y recibidas por las entidades que se integran en el grupo. Sin embargo, el TJUE señala que dicho señalamiento no puede implicar un riesgo de pérdida de ingresos fiscales, requisito que debe entenderse cumplido siempre y cuando la entidad dominante pueda imponer su voluntad o reclamar los ingresos fiscales derivados de las actividades realizadas por las entidades dominadas.

En segundo lugar, el Tribunal señala que los servicios intragrupo recibidos por parte de una entidad con el fin de destinarlos a las prestaciones derivadas de su función pública no pueden comprenderse como servicios gravados, prestados de forma gratuita y para fines ajenos a su empresa en la medida que ha existido una remuneración.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 1 de diciembre de 2022. Asunto C-512/21, Aquila Part Prod Com S.A.

Directiva 2006/112/CE — Artículo 168 — Derecho a deducción del IVA — Principios de neutralidad fiscal, de efectividad y de proporcionalidad — Fraude — Prueba — Obligación de diligencia del sujeto pasivo — Toma en consideración de un incumplimiento de las obligaciones derivadas de disposiciones nacionales y del Derecho de la Unión en materia de seguridad de la cadena alimentaria — Mandato conferido por un sujeto pasivo a un tercero para realizar operaciones gravadas — Carta de los Derechos Fundamentales de la Unión Europea — Artículo 47 — Derecho a un proceso equitativo.

Aquila Part Prod Com (en adelante "Aquila") es una entidad establecida en Hungría, y cuya actividad principal es la prestación de servicios de intermediación. La misma celebró un contrato de agencia mediante el cual encomendó a esta la actividad de compraventa de bienes a nombre del mandante. La Administración, consideró que Aquila había participado en un fraude de tipo de carrusel, que tenía como objetivo redireccionar bienes de Eslovaquia a Hungría, con el objetivo de adquirir una ventaja fiscal ilícita y eludir impuestos de forma intencionada.

El Tribunal establece que es contrario a la Directiva considerar que, probada la existencia de un esquema de fraude de carrusel, automáticamente todos los sujetos pasivos intervinientes en el esquema puedan ser considerados partícipes. Es necesario probar que cada uno tenía, o debía haber tenido, conocimiento de la existencia de dicho fraude, requisito que no se entiende cumplido por el mero hecho de que el sujeto pasivo conociera a la contraparte, que ya había sido condenada por ser parte de un fraude del IVA, lo cual sí puede ser, sin embargo, una circunstancia más a tener en cuenta de cara a probar la intervención en el fraude. No obstante, considera el Tribunal que no es contrario a la Directiva denegar la deducción del IVA si queda demostrado que el representante del sujeto pasivo, en virtud de un contrato de agencia, conocía los hechos constitutivos del fraude.

Continúa el Tribunal exponiendo que es razonable exigir a los sujetos pasivos adoptar medidas que le permitan identificar irregularidades o fraudes y de esta manera verse obligado a informarse acerca de otros sujetos pasivos, pero esto no puede implicar la exigencia de medidas exhaustivas que impliquen el descargo del poder de control que tienen los poderes públicos. Recuerda el Tribunal que no se puede denegar la deducción del IVA por el incumplimiento de normas relativas a la cadena alimenticia. Este incumplimiento puede ser considerado como indicio de la existencia del fraude, no siendo contraria al derecho de la Unión la toma en consideración de esta circunstancia, pero debiendo ser objeto de prueba, refutación y debate frente al órgano jurisdiccional, en el caso que no hubiera sido objeto de un proceso concreto, ya que de lo contrario no sería acorde al principio de tutela judicial efectiva.

4. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de diciembre de 2022. Asunto C-247/21, Luxury Trust Automobil GmbH.

Directiva 2006/112/CE —Artículo 42, letra a) — Artículo 197, apartado 1, letra c) — Artículo 226, punto 11 bis —Artículo 141 — Exención — Operación triangular — Designación del destinatario final de una entrega como deudor del IVA — Facturas — Mención "inversión del sujeto pasivo" — Carácter obligatorio — Omisión de esa mención en una factura — Rectificación retroactiva de la factura.

Luxury Trust Automobil es una sociedad establecida en Austria que ejerce actividades de intermediación y venta de vehículos, tanto en Europa como con terceros países. En 2014, la entidad compró vehículos a un proveedor establecido en el Reino Unido y los revendió a la sociedad M s.r.o. establecida en República Checa, siendo los vehículos transportados directamente desde Reino Unido a la República Checa, emitiendo facturas con la mención "operación triangular intracomunitaria exenta".

Interpreta el Tribunal que, de acuerdo con la Directiva del IVA, para que una operación pueda ser considerada como triangular, es necesario cumplir dos requisitos cumulativos. En primer lugar, el sujeto pasivo debe poder acreditar la realidad de una primera adquisición, y una subsecuente entrega posterior dentro del territorio del Estado Miembro designado como destino final de la mercancía. En segundo lugar, se ha de designar como deudor del impuesto el receptor final de los bienes. En este sentido la Directiva exige que la factura emitida por el intermediario de la cadena de los bienes incluya la mención "inversión del sujeto pasivo", con el fin de determinar formalmente la condición de deudor del receptor de los bienes. En consecuencia, la mención "inversión del sujeto pasivo" ha de considerarse un requisito necesario, pues su ausencia permite que no se designe al deudor del impuesto de forma clara, pudiendo llegar a ser considerada una operación exenta en la totalidad de los Estados Miembros involucrados. Por todo ello, este requisito no puede suplirse a través de la rectificación de la operación, pues nunca se originó una operación triangular.

5. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de diciembre de 2022. Asunto C-378/21, P GmbH

Directiva 2006/112/CE — Artículo 203 — Regularización de la declaración del IVA — Beneficiarios de servicios que no pueden invocar un derecho a la deducción — Ausencia de riesgo de pérdida de ingresos fiscales.

P GmbH es una sociedad austriaca que explota un área de juegos de interior, siendo sus clientes exclusivamente consumidores finales que no cuentan con el derecho a la deducción del IVA soportado. Durante 2019, la entidad aplicó un tipo impositivo del 20% de IVA por sus servicios. Posteriormente, la Compañía descubrió que el tipo impositivo aplicable a sus servicios era del 13%, y en consecuencia procede a regularizar sus declaraciones con el fin de adaptarlas al tipo impositivo correcto, y que de esta manera la Administración reconociera el exceso de IVA ingresado.

Establece el Tribunal, en virtud del artículo 203 de la Directiva del IVA, que los sujetos pasivos son deudores del IVA mencionado en la factura que hayan emitido. A través de esta norma se pretende eliminar el riesgo de pérdidas de ingresos fiscales, garantizando que al menos un sujeto pasivo es deudor del IVA de la operación. De lo contrario, si quién soportó el IVA repercutido en exceso es un sujeto pasivo con derecho a la deducción, la Administración no tendría capacidad de comprobar la realización, y corrección, de deducción por el receptor del servicio. De esta manera y en el supuesto objeto del procedimiento, si los receptores del IVA repercutido en exceso son consumidores finales, que no cuentan con el derecho a la deducción del IVA, el riesgo de pérdidas de ingresos fiscales desaparece y en cambio procede la devolución del IVA ingresado de forma improcedente.

6. Tribunal de Justicia de la Unión Europea. Auto de 9 de diciembre de 2022. Asunto C-459/21, The Navigator Company y Navigator Pulp Figueira.

Directiva 2006/112/CE — Artículo 176 — Exclusiones del derecho a deducir el IVA — Régimen menos favorable que el mecanismo de deducibilidad de los gastos a efectos de un impuesto directo— Principio de equivalencia.

La cuestión prejudicial que les planteada al Tribunal es, en esencia, si el principio de equivalencia debe interpretarse en el sentido de que se opone a una legislación nacional (como la portuguesa) que, de acuerdo con lo previsto en el artículo 176, párrafo segundo, de la Directiva del IVA, establece una exclusión total o parcial del derecho a deducir el IVA soportado en gastos relacionados con vehículos, viajes y estancias, así como en gastos de representación, cuando estos mismos gastos se benefician de un régimen supuestamente más favorable, en cuanto a su deducibilidad, en el ámbito de un impuesto directo (como es el Impuesto sobre Sociedades) regido por la ley nacional.

Atendiendo a la circunstancia de que un impuesto indirecto, como el IVA, y un impuesto directo, como el Impuesto sobre Sociedades, son de naturaleza fundamentalmente distinta, en los que el mecanismo de deducibilidad no tienen un objetivo ni una causa similar, establece el Tribunal que el principio de equivalencia debe interpretarse en el sentido de que no se opone a una legislación nacional (como la portuguesa) que, de acuerdo con lo previsto en el artículo 176, párrafo segundo, de la Directiva del IVA, establece una exclusión total o parcial del derecho a deducir el IVA soportado en gastos relacionados con vehículos, viajes y estancias, así como en gastos de representación, aun cuando dichos gastos se benefician de un régimen supuestamente más favorable, en cuanto a su deducibilidad, en el ámbito de un impuesto directo (como es el Impuesto sobre Sociedades) regido por la ley nacional.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución 938/2021 de 21 de noviembre de 2022.

IVA no establecidos. Suspensión del plazo para solicitar la devolución del IVA por el procedimiento especial de no establecidos, por la vigencia del estado de alarma producido por la situación socio-sanitaria derivada del Covid 19.

El TEAC analiza el caso en el que un empresario no establecido a los efectos del IVA en el TAI, solicita la devolución de las cuotas soportadas según el procedimiento regulado en el artículo 119 de la Ley del IVA. La solicitud se presenta el día 13 de octubre de 2020.

La Oficina de Gestión Tributaria deniega la solicitud al entender que se ha presentado fuera de plazo. Todo ello porque según el artículo 31.4 del Reglamento del IVA dicho plazo concluye el 30 de septiembre.

La recurrente a alega que la solicitud no sería extemporánea por la prórroga ocasionada por la pandemia.

A juicio del Tribunal:

- Es pacífico que el plazo para presentar la solicitud de devolución es un plazo de caducidad.

- El Real Decreto 463/2020 señalaba que "*Los plazos de prescripción y caducidad de cualesquiera acciones y derechos quedarán suspendidos durante el plazo de vigencia del estado de alarma y, en su caso, de las prórrogas que se adoptaren*."

En consecuencia, la solicitud no fue extemporánea porque, a causa de dicha suspensión, el plazo regulado en el artículo 31.4 del Reglamento de IVA terminó el 21 de diciembre de 2020.

2. Tribunal Económico-Administrativo Central. Resolución 5745/2020 de 21 de noviembre de 2022.

IVA. Exención de las segundas y ulteriores entregas de edificaciones. Obras de rehabilitación. Inclusión de las obras conexas a efectos de calcular el porcentaje previsto en el apartado 1º del artículo 20.Uno. 22º B) de la Ley del Impuesto.

En el supuesto objeto de controversia la entidad recurrente adquirió 11/12 partes de un edificio. En la medida en que la adquisición del inmueble se efectuó con la intención de llevar a cabo su rehabilitación por el adquirente, la operación quedó sujeta y no exenta del IVA conforme al artículo 20.Uno.22.b) de la Ley del IVA.

En cambio, la Administración consideró que la operación estaba sujeta y exenta de IVA porque las obras de rehabilitación realizadas en el edificio no cumplían los requisitos establecidos en el artículo 20.Uno.22º.B) de la Ley del IVA para considerarse como tal a efectos de dicha Ley.

La controversia se centra en relación con el criterio manifestado por el TEAR de no computar las obras conexas a efectos del cumplimiento del requisito cualitativo en la medida en que su coste es superior al de las obras de consolidación o tratamiento de elementos estructurales, fachadas o cubiertas o de obras análogas.

En primer lugar el TEAC hace un breve repaso de las normas de deslinde entre el ITP y el IVA.

En lo relativo a la cuestión de fondo el TEAC recuerda que para que se den los requisitos establecidos en el artículo 20.Uno.22º.B) de la Ley del IVA deben cumplirse dos condiciones.

La controversia se centra en el cumplimiento de la primera condición (requisito cualitativo). Así, la Ley del IVA señala que son obras de rehabilitación aquellas en las "*1.º Que su objeto principal sea la reconstrucción de las mismas, entendiéndose cumplido este requisito cuando más del 50 por ciento del coste total del proyecto de rehabilitación se corresponda con obras de consolidación o tratamiento de elementos estructurales, fachadas o cubiertas o con obras análogas o conexas a las de rehabilitación*."

Tras su análisis, el TEAC desestima las alegaciones de la recurrente y ratifica que para poder calificar de obras conexas a unas determinadas obras y tener en cuenta su coste a efectos del cumplimiento del requisito cualitativo de obras de rehabilitación, es necesario, en primer lugar, que el coste de aquellas no exceda del coste de las obras estructurales o de las análogas a las mismas.

De cumplirse los requisitos para calificar determinadas obras como "conexas" el coste de dichas obras se sumaría al de las obras estructurales y al de aquellas otras calificadas como de obras análogas a estas últimas, a efectos de comprobar el cumplimiento de que dicha suma exceda del 50% del coste total del proyecto (requisito cualitativo de las obras de rehabilitación).

3. Tribunal Económico-Administrativo Central. Resolución 3225/2020 de 21 de noviembre de 2022.

Devolución de ingresos indebidos. Exceso de cuotas repercutidas como consecuencia de la indebida determinación de la base imponible - Aunque en los impuestos repercutidos hay que devolver a quien soportó, este es un caso especial en el que el Impuesto va incluido en el precio, por lo que el titular del derecho a la devolución de ingresos indebidos es quien repercutió, no quien soportó el Impuesto.

El TEAC analiza el caso en el que, dentro de un sistema de promoción y fidelización de clientes de una cadena de supermercados, se entregan unos vales descuento para que los clientes pueden canjearlos en futuras compras. En el momento de ser utilizados, dichos bonos o vales deben conllevar una minoración de la base imponible del IVA.

No obstante, la entidad los consideró, erróneamente, como medio de pago y, en consecuencia, no minoró la base imponible, ello suponiendo un exceso de cuotas repercutidas e ingresadas. En el caso analizado, los clientes son consumidores finales a los que normalmente se les expiden facturas simplificadas (tiques), por lo que ello no les genera derecho a la deducción de las cuotas de IVA soportado. En el marco de la operativa descrita, el importe del vale se descuenta del precio final de la compra (IVA incluido) por lo que el importe del bono se entiende, en consecuencia, con el IVA incluido.

Respecto al procedimiento habilitado para la devolución de ingresos indebidos y atendiendo a lo establecido en el artículo 14 del Reglamento del IVA, la devolución de los tributos indebidamente repercutidos procede a quien haya soportado la misma siempre que se cumplan los siguientes requisitos: (i) Que la repercusión se haya efectuado a través de factura o documento sustitutivo, (ii) que las cuotas indebidamente repercutidas hayan sido ingresadas y no hayan sido devueltas por la Administración Tributaria a quien se repercutieron o a un tercero y (iii) que el obligado tributario que haya soportado la repercusión no tuviese derecho a la deducción de las cuotas soportadas.

Por lo tanto, siempre que concurran dichos requisitos, la devolución de las cuotas indebidamente repercutidas deberá concluirse en favor quien las haya soportado.

No obstante, como norma general, en los casos de tributos que se repercutan obligatoriamente, como en el caso del IVA, se habilita tanto al repercutidor como al destinatario de la operación que ha soportado el impuesto para solicitar la devolución de ese IVA directamente a la Hacienda Pública. Sin embargo, según lo establecido en el punto anterior, la devolución del ingreso indebido como consecuencia de una repercusión improcedente deberá efectuarse a quien la soportó en los casos en los que se haya comprobado que efectivamente el adquirente soportó materialmente dicha repercusión y se cumplen los demás requisitos establecidos al efecto.

Si de dicha comprobación puede concluirse que el destinatario de la operación no soportó efectivamente el Impuesto, la devolución puede instrumentarse al propio sujeto pasivo de la misma en virtud de lo establecido en el artículo 14.2.a) del Reglamento del IVA.

Por todo lo anterior y a juicio del Tribunal, en el caso analizado en el que el Impuesto va incluido en el precio, debe entenderse que quien lo soporta paga la misma cantidad con independencia de la distribución que se haya hecho entre

base imponible y cuota. Por ello, el error que supuso el hecho de no minorar la base imponible del IVA en el importe del descuento propiamente no tuvo impacto alguno en el destinatario, sino que únicamente afectó al repercutidor.

En consecuencia, debe entenderse habilitado el referido mecanismo para la devolución de ingresos indebidos (artículo 14.2.a) del Reglamento del IVA) procediendo la misma a quien repercutió.

4. Tribunal Económico-Administrativo Central. Resoluciones 5825/2022 y 6997/2022 de 15 de diciembre de 2022.

Recurso extraordinario de alzada para la unificación de criterio. Aplicación del tipo reducido de IVA en la venta de abonos de sillas y palcos para presenciar desfiles procesionales.

El TEAC resuelve ambos casos, incluyendo recurso extraordinario de alzada para la unificación de criterio, en relación con la tributación en el IVA asociada a la venta de abonos de sillas y palcos para presenciar los desfiles procesionales durante la Semana Santa. En particular, se trata de concluir acerca de si dicha operación está exenta o no del Impuesto y, en caso de no estarlo, qué tipo impositivo debería aplicarse.

En primer lugar y respecto de la posible aplicación de la exención, la Administración había considerado que una actividad como la controvertida (i.e. alquiler de sillas y palcos para presenciar las procesiones de Semana Santa) no tiene encaje en el literal del artículo 20.Uno.14º de la Ley del IVA. En este sentido, si bien la Administración reconoce la finalidad cultural de la organización de las procesiones de Semana Santa, considera que la actividad de alquiler de sillas y palcos no tiene encaje en ninguna de las actividades recogidas en el referido artículo.

En particular, para la Administración tienen lugar dos servicios: (i) el propio servicio cultural, libre y gratuito, derivado de los propios desfiles procesionales de la Semana Santa y, en segundo lugar, (ii) el servicio de alquiler de asientos, entendido como la posibilidad de gozar de un acceso privilegiado para contemplar sentado tales desfiles. En opinión de la Administración, este segundo servicio debe entenderse como una operación sujeta y no exenta del IVA.

El TEAC entiende que los propios desfiles procesionales de Semana Santa sí deben enmarcarse en la exención recogida en el artículo 20.Uno.14º de la Ley del IVA. Para el Tribunal, prevalece el carácter cultural y religioso de las procesiones. En particular, el Tribunal entiende que una parte esencial de las referidas procesiones es la exposición de obras artísticas de indudable valor, hecho por el cual ya debería incluirse esta actividad en el marco de aplicación de la referida exención. Además, con carácter general, la asistencia a los desfiles procesionales de la Semana Santa es libre y gratuita.

Atendiendo a lo anterior y a juicio del TEAC, se pueden dar dos servicios distintos en función de si el acceso del público a la procesión es libre y gratuito o no lo es.

