Deloitte.
Legal

Mayo 2023

Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

Índice de contenido

I. Normativa

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 20 de abril de 2023. Asunto C-282/22 (P. w W.).
2. Tribunal de Justicia de la Unión Europea. Sentencia de 27 de abril de 2023. Asunto C-677/21 (Fluvius Antwerpen).
3. Tribunal Supremo. Sala de lo Contencioso. Sentencias de 21 de marzo de 2023. Nº de recursos 5786/2021 y 4948/2021.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución nº 2578/2020, de 21 de febrero de 2023.
2. Dirección General de Tributos. Contestación nº V0509-23, de 3 de marzo de 2023.
3. Dirección General de Tributos. Contestación nº V0510-23, de 3 de marzo de 2023.
4. Dirección General de Tributos. Contestación nº V0558-23, de 8 de marzo de 2023.
5. Dirección General de Tributos. Contestación nº V0593-23, de 13 de marzo de 2023.
6. Dirección General de Tributos. Contestación nº V0617-23, de 16 de marzo de 2023.
7. Dirección General de Tributos. Contestación nº V0624-23, de 16 de marzo de 2023.
8. Dirección General de Tributos. Contestación nº V0647-23, de 17 de marzo de 2023.
9. Dirección General de Tributos. Contestaciones nº V0688-23 y nº V0689-23, de 22 de marzo de 2023.
10. Dirección General de Tributos. Contestación nº V0691-23, de 22 de marzo de 2023.
11. Dirección General de Tributos. Contestación nº V0758-23, de 28 de marzo de 2023.

IV. Country Summaries

Featured articles

Australia-UK

Free trade agreement enters into force The Australia-United Kingdom Free Trade Agreement entered into force on 31 May 2023. The A-UKFTA is a comprehensive trade agreement covering a wide range of issues. Affected businesses should be reviewing the terms of the agreement to identify the potential benefits.

Botswana

New zero-rated and exempt supplies

The VAT Act was amended with effect from 3 May 2023, introducing new zerorated and exempt supplies. VAT registered taxpayers were required to implement the amendment by 8 May; those unable to do so must account for VAT charged until their systems are amended.

Czech Republic

Consolidation and austerity package

The government presented "Czech Republic in Shape," its fiscal consolidation and austerity package for the next few years, at a press conference on 11 May. The package contains measures aimed at stabilizing the state budget and reducing inflation.

India

Indirect tax rulings and other developments

There were a number of important GST rulings reported in November and December 2022. Rulings were also reported concerning customs duty, central excise duty, and service tax laws. There were also a number of other indirect tax developments in that period.

Other news

Australia: Point of consumption betting taxes: Victoria proposes increased rate of 15%

Australia: Federal Budget 2023-24 tax developments

Finland: Amendments to VAT Act proposed following Finland's accession to NATO

Finland: Summary of SAC rulings regarding right to deduct VAT on stock market listing costs

India: Purchaser claiming input tax credit has burden of proving purchase is genuine

Luxembourg: New circular addresses VAT consequences of employers providing company cars to staff

Malaysia: Tourism tax regulatory updates (April 2023)

Philippines: Regulations provide updates to VAT zero-rating certification

Philippines: VAT returns no longer required to be filed monthly

Philippines: VAT-registered persons allowed to continue to file VAT returns monthly

Poland: Details of VAT intragroup transaction reporting published

Poland: CJEU rules on VAT treatment of supply at electric vehicle charging points

Poland: Draft bill mandating use of structured e-invoicing system approved

Saudi Arabia: ZATCA announces criteria for selecting taxpayers in fourth wave of einvoicing

United States: State Tax Matters (5 May 2023), including indirect, sales and use tax developments in Georgia, Indiana, Michigan, and Wisconsin

United States: State Tax Matters (12 May 2023), including indirect, sales and use tax developments in California, Colorado, Michigan, and Washington

United States: State Tax Matters (19 May 2023), including indirect, sales and use tax developments in Alabama, Colorado, Michigan, North Carolina, and Washington

United States: State Tax Matters (26 May 2023)

I. Normativa

1. Ley 11/2023, de 8 de mayo, de trasposición de Directivas de la Unión Europea en materia de accesibilidad de determinados productos y servicios, migración de personas altamente cualificadas, tributaria y digitalización de actuaciones notariales y registrales; y por la que se modifica la Ley 12/2011, de 27 de mayo, sobre responsabilidad civil por daños nucleares o producidos por materiales radiactivos.