En primer lugar, si el acceso del público es libre y gratuito, las personas que pagasen por alquilar una silla o palco no lo estarían haciendo por ver el propio desfile (ya que podrían verlo sin necesidad de pagar), sino que el pago realizado tendría la consideración de contraprestación por el hecho de poder ver la procesión sentados.

No obstante, si el acceso al a la procesión no fuera libre y gratuito, no tendrían lugar dos servicios distintos, un servicio cultural de acceso libre y gratuito constituido por los desfiles procesionales y un servicio de alquiler de sillas y palcos, de pago.

En este segundo caso, en el que el acceso al desfile ya exige el pago de una contraprestación, se estaría ante un servicio único consistente en conceder, previo pago, el acceso a una zona restringida del recorrido procesional para poder presenciar los desfiles.

En consecuencia y a juicio del Tribunal, para poder resolver la tributación asociada al caso objeto de análisis es imprescindible saber si el acceso al desfile procesional es gratuito o no.

Teniendo en cuenta lo anterior y en conclusión para el Tribunal Central, si el acceso a la procesión fuera gratuito, la venta de abonos de sillas y palcos constituiría en tal supuesto un servicio sujeto y no exento del IVA, al que le sería de aplicación el tipo general del IVA (21%) ya que el precio satisfecho no estaría relacionado con el propio acceso al desfile, sino con el hecho de poder presenciarlo sentado.

5. Dirección General de Tributos. Contestación nº V2314-22, de 2 de noviembre de 2022.

Transmisión de vivienda – Sujeción y exención al Impuesto.

La consultante es una comunidad de bienes que promovió una vivienda para su venta y que se ha destinado provisionalmente al arrendamiento turístico esporádico desde 2017 hasta que se encontrase a un comprador.

La consultante se plantea si la venta de la ya mencionada vivienda se encontrará sujeta y exenta del IVA.

Señala la DGT, en primer lugar, que de acuerdo con el articulo 5.uno de la Ley del IVA, las comunidades de bienes tendrán la condición de empresarios o profesionales, a efectos del IVA, cuando ordenen un conjunto de medios personales y materiales, con independencia y bajo su responsabilidad, para desarrollar una actividad empresarial, sea de fabricación, comercio, de prestación de servicios, etc.

Finalmente, considera la DGT que, conforme al artículo 20.Uno.22º de la Ley del IVA, la transmisión de la vivienda tendría la consideración de primera entrega y, por tanto, se encontraría sujeta y no exenta del IVA, todo ello, teniendo en

cuenta que, de acuerdo con la información facilitada por la consultante, ninguno de los arrendamientos previos a la transmisión de la vivienda lo ha sido de forma ininterrumpida por plazo igual o superior a dos años.

6. Dirección General de Tributos. Contestaciones nº V2330-22, V2332-22 y V 2333-22, de 10 de noviembre de 2022.

Servicios de gestión energética (calefacción y agua caliente) – Tipo impositivo aplicable.

Las consultantes son empresas especializadas en gestiones energéticas y mejora de la eficiencia y actualización de instalaciones en comunidades de propietarios, sector industrial y edificios administrativos.

En este contexto, las consultantes suscriben contratos con las comunidades de propietarios para la prestación de servicios energéticos de forma que compran el gas natural que entra en las salas de calderas centralizadas y facturan a cada vecino el servicio de calefacción y agua caliente sanitaria según el consumo individualizado de acuerdo con la lectura del correspondiente contador.

Las citadas empresas se plantean el tipo impositivo aplicable en el IVA a las prestaciones energéticas descritas en virtud del Real Decreto-ley 17/2022, de 20 de septiembre.

El artículo 5 de dicho Real Decreto-ley contempla el tipo reducido únicamente para las entregas, importaciones y adquisiciones intracomunitarias de gas natural; por lo que, advierte la DGT que el tipo reducido del 5% no sería de aplicación al suministro de calefacción por empresas dedicadas a la prestación de servicios de gestión energética como las consultantes, las cuales deberán facturar dichas prestaciones energéticas al tipo general del Impuesto del 21%.

Analizado el punto anterior, la DGT admite que, si las consultantes procedieran a la entrega de gas natural, facturando por dicha operación y no por la prestación de servicio de calefacción, se podría entender que aquellas estarían realizando entregas de gas natural, previamente adquirido a otros comercializadores, en nombre propio, y que, por ello, las mismas estarían sujetas al IVA al tipo reducido del 5%.

Finalmente, y en relación con el suministro de servicios de calentamiento de agua, la DGT entiende que el suministro de agua caliente sanitaria, llevado a cabo por las consultantes, no parece constituir un fin en sí mismo para el destinatario, debiendo considerarse accesorio de la operación principal, que es el suministro de calefacción, y debiendo seguir, por tanto, la misma tributación a efectos del IVA que le corresponda a dicha operación.

7. Dirección General de Tributos. Contestación nº V2341-22, de 14 de noviembre de 2022.

Importación de bienes de escaso valor por particulares – Declaración en aduana de la mercancía.

Un particular importa un envío de escaso valor a través del Servicio de Correos, quien tramita automáticamente la importación y entrega el envío al destinatario, cobrándole el IVA correspondiente a la importación de la mercancía.

La consultante se plantea si, por un lado, el Servicio de Correos está legitimado a presentar declaraciones aduaneras para los envíos de escaso valor sin necesidad de la autorización de despacho expresa del destinatario del envío y, por otro lado, si el destinatario puede presentar por cuenta propia la declaración en aduana de la mercancía (declaración de importación de envíos de bajo valor H7).

A este respecto, la DGT entiende que la aplicación de la modalidad especial de declaración y pago de bienes de escaso valor solo es posible cuando el empresario vendedor del producto no se ha acogido al régimen especial, de importación, aplicable a las ventas a distancia de bienes importados de países o territorios terceros (Sección 4ª, Capítulo XI, Título IX de la Ley 37/1992).

Asimismo, dicho Centro Directivo se ha pronunciado considerando que no es necesaria la autorización del consultante, destinatario de los bienes objeto de importación, para la aplicación de la modalidad especial de declaración y pago de la importación en las condiciones señaladas.

Finalmente, en relación con la cuestión de si el destinatario del bien importado puede presentar por cuenta propia la declaración en aduana de la mercancía, entiende la DGT que la declaración de importación de envíos de escaso valor (H7) puede ser presentada por toda persona que reúna las condiciones previstas en el artículo 170 del Código Aduanero de la Unión. Por tanto, conforme lo anterior, el declarante podría ser el importador (es decir, el destinatario, que suele ser el mismo que el comprador, aunque no necesariamente) y este podría actuar en nombre y por cuenta propia o a través de un representante (es decir, por el Servicio de Correos, una empresa de transporte urgente, un agente de aduanas, etc.).

8. Dirección General de Tributos. Contestación nº V2384-22, de 16 de noviembre de 2022.

Fondos y sociedad de capital-riesgo – Condición de empresario o profesional – Exención en el IVA por el servicio de provisión de informes de análisis financieros recibido por dichas instituciones.

La consultante tiene previsto promover la constitución de una Sociedad de Capital Riesgo, un Fondo de Capital Riesgo Europeo y un Fondo de Emprendimiento Social Europeo.

En este sentido, se plantean dos cuestiones: si los fondos y sociedad de capital-riesgo que promueve la consultante tienen la consideración de empresario o profesional en el Impuesto sobre el Valor Añadido y, por otro lado, si la exención en el Impuesto sobre el Valor Añadido por el servicio de provisión de informes de análisis financiero recibido por dichas instituciones.

En relación con la primera cuestión, la DGT comienza su análisis remitiéndose al artículo 4 de la Ley 37/1992, así como a la Ley 22/2014 y, más específicamente, a su artículo 5.

Ahora bien, de cara analizar si un fondo de capital-riesgo o una sociedad de capital riesgo tienen dicha condición de empresario o profesional en el Impuesto sobre el Valor Añadido, es necesario hacer la siguiente diferenciación. Por un lado, en lo relacionado con las sociedades capital-riesgo, se presume que, salvo prueba en contrario, serán consideradas como sociedades mercantiles y, por tanto, ostentan la condición de empresario o profesional. Por otro lado, en lo que respecta a los fondos de capital-riesgo, este Centro Doctrinal, apoyándose en conclusiones recientes del Tribunal Económico Administrativo Central y aludiendo a la naturaleza de estos, entienden que se caracterizan por ser un patrimonio común de unos inversores cuyo objetivo es canalizar financiación forma directa o indirecta a empresas, siendo una fórmula de inversión sin personalidad jurídica, que administra dicho patrimonio a través de una Sociedad Gestora del Capital Riesgo, que tampoco es la propietaria de los fondos, sino la que los gestiona bajo los principios previstos en la Ley 22/2014, todo lo que resulta difícilmente conciliable con la premisa de que el fondo de capital-riesgo asuma el riesgo inherente al desarrollo de toda actividad empresarial.

Conforme la anterior, concluye que los fondos capital-riesgo que cumplan dichos criterios, no ostentarán la condición de empresario o profesional.

Así, y en relación con la cuestión planteada acerca de la aplicación de la exención del Impuesto sobre el Valor Añadido relativa a la gestión de fondos comunes de inversión, la DGT, a la luz de la jurisprudencia del Tribunal de Justicia de la Unión Europea, considera que debe entenderse que los servicios de asesoramiento sobre inversiones financieras, prestados a una sociedad gestora de Instituciones de Inversión Colectiva están exentos del Impuesto sobre el Valor Añadido conforme a lo establecido en el artículo 20. Uno.18º, letra n) de la Ley 37/1992. Dicha exención, en su caso, se predica tanto de los servicios de asesoramiento sobre inversiones financieras prestados directamente a una Institución de Inversión Colectiva como de los prestados a una sociedad gestora de esta última y siempre que se trate de servicios consistentes en formular recomendaciones de compra y venta de activos.

Finalmente, la DGT analiza si de acuerdo con lo anterior los servicios de análisis o investigación controvertidos son similares a un servicio de asesoramiento financiero y por consiguiente su externalización a un tercero supondría un servicio sujeto y exento del Impuesto. Pues bien, en este sentido concluye que quedarán sujetos y exentos del Impuesto cuando sean externalizados a un tercero y cumplan las funciones específicas y esenciales de un fondo común de inversión.

9. Dirección General de Tributos. Contestación nº V2417-22, de 22 de noviembre de 2022.

Trabajos de reparación en garantía – Prestación del servicio por tercero – Sujeción al Impuesto.

La consultante es una entidad dedicada a la reparación de maquinaria industrial, que es contratada por una mercantil no comunitaria para la reparación y entrega de piezas en periodo de garantía a los clientes de la última con domicilio en el territorio de aplicación del Impuesto.

La consultante se cuestiona cuál es el tratamiento a efectos del Impuesto sobre el Valor Añadido aplicable al servicio de reparación prestado a la mercantil no comunitaria.

En primer lugar, se debe hacer una distinción en el servicio de reparación, distinguiendo entre aquel prestado por quién vende el bien reparado, que no constituye operación sujeta al Impuesto y, el servicio prestado por un tercero que cobra una cantidad por sus servicios, donde si existe una contraprestación.

El tratamiento a efectos del Impuesto, en los supuestos de servicios prestados por un tercero, dependerá de si esta operación es considerada como una entrega de bienes o como una prestación de servicios.

En este sentido, de considerarse como entregas de bienes conforme a las reglas de localización establecidas en la LIVA, así como del hecho de poner a disposición dichos bienes sin expedición en el territorio de aplicación del Impuesto, la reparación se encontraría sujeta al Impuesto.

Por otro lado, de considerarse como prestaciones de servicios, conforme a las reglas de localización generales no quedarían sujetos al Impuesto pues el destinatario no tiene en el citado territorio su sede de actividad o un establecimiento permanente. No obstante, en caso de que se determine que dichos servicios se relacionan con un bien inmueble, quedarán sujetos al Impuesto.

10. Dirección General de Tributos. Contestación nº V2422-22, de 23 de noviembre de 2022.

Entregas intracomunitarias de prótesis dentales – Tributación a efectos del Impuesto.

La consultante es una entidad establecida en el territorio de aplicación del Impuesto que se dedica a la prestación de servicios de odontología; para la realización de dichos servicios adquiere alineadores dentales invisibles y personalizados que son enviados desde los establecimientos de su proveedor radicados en Alemania, Países Bajos o Polonia.

La consultante se cuestiona cual es el tratamiento a efectos del Impuesto sobre el Valor Añadido de las entregas realizadas por su proveedor.

Este Centro Directivo considera que, puesto que los bienes objeto de entrega son considerados como aparatos de ortodoncia, de ser considerada dicha operación como una adquisición intracomunitaria de bienes por la consultante, la misma quedará exenta del Impuesto siempre y cuando el suministrador sea un dentista o un protésico dental, todo ello con independencia de que el Estado miembro de origen hubiese o no aplicado el régimen excepcional y transitorio del artículo 370 de la Directiva.

No obstante lo anterior, en el caso que la referida operación se califique como venta a distancia intracomunitaria de bienes sujeta al Impuesto, dichas operaciones serían equiparables a entregas interiores, las cuales quedarían exentas siempre que el suministrador tenga la condición de estomatólogo, odontólogo, mecánico dentista o, protésicos dentales en el desarrollo de su profesión.

En el caso de no cumplirse los requisitos para la exención, tanto si se considera una adquisición intracomunitaria como una venta a distancia intracomunitaria de bienes, en el caso de no cumplirse los requisitos para la exención, las mismas quedarán sujetas al tipo impositivo reducido del 10%.

Por último, cabe destacar que la consultante quedará en todo caso exonerada de la obligación de presentar declaraciones-liquidaciones periódicas, así como la declaración resumen anual del Impuesto, en caso de que únicamente realice actividades exentas del Impuesto. Sin embargo, en caso de que las operaciones califiquen como adquisiciones intracomunitarias de bienes, la misma sí estará obligada a presentar la declaración recapitulativa de operaciones intracomunitarias.

11. Dirección General de Tributos. Contestación nº V2427-22, de 23 de noviembre de 2022.

Trabajos de acondicionamiento en el marco de un contrato de arrendamiento de oficinas – Sujeción al Impuesto.

La consultante es una entidad que ha formalizado un contrato de arrendamiento, como parte arrendataria, para uso distinto de vivienda. Dicho contrato prevé un periodo de carencia de dos meses; asimismo, el propio contrato establece la posibilidad de realizar obras de acondicionamiento del inmueble, las cuales, a la finalización del contrato, podrá el arrendador optar por quedárselas sin pago de compensación o exigir la reposición del inmueble a su estado inicial.

La consultante solicita una aclaración y ampliación de la contestación vinculante V2684-18, de 2 de octubre.

El criterio de este Centro Directivo, en primer lugar, difiere conforme a si existe o no un periodo de carencia, en este sentido, si dicho periodo de carencia implica la renuncia al cobro de una cantidad exigible y, por tanto, una cesión del inmueble gratuita, se producirá un supuesto de autoconsumo sujeto y no exento del IVA.

Sin perjuicio de lo anterior, en el caso que las obras de acondicionamiento tengan la consideración de bienes de inversión y, el arrendador opte por quedárselas sin pago de compensación, la reversión de los bienes de inversión después del plazo de arrendamiento tendrá la consideración de entrega de bienes a efectos del Impuesto realizada a título gratuito por la consultante, debiendo repercutir el IVA en factura al tipo general en el momento de la reversión, a la vez que debe de proceder a la regularización de las cuotas soportadas en dichos bienes de inversión.

12. Dirección General de Tributos. Contestación nº V2442-22, de 28 de noviembre de 2022.

Trabajos de instalación – Ejecuciones de obra – Tipo impositivo aplicable.

La consultante es una entidad dedicada a la instalación de contadores individuales de calefacción, que ha sido contratada para su instalación en la Comandancia de la Guardia Civil.

Dichos servicios corren a cargo de la Comandancia, a quien se facturará, sobre unas viviendas de su propiedad pero que se destinan a uso por los empleados, sin cobrar importe alguno por concepto de alquiler.

La consultante se cuestiona cual es el tipo impositivo del Impuesto sobre el Valor Añadido aplicable a dicha operación.

El criterio doctrinal de este Centro Directivo hasta la fecha establecía que, en el caso de ejecuciones de obra, u obras de conservación o renovación, con cargo a presupuestos públicos no era de aplicación el tipo reducido del Impuesto. No obstante, con base en la jurisprudencia del Tribunal Supremo, este Centro Directivo concluye que en el caso que el proyecto de obras no pueda calificar como de construcción o rehabilitación, pero sí como ejecuciones de obra de renovación y reparación de viviendas, les será de aplicación el tipo reducido del 10 por ciento.

IV. Country Summaries

Featured articles

Albania

Key measures in 2023 fiscal package

Legislation implementing changes to the Albanian tax procedures, VAT, and excise duty laws included in the 2023 fiscal package presented by the Ministry of Finance and Economy in October 2022 was published in the official gazette on 20 and 22 December 2022 as Laws No. 83/2022, 82/2022, and 81/2022, respectively. The amendments apply as from 1 January 2023. The key measures are discussed below and include limits on cash at hand, revisions to the general anti-avoidance rule, changes to the penalty regime, and an increase in the scope of VAT exemptions.

Tax procedures

Introduction of cash register limits

Law No. 83/2022 introduces a daily cash register limit for taxpayers making sales in cash. Such taxpayers are obliged to deposit, on a daily basis, the cash taken from sales in the previous day that exceeds the daily cash register limit. The excess cash must be deposited either into the taxpayer's bank account or an account with a non-banking financial institution. The daily cash register limit depends on the taxpayer's annual turnover for the previous year and applies across all the taxpayer's business activities, regardless of the number of locations, It is calculated as follows:

Prior year annual turnover	Daily cash register limit
Up to ALL 2 million	ALL 150,000
ALL 2 million—ALL 10 million	ALL 500,000
Over ALL 10 million	The higher of ALL 500,000 or 5% of the annual prior year turnover

Taxpayers may determine their own lower daily cash register limits, including by setting individual daily limits for each place of activity.

The daily cash limits do not apply to banks and other non-banking financial institutions. Different limits apply to taxpayers performing currency exchange transactions.

Revision of general anti-avoidance rule (GAAR)

The GAAR first introduced in 2019 has been revised. According to the revised rule, when assessing taxable income and taxable profit, the Albanian tax authorities may disregard any agreement or series of agreements between taxpayers concluded for the purpose of obtaining a tax advantage. The "substance over form" principle will be applied and arrangements may be found to be in breach of the GAAR when:

- The legal substance of individual elements is inconsistent with the agreement as a whole;
- The agreement contains elements having an offsetting or canceling effect;
- The agreement applies in a manner that is inconsistent with regular business conduct;
- Related transactions are of a circular nature;
- The agreement leads to a significant tax benefit which is not reflected in the taxpayer's business risks or cash flows; or
- The projected pre-tax margin is significant compared to the amount of the projected tax benefit.

The burden of proof now lies entirely with the tax authorities.