Con fecha 9 de mayo de 2023 se publicó en el Boletín Oficial del Estado, la Ley 11/2023, de 8 de mayo, de trasposición de Directivas de la Unión Europea en materia de accesibilidad de determinados productos y servicios, migración de personas altamente cualificadas, tributaria y digitalización de actuaciones notariales y registrales; y por la que se modifica la Ley 12/2011, de 27 de mayo, sobre responsabilidad civil por daños nucleares o producidos por materiales radiactivos. Con fecha 27 de abril de 2023, el Congreso de los Diputados ha aprobado el texto definitivo estando pendiente su publicación en el Boletín Oficial del Estado.

En relación con el Impuesto sobre el Valor Añadido, dicha Ley, en su artículo 33, introduce modificaciones en la Ley 37/1992 –Ley del IVA– consecuencia de la transposición de la Directiva (UE) 2020/284 del Consejo, de 18 de febrero de 2020, por la que se modifica la Directiva 2006/112/CE en lo que respecta a la introducción de determinados requisitos para los proveedores de servicios de pago.

Dichas modificaciones consisten en: i) reformar el título X de dicha Ley del IVA –Obligaciones de los sujetos pasivos–, dividiéndolo en dos capítulos con objeto de sistematizar aquellas obligaciones que afectan a todos los sujetos pasivos de las obligaciones específicas derivadas del comercio electrónico, e ii) imponer a los proveedores de servicios de pago la obligación de mantener registros suficientemente detallados de los pagos transfronterizos realizados en los que intervengan, y a suministrar esta información a la Administración tributaria.

Estas modificaciones entrarán en vigor el 1 de enero de 2024.

2. Real Decreto 249/2023, de 4 de abril, por el que se modifican el Reglamento General de Desarrollo de la Ley 58/2003, de 17 de diciembre, General Tributaria, en materia de revisión en vía administrativa, aprobado por el Real Decreto 520/2005, de 13 de mayo; el Reglamento General de Recaudación, aprobado por el Real Decreto 939/2005, de 29 de julio; el Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por el Real Decreto 1065/2007, de 27 de julio; el Reglamento del Impuesto sobre Sucesiones y Donaciones, aprobado por el Real Decreto 1629/1991, de 8 de noviembre; el Reglamento del Impuesto sobre el Valor Añadido, aprobado por el Real Decreto 1624/1992, de 29 de diciembre; el Reglamento del Impuesto sobre la Renta de las Personas Físicas, aprobado por el Real Decreto 439/2007, de 30 de marzo, y el Reglamento del Impuesto sobre Sociedades, aprobado por el Real Decreto 634/2015, de 10 de julio.

Con fecha 5 de abril de 2023 se publicó en el Boletín Oficial del Estado el Real Decreto 249/2023, de 4 de abril, por el que se modifican el Reglamento General de Desarrollo de la Ley 58/2003, de 17 de diciembre, General Tributaria, en materia de revisión en vía administrativa, aprobado por el Real Decreto 520/2005, de 13 de mayo; el Reglamento General de Recaudación, aprobado por el Real Decreto 939/2005, de 29 de julio; el Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por el Real Decreto 1065/2007, de 27 de julio; el Reglamento del Impuesto sobre Sucesiones y Donaciones, aprobado por el Real Decreto 1629/1991, de 8 de noviembre; el Reglamento del Impuesto sobre el Valor Añadido, aprobado por el Real Decreto 1624/1992, de 29 de diciembre; el Reglamento del Impuesto sobre la Renta de las Personas Físicas, aprobado por el Real Decreto 439/2007, de 30 de marzo, y el Reglamento del Impuesto sobre Sociedades, aprobado por el Real Decreto 634/2015, de 10 de julio.

Por lo que se refiere al Impuesto sobre el Valor Añadido, se realizan las siguientes modificaciones:

a) En materia de censos tributarios, se regula la formación del Registro de extractores de depósitos fiscales de productos incluidos en los ámbitos objetivos de los Impuestos sobre el Alcohol y Bebidas Derivadas o sobre Hidrocarburos, a que se refiere el apartado quinto del anexo de la Ley del IVA, que estará integrado por las personas o entidades, cualquiera que sea su condición, que extraigan de los depósitos fiscales los productos incluidos en los ámbitos objetivos de los citados impuestos sobre el Alcohol y Bebidas Derivadas o sobre Hidrocarburos.

   La inclusión en dicho Registro, que formará parte del Censo de Empresarios, Profesionales y Retenedores, se realizará previa solicitud del interesado, en la forma prevista para la declaración de alta o de modificación de datos censales.

   Esta modificación entró en vigor el día 25 de abril de 2023.

b) Se modifica el Reglamento del IVA –arts. 63.3 y 69 bis.1.a)– para incorporar una modificación técnica en los libros registros de facturas emitidas del IVA, que tiene como objetivo habilitar el registro de modificaciones en la base imponible y cuota por las que no exista obligación de expedir una factura rectificativa, tales como los ajustes en cuota derivados de los regímenes especiales en los que la base imponible se determina por el margen de beneficio. Por otra parte, también se regula un plazo de envío de las anotaciones que no están documentadas en factura rectificativa.

   Esta modificación entrará en vigor el 1 de julio de 2023 y se aplicarán respecto de ajustes que deban incluirse en las autoliquidaciones correspondientes a periodos impositivos que se inicien a partir de dicha fecha.

3. Orden HFP/312/2023, de 28 de marzo, por la que se modifica la Orden HFP/227/2017, de 13 de marzo, por la que se aprueba el modelo 202 para efectuar los pagos fraccionados a cuenta del Impuesto sobre Sociedades y del Impuesto sobre la Renta de no Residentes correspondiente a establecimientos permanentes y entidades en régimen de atribución de rentas constituidas en el extranjero con presencia en territorio español, y el modelo 222

para efectuar los pagos fraccionados a cuenta del Impuesto sobre Sociedades en régimen de consolidación fiscal y se establecen las condiciones generales y el procedimiento para su presentación electrónica; y la Orden EHA/1658/2009, de 12 de junio, por la que se establecen el procedimiento y las condiciones para la domiciliación del pago de determinadas deudas a través de cuentas abiertas en las Entidades de crédito que prestan el servicio de colaboración en la gestión recaudatoria de la Agencia Estatal de Administración Tributaria.

En relación con el Impuesto sobre el Valor Añadido, esta Orden introduce la domiciliación bancaria como método de pago de la deuda resultante del modelo 309 para los supuestos de presentación trimestral, es decir, aquellos en los que su presentación no esté motivada por adquisiciones intracomunitarias de medios de transporte nuevos o adjudicaciones en procedimientos administrativos o judiciales de ejecución forzosa.

Dicha domiciliación bancaria será de aplicación por primera vez para las autoliquidaciones del modelo 309 correspondientes al primer trimestre de 2023.

4. Orden HFP/381/2023, de 18 de abril, por la que se modifican la Orden EHA/1274/2007, de 26 de abril, por la que se aprueban los modelos 036 de Declaración censal de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores y 037 Declaración censal simplificada de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores y la Orden HFP/417/2017, de 12 de mayo, por la que se regulan las especificaciones normativas y técnicas que desarrollan la llevanza de los Libros registro del Impuesto sobre el Valor Añadido a través de la Sede electrónica de la Agencia Estatal de Administración Tributaria establecida en el artículo 62.6 del Reglamento del Impuesto sobre el Valor Añadido, aprobado por el Real Decreto 1624/1992, de 29 de diciembre, y se modifica otra normativa tributaria.