Changes to the penalty regime

Law No. 83/2022 revises the following penalties:

- The nonpayment of corporate income tax advance installments is subject to interest for late payment calculated up to a maximum of 365 days of delay, in addition to the previous penalty of 10% on the amount of the installment.
- The penalty for not declaring employees and concealing the real/actual payment for legal persons doubles to 200% (previously 100%) of the calculated obligation and contribution.
- The penalty applicable for breaches in the procedure of fiscalization of sale invoices and inventory accompanying invoices is:
    - ALL 25,000 for sole entrepreneurs not registered for VAT;
    - ALL 50,000 for sole entrepreneurs registered for VAT; and
    - ALL 75,000 for taxpayers subject to corporate income tax.
- The penalty applicable for holding, using, or transporting goods not accompanied by proper tax documentation is as follows; taxpayers also may face criminal charges for repeat offenses:
    - ALL 25,000 for sole entrepreneurs not registered for VAT;
    - ALL 50,000 for sole entrepreneurs registered for VAT, subject to a minimum penalty of the amount of VAT lost; and
    - ALL 750,000 for taxpayers subject to corporate income tax, subject to a minimum penalty of the amount of VAT lost.
- For taxpayers subject to corporate income tax that fail to issue fiscalized invoices for a second consecutive occasion in a calendar year, the penalty is increased from ALL 150,000 to ALL 500,000.
- Failure to maintain tax records as required under the tax legislation is subject to a penalty of ALL 10,000 for sole entrepreneurs and ALL 50,000 for legal persons.
- The penalty applicable for failure to submit or update records is ALL 10,000 for sole entrepreneurs and ALL 15,000 for legal persons.
- The penalty applicable for failure to submit a tax declaration on time is ALL 3,000 for individuals and ALL 5,000 for other taxpayers.

Introduction of new penalty for obstructing a tax audit or investigation

A taxpayer that directly or indirectly obstructs a tax audit or investigation by the tax authorities is subject to a penalty of ALL 100,000 (sole entrepreneurs) or ALL 1 million (wealthy/high income entities or individuals). However, there is no definition in the tax legislation of wealthy/high income entities or individuals.

Extension of scope of third party information requests

An instruction of the minister of finance is expected to determine the procedure, time, content and form of information that third parties may be required to provide to the tax authorities.

The list of persons who may be requested to provide information has been extended to include digital marketplaces in relation to their suppliers, buyers, and transactions, as well as all public and private databases and registers.

Introduction and revision of terminology

Law No. 83/2022 updates existing and/or introduces new terms and definitions including "entity," "related party," "self-employed individual," "sole entrepreneur," and "taxpayer," with the intention of aligning with the new law on income tax expected to become effective as from 1 January 2024.

Changes to structure of General Tax Directorate

The legal framework is in place for a new department to be established at the General Tax Directorate with the right to initiate and conduct tax audits at taxpayers' premises and issue tax assessment notices. Currently, only Regional Tax Directorates are authorized to undertake these actions.

The law also provides for a new department to be set up to operate at the central and regional level, dealing with administrative measures for tax offenses and the implementation of restrictive measures.

VAT

Law No. 82/2022 contains the following measures:

- Goods imported for the implementation of projects financed by funds received through a donation or grant agreement between foreign donors and the Albanian state are exempt from VAT on import. The funds received should not be intended for the payment of taxes. An instruction of the minister of finance is expected to determine the criteria and procedures for the implementation of this exemption. The domestic supply of goods and services intended for use in such projects is treated as a zero-rated supply similar to exports.

- Imports and domestic supplies of wood for use as fuel are exempt from VAT from 1 January 2023 through 31 December 2023.

- A special VAT regime is introduced for the Albanian Energy Exchange, which includes the non-application of VAT on imports and domestic supplies of electricity intended for sale through the exchange. Through 31 December 2026, buyers of electricity from the exchange will be required to charge VAT under the reverse charge mechanism. Further details on the operation of the VAT regime are expected to be provided in a decision of the Council of Ministers.

Excise duties

Excise duty unification

Law No. 81/2022 unifies the level of excise duty for beer and spirituous beverages from both domestic and foreign producers for all levels of production capacity:

- Excise tax for beer is unified at ALL 710 per hectoliter (HL). Previously, producers with a production capacity of less than 200,000 HL paid a lower rate of excise duty of ALL 360/HL.
- Excise duty on spirituous beverages is unified at ALL 84,500/HL. Previously, producers with a production capacity of less than 200,000 HL paid a lower rate of excise duty of ALL 65,000/HL.

Excise duty removal

Excise duty (previously ALL 20 per kilogram) is removed for electric accumulators.

India

GST council recommends changes to rates and trade facilitation measures

At its 48th meeting on 17 December 2022, India's goods and services tax (GST) council made various recommendations with respect to changes to GST rates on goods and services, trade facilitation measures (including issuing circulars to clarify certain issues), and streamlining tax compliance.

Recommendations of the GST council

GST rate on goods and services

The following recommendations were made:

- No GST would be payable where a residential dwelling is rented to a registered person in their personal capacity for use as their private residence and not for business purposes.
- Clarification would be issued that the higher rate of compensation cess of 22% applies to motor vehicles fulfilling the following four conditions:
    - Commonly referred to as a sport utility vehicle (SUV);
    - Engine capacity exceeding 1500 cc;
    - Length exceeding 4,000 mm; and
    - Ground clearance of at least 170 mm.
- Goods (included under schedule I of Notification No. 1/2017—central tax rate) imported for petroleum operations would attract a lower GST rate of 5%. A 12% rate would apply on goods imported for petroleum operations only if the general rate exceeds 12%.
- A reduction to the GST rates applicable to ethyl alcohol supplied to refineries for blending with motor spirit (petrol) from 18% to 5%.

- The incentives paid to banks by the central government under the scheme for promotion of certain debit cards (RuPay) and low value payment interface (BHIM) transactions should be treated as subsidies and therefore not taxable.

Trade facilitation measures

- The GST council recommended the following changes:

- Raising the minimum threshold for launching a prosecution under the GST legislation to INR 20 million from INR 10 million, other than where an invoice has been issued without a corresponding supply.

- Reducing the compounding amount to 25%-100% of the tax amount, from the present range of 50%-150%.

- Decriminalizing certain offenses such as obstruction, preventing an officer from the discharge of their duties, deliberately tampering with evidence, or failure to supply information.

- Defining the procedure for filing refund applications by unregistered purchasers. Currently, there is no procedure for submitting claims for a refund of tax incurred by unregistered buyers where the contract or agreement for the supply of services is canceled, and the time period for the issuance of a credit note by the relevant supplier has elapsed.

- Implementing the scheme allowing unregistered suppliers and composition taxpayers to make intrastate supplies of goods through e-commerce operators as from 1 October 2023.

- Supplies of goods inserted into schedule III (items not covered under GST) of the Central GST Act, 2017 (CGST Act) with effect from 1 February 2019, such as supplies of goods from a place outside the taxable territory to another place outside the taxable territory, high sea sales, and supply of warehoused goods before their home clearance, would be kept outside the scope of GST with retroactive effect as from the date of implementation of GST.

- Providing a retroactive amendment with effect from 1 October 2022 requiring the reversal of input tax credit (ITC) proportionate to any amount not paid to the supplier within 180 days.

- Providing clarity on the requirement to submit a certified copy of an order against which an appeal has been launched, and the issuance of final acknowledgment by the appellate authority.

- Issuing a circular clarifying the following situations:

    - No GST is applicable on no-claims bonuses offered by insurance companies, as they are admissible deductions for the valuation of insurance services;

    - The treatment of statutory dues under the GST law in respect of the taxpayers for whom proceedings have been finalized under the Insolvency and Bankruptcy Code, 2016;

- The place of supply of services for goods transportation, and the availability of ITC to the recipient of these services;

- The verification procedure for ITC in cases involving a difference in ITC claimed in Form GSTR-3B as opposed to that available in Form GSTR-2A during financial years 2017-18 and 2018-19; and

- The applicability of e-invoicing.

Measures to streamline GST compliance

The following measures were proposed:

- The amendment of the rules relating to taxpayer registration to conduct a pilot project in Gujarat for biometric authentication for the Aadhar system, and risk-based physical verification of registration applications, to address the risk of fake and fraudulent registrations.

- An amendment to systems so that a mobile number and email address linked to a taxpayer's permanent account number (PAN) would be captured in Form GST REG-01, and one-time passcode verification would be conducted at the time of registration, reducing the risk of misuse of a PAN without the knowledge of the PAN holder.

- An amendment to the provisions relating to the statement of outward supplies, monthly returns, and annual returns, to restrict the time limit for filing to a maximum of three years from the relevant due date.

- Form GSTR-1 would be amended to report supplies made through e-commerce operators and deemed supplies by an e-commerce operator under section 9(5) of the CGST Act.

- The implementation of a new rule and associated form to provide the opportunity for taxpayers to explain certain differences between the tax liabilities reported in Form GSTR-1 and Form GSTR-3B. An amendment also has been proposed to restrict the filing of Form GSTR-1 for the subsequent period in cases where the taxpayer neither provides the required explanation, nor deposits the tax due.

- In order to reduce interpretation issues and litigation, an amendment to the definition of online information and database access retrieval services, and of nontaxable online recipients, has been proposed.

Deloitte India comments

The government is focused on enhancing the functionality of the GST online portal to make compliance more robust. Measures such as capturing a mobile number and email address linked to a PAN during GST registration and issuing notices for differences between the tax liability reported on different forms, are steps to reduce risk and enforce compliance.

In addition, the proposal for the proportionate reversal of ITC for amounts not paid to the vendor within 180 days, decriminalization of certain offenses, and the introduction of the compounding of offenses relating to GST, would bring much needed relief to industry.

However, no decisions were made on the taxation of online gaming and setting up a GST appellate tribunal during this council meeting. Discussions on these topics are expected in the next meeting.

Japan

2023 tax reform proposals announced

On 16 December 2022, Japan's ruling party announced (in Japanese) the 2023 tax reform proposals, which aim to increase investment in markets, industries, and people, and implement tax and other policies to redistribute wealth so that as many people as possible can enjoy the benefits of growth. To this end, the proposals include amendments to tax incentives for promoting open innovation to allow mergers and acquisitions that involve existing shares to be eligible for the incentives, and revisions to the research and development (R&D) tax credits that add costs for highly skilled researchers to the scope of eligible R&D costs in order to incentivize businesses to spend more for R&D.

In the area of international tax, a global minimum tax, which is conceptually aligned with the OECD Pillar Two initiative, would be implemented for fiscal years beginning on or after 1 April 2024 to ensure a level playing field by reducing international corporate tax competition.

In addition, the proposals include several tax measures to secure stable funds for an increase in defense spending. The details of these measures will be further discussed in 2023 and implemented in stages as from fiscal year 2024.

Please see below for some of the key items that may affect foreign-headquartered companies doing business and individuals residing in Japan. It should be emphasized that these proposals have not been enacted and could change prior to becoming law.

Corporate income tax

Revision of R&D tax incentives

General R&D tax incentives

The general R&D tax incentive proposals are set forth below:

Item	Proposed revisions
Tax credit rate	The tax credit rate formula would be revised as follows: If percentage of increased R&D costs (i.e., current R&D costs less the three-year average divided by such three-year average) is greater than 12%: • Tax credit rate equals 11.5% plus (percentage of increased R&D costs reduced by 12%) and multiplied by 0.375; and • Special provision raising the credit limit to 14% (generally the credit limit is 10%) would be extended by three years, If percentage of increased R&D costs is equal to or less than 12%: • Tax credit rate equals 11.5**%** less (12% reduced by percentage of increased R&D costs) and multiplied by 0.25); and • The minimum tax credit would be reduced from the current 2% to 1%.
Tax credit limit	The maximum credit amount for fiscal years beginning from 1 April 2023 to 31 March 2026 would be revised as follows: • If the percentage of increased R&D costs is greater than 4%, there would be a 0.625% increase per 1% increase in R&D costs (up to 5%); • If the percentage of increased R&D costs is less than 4%, there would be a 0.625% decrease per 1% decrease in R&D costs (up to 5%); and • If R&D costs are greater than 10% of average sales, either the above provision or the additional R&D tax credit available where R&D costs are greater than 10% of average sales, whichever allows a greater credit limit, would be applicable (see below).
Additional R&D tax credit and additional credit limit available where R&D costs are greater than 10% of average sales	Extended by three years
Additional credit limit available where R&D costs increase despite a decrease in sales of 2% or more from prior fiscal year beginning before 1 February 2020	Discontinued at the end of the applicable period

R&D tax incentives for small and medium-sized enterprises

The R&D tax incentive proposals for small and medium-sized enterprises (SMEs) are set forth below:

Item	Proposed revisions
Additional R&D tax credit if percentage of increased R&D costs is greater than 9.4% (maximum tax credit and credit limit)	The formula would be revised as follows and the applicable period would be extended by three years: • Additional credit equals 12% plus (percentage of increased R&D costs less 12%) multiplied by 0.375; and • The credit limit would be increased by 10% of the annual corporate income tax.
Additional R&D tax credit and additional credit limit available where R&D costs are greater than 10% of average sales	Extended by three years
Additional credit limit available where R&D costs increase despite a decrease in sales of 2% or more from prior fiscal year beginning before 1 February 2020	Discontinued at the end of the applicable period

R&D tax incentives for joint or outsourced research

The scope of eligible R&D costs for tax incentives for joint or outsourced research would be revised to include the R&D costs set forth below:

Costs added to eligible R&D costs	Details	Tax credit percentage
R&D costs for joint research with (or research outsourced to) "venture companies"	A company is a "venture company" if the following apply: • The company conducts business that contributes to certain business activities under the Act on Strengthening Industrial Competitiveness (SIC Act); • The Ministry of Trade, Economy and Industry has certified that the company's management resources are used to carry out business with high productivity or contribute to new business development for the specified business activities; and • Certain other conditions are met.	25%
Personnel costs for highly skilled researchers engaged in R&D	Personnel costs for highly skilled researchers engaged in R&D are entitled to the incentives if the following apply: • The company performs R&D using such personnel who are its directors or employees and pays their personnel costs; • The ratio of highly skilled personell costs for current fiscal year engaged in R&D (excluding research for practical application) divided by such personnel costs for previous fiscal years is equal to or greater than 1.03; and • Certain other conditions are met.	20%

These incentives would not apply to R&D costs for joint research with (or research outsourced to) venture companies with a focus on R&D.

Comments

The additional tax credit and credit limit for general type R&D tax incentives would be revised to make the incentives more attractive for companies spending more money for R&D. Specifically, the slope of the rate curve would be amended to make larger R&D investments more beneficial, while reducing the minimum rate of credit from the current 2% to 1%. Further, the establishment of a credit limit range, as opposed to the current flat rate of 25% of annual corporate tax, would result in larger R&D investments being given a higher credit limit. This would be the case for both R&D credits applicable to large companies and those for SMEs.

In addition, the scope of eligible R&D costs would be expanded to include R&D costs for joint research with, or research outsourced to, venture companies (excluding R&D venture companies) and costs for highly skilled researchers engaged in R&D to promote the hiring of R&D personnel with doctorate degrees and external, experienced researchers.

Revisions to tax incentives for promoting open innovation

The following revisions would be made to the tax incentives for promoting open innovation:

Item	Proposed revisions
Addition of eligible type of share acquisition	The following type of acquisition would be added: Shares that are acquired from an entity or person other than the original issuer (i.e., the qualified venture company) would be added to the scope of specified shares. In order for taxpayers to be eligible, they would be required to acquire majority voting rights of the qualified venture company, as follows: • Upper limit of acquisition cost of the specified shares acquired under this category is JPY 20 billion; • Certain revisions to the requirement would be considered: 1) minimum shareholding period would be five years, 2) minimum total investment costs would be JPY 500 million, and 3) only domestic companies would be eligible as qualified venture companies for this purpose; and • Some of the conditions that trigger a reversal of the deduction and subsequent inclusion in taxable income would be reconsidered.
Reduction of upper limit for acquisition cost	With regard to the acquisition cost of specified shares obtained as part of direct capital investments in a qualified venture company, the upper limit would be reduced from JPY 10 billion to JPY 5 billion.
Exclusions from eligible investments	The following criteria would be added to determine eligibility: • Investments made to qualified venture companies whose majority shares are already owned by the investor would be excluded from eligible investments; and • For incremental investments in qualified venture companies where the investor has already acquired minority voting rights using open innovation tax incentives, the incremental investment should bring the voting right ratio of the investor from below 50% to 50% or higher in order to be eligible.

In order for venture companies to consider various options as their exit strategy, the acquisition of the shares from entities other than the original issuer (i.e., the qualified venture company) would be added to the eligible acquisition method. Furthermore, for the true growth of venture companies, a new system would be introduced to allow eligible acquiring companies to receive tax benefits continuously if some additional requirements (e.g., growth rate of venture company or scale of investment in venture company) are met within five years after the acquisition. It is expected that those proposed revisions will strongly accelerate the growth of venture companies in Japan.

Revisions to tax incentives for promoting regional future investment

The tax incentives for promoting regional future investment would be revised as follows with an extension of two years until 31 March 2025 (the same would be applied to individual income tax):

Item	Proposed revisions
Tax credit rate and special depreciation	The following new set of requirements would be added to the existing requirements that taxpayers are required to meet in order to be eligible for the incentive: • The average added value of the regional economic business certified by the relevant ministry is JPY 5 billion or more in the prior two years; • The regional economic business is expected to create an added value of JPY 300 million or more; and • The labor productivity growth and return on investment is expected to exceed a certain level. Note that under the current regulation it is not necessary to meet the requirement for being considered “cutting edge” if the regional economic business is conducted at a location where buildings or structures used to be located but they could not be used anymore due to a specified emergency disaster. This special treatment would end by 31 March 2023.
Approval of business plan by relevant ministry	The following improvements would be made to the approval process: • The financial impact (e.g., fluctuation in demand) would be taken into consideration for the purpose of calculating revenue as part of the application evaluation; and • With regard to the requirement for being advanced, some measures would be taken to improve the accuracy of the evaluation by the evaluation committee. With regard to businesses related to the manufacturing of specified important materials that are stipulated in the relevant laws on promotion of economic security, such businesses would no longer fall into the category of supply chain type. The requirement that planned capital investments in the depreciable assets must be 10% of the prior year’s depreciation expense or more would be revised to 20% of the prior year’s depreciation expense or more.

Revisions to tax incentives for promoting digital transformation investment

The tax incentives for promoting digital transformation investment would be revised as follows with an extension of two years until 31 March 2025:

- In regard to requirements for productivity improvement or development of new demand, there would be a new requirement that sales are expected to increase 10% or more; and

- In regard to requirements for business transformation, there would be a new requirement that the overseas sales ratio of the targeted business is expected to exceed a certain ratio.

The above revisions would not be applied to assets acquired before 1 April 2023 based on an application that was submitted before 1 April 2023. In addition, there also may be a new requirement for human resource development and hiring, which will be introduced. However, no specific description was included in the 2023 tax reform proposals.

Expansion of tax-qualified share distribution

Distribution of shares of a wholly-owned subsidiary by a company (the "distributing company") whose business restructuring plan is certified under the SIC Act during the period from 1 April 2023 to 31 March 2024 would be treated as a share distribution (as defined under tax law) if it is made in the form of dividends from specified surplus (as prescribed under the SIC Act). Further, the share distribution would be treated as a qualified share distribution (i.e., tax neutral) if the following requirements are satisfied (these changes would apply for individual and corporate income tax purposes):

- Only shares in the wholly-owned subsidiary are distributed to the shareholders of the distributing company in proportion to their ownership percentages;

- The number of shares in the wholly-owned subsidiary held by the distributing company immediately after the distribution will be less than 20% of the total number of its outstanding shares;

- Approximately 90% or more of the employees of the wholly-owned subsidiary are expected to continue to be engaged in the subsidiary's business;

- The non-controlling, business continuity, and management continuity tests (similar to those under existing qualified share distribution rules) are satisfied; and

- Other requirements, such as the grant of (or expectation to grant) stock options to specified management of a related business operator or an affiliated foreign company under the certification, are satisfied.

Currently, a distribution of shares of a wholly-owned subsidiary is treated as a taxable transaction when a portion of shares is retained by the distributing company. Based on the proposal, a distribution of shares in a wholly-owned subsidiary may qualify for tax neutral treatment as a qualified share distribution even when a portion of the shares is retained by the distributing company subject to certain other conditions outlined above. This proposal is in line with the reform request made by the Ministry of Economy, Trade and Industry to facilitate a phased spinoff.

Global minimum taxation

In October 2021, an international agreement was reached to address the tax challenges arising from the digitalization of the economy based on the OECD/G20 Inclusive Framework on BEPS. This international agreement consists of two pillars: the allocation of new taxation rights to market countries (Pillar One) and global minimum taxation (Pillar Two).

Under the 2023 tax reform, Japan would introduce an income inclusion rule (IIR), which is conceptually aligned with the IIR under Pillar Two. The basic structure of Japan's proposed IIR is set forth below.

Taxpayer

A domestic company that belongs to a specified multinational enterprise group (i.e., generally, a group whose gross revenues are equivalent to EUR 750 million or more in at least two of the four fiscal years immediately preceding the target fiscal year) would be liable to pay national corporate income tax on the global minimum tax amount (see below) for each target fiscal year.

Target fiscal year

The target fiscal year is a period with respect to which the ultimate parent entity (i.e., generally, a company that directly or indirectly holds a controlling interest in another company, but which is not itself controlled by another company) of a specified multinational enterprise group prepares its consolidated financial statements.

Global minimum tax amount

The global minimum tax amount would be calculated based on various factors outlined in the proposal document and ultimately allocated to national corporate income tax and local corporate tax as follows:

- National corporate income tax is calculated by multiplying the global minimum tax amount by 90.7/100 (“specified base corporate income tax” or SBCIT); and
- Local corporate tax is calculated by multiplying the SBCIT amount by 93/907.

Filing and payment

Filing and payment would be required within 15 months (18 months in certain cases) from the day immediately after the last day of each target fiscal year. However, filing would not be required if there is no global minimum tax amount for the target fiscal year.

Safe harbor

De minimis exclusions and transitional safe harbor rules using certain information on the country-by-country report, etc. would apply.

Information return

Information related to the specified multinational enterprise group (e.g., name of constituent company, effective tax rate for each country, global minimum tax amount, etc.) would be required to be provided to the district director of the competent tax office via e-filing within 15 months (18 months in certain cases) from the day immediately after the last day of each target fiscal year.

Effective date

National corporate income tax on the global minimum tax amount and local corporate tax on the SBCIT amount would be applicable from the domestic company's fiscal years beginning on or after 1 April 2024.

The government has reconfirmed its support for Pillar Two by deciding to introduce the IIR. The government also has indicated that it is considering including the undertaxed profits rule and qualified domestic minimum top-up tax in future tax legislation based on ongoing international discussions.

Individual income tax

Revision of the Nippon Individual Savings Account

A Nippon Individual Savings Account (NISA) earns tax-exempt income on dividends and capital gains from listed shares, etc. held in a NISA account for a specified exemption period. The specified exemption period and the deadline for opening a NISA account would be discontinued. In addition, the annual contribution limit and the tax exemption total investment limit would be increased as set forth below as from fiscal year 2024:

Type	Description	Annual contribution limit	Total investment limit
Installment	Long term, installment, and diversified investment in specified mutual funds	JPY 1.2 million	JPY 18 million (lump-sum investment portion can be up to JPY 12 million)
Lump sum	Investment in listed shares, etc.	JPY 2.4 million	JPY 12 million
Total		JPY 3.6 million	JPY 18 million

The revisions would significantly increase the annual contribution limits (increased by three times for the installment investment type and two times for the lump-sum investment type). The revisions are meant to encourage more middle-income taxpayers to participate in the capital market.

Minimum tax on significantly high income earners

A minimum tax on significantly high income earners would be implemented to ensure fair taxation. Specifically, the minimum tax would be levied on the difference between amounts A and B below (if A is greater than B):

- A: minimum income tax (which is income less JPY 330 million, multiplied by 22.5%)
- B: base income tax

Capital gains on reinvestment in start-ups, which are exempt from tax and income exempted under the NISA system, would be excluded from the calculation of the base income tax.

The revision would be applicable as from fiscal year 2025.

Dividends and capital gains from listed and non-listed shares are taxed separately from other sources of income at a (national) rate of about 15%. This means that for individual taxpayers with primarily investment income, the minimum tax would be applicable if investment income is approximately JPY 1 billion or more.

Revisions of the inclusion period and amount of gifts in regard to inheritance tax

Currently, all property that a person, who is an heir of a decedent, acquired as a gift from the decedent within three years before death are included in the taxable estate of the decedent for inheritance tax purposes. This provision is only applicable to those who have received property through inheritance. The following are the proposed revisions:

- The taxable estate inclusion period would be within seven years before the date of death (currently it is three years); and
- A deduction of JPY 1 million would be allowed from the taxable estate on property acquired by gift (only applicable to the portion of the taxable estate that was gifted in the four-year period beginning seven years before and up to three years prior to the date of death).

This revisions would be applied to the inherited property acquired by gift as from 1 January 2024.

The inclusion period of gifts would be increased by one year per year beginning 1 January 2027. If the date of death is on or after 1 January 2031, the maximum duration of within seven years would be applied.

For a death occurring on or before 31 December 2026, the current inheritance tax calculation of within three years would be applied.

Japanese Consumption Tax

New transitional measures proposed for the qualified invoice system

The following Japanese Consumption Tax (JCT) proposed transitional measures regarding the qualified invoice system (QIS) would be implemented as from 1 October 2023.

Simplified JCT calculation for new JCT taxpayers

Under the QIS, only enterprises registered as qualified invoice issuers are permitted to issue qualified invoices. Qualified invoices are required for purchasers to claim a deduction for any input JCT. To become a qualified invoice issuer, an enterprise must be a JCT taxpayer. Consequently, enterprises that are exempt from the JCT reporting obligation (i.e., those with small taxable sales) must elect to become voluntary JCT taxpayers in order to become a qualified invoice issuer.

The proposed transitional measures would allow new JCT taxpayers to calculate the amount of JCT liability in a simplified manner on its JCT return for the tax period. Any such enterprise would be allowed to calculate its JCT liability as 20% of the output JCT (as if it incurred input JCT in the amount of 80% of the output JCT, regardless of the actual amount of input JCT incurred).

In order to qualify, exempt enterprises would be required to register to be a qualified invoice issuer or file a notification of election to become a voluntary JCT taxpayer during the tax period between 1 October 2023 and 30 September 2026.

Eased documentation requirements for input JCT deduction for enterprises with small taxable sales

Under the QIS, a JCT taxpayer is, in principle, required to retain qualified invoices and other necessary accounting books and records to deduct any input JCT.

Under the proposed transitional measures, the above documentation requirements would be eased for enterprises with taxable sales of JPY 100 million or less during the base period (i.e., second prior fiscal year) or JPY 50 million or less during the specified period (i.e., first six months of the prior fiscal year). These enterprises would be allowed to deduct input JCT without retaining the relevant qualified invoices (i.e., they would only be required to retain accounting books) with respect to taxable purchases of less than JPY 10,000 (JCT inclusive) incurred during the period 1 October 2023 to 30 September 2029.

De minimis rule for qualified credit notes

In principle, under the QIS, qualified invoice issuers must issue qualified credit notes containing necessary items for any sales refunds.

The proposed transitional measures introduce a de minimis rule that would remove the obligation to issue qualified credit notes for sales refunds of less than JPY 10,000 (JCT inclusive). This rule would be available to all qualified invoice issuers and would apply to sales refunds of taxable transactions occurring on or after 1 October 2023.

Revisions to qualified invoice issuer registration

Deadline for filing a registration application

The due date for filing an application for registration to be a qualified invoice issuer would be extended. Registration would be effective from the beginning of the following tax period if an application is filed by 15 days before the beginning of the following tax period (currently the due date is one month before the date prior to the beginning of the following tax period).

Deadline for filing a notification of registration cancellation

The due date for filing a notice to request a registration cancellation would be extended. Cancellation would be effective from the beginning of the following tax period if a notification is filed by 15 days before the beginning of the following tax period (currently the due date is 31 days before the end of the tax period in which the notice was filed).

Timing of registration as a qualified invoice issuer

An enterprise becomes a JCT taxpayer from the date that they are registered as a qualified invoice issuer, if the registration is complete in the tax period from 1 October 2023 to 30 September 2029.

According to the proposed transitional measure, an enterprise that intends to become a JCT taxpayer and register as a qualified invoice issuer on or after 2 October 2023 would be able to specify a desired effective date of registration if the date is at least 15 days after the application submission date. If such desired date is specified, the enterprise would be deemed to become registered as a qualified invoice issuer from the desired date as opposed to the registration completion date.

Platform taxation

With regard to JCT on the provision of cross-border services, the government is considering measures to ensure appropriate taxation taking into account the regulatory responses in other countries, enforcement issues and the role of platform operators, and the fairness of domestic and foreign competitive conditions.

Revisions to the Electronic Record Retention Law

Under the Electronic Record Retention Law (ERRL), certain requirements and procedures for electronic record retention would be relaxed to accelerate the transition to electronic record retention, taking into consideration the current circumstances, as well as feasibility and necessity for ensuring proper taxation.

ERRL title and article	Proposed revisions	Effective date
Electronic Books ERRL 4(1)	The scope of high quality electronic books would be limited to general ledgers, journals, and other specific data included in the books. Electronic books can be classified into general electronic books or high quality electronic books. When a company adopts the classification of high quality electronic books, a penalty tax for understatement of liability can be mitigated. However, in order to be considered as using high quality electronic books, several additional requirements would be required to be met and a notification would need to be filed with the designated tax office.	Books related to national taxes with a tax filing due date on or after 1 January 2024
Scanned digital documents ERRL 4(3)	The requirements related to definition, gradation, and size of information would be abolished. The requirement to confirm the identity of who input scanned digital documents would be abolished. For the cross-reference requirement, the scope of documents required to have cross references with records related to national tax would be limited to important documents defined in the ERRL (e.g., contracts, receipts, etc.).	Records related to national taxes to be retained on or after 1 January 2024

ERRL title and article	Proposed revisions	Effective date
Electronic transaction records ERRL 7	The requirements for electronic transaction records would be relaxed as follows: The measure that the search requirement is not applicable to taxpayers who can download electronic transaction records upon a request from national tax auditors would be applied to: • Taxpayers whose taxable sales for the base period are JPY 50 million or less (currently JPY 10 million or less); and • Taxpayers that can present or provide paper documents upon a request. The requirement to retain data of the input user for assurance of integrity would be abolished. For taxpayers not able to retain electronic transaction records under the ERRL 7 requirements due to reasonable circumstances, a grace measure allowing taxpayers to retain electronic transaction records not in accordance with ERRL 7 requirements would be applicable if both of following conditions are met: • The commissioner of the designated tax office acknowledges that the corporate or individual income taxpayer is not able to retain electronic transaction records due to reasonable circumstances; and • The taxpayer can download electronic transaction records or can present or provide paper documents upon request from national tax auditors. Transitional measures for preservation of electronic transaction records would be abolished after 31 December 2023.	Electronic transaction records occurring on or after 1 January 2024

The requirements for high-quality electronic books implemented in 2021 would be simplified to accelerate the transition to electronic record retention by limiting the scope, and the requirements for scanned digital documents also would be relaxed to accelerate the transition.

The transitional measures for preservation of electronic transaction records would be abolished after 31 December 2023. However, the additional grace measure would be implemented for enterprises not able to retain electronic transaction records under the ERRL 7 requirements due to reasonable circumstances. In addition, the search requirement would be relaxed to accelerate the transition to electronic transaction records.

Tax measures to finance an increase in defense spending

Tax measures to finance an increase in defense spending would be implemented in stages over several years as from fiscal year 2024 to secure the defense budget of over JPY 1 trillion in fiscal year 2027. Specifically, to finance the increase in defense spending, corporate and individual income taxes, as well as tobacco tax, would be raised as follows:

Item	Proposed measure
Corporate income tax	A special levy would be added: • The special levy equals (corporate tax multiplied by 4.0%) less 4.5%; and • A deduction of JPY 5 million from the tax base would be available to SMEs.
Individual income tax	A special levy would be added for a certain period: • The special levy equals individual income tax multiplied by 1%; and • The special levy for reconstruction would be reduced by 1% while extending the applicable period by the necessary amount of time to secure the sufficient funds for reconstruction.
Tobacco tax	Tobacco tax would be raised in stages by JPY 3 per cigarette with sufficient consideration for tobacco farmers and securing predictability for tobacco companies.

United Kingdom

HMRC guidance on amended VAT penalty and interest regime published

On 4 January 2023, the UK HM Revenue & Customs (HMRC) published guidance on the amended VAT penalty and interest regime for the late submission of VAT returns or late payments of VAT for accounting periods starting on or after 1 January 2023.

Under the new regime, a business will receive a point for each late submission of a VAT return. Upon receipt of a certain number of points, HMRC may issue a fixed GBP 200 penalty. When a business makes a late payment of VAT due, HMRC may issue late payment penalties. If a payment is up to 15 days late, HMRC will not issue a penalty. If the payment is between 16 and 30 days late, HMRC may issue a 2% penalty, calculated by reference to the outstanding VAT due. If the payment is made after 31 days, HMRC may issue a 4% penalty. To give businesses time to adjust to the changes, HMRC have indicated that late payment penalties will not be issued in 2023, provided a business pays within 30 days of the due payment date.

Also as from 1 January 2023, the VAT repayment supplement will no longer apply, and HMRC will instead pay repayment interest on overpayments of VAT that are owed to a business. HMRC also will charge interest on late payments of VAT.

Other news

Botswana

Extension of temporary reduced VAT rate

The temporary reduction of Botswana's standard VAT rate to 12% from 14% has been extended through 31 March 2023, under the Value Added Tax (Decrease in rate of tax) Order, 2023, published in the official gazette on 13 January 2023. The six-month reduction was originally due to expire on 3 February 2023.

In addition, as from 4 February 2023, the VAT rate on supplies of cooking oil and liquified petroleum gas (LPG) that were zero-rated following the VAT Amendment Act No. 23 of 2022 will revert to the standard rate.

Considerations

Suppliers of zero-rated cooking oil and LPG will be required to account for VAT at the standard rate on these supplies after 3 February 2023, and purchasers are likely to see a resulting increase in prices.

Botswana's Unified Revenue Service will issue transitional rules for affected taxpayers, and provide guidance to VAT registered entities on how to complete VAT declaration forms.

Brazil

Provisional measure amends law on temporary 0% tax rate for tourism industry

On 21 December 2022, the Brazilian government issued a provisional measure (PM 1,147/2022) amending Law No. 14,148/2021, which introduced the Emergency Program for the Recovery of the Events Sector ("PERSE") and established a 0% rate for corporate income taxes (IRPJ and CSLL) and federal gross revenue taxes (PIS and COFINS) for a period of five years as from 18 March 2022. The PM reinforces certain limitations and guidance on the practical application of the reduced rate provided in a normative ruling (NR 2,114/2022) issued by the Brazilian tax authorities on 31 October 2022. The changes seek to clarify that the tax benefits were intended to apply only to revenues that were negatively affected by the COVID-19 pandemic, thereby avoiding a broader interpretation of the original law and compromising the public budget.

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

PM 1,147/2022 amends the fourth paragraph of Law No. 14,148/2021, introducing new requirements and guidance for taxpayers eligible for the PERSE, as follows:

- The rate reduction applies only to revenues and results derived from tourism and events activities. Prior to the publication of the PM, Law No. 14,148/2021 provided that the zero rates would apply to taxpayers involved the tourism and events sector (e.g., cinemas, concerts, hotels, sporting and cultural events, travel agencies), which implied that all revenues derived by taxpayers in the sector would be eligible for the five-year zero rates. The amendment made by the PM would give legislative effect to the clarification provided by Normative Ruling 2,114/2022.

- No PIS and COFINS input tax credit is available where the associated outputs (revenues) benefit from the zero rates. Neither Law No. 14,148/2021 nor Normative Ruling 2,114/2022 addressed the treatment of input credits in these circumstances.

- Taxpayers benefiting from the reduced rates are exempt from the obligation to withhold taxes (e.g., IRRF, CSLL, PIS, and COFINS) on domestic payments made out of revenues subject to the zero rate. This issue had not been addressed by either Law No. 14,148/2021 or Normative Ruling 2,114/2022.

Eligibility for the tax benefit will continue to be based on the Economic Activities National Classification (CNAE), previously listed in Ordinance No. 7,163/2021, until further clarification is issued by the Brazilian tax authorities.

The PM also extends the zero rate benefit as from 1 January 2023 through 31 December 2026 to revenues derived from regular air passenger transport activities (subject to the condition that no input credits of PIS and COFINS are available on outputs subject to the zero rate).

Brazil

Normative ruling consolidates and provides new rules on PIS and COFINS

On 20 December 2022, the Brazilian tax authorities issued a normative ruling (NR 2,121/22), which consolidates and provides new rules on the calculation, collection, audit, and administration of federal gross revenue taxes (PIS and COFINS). NR 2,121/22 consists of 811 articles and 25 annexes covering several topics, revokes various other provisions (including NR 1,911/19, which was the prior NR that consolidated the PIS and COFINS rules), and incorporates certain positions taken by the superior courts and federal tax authorities. The rules in NR 2,121/22 are effective as from 20 December 2022.

Set forth below are key aspects of NR 2,121/22:

- The exclusion of state VAT (ICMS) indicated on invoices from the PIS and COFINS calculation base, which could affect ancillary tax obligations (EFD-Contribuições);

- The exclusion of excise tax (IPI) in certain circumstances from the calculation of PIS and COFINS input credits;

- Expansions of the exemplifying lists of expenditures that can and cannot be considered as "inputs" for purposes of calculating PIS and COFINS tax credits;

- The exclusion of the municipal service tax (ISS) from the PIS and COFINS calculation base upon the import of services; and

- An additional 1% COFINS on the import of goods has been postponed until December 2023.