Esta Orden, a efectos del Impuesto sobre el Valor Añadido, contiene las siguientes modificaciones:

- Por un lado, modifica el modelo 036, “Declaración censal de alta, modificación y baja en el Censo de empresarios, profesionales y retenedores”, para: i) incorporar la solicitud de inclusión y de baja en el Registro de extractores de depósitos fiscales de productos incluidos en los ámbitos objetivos de los impuestos sobre el alcohol y bebidas derivadas o sobre hidrocarburos, a que se refiere el apartado quinto del anexo de la Ley del IVA, y regulado en el artículo 3.7 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007, de 27 de julio, y ii) introducir una modificación de carácter técnico para incluir la fecha de efectos de la adquisición o cese de la condición de revendedor de teléfonos móviles, consolas de videojuegos, ordenadores portátiles y tabletas digitales a los que se refiere el artículo 84.uno 2.º de la Ley del IVA.

  Esta modificación entró en vigor el día 25 de abril de 2023.

- Por otra parte, introduce una modificación en las especificaciones técnicas que desarrollan la llevanza de los libros registro del impuesto sobre el valor añadido a través de la sede electrónica de la Agencia Estatal de Administración Tributaria (SII), modificando a tal efecto la Orden HFP/417/2017.

Esta modificación tiene como objetivo habilitar en el libro registro de facturas expedidas el apunte de modificaciones en la base imponible y cuota por las que no exista obligación de expedir una factura rectificativa, tales como las derivadas de la aplicación de regímenes especiales en los que la determinación de la base imponible se realiza en función del margen de beneficio.

Esta modificación entrará en vigor el 1 de julio de 2023.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 20 de abril de 2023. Asunto, C-282/22, P. w W.

Directiva 2006/112/CE — Artículos 14, 15 y 24 — Puntos de recarga de vehículos eléctricos — Puesta de disposición de equipos destinados a la recarga de vehículos eléctricos, al suministro de la electricidad necesaria y a la prestación de asistencia técnica y de servicios informáticos — Calificación como "entrega de bienes" o "prestación de servicios".

P.w.W. pretende realizar una actividad consistente en la instalación y explotación de puntos de recarga de vehículos eléctricos, en las cuales se ofrecerá dos métodos de carga: carga rápida o carga lenta, las cuales implicarán diferentes precios. La puesta a disposición de los puntos de carga conllevará la prestación de operaciones tales como acceso a la información de la provisión de flujo de electricidad o asistencia técnica. Además, la entidad tiene la intención de garantizar el acceso a los clientes a un espacio web, o aplicación informática, que les permita observar su historial de pagos, reservar puntos específicos de carga o adquirir créditos de cartera digital, para su posterior uso en puntos de recarga. Por todo ello, P.w.W. pretende facturar un precio global, bajo la consideración de facturar una única prestación de servicios.

Establece el Tribunal que, la provisión de energía eléctrica es considerada, a efectos del IVA, como una entrega de bienes, y que toda entrega de bienes es acompañada de una prestación de servicios mínima, destinada a facilitar la provisión del bien. En este sentido, las operaciones que pretende prestar P.w.W están claramente destinadas a proporcionar electricidad, a través de la habilitación del punto de recarga, y la asistencia técnica no tiene otro objetivo que no fuera garantizar la entrega de la electricidad en condiciones óptimas. Finalmente, señala el TJUE que el acceso a una aplicación informática que permita controlar el consumo es un medio que permite disfrutar en mejores condiciones del acceso al suministro. Por lo tanto, la actividad a prestar por P.w.W tendrá la consideración de operación única y compleja, con independencia de exista diferencia de precios entre los métodos de carga.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 27 de abril de 2023. Asunto C-677/21, Fluvius Antwerpen.