Although NR 2,121/22 is extensive and detailed, further discussions are expected, and taxpayers should stay updated on any developments.

Brazil

Provisional measure changes PIS and COFINS input credit calculation

On 12 January 2023, Brazil's federal government issued, as part of its tax recovery package, Provisional Measure 1,159/2023 (PM 1,159), which requires that state VAT (ICMS) be excluded from the basis for calculating federal gross revenue tax (PIS and COFINS) input credits. The purpose of PM 1,159 is to reduce taxpayers' credit value and, therefore, increase tax collections as from 1 May 2023.

PM 1,159 is contrary to what was established in Normative Ruling 2,121/22 issued by the tax authorities on 20 December 2022, which stated that ICMS should be considered as part of the basis for calculating PIS and COFINS input credits.

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

Taxpayers should monitor the situation and consider how PM 1,159 could affect the calculation of input credits.

France

2023 finance bill adopted by Parliament

On 15 December 2022, France's 2023 finance bill was adopted by Parliament. It is now expected to be published without modification by 31 December 2022, following a review by the French Constitutional Council.

This article summarizes the law's key tax provisions, some of which are the same as those included in the draft bill released in September 2022.

Corporate income tax

Temporary solidarity contribution for fossil fuel sector

The 2023 finance law creates a temporary solidarity contribution for the fossil fuel sector, thereby transposing into domestic law Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, which entered into force on 8 October.

The French temporary solidarity contribution applies to the 2022 excess profits of French companies and permanent establishments generating at least 75% of their turnover from activities in the crude petroleum, natural gas, coal, and refinery sectors.

A 33% rate is imposed on the amount of 2022 "taxable result" that exceeds a 20% increase on the average taxable result for the previous four fiscal years (FYs) (i.e., FYs starting between 1 January 2018 and 1 January 2022). The "taxable result" is the result actually subject to corporate income tax, before tax deductions, tax credits, and tax receivables. In line with the EU regulation, if the average taxable result for the previous four years is a loss, the average is deemed to be zero, and the solidarity contribution is due on the first euro of taxable result for FY22.

In the case of companies that are members of a tax consolidation group, the temporary contribution is due by each group member that individually meets the turnover condition and the tax base is calculated at the company level (taking into account each entity's taxable result, as if it had been taxed separately).

The French temporary solidarity contribution is due no later than 15 May 2023 for companies with a 31 December 2022 FY end (otherwise, on the 15th day of the fourth month following the FY end). It cannot be treated as a deductible expense when determining taxable income. The tax audit procedures and penalties applicable to the temporary regime follow the corporate income tax rules.

Cap on market revenue of electricity producers

The law also implements the cap on the market revenue of electricity producers prescribed by the same EU regulation.

The cap on market revenue applies to 90% of a company's market revenue exceeding a specific threshold based on the type of electricity source: for example, the threshold is EUR 90 per megawatt hour (MWh) for electricity produced via nuclear energy, EUR 100 per MWh for electricity produced via wind energy, and EUR 130 per MWh for electricity produced via biomass combustion.

The measure applies to electricity production carried out between 1 July 2022 and 31 December 2023.

Amendments to the digital services tax (DST)

On 11 July 2019, the French parliament enacted a law imposing a 3% DST on annual revenue derived from:

- The online placement of advertising and the sale of collected user data: Services provided in placing advertising targeted at users on a digital interface, as well as the transmission of data collected from users as they use the interface; and

- Intermediation services: Services rendered to make multi-sided digital interfaces available to users ("intermediation services") that allow users to find other users and to interact with them, and that also may facilitate the provision of underlying supplies of goods or services directly between users.

The French DST applies only to companies whose relevant turnover during the calendar year exceeds EUR 750 million globally and EUR 25 million in France.

The French tax authorities' (FTA's) final DST guidelines were published on 8 April 2021. However, several of the guidelines' provisions were challenged by a company before the Administrative Supreme Court. The court annulled some of the guidelines' provisions while validating others (Conseil d'Etat, 31 March 2022, n° 461058). As a result, the FTA amended its comments in an update dated 18 May 2022.

The 2023 finance law also draws several conclusions from the Administrative Supreme Court's decision regarding when digital interface services should be excluded from the scope of the DST. Notably, the law provides as follows:

- The provision of a digital interface will only be excluded from the scope of the DST when the interactions between the interface's users are purely ancillary.

- The above exclusion will not impact the taxation of the digital content supplied to the users when this content constitutes in itself a distinct digital interface.

- The exclusion of services provided between companies that are part of the same group will be limited to services exclusively rendered to companies of the same group (i.e., a service provided to both related and unrelated companies will no longer benefit from the exclusion).

These rules apply to DSTs for which the triggering event occurs on or after 31 December 2022.

Five-year depreciation period for fixed assets extended to EU public subsidies for research and development

As a reminder, operating costs incurred by companies for technical or scientific research can be treated as fixed assets and thus can be depreciated over a maximum period of five years.

Public subsidies (i.e., subsidies granted by the state, local authorities, and public establishments) covering those fixed assets may also be spread over the same five-year period.

The 2023 finance law extends this mechanism to research and development subsidies granted by the EU, or by agencies set up by EU institutions.

Tax framework for captive reinsurance companies located in France

Considering the overall deterioration in French companies' level of insurance coverage, the 2023 finance law introduces a new favorable tax framework for captive reinsurance companies located in France.

Captive reinsurance companies that are not owned by a financial undertaking are authorized to set up a tax-free reserve to cover the costs related to reinsurance operations falling within the specific categories listed in the Insurance Code (i.e., damage to professional and agricultural property, natural disasters, general civil liability, pecuniary losses, damage and pecuniary loss resulting from breaches of information and communication systems and transport).

The annual amount and total amount of the reserve are capped by limits that will be set by decree.

Any unused reserve must be added back to taxable income in the 16th year following the year it was booked.

This measure applies as from 1 January 2023.

Favorable tax regime for partial contribution of assets granted upon FTA approval: Eligibility conditions eased

As a reminder, article 115, 2 of the French Tax Code (FTC) allows, under certain conditions, a tax-free allocation of shares that are received in exchange for a contribution of assets to the shareholders of the transferring company (i.e., the company transferring the shares), when the assets transferred represent a "complete branch of activity" (favorable tax regime).

When the assets transferred do not represent a "complete branch of activity" or when the transferring company does not keep a "complete branch of activity" after the transfer, this favorable tax regime is subject to FTA approval. The approval is granted notably when (i) the allocation of shares is justified on economic grounds, and (ii) the shareholders of the transferring company commit to keeping the shares in the transferring company for three years as from the date of transfer.

This commitment only applies to shareholders holding at least 5% of the transferring company's voting rights (or 0.1% if they carry out management/administrative functions within the company) at the time of the transfer.

The 2023 finance law cancels the above-mentioned three-year commitment for 5%-or-greater shareholders if they meet the following three conditions:

- The shares of the transferring company are traded on a French or European regulated market;
- The transferring company is not controlled by a shareholder or a group of shareholders "acting together," within the meaning of article L 233-3 of the business code; and
- The shareholder does not have a "significant influence" on the management of the transferring company, within the meaning of article L. 233-17-2 of the business code.

It should be noted that other conditions required for FTA approval will remain applicable.

These provisions apply as from 1 January 2023.

Local taxes/business tax

Removal of the added value contribution (CVAE) over two years and CET cap adjustment

CVAE due in 2023

The CVAE applies at a single rate of 0.75% to the added value produced by a company. However, a digressive allowance is available depending on the company's turnover, impacting the CVAE's effective tax rates (ETRs).

The finance law divides these ETRs by two, as illustrated in the table below:

Turnover (excluding taxes)	ETR based on enacted rules	ETR based on 2023 finance law
< EUR 500,000	0%	0%
EUR 500,000 ≤ turnover ≤ EUR 3 million	0.25% x ((turnover - EUR 500,000) / EUR 2,500,000)	0.125% x ((turnover - EUR 500,000) / EUR 2,500,000)
EUR 3 million < turnover ≤ EUR 10 million	0.25% + 0.45% x ((turnover - EUR 3,000,000) / EUR 7,000,000)	0.125% + 0.225% x ((turnover -EUR 3,000,000) / EUR 7,000,000)
EUR 10 million < turnover ≤ EUR 50 million	0.7% + 0.05% x ((turnover - EUR 10,000,000) / EUR 40,000,000)	0.35% + 0.025% x ((turnover -EUR 10,000,000) / EUR 40,000,000)
> EUR 50 million	0.75%	0.375%

The rate of the additional tax applicable on top of the CVAE is doubled (from 3.46% to 6.92%) to remain at the same amount.

The changes apply for the computation of CVAE due as from 1 January 2023.

Removal of the CVAE as from 1 January 2024

As from 1 January 2024, the CVAE (and the associated CVAE additional tax) will be abolished.

Although the changes to the CVAE rules apply as from 2023, they could impact consolidated financial statements for the fiscal year ended on 31 December 2022 if enacted before 31 December 2022. To the extent that CVAE is considered an income tax (optional under IFRS and mandatory under US GAAP), the associated deferred tax would need to be adjusted as soon as the change in the tax rate is enacted.

Adjustments to the territorial economic contribution (CET) cap mechanism

The CET consists of two different taxes: the immovable property contribution (CFE) and the added value contribution (CVAE). The CET is capped at 2% of the added value generated by an enterprise (cap mechanism).

The finance law lowers this cap to 1.625% for CET due in 2023 and to 1.25% for the following years (applicable to the CFE only as the CVAE will be abolished in 2024).

Individual income tax

Adjustments to the PAYE system ("PAS") for French-source compensation paid to a French resident taxpayer by a foreign employer

These provisions will be detailed in a separate article.

Increase of the childcare expenses tax credit

French taxpayers can benefit from a tax credit for childcare expenses incurred outside the home with respect to their children under six years old. The tax credit covers 50% of childcare expenses, limited to EUR 2,300 per child.

The finance law increases the per-child limit to EUR 3,500 for individual income taxes due as from 2022.

Extension of the FTA's powers of control to capitalization and investment contracts held abroad

French taxpayers holding capitalization contracts or similar investments abroad, including life insurance contracts, must fulfill certain reporting obligations (FTC, article 1649 AA).

Under specific conditions, the FTA may ask individuals who have not complied with their reporting obligations to declare life insurance contracts held in foreign establishments as well as information regarding the origin and methods to acquire the assets placed in their "concealed" life assurance contracts (i.e., contracts that they failed to report at least once during the previous 10 years, based on the French Book of Tax Procedure (FBTP), article L 23 C).

The 2023 finance lax extends the FTA's powers of control mentioned above to all capitalization or investment contracts (v. only life insurance contracts) held through foreign establishments. This new provision aims at ensuring an alignment between the scope of the reporting obligations (FTC, article 1649 AA) and the powers of control granted to the FTA (FBTP, article L 23 C).

A similar harmonization is provided regarding the automatic taxation of inheritance and gifts.

Currently, assets held in a foreign life insurance account whose origin has not been justified to the FTA are treated as assets acquired for free and are, as such, subject to inheritance and gift tax at the highest rate (60%). The same presumption is extended to assets held in all capitalization or investment contracts held abroad (when their origin has not been justified).

The measure applies as from 1 January 2023.

Release of taxpayer's bank account statements to the FTA upon request

During the tax audit of an individual taxpayer, the FTA can ask the taxpayer for their bank statements. If the taxpayer does not reply to this request within 60 days, the FTA may then directly ask the relevant financial institutions for the taxpayer's bank statements. The audit's duration is then extended by the time necessary for the FTA to obtain these statements.

The finance law allows the FTA to request these documents directly from the financial institutions holding the taxpayer's known accounts located in France. In this case, the taxpayer will only provide the FTA with a list of, and statements for, their other bank accounts.

The measure is applicable to tax audits beginning on or after 1 January 2023.

Miscellaneous provisions

Extension of the 5.5% VAT rate for goods aimed at limiting the spread of COVID-19

The reduced 5.5% VAT rate for face masks and protective clothing is extended by one year until 1 January 2024.

New reporting requirements for payment service providers (PSPs)

The 2023 finance law transposes into French law Council Directive (EU) 2020/284 introducing, as from 1 January 2024, a data reporting obligation for PSPs aimed at combatting VAT fraud.

PSPs are required to keep records in relation to cross-border payments and beneficiaries if:

- They have a head office in France or, if they do not have a head office in accordance with their domestic law, they have their central administration in France; or
- They have an agent or branch in France, or provide payment services in France.

The reporting obligation generally applies to cross-border payment services between a payer located in an EU member state and a beneficiary located in another member state or outside the EU, where the number of payments received by a given recipient exceeds 25 in a calendar

quarter. PSPs must keep records regarding cross-border payments for a period of three calendar years and provide the information to the FTA at the end of the month following the calendar quarter to which the payment data relates.

Failure to comply with this obligation will result in a fine equal to EUR 15 per unreported (inaccurately reported or late reported) payment, up to a limit of EUR 500,000 per PSP per calendar quarter to which the data relates, with an exception for the "first infraction," subject to certain conditions.

The data thus collected will be aggregated, processed, and exchanged among EU member states.

Germany

VAT Act amended by Annual Tax Act 2022

On 21 December 2022, Germany's Annual Tax Act 2022 entered into force. The Annual Tax Act 2022 provides for various amendments to the VAT Act, including a zero VAT rate for the supply and installation of photovoltaic systems and the implementation of EU VAT rules on record keeping and reporting obligations for payment service providers (PSPs). The most important new VAT rules are highlighted below.

Entrepreneurial status irrespective of legal capacity

The amended section 2(1)(1) of the VAT Act clarifies that entrepreneurial status does not require legal capacity. As such, unincorporated partnerships (e.g., tenancies in common) can be taxable persons. For decades, the legal capacity has not been decisive for entrepreneurial status. However, the Federal Fiscal Court held by judgment of 22 November 2018 (V R 65/17) that a tenancy in common is not a taxable person. The purpose of the amendment is to eliminate the legal uncertainty that had arisen due to this divergent case law. The revised provision applies as from 1 January 2023.

E-filing for VAT refunds for humanitarian, charitable, or educational supplies

Under the amended section 4a(1)(2) of the VAT Act, the application for VAT refunds by nonprofit corporations and legal entities under public law for supplies for humanitarian, charitable, or educational purposes in third countries can be filed electronically. This applies as from 1 January 2023.

Zero VAT rate on supplies and installation of photovoltaic systems

A new section 12(3) of the VAT Act has been introduced, which provides for a zero VAT rate on supplies and installation of photovoltaic systems as from 1 January 2023. The zero VAT rate entails that the operator of photovoltaic systems can deduct input tax. Previously, photovoltaic system operators, who were small taxable persons within the meaning of section 19(1) of the VAT Act, could only deduct input tax if they had waived the application of the small business rule.

Under the new provision, the VAT rate for the supply of solar modules to the operator of a photovoltaic system (including its essential components and storage devices) is reduced to zero percent. The zero VAT rate applies if the photovoltaic system is installed on or in the vicinity of

private dwellings, apartments, and public or other buildings used for activities serving the public interest. The requirements are deemed to be met if the installed gross capacity of the photovoltaic system does not or will not exceed 30 kW (peak) pursuant to the market master data register. This also applies to intra-Community acquisitions and imports of solar modules, essential components, and storage devices. Additionally, the installation of photovoltaic systems and the storage systems are subject to the zero VAT rate.

E-filing in case of individual taxation of vehicles

For the individual taxation of vehicles, the vehicle purchaser can submit VAT returns electronically under a new section 18(5a) of the VAT Act. This applies for taxation periods ending after 31 December 2022.

Restriction of the input tax refund procedure

According to a new section 18(9)(3) of the VAT Act, invoiced VAT amounts for exports (if goods were transported or dispatched by the customer or by a third party commissioned by the customer) and for intra-Community supplies are not refunded in the input tax refund procedure. This amendment should ensure that separately invoiced VAT amounts for intra-Community supplies are not refunded in the input tax refund procedure if the customer does not provide a valid VAT identification number issued to them by another EU member state, where the other requirements for the VAT exemption are objectively met. In cases where the supplies are zero-rated, if the customer subsequently discloses their VAT identification number, a refund in the input tax refund procedure is ruled out. This amendment applies from 21 December 2022 onwards.

Implementation of recording keeping and reporting obligations for PSPs

The EU VAT rules on reporting and record keeping for PSPs under Council Directive (EU) 2020/284 of 18 February 2020 are implemented in section 22g of the VAT Act. Accordingly, PSPs that render payment services in Germany are obliged, in the case of cross-border payments, to keep records and to transmit data to the Federal Central Tax Office. The records are stored temporarily and transmitted to the Central Electronic System of Payment information (CESOP) for further evaluation. This applies as from 1 January 2024.

Section 22g(1) of the VAT Act specifies the information on the payee to be recorded by the PSPs in the case of cross-border payments. This includes (company) name, VAT number, other tax number, address, IBAN or other identifiers of the recipient's account, BIC, precise details of all cross-border payments or refunds made in the relevant calendar quarter by date and time, amount, currency, the EU member state from which the payment originates, reference identifying the payment or refund, and, where applicable, information that the payment is initiated at the physical premises of the merchant. PSPs only are required to keep these records if they make more than 25 cross-border payments to the same payee per calendar year. PSPs must transmit the records to the Federal Central Tax Office on a quarterly basis in accordance with the officially prescribed data record. Incorrect data must be corrected within one month after realizing the error. PSPs must keep records for three years after the end of the calendar year in which the payments were made.

The reporting and record keeping obligations are accompanied by new offense provisions pursuant to section 26a(2) numbers 8, 9, and 10 of the VAT Act. Pursuant to these provisions, an administrative offense will be deemed to have been committed by any person who deliberately or negligently fails to provide the above-mentioned data correctly, completely, and in a timely manner, or fails to correct inaccurate or incomplete information, or fails to keep records. The offenses are punishable by a fine of up to EUR 5,000.

Further changes

Clarifications also have been made in connection with the submission of recapitulative statements. If a taxable person submits a corrected recapitulative statement or an initial recapitulative statement for the respective reporting period within the assessment period, the intra-Community supply is zero-rated, provided that the other conditions for VAT exemption are met. Other amendments to the VAT Act concern entities under public law.

Ghana

Relief from import VAT and levies available on raw materials for manufacturers

Ghana's Value Added Tax Act, 2013 (Act 870) provides a relief from import VAT and applicable levies on raw materials imported into the country for use in manufacturing. As customs duties and import costs are major considerations for businesses engaged in international trade, relief from VAT and import duties can provide both cash flow benefits and reduced processing costs.

Customs duties are calculated on the transaction value plus other costs effectively connected to an imported product. The default transaction value usually is the price stated on the commercial invoice, which typically is denominated in foreign currency. As a result, with the depreciation of the Ghana cedi against major foreign trading currencies, customs duties increase, making the cost of imported products more expensive.

This article provides an overview of the relief available, and the application process.

Conditions for the relief

A VAT registered manufacturer must satisfy the following conditions to qualify for the relief from import VAT and levies:

- The manufacturer must be a member in good standing of the Association of Ghana Industries (AGI), i.e., the member's subscription must be current, and paid up to date.
- The manufacturer must have discharged all direct and indirect tax obligations including payment of any interest and penalties, where applicable.
- The commissioner-general of the Ghana Revenue Authority (GRA) is satisfied that the manufacturer is tax compliant and listed as a VAT registered manufacturer.
- The imported raw material is to be used solely and exclusively for the taxpayer's manufacturing operations.

Manufacturers seeking relief from import VAT and levies must have been in business for at least three years. An annual evaluation exercise may be conducted for existing taxpayers benefiting from the relief, to ensure they remain compliant with the above conditions.

Raw material specifications

The imported raw materials must be in a natural (raw) or semi-natural state, and unable to be consumed unless they have undergone processing. Raw materials that are locally available—whether produced in Ghana or already being imported by another local supplier—do not qualify for the relief.

Application process

The application process for receiving approval of the relief is as follows:

- The VAT registered manufacturer must apply for the relief through the AGI (and apply for membership, if not already an AGI member), who reviews and forwards the application to the commissioner-general of the GRA for processing.
- The commissioner-general evaluates the application based on the applicant's tax compliance status (covering all taxes) over the previous three years, or an extended period where necessary. Additional documentary information and an inspection of the manufacturing facilities and raw materials also may be required.

A VAT relief license is valid from 1 January each year for a period of 12 months, and renewable annually. The list of licensed VAT registered manufacturers is published annually by the commissioner-general and is valid from January through December. The list is shared with the customs division of the GRA, the ministry of finance, the AGI, and other qualifying manufacturers. A manufacturer holding a valid license may submit this to the customs division for use on qualifying imports.

Benefits to manufacturers

Unlike import VAT, levies are not deductible and therefore increase the cost of production. Benefits of the relief are therefore an improved cash flow, as the manufacturer is not required to make an upfront payment for import VAT and levies, and a reduced cost of production due to the levy amounts saved.

Deloitte Ghana comments

National and international businesses may wish to conduct a critical review of their supply chain processes to identify and implement effective cost optimization strategies. Identifying available tax reliefs—especially on imported products—can provide significant benefits.

As the list of approved VAT registered manufacturers is effective from January through December, qualifying VAT registered manufacturers who wish to benefit from the relief from the following January may wish to consider making their applications as early as possible to ensure sufficient time for the approval process.

All VAT registered manufacturers must file their tax returns and pay all applicable taxes and duties to remain tax compliant.

Changes to VAT and e-levy rates effected and benchmark discount value policy reversed

Following the Ghanian government's announcement of various indirect tax policy changes in the 2023 budget statement, the Value Added Tax (Amendment) (No.2) Act, 2022 (Act 1087) and the Electronic Transfer Levy (Amendment) Act, 2022 (Act 1089) have been passed, bringing into effect changes to the VAT and electronic transfer levy (e-levy) regimes in Ghana. The acts were published in the official gazette on 29 December 2022 and take effect as from 1 January 2023. In addition, the GRA has published a public notice announcing the abolition of the benchmark value discount policy (BVDP) on imported goods.

This article provides a summary of the important provisions in both the acts and the public notice, and their potential impact on taxpayers.

Value Added Tax (Amendment) (No.2) Act, 2022 (Act 1087)

Revision of VAT rate for standard rate scheme

Act 1087 has revised the standard rate of VAT to 15% from 12.5%, and therefore taxable suppliers registered under the standard regime now are required to charge the increased rate on the value of their

taxable supplies. VAT is charged together with the national health insurance levy (2.5%), the Ghana education trust fund levy (2.5%), and the COVID-19 health recovery levy (1%). The effective VAT rate including all applicable levies has therefore increased to 21.9% from 19.25%.

Taxpayers registered under the VAT flat rate scheme continue to charge VAT at a flat rate of 3%, plus the 1% COVID-19 health recovery levy.

Penalty for noncompliance with invoicing requirements

As from 2022, taxpayers must use a certified invoicing system (CIS) to raise VAT invoices through an approved electronic system. A taxpayer's chosen invoicing system must be certified by the commissioner-general of the GRA and is integrated into the national invoicing system.

The amendment under Act 1087 provides a specific penalty for VAT registered businesses that fail to comply with the requirements of the CIS. Failure to issue an appropriate tax invoice or sales receipt, tampering with the CIS, or failure to integrate the taxpayer's invoicing system into the national invoicing system may result in a penalty of the higher of GHS 50,000, or three times the amount of tax involved. This penalty must be paid in addition to any penalty for failure to issue a tax invoice under the VAT Act.

Revision of VAT exempt supplies

Act 1087 has expanded the scope of VAT exempt supplies in Ghana to include the acceptance of a wager or stake in any form of gaming or betting. Taxpayers engaged in the gaming or betting business, including lotteries and the provision of gaming machines, no longer are required to charge VAT on stakes placed by their customers.

In addition, Act 1087 has excluded the supply of imported textbooks and other imported educational printed materials from the ministry of education's textbook and stationery VAT exemption list, meaning they are now subject to VAT.

Electronic Transfer Levy (Amendment) Act, 2022 (Act 1089)

Act 1089 has reduced the e-levy rate to 1% of the value of electronic transfers, from 1.5%. Notably, Act 1089 did not make any change to the daily threshold of GHS 100 for electronic money transfers, and GHS 20,000 for bank transfers through instant pay digital platforms, as initially proposed in the government's 2023 budget statement. The reduction in the rate of the e-levy is expected to reduce the cost of electronic payment services to final consumers.

Act 1089 also introduces an obligation for entities subject to the levy to file a return with the commissioner-general in the manner and at the time to be determined. Taxpayers must pay the amount of the levy to the tax authorities within 24 hours of charging the levy on an electronic transfer.

Reversal of the BVDP

Background

The BVDP was introduced to make Ghanaian ports competitive, reduce smuggling, and increase government revenue. In 2022, the BVDP provided a 10% discount on the home delivery value (HDV) of vehicles and a 30% discount on the delivery or benchmark values of all other imports. Following an announcement in the 2023 budget statement that the discount was to be phased out, the commissioner-general issued a public notice on 22 December 2022 announcing the abolition of the BVDP.

Scope of the change

As from 1 January 2023, no discount is offered on the benchmark value of all imports. Import duty assessments are based on the total HDVs, benchmark values, or free on board (FOB) values, subject to the GRA's existing risk management procedures.

Transitional arrangements

Given the immediate nature of the revision, certain transitional rules have been put in place to mitigate the effect on transactions spanning the date of the change, including:

- Consignments unloaded on 31 December 2022 from ships, aircraft, or vehicles may clear import controls without being affected by the reversal, under a free storage period.
- Where a pre-arrival declaration has been processed, and any tax paid, prior to 1 January 2023, the import is not affected by the new rules, even if the goods arrive on or after that date.
- Any bill of entry (BOE) with tax paid before 1 January 2023, but undergoing post-entry declaration without any changes that would affect the tax amount paid, will not be affected.
- Any BOE that has been assessed or accepted, but where the tax has not been paid before 1 January 2023, will undergo reprocessing to reverse the discount applied to the valuation.

Deloitte Ghana comments

The abolition of the BVDP means that 100% of the value of imports is used as the base for assessing customs duties. This is expected to increase the cost of imports and may directly affect the general price of goods in Ghana. Coupled with the global increase in prices, and fluctuating foreign exchange rates, businesses may wish to consider enhancing compliance processes to mitigate any tax loss, and implement cost optimization strategies such as a review of supply chain processes to reduce costs and remain competitive.

Greece

COVID-19 vaccines and diagnostic medical devices subject to super-reduced VAT rate

Circular E.2002/2023, published by Greece's Independent Authority for Public Revenue (IAPR) on 11 January 2022, provides that, as from 1 January 2023, certain COVID-19 vaccines and diagnostic tests are subject to the super-reduced VAT rate of 6%.

The VAT rate had been set at 0% until 31 December 2022 for COVID-19 vaccines that have been approved by the European Commission or the EU member states (tariff class code 3002 20 00 and, as from 1 January 2021, 3002 20 10). The same rate applied to services closely related to these products.

The VAT rate also had been set at 0% until 31 December 2022 for COVID-19 in vitro diagnostic medical devices that comply with the applicable requirements of EU Directive 98/79/EC (L 331) or Regulation (EU) 2017/746 (L 117) and other applicable EU legislation. The same rate applied to services closely related to these products.

As from 1 January 2023 and for an unlimited period of time, Circular E.2002/2023 clarifies that COVID-19 vaccines of tariff class code 3002, as well as diagnostic rapid tests, diagnostic PCR tests, diagnostic antibodies tests, and other COVID-19 diagnostics of tariff class code 3822 for humans are subject to the super-reduced VAT rate of 6% because they are important goods in the fight against the pandemic. This measure aims to facilitate the access of healthcare entities and the general public to goods meant to fight the virus and prevent its spread. In addition, the circular clarifies that, in the case of the supply of diagnostic rapid tests by pharmacies that also administer the tests for the convenience of consumers, the additional consideration received by the pharmacies for the tests' administration increases the taxable value of the supply (i.e., the sale of the tests). Accordingly, this additional consideration also is subject to the super-reduced VAT rate of 6% as from 1 January 2023.

However, COVID-19 diagnostic services performed by private diagnostic laboratories or other primary healthcare service providers are VAT exempt without the right to deduct (pursuant to article 22 paragraph 1 of the Greek VAT Code, Law 2859/2000), regardless of the diagnostic method used (rapid or PCR test).

Guatemala

General VAT regime taxpayers may use electronic tax book system from 1 January 2023

As part of the 2021-2025 institutional strategic plan of Guatemala's Superintendency of Tax Administration (SAT), which seeks to facilitate taxpayers' compliance and payment of their tax obligations, the SAT recently announced that as from 1 January 2023, the electronic tax book

(LET) system will be available for use by taxpayers registered under the general regime for VAT. The system will allow taxpayers to generate the book of purchases and services received and the book of sales and/or services provided to individuals and/or legal entities. The SAT also published a manual for the electronic tax book system, which covers the relevant requirements, objectives of the use of the system, and steps for generating reports.

The electronic tax book for the general VAT regime is free and available through the SAT's online branch. The following are some of the requirements that taxpayers must comply with to use the system:

- Must have an active establishment;
- Must have active computerized books of purchases and sales;
- Must have a username and password for the online branch;
- Must have adopted online electronic invoicing; and
- Must have internet access.

In addition to the books of purchases and sales generated by the system, taxpayers also may download reports of sales per customer and reports of purchases per supplier.

Taxpayers should consider reviewing their tax internal control procedures to ensure that all purchases include their NIT (tax identification number), that such purchases are directly related to the taxpayer's economic activity, and that the information on purchases and sales matches what is recorded in the accounting records and related reports. If any differences are identified in the information reviewed, taxpayers should ensure they have the appropriate details of the accounts.

In addition, the SAT has indicated that it expects that "pre-filled" VAT returns will be introduced in 2023. In other words, a taxpayer registered under the general VAT regime that has adopted the electronic tax book system will receive, through the SAT's online branch, a prepopulated tax return with the information on purchases and sales. Thus, the implementation of the electronic tax book for the general VAT regime represents a significant accomplishment for the SAT.

India

Global Trade Advisory Newsletter (October–December 2022)

India Global Trade Advisory Newsletter is a regular update on customs and other trade developments relevant to businesses operating within or trading with India.

The October-December 2022 issue of the newsletter includes coverage of the following:

- Extension of the Foreign Trade Policy 2015-2020 (FTP) and the Handbook of Procedures 2015-2020;
- Extension of the remission of duties and taxes on exported products (RoDTEP) scheme to chemicals, pharmaceuticals, and articles of iron and steel as from 15 December 2022; and

- Other changes in customs and FTP 2015-2020:
    - General trade facilitation measures;
    - Other changes in the FTP; and
    - News on levy of anti-dumping duty.

Ireland

Irish Revenue releases VAT Notes for Guidance to Finance Act 2022

Irish Revenue, in eBrief No. 214/22 of 19 December 2022, released VAT Notes for Guidance to Finance Act 2022. The notes detail the VAT changes introduced by the Finance Act 2022 under each relevant paragraph, including the effective date when each of the changes comes into force.

Ireland

Tax and Duty Manual on Betting Duty Return and Payments Compliance Procedures updated

Irish Revenue eBrief No.212/22 of 19 December 2022 updates the Tax and Duty Manual on Betting Duty Return and Payments Compliance Procedures to reflect changes introduced by the Finance Act 2022 to include the following:

- An additional category is added under paragraph 1.4.2 (Amount of Bet), which clarifies that the amount of bet on which duty is chargeable includes the amount of the unit stake for certain free/bonus bets.
- Appendix 1 previously called “Accessing the NELO Database” has been renamed to “Accessing the Excise Licences Dashboard”. However, this has no effect on the contents of the manual.

There are no other changes to the manual.

Ireland

Tax and Duty Manual on Electronic Relevant Contracts Tax System updated

Irish Revenue eBrief No. 213/22 of 19 December 2022 updates Part 18-02-11 (Electronic Relevant Contracts Tax System) (referred to as the “eRCT” system) of the Tax and Duty Manual.

The update introduces a new paragraph 8 (Bulk Rate Review), which provides details on new bulk rate review procedures to be carried out by Irish Revenue on a monthly basis. Certain contractors will be selected for a compliance assessment each month, resulting in the Relevant Contracts Tax rate review and amendment, where necessary.

There are no other updates to the manual.

Ireland

Irish Revenue updates Tax and Duty Manual on Importation of Motor Vehicles from UK

Irish Revenue eBrief No. 215/22 of 20 December 2022 updates the Tax and Duty Manual on Importation of Motor Vehicles from the UK. The updates include the following clarifications of Irish Revenue's view under paragraph 10 (Importing a Vehicle from Northern Ireland) of the manual:

- Clarification that no customs obligations arise when registering vehicles brought from Northern Ireland into Ireland where such vehicles were brought into Northern Ireland before 1 January 2021 and have remained there ever since (where relevant proof of movement/location can be provided).

- Examples of documentation that could be provided when proving movement of a vehicle into Northern Ireland prior to 1 January 2021 (e.g., ferry ticket showing the date of arrival in Northern Ireland).

- Slight update on the import declaration required in respect to vehicles that qualify for the UK VAT margin scheme. The previous guidance noted the declaration's name as "Supplementary Import Declaration– VAT on Import", which now has been updated to "Supplementary Import Declaration– VAT on Import on Used Vehicles".

No other changes have been made to the manual.

Ireland

New Tax and Duty Manual on VAT treatment of dental services

Irish Revenue, in eBrief No. 224/22 of 22 December 2022, issues new Tax and Duty Manual on VAT treatment of dental services to detail Irish Revenue's view on the VAT treatment of the below:

- The manual confirms that professional dental services are exempt from VAT, but notes that goods supplied by dentists that do not form part of dental treatment are liable to VAT at the individual VAT rates assigned to them.

- The manual confirms that supply of services of a dental nature (i.e., by dental technicians), dentures, and other dental prostheses is exempt from VAT

- The manual lays out the conditions under which arrangements where several dentists (such as principal and associate dentists) come together to form a practice "body of persons" are not considered supplies of service from a VAT perspective.

Ireland

Tax and Duty Manuals updated with VAT changes introduced by Finance Act 2022

Irish Revenue eBrief No. 236/22 of 30 December 2022 updates the following Tax and Duty Manuals on:

Printing and Printed Matter

The following changes have been made to the existing Tax and Duty Manual:

- Reference to newspapers has been removed from paragraph 3 (Printed matter liable at the second reduced rate) and a new subparagraph 2.2 has been added under paragraph 2 (Printed matter liable at the zero rate) to reflect the application of a zero VAT rate to newspapers with effect as from 1 January 2023. A definition of a newspaper is included under the new sub-paragraph together with clarification that newspapers that are wholly or predominantly devoted to advertising fall outside the remits of zero rating and are liable to the standard rate of VAT.

- A note is added under paragraph 3, which clarifies that the printed matter included under this paragraph and subject to a 9% rate (e.g., periodicals, brochures, catalogues, maps, etc.) will revert to being chargeable to the reduced rate of VAT (i.e., 13.5%) with effect as from 1 March 2023. This position could potentially change as there is some support for the 9% rate to continue to apply to certain supplies after 28 February 2023.

- The definition of periodicals under paragraph 3 has been amended to remove reference to newspapers and has been extended to not only weekly, but also monthly magazines.

- Appendix I, which contains a listing of various types of printed matter and the corresponding VAT rates, has been amended to reflect the application of zero rating to newspapers. The remainder of the content of the appendix remains unchanged.

Electronic Publications

Similarly, as with the printed matter above, the existing Tax and Duty Manual includes the below changes:

- A zero rate of VAT is now applicable to e-newspapers with effect as from 1 January 2023. An updated definition of an e-newspaper is provided, including exclusions that fall outside the zero-rating remits.

- Electronic publications to which the second reduced rate of VAT (i.e., 9%) currently applies will revert to being chargeable to the reduced rate of VAT (i.e., 13.5%) with effect as from 1 March 2023. As mentioned above, this position may change.

- The definition of an e-periodical has been slightly amended and the definition of an e-book has been completely removed from the updated Tax and Duty Manual.

- A new sub-section for e-newspaper subscriptions has been created. This clarifies that the subscriptions for access to the online content of an e-newspaper also fall within the remits of zero rating.

Certain Sanitary Products

The following changes have been made to the existing Tax and Duty Manual:

- Prior paragraph 2 (Products taxable at the reduced rate of VAT) (i.e., 13.5%) has been deleted and the products contained in this paragraph (i.e., menstrual cups, pants, and sponges) have been added under the paragraph 1 (Products taxable at the zero rate of VAT) to reflect application of zero VAT rate to these products with effect as from 1 January 2023.

Management of Special Investment Funds

This Tax and Duty manual replaces previous Irish Revenue VAT guidance on their position on the management of special investment funds following the CJEU decision in GfBk (Case C-275/11) and details application of VAT exemption to management of special investment funds both directly and when outsourced by a fund manager to a third party. The new guidance covers the following:

- Criteria is set for application of exemption (i.e., the service being provided must constitute "management" and be provided "in respect of specified funds".
- Management is defined as including any of the three functions listed in annex 2 of the EU directive on the undertakings for collective investment in transferable securities (UCITS) (i.e., investment management, administration, and marketing), whether provided individually or collectively.
- Further criteria has been laid down to assist with determining whether management of special investment funds outsourced to a third party falls within the remits of the VAT exemption, which is in line with the CJEU conclusions in GfBk.
- A comprehensive list of specified funds to management of which the exemption applies is provided. This is effective as from 1 January 2023; however, it must be noted that there will be slight changes to the list from 1 March 2023 when VAT exemption will be removed for management services provided to certain qualifying funds holding investments in plant and machinery.