Directiva 2006/112/CE — Hecho imponible — Artículo 2, apartado 1, letra a) — Concepto de "entrega de bienes a título oneroso" — Artículo 9, apartado 1 — Actividad económica — Artículo 14, apartados 1 y 2,letra a) — Entrega de bienes — Consumo ilegal de electricidad — Principio de neutralidad del IVA —Facturación al consumidor de una indemnización que incluye el precio de la electricidad consumida —Normativa regional de un Estado miembro — Sujeto pasivo — Entidad sui generis que recibe una encomienda de municipios — Concepto de "organismo de Derecho público" — Directiva 2006/112 —Artículo 13, apartado 1, párrafo tercero, y anexo I — Sujeción, en principio, de la distribución de electricidad — Concepto de "carácter insignificante de la actividad"

Fluvius es una estructura de cooperación intermunicipal a la que algunos municipios le han encomendado la distribución de energía. Como gestor de la red de distribución, estaba encargada del transporte hasta las viviendas, así como de la instalación, mantenimiento y lectura de los contadores. Fluvius, descubrió que MX, particular, había venido consumiendo electricidad de forma ilícita durante dos años, y procedió a emitir factura, incluyendo el correspondiente IVA, por el importe relativo al consumo medio durante los dos años. Sin embargo, MX nunca llegó a abonarla y Fluvius procedió su reclamación judicial.

Recuerda el Tribunal que en la medida en que la regulación de la obtención ilícita de electricidad así como su posterior facturación, constituye un marco jurídico a través del cual se ha regulado una puesta a disposición y enajenación del bien, el consumo ilegal de energía constituiría una entrega de bienes onerosa. Asimismo, concluye el TJUE que el hecho de que Fluvius esté obligado legalmente al abastecimiento de cualquier persona que no cuente con un contrato de abastecimiento, así como la previsión legal de que recaude cuantías en concepto de obtención ilegal de energía, dejaban patente que estas operaciones no eran marginales, ni hechos aislados, si no actividades inherentes al servicio. En consecuencia, el suministro de electricidad llevado a cabo no se puede entender como una actividad con carácter insignificante y debe estar sujeto, por tanto, al IVA.

3. Tribunal Supremo. Sala de lo Contencioso. Sentencias de 21 de marzo de 2023. Nº de recursos 5786/2021 y 4948/2021.

Exenciones — Artículo 20.uno.23º, letra a), LIVA — Arrendamiento del aprovechamiento cinegético en un terreno.

En estas dos sentencias el Tribunal Supremo aborda la misma cuestión, que podría resumirse de la siguiente manera: ¿la exención prevista en el artículo 20.uno.23º de la Ley del IVA a los arrendamientos que tengan la consideración de prestación de servicios y que tengan por objeto terrenos, alcanza a aquellas operaciones de arrendamientos de terrenos de naturaleza rústica, cualquiera que sea el aprovechamiento que de ellos se obtenga, incluido el cinegético o, por el contrario, ha de considerarse que un eventual aprovechamiento cinegético de ese terreno excluye la aplicación de la exención?

Para el Alto Tribunal, "el disfrute del aprovechamiento cinegético no se refiere ni implica los medios normalmente utilizados en las explotaciones agrícolas o forestales, sino que tiene una finalidad de ocio o recreativa, aunque se desarrolle en el entorno rústico". Es por

ello por lo que, a juicio del Tribunal Supremo, la cesión del aprovechamiento cinegético es un servicio que tiene "sustantividad propia", al margen del propio terreno. Siendo precisamente esta explotación económica inherente al terreno (como es la agraria, la forestal o la ganadera vinculada a la explotación del suelo) la que justifica la exención prevista en el artículo 20.uno.23º LIVA, el Alto Tribunal resuelve que el arrendamiento del aprovechamiento cinegético en un terreno no está incluido en dicha exención.