VAT treatment of food and drink supplied by wholesalers and retailers

The existing Tax and Duty Manual on VAT on Food and Drink has been reorganized with restaurant and catering services removed (guidance contained in a separate standalone manual) and contains the following changes:

- A definition of food has been added as a starting point under paragraph 1.
- Products are then categorised by the VAT rate:
    - Zero-rated foods and drinks – most foods and drinks are covered in this category. In addition to the sample list provided in prior guidance, the updated manual also includes more detailed guidance on milk and milk-based drinks (including milk alternatives), tea and coffee in non-drinkable form (including alternatives), and baby food.
    - Foods and drinks taxable at a second reduced rate (i.e., 9%) – more detailed guidance is provided on the foods included in this category.
    - Foods and drinks taxable at a reduced rate (i.e., 13.5%) – more detailed guidance is provided on the items specifically excluded from this category, as well as flour or egg-based bakery products and biscuits.

    - Foods and drinks taxable at a standard rate (i.e., 23%) – in addition to the sample list provided in the prior guidance, the updated manual provides more detailed specific guidance on savory products, confectionary products, and drinks.

- Finally, an additional standalone paragraph that focuses on VAT treatment of take away food and drink has been added to the manual. This includes an extended definition of take away, guidance on various VAT rates applicable, and combination meal deals.

- References to VAT rates applicable in catering scenarios (e.g., hotels, restaurants, canteens, pubs, etc.) and to the supplies via vending machines have been removed from the summary table. The notes to the summary table also have been removed.

VAT Treatment of Medical Services

The following changes have been made to the existing Tax and Duty Manual:

- Direct reference to medical exemption paragraphs contained in schedule 1 of the VAT legislation has been removed from paragraph 1 (Medical exemption) of the guidance. Instead, the guidance now specifies that the exemption *"is limited to the provision of medical care services by recognised medical professionals who are registered on a statutory register in the State or equivalent legislation applicable in other countries"*. It also notes that *"the service provided must be medical care and it must be provided by a person in the exercise of the medical profession"*.

- Clarification of what constitutes professional medical care services has been removed from paragraph 2 (Medical professionals). This paragraph also has been slightly updated to list the medical professionals that also can qualify for exemption under the Health and Social Care Professionals Act 2005.

- The list of taxable services contained in paragraph 5 (Taxable activities) has been updated. *"A medical service not recognised under the provisions of the Health and Care Professionals Act 2005"* has been removed and replaced *by "A medical service not provided by a recognised medical professional".*

- Appendix A (Medical Professionals) who are treated as carrying on exempt activities when they provide qualifying medical services removes reference to the Nurses Act 1985 under bullet point 2 and replaces this with the Nurses and Midwives Act 2011.

Ireland

Irish Revenue updates procedures to prepare for new AES system

Irish Revenue eBrief No. 230/22 of 23 December 2022 updates the existing Customs Export Procedures Manual to reflect changes to the Automated Export System (AES) procedures coming into force on 30 January 2023. Apart from some stylistic changes to improve readability, AES specific changes include:

- Inclusion of an official name for Turkey – Türkiye (paragraph 1.45);

- Addition of table displaying a list of countries that accept invoice declaration or invoice declaration EUR-MED issued under simplified procedures provided by preferential agreements (paragraph 1.45.5);

- Provision of additional information on the Registered Exporter System (REX), including a list of countries that can avail of preferential exports (paragraph 1.45.8); and

- Addition of a new paragraph 1.68 (Outward Processing), which details procedures involved in claiming total or partial relief from import charges where goods are temporarily exported for processing or repair.

Please note that there appears to be an error in the paragraph numbering in the updated document and the paragraph references provided may change as part of a subsequent update by Irish Revenue.

Ireland

Tax and Duty Manual on VAT and Employer Direct Debit Guidelines updated

Irish Revenue eBrief No.235/22 of 30 December 2022 updates the existing Tax and Duty Manual on VAT and Employer Direct Debit Guidelines to remove the sentence *"Revenue will request the missed or unpaid Variable Direct Debit payment seven working days after the date the original payment was due."* Irish Revenue will no longer request the missed direct debit, and it will be the taxpayer's liability to ensure that the payment has been made and initiate a repeat payment, if necessary, in order to avoid interest accumulating on late payment.

No other changes have been made to the manual.

Ireland

Debt warehousing scheme updated

Irish Revenue eBrief No. 013/23 of 17 January 2023 updates the Tax and Duty Manual on Debt Warehousing Scheme - Level 1 Compliance Programme Guide.

Guidance has been added in paragraph 2 (Debt Warehousing Scheme – Opportunity to disclose additional relevant liabilities) to allow for an opportunity to warehouse additional liability resulting from previously undisclosed "Period 1" liabilities if the taxpayer discloses such additional liability by making an "Unprompted Qualifying Disclosure" on or before 31 January 2023.

In addition to the above, paragraph 2.4 (and relevant sub-paragraphs) has been updated to reflect that the period within which taxpayers availing of debt warehousing are required to enter into a "Phased Payment Arrangement" (PPA) with Irish Revenue has been extended, with the PPA now required to be in place by 1 May 2024.

This guidance applies to VAT and other relevant taxes.

Ireland

Irish Revenue updates Tax and Duty Manual on Review of Opinions or Confirmations

Irish Revenue eBrief No. 010/23 of 17 January 2023 updates Part 37-00-41 (Review of Opinions or Confirmations) of the Tax and Duty Manual. The update reminds taxpayers who received opinions/confirmations between 1 January and 31 December 2017 to make a renewal/extension application on or before 31 March 2023 if they wish to continue relying on such opinions/confirmations on or after 1 January 2023.

Ireland

Irish Revenue removes Vietnam as a qualifying beneficiary under the GSP scheme

Irish Revenue eBrief No. 006/23 of 16 January 2023 updates the Customs Manual on Preferential Origin to remove Vietnam as a qualifying beneficiary under the "Generalized System of Preferences" (GSP) scheme.

Following completion of a bilateral trade agreement with the EU on 1 August 2020 and expiration of the prescribed transition period, Vietnam is no longer a qualifying beneficiary under the unilateral GSP scheme. As a result, the Customs Manual on Preferential Origin has been amended to remove Vietnam from the GSP qualifying beneficiary listing.

Japan

Tax audits and controversy are returning in 2023

Japan's National Tax Agency recently published its latest fiscal year (FY) 2022 statistics on tax audits (July 2021 through June 2022) and tax appeals and litigation (April 2021 through March 2022). The statistics clearly show the return of tax audits and controversy in FY 2022, regardless of the effects of several waves of COVID-19. In FY 2023, tax audit activity has almost returned to pre-COVID-19 levels.

Tax audits

The number of field audits of corporate taxpayers in FY 2022 increased by 63.2% from FY 2021, and the total amount of income found in FY 2022 increased by 14% from FY 2021. The total amount of corporation tax imposed by field audits in FY 2022 increased by 19.1%. These increases indicate that tax audit activities were expanding in FY 2022.

The number of field audits on corporations for consumption tax in FY 2022 increased by 62.9% from FY 2021, and the total amount of consumption tax imposed by field audits in FY 2022 increased by 19.1%, which indicates that consumption tax was one of the major tax audit focal points in FY 2022. In particular, the tax authorities conducted intensive tax audits of corporate taxpayers claiming a refund of consumption tax, conversely imposing JPY 37 billion on those taxpayers.

Audits, income found, tax imposed	FY 2021	FY 2022	Change (%)
Corporation tax field audits (cases)	25,000	41,000	63.2
Total corporation income found (JPY)	529 billion	603 billion	14.0
Total corporation tax imposed (JPY)	121 billion	144 billion	19.1
Corporation tax imposed per case (JPY)	4.8 million	3.5 million	-27.0
Consumption tax field audits (cases)	25,000	40,000	62.9
Total consumption tax imposed (JPY)	73 billion	87 billion	19.1
Consumption tax imposed per case (JPY)	3.0 million	2.2 million	-26.9

(Source: National Tax Agency)

Regarding individual taxpayers, the number of field audits in FY 2022 increased by 31.9% from FY 2021, and the total amount of income found by field audits in FY 2022 increased by 40.3% from FY 2021. The total amount of individual income tax imposed by field audits in FY 2022 increased by 50.8%. As with corporate taxpayers, tax audit activity against individual taxpayers also increased during the year.

The number of field audits on individual taxpayers engaged in business activities for consumption tax in FY 2022 increased by 52.7% from FY 2021, and the total amount of consumption tax imposed by field audits in FY 2022 increased by 81.2%. A major tax audit target historically has been wealthy individuals, but in FY 2022 the tax authorities also rigorously targeted individual taxpayers taking advantage of consumption tax exemptions, additionally imposing JPY 1.2 billion on those taxpayers.

Audits, income found, tax imposed	FY 2021	FY 2022	Change (%)
Individual income tax field audits (cases)	24,000	31,000	31.9
Total income found (JPY)	299 billion	420 million	40.3
Total individual income tax imposed (JPY)	53 billion	80 billion	50.8
Individual income tax imposed per case (JPY)	2.2 million	2.6 million	14.3
Consumption tax field audits (cases)	11,000	17,000	52.7
Total consumption tax imposed (JPY)	13 billion	24 billion	81.2
Consumption tax imposed per case (JPY)	1.2 million	1.4 million	19.2

(Source: National Tax Agency)

In FY 2023, the tax authorities are carrying out tax audit activity at levels approaching those seen before the spread of COVID-19. As such, taxpayers, especially those with consumption tax issues, should prepare for tax audits in advance.

Tax appeals and litigation

The number of first tier tax appeals filed with the tax authorities in FY 2022 increased by 11.9% from FY 2021, and those completed in FY 2022 increased by 19.9%. The number of second tier tax appeals filed with the National Tax Tribunal in FY 2022 increased by 11% from FY 2021, and

those completed in FY 2022 decreased by 2%. Also, the number of tax litigation cases initiated in FY 2022 increased by 14.5% from FY 2021 and those completed in FY 2022 increased by 10.6%.

As tax audit activity increased in FY 2022, the number of unresolved points of contention between taxpayers and the tax authorities also increased, showing that tax controversy also was returning in FY 2022.

Appeals/litigation initiated by taxpayers	FY 2021	FY 2022	Change (%)
First tier tax appeals initiated (cases)	1,000	1,119	11.9
First tier tax appeals completed (cases)	999	1,198	19.9
Successful first tier tax appeals (cases)	100	83	-17.0
Successful first tier tax appeal ratio (%)	10.0	6.9	-31.0
Second tier tax appeals initiated (cases)	2,237	2,482	11.0
Second tier tax appeals completed (cases)	2,328	2,282	-2.0
Successful second tier tax appeals (cases)	233	297	27.5
Successful second tier tax appeal ratio (%)	10.0	13.0	30.0
Tax litigation initiated (cases)	165	189	14.5
Tax litigation completed (cases)	180	199	10.6
Successful tax litigation (cases)	14	13	-7.1
Successful tax litigation ratio (%)	7.8	6.5	-16.7

(Source: National Tax Agency)

The number of successful first tier tax appeals in FY 2022 decreased by 17% from FY 2021, with the success ratio in FY 2022 decreasing by 31%. The number of successful second tier tax appeals in FY 2022 increased by 27.5% from FY 2021, with the success ratio in FY 2022 increasing by 30%. Furthermore, the number of successful tax litigation cases in FY 2022 decreased by 7.1%, with the success ratio in FY 2022 decreasing by 16.7%.

Compared with the recent five-year average, the first tier tax appeal success ratio has decreased, and the successful tax litigation ratio was almost unchanged. It is notable, however, that the second tier tax appeal success ratio has increased, with the number of successful second tier tax appeals reaching nearly 300 in FY 2022, considering most tax disagreements tend to be resolved during the tax audit process in Japan.

Deloitte Japan comments

Tax audits and controversy are returning, and the tax authorities are conducting even more tax audits in FY 2023 than in FY 2022. Consumption tax continues to be a major tax audit focal point in FY 2023, and a key issue often is whether a fact that is considered to be true by a taxpayer is actually correct.

For example, if a tax-free shop sells certain goods, such as cell phones or cameras, to a nonresident in accordance with tax-free procedures, the sale of the goods is exempt from consumption tax. However, if the tax-free shop sells the same goods to a resident, the sale of the goods is subject to consumption tax at 10%. Therefore, the consumption tax treatment of the sale depends on whether the purchaser is actually a nonresident. In practice, most customers visiting a tax-free shop, stating they are nonresidents

and showing their passports, are actually nonresidents. However, abuse of the system is possible if a nonresident assists a resident in purchasing goods at the tax-free price. In this case, whether the purchaser is actually a nonresident could be a point of dispute in tax audits.

If a tax position relies on uncertain facts, taxpayers should determine whether there is enough evidence to prove the position in preparation for a future tax audit.

Italy

2023 budget law enacted, including certain measures relevant to multinational groups

Italy's 2023 budget law was published in the Italian official gazette on 29 December 2022, and its provisions generally entered into force on 1 January 2023 and generally are applicable as from the same date. The budget law contains several tax provisions that could be relevant to multinational groups with Italian activities, such as provisions relating to the definition of a permanent establishment, the tax treatment of certain inbound dividends, the introduction of rules relating to the taxability of certain capital gains from transfers of participations in companies whose value principally is derived from Italian immovable property ("land-rich rules"), and the settlement of certain assessment procedures with the Italian tax authorities. Among other things, the budget law also includes provisions allowing a significant reduction in administrative penalties in certain cases where taxpayers voluntarily correct tax violations; establishing the temporary solidarity contribution for 2023 that applies to surplus profits of Italian entities operating in certain industries; and amending the computation of the solidarity contribution for 2022 (which may require certain entities to pay additional tax for 2022).

The most relevant tax measures in the budget law include the following:

Land-rich rules

The new land-rich rules are applicable to capital gains realized by non-Italian tax resident shareholders from transfers of certain Italian and non-Italian participations, with the aim of aligning Italian domestic tax law with the OECD's latest standards (and the tax rules already applicable in certain other jurisdictions, such as China, Germany, and India).

Under the new rules, capital gains from transfers of non-Italian participations are deemed to arise in Italy (and, therefore, are prima facie subject to the 26% Italian capital gains tax) if the value of the company whose participations are transferred principally is derived (directly or indirectly) from immovable property located in Italy.

The new rules also eliminate the tax exemption formerly provided by Italian domestic tax law for capital gains from transfers of "nonqualified" participations in Italian companies realized by non-Italian tax residents that are resident in a listed jurisdiction in cases where the value of the Italian company principally is derived (directly or indirectly) from immovable property located in

Italy. A “listed jurisdiction” is a jurisdiction included on the list of jurisdictions set forth in a ministerial decree (dated 4 September 1996, as amended) that are considered to grant an adequate exchange of tax information with Italy.

For the purposes of the new rules, a company is deemed to be “land rich” if, at any time during the 365 days preceding the transfer, more than 50% of its value is derived (directly or indirectly) from immovable property located in Italy, other than immovable property (i) whose construction and disposal constitutes the effective business activity of the company, and (ii) that is used in the course of the business activity of the company.

Participations in Italian and non-Italian companies listed in regulated markets are out of the scope of the new rules. In addition, the new rules do not apply to EU collective investment undertakings, provided certain conditions are met.

From a practical perspective, although the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) (which includes a “land-rich” clause) has not yet been ratified by Italy and therefore is not in force for Italy, the new rules should be carefully evaluated in light of the need to consider the application of relevant bilateral tax treaties concluded by Italy (if any) also in cases of indirect transfers of an Italian participation.

Permanent establishments

A new rule is introduced to provide clarification regarding the possibility that activities performed by individuals (asset managers) who manage investments in Italy on behalf of nonresident investment vehicles may not trigger the existence of a permanent establishment in Italy. Under the new rule, a permanent establishment in Italy is not deemed to exist, as long as the following conditions are met:

- The investment vehicle and its controlled companies are tax resident or located in a listed jurisdiction;

- The investment vehicle meets certain independence requirements, which will be set forth by a decree from the Ministry of Economy and Finance;

- The asset manager does not hold an office in the administrative and control bodies of the investment vehicle or its controlled companies, and does not hold a profit participation in the same investment vehicle that is greater than 25% (also taking into account the participations held by related parties of the asset manager); and

- The asset manager receives an arm’s length remuneration duly supported by proper documentation (the Italian tax authorities will have to provide specific guidelines for the application of the general transfer pricing rules to such remuneration).

Tax step-up for participations and land

Non-Italian tax resident taxpayers (including individuals, companies, and other entities) can opt for a special tax step-up of the basis of participations in Italian companies (listed and unlisted) and land located in Italy held as of 1 January 2023, through the payment of an upfront substitute tax at a 16% rate applied to the market value of the participations and land as at 1 January 2023.

The payment of the substitute tax must be made by 15 November 2023 (with the possibility to opt for payments in three annual installments, with the first installment due by 15 November and interest at a 3% rate payable on the second and third installments) and a specific procedure must be followed (including the obtaining of a sworn appraisal of the participations in unlisted companies whose basis will be stepped up).

Substitute tax on foreign retained profits

An optional regime is introduced that allows Italian companies (and Italian individual entrepreneurs), through the payment of an advance substitute tax, to exclude from their taxable income certain dividends distributed by their foreign subsidiaries. The regime may be of interest to Italian companies holding participations in non-EU companies that are tax resident in a "tax haven" jurisdiction (i.e., a jurisdiction in which the company is subject to a "low-tax" regime), as dividends distributed by such companies cannot benefit from the Italian participation exemption (PEX) regime (providing for 1.2% effective taxation for dividends and capital gains).

The option can be elected with reference to profits and retained earning reserves resulting from the 2021 financial statements of the foreign subsidiaries. For Italian companies, the substitute tax is applied at a 9% rate on the amount of profits and retained earning reserves and is levied in lieu of ordinary Italian corporate income tax, which applies at a 24% rate if the Italian PEX regime is not applicable (for Italian individual taxpayers, the substitute tax is levied at a 30% rate, in lieu of progressive rates up to 43%).

As an alternative, the substitute tax can be applied at a reduced rate of 6% for Italian companies (27% for Italian individual taxpayers) if it is expected that:

i. The Italian company will receive the foreign-source dividends by the deadline for the payment of the balance of the income taxes due for fiscal year (FY) 2023 (30 June 2024 for calendar-year taxpayers); and

ii. The relevant amount will be set aside in a specific equity reserve for at least two years.

A specific recapture mechanism is provided in case the two conditions above are not met.

For the purposes of the Italian capital gains tax, the tax basis of the interest in the foreign subsidiary is increased (up to a maximum threshold of the sales price) by the amount of profits and retained earning reserves subjected to substitute tax, and decreased by the amount of the distributions of the same profits and retained earning reserves.

The option, which can be exercised separately for each foreign subsidiary and in relation to all or part of its profits/retained earning reserves, is elected with the tax return related to FY 2022 (whose deadline is 30 November 2023 for calendar-year taxpayers). However, the payment of the substitute tax is due by the deadline for the payment of the balance of the income taxes due for FY 2022 (30 June 2023 for calendar-year taxpayers).

Transactions with companies in noncooperative jurisdictions

New rules provide that costs incurred by Italian companies in relation to transactions with third-party companies resident or located in noncooperative jurisdictions may be deducted up to the "normal value" of the relevant goods and services provided. The deduction of any costs exceeding the normal value is allowed as long as the Italian company is able to prove the effective execution of the transaction and its actual economic interest.

The "noncooperative" jurisdictions are those included on the EU list of noncooperative jurisdictions for tax purposes (currently 12 jurisdictions: American Samoa, Anguilla, Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands, and Vanuatu).

The Italian company is required to disclose in a specific field of its tax return the costs incurred with counterparties in noncooperative jurisdictions. A specific procedure will be followed by the Italian tax authorities in the case of an audit, which includes a requirement for the Italian company to provide the relevant information to support the tax treatment of the transactions within 90 days from a formal request by the tax authorities.

The deduction limitation does not apply to transactions with companies that are subject to the application of the Italian controlled foreign company (CFC) regime.

Temporary solidarity contribution

Surplus profits generated by Italian entities operating in the production, importation, or distribution of gas, electricity, and petroleum products are subject to a 50% temporary solidarity contribution for 2023. The contribution is applied on the taxable income for Italian corporate income tax (IRES) purposes related to FY 2022 that exceeds at least 10% of the average of the taxable income for the previous four FYs (with a cap based on the amount of equity). The contribution for 2023 must be paid by 30 June 2023 and is not deductible for tax purposes.

The 2023 budget law also amends the computation of the temporary solidarity contribution for 2022 (as provided for under article 37 of Legislative Decree No. 21/2022) and any additional amount due under the new rules must be paid by 31 March 2023 (in the case of a lower amount resulting from the new computation rules, a tax credit may be claimed as from 31 March 2023).

Postponement of plastic tax and sugar tax

The budget law further postpones to 1 January 2024 the entry into force of both the "plastic tax" (which applies to certain single-use products made of plastic materials containing synthetic organic polymers) and the "sugar tax" (which applies to the consumption of sweetened drinks).

Special voluntary correction procedure

The budget law provides for a special application of the voluntary correction procedure ("ravvedimento operoso") providing for a substantial reduction of administrative penalties in cases where a self-correction of certain tax violations (e.g., the incorrect deduction of a cost or the omitted payment of taxes) is made by taxpayers by 31 March 2023.

Under the special procedure, a taxpayer is entitled to voluntarily correct tax returns regularly filed by paying administrative penalties that are reduced to 1/18 of the general statutory minimum. The payment of the additional taxes due, late payment interest, and reduced administrative penalties must be made by 31 March 2023; however, it is possible to opt for payments in up to eight quarterly installments, with the first installment due by 31 March and interest at a 2% rate payable on subsequent installments. The voluntary correction procedure is not available if a tax audit of the taxpayer already has begun, and in any case is unavailable for violations related to the tax reporting of assets held by Italian taxpayers outside of Italy. The budget law provides that further guidance on the actual application of the special procedure should be issued by the Italian tax authorities.

Settlement of tax assessments

The budget law allows the settlement of certain assessment procedures of the Italian tax authorities with a reduction of penalties to 1/18 of the relevant amount (instead of the ordinary 1/3 reduction) and the option to pay the amounts due in a maximum of 20 quarterly installments of equal amounts (instead of the ordinary 16 or eight installments, depending on the case), with the application of interest at the legal rate for the installments following the first installment. The main categories falling within the scope of the rules are the following:

- Tax assessments not yet appealed by the taxpayer but that still are appealable as of 1 January 2023;
- Tax assessments of which the taxpayer is notified by 31 March 2023; and
- Tax settlements related to final tax audit reports of which the taxpayer is notified by 31 March 2023, tax assessments not yet appealed by the taxpayer but that still are appealable as of 1 January 2023, or other tax assessments of which the taxpayer is notified by 31 March 2023.

Special settlement of pending tax litigation

The budget law allows taxpayers to settle tax litigation with the tax authorities pending on 1 January 2023, through a special procedure to be carried out by 30 June 2023 involving the payment of a specific amount based on the value of the taxes challenged in the litigation and the level of the court at which the litigation is pending (i.e., the first-level tax court, second-level tax court, or Supreme Court):

- 90% of taxes challenged, for litigation pending before the first-level tax court;
- 40% of taxes challenged, for litigation pending before the second-level tax court if a decision in favor of the taxpayer has been issued by the first-level tax court;
- 15% of taxes challenged, for litigation pending before the Supreme Court if a decision in favor of the taxpayer has been issued by the second-level tax court;
- 5% of taxes challenged, for litigation pending before the Supreme Court if both of the prior level courts' decisions have been issued in favor of the taxpayer; and

- For litigation pending before the Supreme Court, if any of the decisions at a prior level has been issued in favor of the tax authorities, the taxpayer is required to pay the full amount of taxes challenged (although administrative penalties and late payment interest are not required to be paid).

The payment of the amount due under the special settlement procedure must be made by 30 June 2023 (with the possibility to opt for payments in up to 20 quarterly installments, with interest applied based on the legal rate).

The budget law provides that further guidance on the actual application of the special settlement procedure should be issued by the Italian tax authorities.

Norway

Government committee publishes report recommending various tax changes

On 19 December 2022, a committee appointed by the Norwegian government published a report that evaluates Norway's taxation regime in the context of both domestic and international developments. The report covers direct and indirect taxes for corporations and individuals. Although detailed, the report mostly recommends amendments to existing rules rather than introducing reforms.

Although the overall revenue effects of the recommendations in the short term are estimated to be at the same level as today, it is projected that tax revenues will increase in the long term if the recommendations are implemented.

This article summarizes the key recommendations made by the committee. However, the committee only provided evaluations and recommendations, so the report itself does not create new law. It remains to be seen whether these recommendations lead to changes in the current tax laws in Norway.

Corporate income tax in general

The committee did not suggest any changes to the corporate income tax rate, although a minority of the committee proposed an increase from 22% to 24%. Furthermore, no changes were recommended regarding the treatment of net operating losses.

Taxation of multinational enterprises

Withholding tax rules and adjustment of the EEA exemption to net taxation

The committee recommended that the 15% withholding tax on interest, royalties, and lease payments of certain assets be extended to all cross-border payments. Currently, the withholding tax only applies to payments to related parties in low tax jurisdictions, with a general exemption for payments to residents in a European Economic Area (EEA) member state that are carrying out genuine economic activities. The committee has not carried out an independent analysis of the relationship between the withholding tax and the general EEA law, but still suggests that the general EEA exemption should be removed and replaced by a net tax, i.e., the EEA recipient would be subject to Norwegian withholding tax but able to deduct costs incurred.

Equity escape clause in the interest deduction limitation rule

The committee recommended removing, or at least adjusting, the equity escape clause relating to the interest limitation rule. Currently, the equity escape clause allows the taxpayer to deduct interest expense if the taxpayer can demonstrate that the equity ratio in the Norwegian company, or the Norwegian part of the group, is equal or similar to the equity ratio in the group as a whole. However, the committee found that the equity escape clause is complicated and resource-demanding for some companies, and that it may contribute to an increase in the use of debt financing instead of equity financing.

OECD BEPS Pillar One and Pillar Two and EU tax law developments

The committee encouraged the continued support of and contributions to the OECD BEPS Pillar One and Pillar Two initiative. In addition, the committee recommended that the Ministry of Finance should evaluate whether adjustments to domestic legislation should be made based on developments within the EU in regard to various international tax initiatives.

Proposal to phase out the tonnage tax regime

The committee proposed to phase out the tonnage tax regime in Norway. Alternatively, the committee recommends amending the regime to ensure that the taxation of Norwegian shipping companies is not more burdensome than for comparable foreign shipping companies.

Corporate income taxation relating to share ownership

The committee recommended increasing the scope of the exemption method (i.e., corporate income tax exemption of 97% of dividends in certain circumstances) to include capital gains. Furthermore, the committee proposed to increase the exemption method add-back (i.e., the amount subject to corporate income tax) from 3% to 5%. However, capital gains would be fully exempt if the recipient owns more than 90% of the shares of the distributing company (similar to current exemption method rules for dividends).

In addition, the committee recommended treating liquidation payments to foreign shareholders as dividends. The recommendation means that foreign shareholders would be subject to a 25% withholding tax unless they are covered by the exemption method or a tax treaty that reduces the withholding tax.

Furthermore, the committee recommended changes to the rules regarding paid-in capital by determining the tax basis based on the share's relative part of paid-in capital in the company, limited to the share's cost price, if lower.

Finally, the committee supports the introduction of an immediate tax upon exit but did not provide specific solutions. The committee also supports the ongoing legislative process in Norway of taxing private consumption of assets owned by a company.

Individual income taxation of capital income

The committee recommended increasing the individual income tax on capital income to reduce the difference between the marginal tax rate on capital income versus the marginal tax rate on dividends and salary. Although two possible models are in the report, the committee did not indicate which one was preferred.

Other recommendations

The committee recommended lowering payroll tax to incentivize employment. In addition, the committee recommended introducing an estate tax (but removing stamp duty on relevant deeds), as well as re-introducing an inheritance tax (which was abolished in 2014).

The committee recommended simplifying the VAT rules by implementing a single rate of 25% for all goods and services. In addition, the committee proposed to remove several exemptions from VAT, such as for media services and electricity for private customers. However, the committee did not propose significant changes to the exemption from VAT for financial services. Furthermore, the committee recommended harmonizing the nonrecurring duty for electric cars with other cars and abolishing the VAT exemption for electric cars.

The committee supports the use of resource rent for tax purposes (i.e., a super profit tax on certain natural resources), which has been proposed by the government in regard to hydroelectric power, wind power, and aquaculture. In addition, the committee recommended certain enhancements to improve taxation relating to activities that affect the climate and environment.

Philippines

Guidelines issued on the online registration of books of accounts

Revenue Memorandum Circular (RMC) No. 3-2023 issued on 10 January 2023 prescribes the policies and guidelines for the online registration of books of accounts using the Philippines' Bureau of Internal Revenue's (BIR's) Online Registration and Update System (ORUS) facility. Under RMC No. 3-2023, all books of accounts must be registered through the ORUS. Instead of the manual stamping of books, a quick response (QR) code/stamp will be generated after a successful registration, which can be validated online. During the initial implementation of the online registration of books of accounts, taxpayers will still be allowed to register and stamp their manual books at the revenue district office (RDO)/large taxpayer (LT) division/office where the head office or branch is registered. However, taxpayers should reach out to their RDOs/LT divisions/offices to confirm whether registration can be done manually or online.

RMC No. 3-2023 also provides tables that summarize the manner of bookkeeping and maintaining the books of accounts for new business registrants and existing business taxpayers (or for subsequent registrations).

Poland

Restricted deduction of input tax related to certain passenger cars extended

On 6 December 2022, the Council of the European Union issued Implementing Decision (EU) 2022/2385, authorizing Poland to extend through 31 December 2025 the 50% restriction on the deduction of input tax related to imports, purchases, leases, or acquisitions of certain cars used for both business and nonbusiness purposes. The restriction was originally approved through Implementing Decision 2013/805/EU of 17 December 2013 for an initial period of three years but has subsequently been extended several times.

If the cars are used solely for business purposes, the taxpayer is allowed to deduct 100% of the input tax, provided that certain additional conditions are met.

VAT exemption threshold remains unchanged

Under proposed amendments to the EU VAT directive (2006/112/EC), as from 1 January 2025 EU member states will be permitted to increase the VAT exemption threshold, below which a taxpayer is not required to account for VAT, to EUR 85,000. However, member states may apply to the European Commission to increase their threshold as from 2023.

Polish taxpayers with an annual turnover of no more than PLN 200,000 have been exempt from the requirement to account for VAT since 2017. In December, the Ministry of Finance confirmed that no increase to the threshold is planned in 2023, but it is expected that the threshold will be changed once the amendments to the EU VAT directive enter into force in 2025.

Switzerland

VAT registration annual turnover threshold increased for certain institutions

A change in the annual turnover threshold triggering the VAT registration of public utility institutions and non-profit sports and cultural associations was implemented into Switzerland's legislation and guidelines on 25 November 2022 and entered into force on 1 January 2023 following implementation by the Federal Council.

Non-profit sports and cultural associations run on a voluntary basis and public utility institutions whose annual worldwide turnover in a single year from supplies that are not excluded from the tax (i.e., VAT exempt without an input VAT credit) is below CHF 250,000 (increased from CHF 150,000 previously) no longer are required to register for VAT purposes (however, they may register for VAT voluntarily, provided all conditions are met).

To reflect this change, the VAT Act as well as all VAT Infos referring to the registration threshold have been amended (i.e., VAT Infos 02 and 22 and Sector VAT Infos 19, 22, 23, and 24). No other changes were observed.

Thailand

Tax incentives provided for donations to certain medical foundations

A Thai royal decree (No. 756) issued on 8 November 2022 provides tax incentives for certain donations via the electronic donation (e-Donation) system in support of public health that are made from 26 July 2022 to 31 December 2024 to the Chaipattana Foundation, the Information Technology Foundation under the initiative of Her Royal Highness Princess Maha Chakri Sirindhorn, or the Ramathibodi Foundation under the royal patronage of Her Royal Highness Princess Maha Chakri Sirindhorn. A summary of the key measures in the royal decree is provided below:

- Individuals will be entitled to a double deduction (i.e., a total income tax deduction of 200%) for cash contributions made to a qualifying foundation, up to an amount equal to 10% of the individual's net income (i.e., assessable income reduced by all applicable allowances and deductions).

- Companies or juristic partnerships will be entitled to a double deduction for cash or asset contributions made to a qualifying foundation, up to an amount equal to 10% of the entity's net profits.

- Exemptions from income tax, VAT, specific business tax, and stamp duty will be available for individuals, companies, or juristic partnerships with respect to income derived from a transfer of assets or a sale of goods, or with respect to the execution of an instrument, in connection with contributions made to a qualifying foundation.

The tax incentives will be available in accordance with rules, procedures, and conditions prescribed by the Director-General of the Thai Revenue Department.

United States

State Tax Matters (6 January 2023)

The 6 January 2023 edition of ***State Tax Matters*** includes coverage of the following US state tax developments:

- Administrative
    - Maryland: State Supreme Court says agency deference means Comptroller of the Treasury's interpretation, not Maryland Tax Court's
- Income/Franchise:
    - Colorado: Governor issues proclamation on voter-approved income tax rate reduction
    - Iowa: Department of Revenue proposes rules on new composite return requirements on behalf of nonresident members
    - Iowa: Department of Revenue says parent's gain from sale of qualified subchapter S subsidiary (Q-Sub) stock may be excluded from Q-Sub's income
    - Kansas: Department of Revenue issues guidance on new elective entity-level taxation for passthrough entities (PTEs)
    - Louisiana: Department of Revenue adopts changes to rule on elective PTE-level income tax
    - Louisiana: Emergency rule reflects personal income tax exemption for some qualifying digital nomads
    - Massachusetts: Department of Revenue addresses new entity-level taxation for some PTEs
    - Michigan: Department of Treasury explains imposition of city income tax on telecommuters
    - Minnesota: State Tax Court holds gain involving goodwill is business income based on unitary principles
    - Missouri: Department of Revenue issues emergency rule to implement new optional PTE-level tax
    - New Jersey: New law addresses federal partnership audit adjustments, S corporation election, and statute of limitations

- North Carolina: Department of Revenue summarizes law changes on net worth calculation, intercompany loans, and net operating losses (NOLs)
- Ohio: Appellate court affirms dismissal of local tax suit involving pandemic-based telecommuting
- Oregon: Department of Revenue amends rule to clarify process for calculating capital loss deduction
- Oregon: Department of Revenue adopts administrative rules on new elective PTE-level tax
- Pennsylvania: State Commonwealth Court reverses ruling on invalid NOL cap and a refund is due
- Rhode Island: Division of Taxation warns against offsetting bonus depreciation addback with passive losses

- Gross receipts:
  - Washington: Department of Revenue addresses potential refunds for use of proportional attribution in calculating receipts factor
- Sales/Use/Indirect:
  - Florida: Department of Revenue ruling addresses whether online marketplace constitutes a marketplace provider
  - Florida: Department of Revenue ruling addresses taxation of certain online learning services
  - Kentucky: State Supreme Court overturns appellate court to hold that manufacturer purchased exempt supplies
  - Massachusetts: State Supreme Judicial Court affirms that Department of Revenue cannot enforce *Wayfair* retroactively
  - North Carolina: State Supreme Court reverses lower court to uphold constitutionality of tax imposition
  - Ohio: New law permits bad debt deductions for certain private label credit card transactions
- Unclaimed property:
  - Delaware: Invitations for 2023 unclaimed property voluntary disclosure agreement coming soon
- Other/Miscellaneous:
  - Maryland: State Supreme Court asked to review case invalidating gross receipts tax on digital ad services

United States

State Tax Matters (13 January 2023)

The 13 January 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Administrative:
    - Ohio: New law potentially creates amnesty program that may permit penalty and interest waiver
- Income/Franchise:
    - Florida: Department of Revenue reminds taxpayers about corporate income tax rate changes and fluctuations
    - Massachusetts: Department of Revenue adopts release on FY 2023 budget including Internal Revenue Code section 199A decoupling
    - Massachusetts: Department of Revenue adopts release on accounting for leases under non-income measure of corporate excise tax
    - Washington: Department of Revenue adopts rule that implements controversial tax on capital gains
- Sales/Use/Indirect:
    - Missouri: Rule amendments proposed for comment reflect post-*Wayfair* nexus standard for vendors
    - Texas: Comptroller of Public Accounts explains policy on remote sellers and marketplaces
    - Washington: Retailer cannot claim "bad debt" refunds on defaulted private label credit card payments

United States

State Tax Matters (20 January 2023)

The 20 January 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
    - Minnesota: New law updates state conformity to Internal Revenue Code and includes some decoupling
    - Ohio: Department of Taxation updates FAQ guidance on new elective passthrough entity-level tax

- Sales/Use/Indirect:
    - Oklahoma: Guidance explains scope of marketplace facilitator collection and remittance obligations

United States

State Tax Matters (27 January 2023)

The 27 January 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
    - California: Proposed rule changes on alternative apportionment move forward with comments due 7 March 2023
    - Georgia: Department of Revenue issues FAQs on implementation of elective passthrough entity (PTE)-level tax
    - Michigan: Taxpayer electing to file under Michigan Business Tax (MBT) base cannot claim MBT loss carryforwards on corporate income tax return
    - Missouri: Circuit court holds that city earnings tax does not apply to remote work from outside city
    - Texas: Comptroller proposes amendments to franchise tax apportionment rule on sourcing
- Sales/Use/Indirect:
    - California: 7 February 2023 public hearing scheduled for proposed marketplace sales rule
    - Rhode Island: Hearing officer says timing of resale exemption certificate acceptance dictates taxability
    - Texas: Credit ratings of legal entities are taxable but credit ratings of debt obligations are not
- Other/Miscellaneous:
    - Maryland: State supreme court agrees to review case invalidating gross receipts tax on digital ad services

The newsletter also features recent Multistate Tax Alerts:

- "IRS Notice 2022-39 - Alternative fuel credit claims"
- "Treasury and the IRS issue guidance on new sustainable aviation fuel credits"

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

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

Atentamente,
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