Este pronunciamiento es sustancialmente idéntico al criterio interpretativo mantenido por el Tribunal Supremo en su sentencia de 27 de octubre de 2022, recurso de casación número 5341/2020.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución nº 2578/2020, de 21 de febrero de 2023.

Derecho a la deducción del IVA soportado — Gastos generales de la actividad — Entidad holding mixta que se deduce el IVA soportado por servicios relacionados con la adquisición de participaciones en entidades filiales. Necesidad de la inclusión de su coste en el precio de los servicios prestados por ella a efectos de su consideración como gastos generales.

El TEAC debe determinar si una entidad holding mixta tiene derecho a la deducción de las cuotas del IVA soportado por los servicios recibidos (prestados por terceros) por la adquisición de participaciones de entidades filiales a las que presta servicios de gestión.

En primer lugar, el Tribunal analiza si la entidad holding lleva a cabo una actividad económica, entendida ésta como la explotación de un bien corporal o incorporal con el fin de obtener ingresos continuados en el tiempo , y si, consiguientemente, el volumen de dichas operaciones debe tomarse en consideración para el cálculo de la prorrata. A este respecto, concluye el TEAC que la entidad holding es sujeto pasivo del IVA en la medida que, además de la tenencia de participaciones de sus filiales, interviene en la gestión de estas, y les presta servicios sujetos al IVA.

Una vez determinado lo anterior, el Tribunal debe concluir si las cuotas del IVA soportado por la entidad holding derivadas de los servicios recibidos de terceros para la adquisición de las participaciones de sus filiales pueden ser objeto de deducción.

En este sentido, la jurisprudencia europea ha determinado que, si bien no existe relación directa e inmediata entre los servicios utilizados por una entidad holding para la adquisición de participaciones de una filial y las operaciones por las que se repercute el IVA y que dan derecho a la deducción, los costes de tales servicios forman parte de los gastos generales del sujeto pasivo y, como tales, son elementos integrantes del precio de los productos de una empresa. Por tanto, dichos servicios guardan una relación directa e inmediata con la actividad económica de la entidad holding en su conjunto.

Por todo lo anterior, para que los costes de adquisición tengan la consideración de gastos generales, los mismos deben ser elementos constitutivos del precio de los bienes que la entidad entrega o de los servicios que presta.

A juicio del Tribunal, en el caso analizado no puede apreciarse que los costes de adquisición de las participaciones hayan sido incluidos en el precio de los servicios prestados, en la medida que en los periodos en los que se soportó un elevado importe derivado de dichos gastos la entidad no prestó servicio alguno a sus filiales; y, en periodos posteriores, existe una desproporción evidente entre el importe de los servicios recibidos y los prestados a las filiales. En particular, concluye el Tribunal que los servicios de gestión prestados a sus filiales son generalmente adquiridos de terceros en los mismos periodos en los que los presta, y que los importes de adquisición de los servicios y los importes de prestación a sus filiales son idénticos o muy similares.

Con base en lo anterior, el TEAC reitera y consolida el criterio recogido en su Resolución 2866/2017, de 21 de octubre de 2020, concluyendo que no cabe la consideración de los gastos controvertidos como gastos generales de la entidad holding que puedan ser objeto de deducción, ya que para ello sería necesaria la inclusión de su coste en el precio de los servicios prestados por ella, según dispone el TJUE en diversas sentencias (e.gr., Sveda, C-126/14; Iberdrola Inmobiliaria Real Estate Investments, C-132/16; Mitteldeutsche Hartstein-Industrie, C-528/19).

2. Dirección General de Tributos. Contestación nº V0509-23, de 3 de marzo de 2023.

Entidad mercantil estatal – Prestación de servicios aeroportuarios – Sujeción al IVA.

La sociedad consultante ha formalizado en el marco de su actividad encargos con otras dos sociedades mercantiles estatales para la prestación de determinados servicios (consultoría, asistencia en aplicaciones TIC, desarrollo de proyectos internacionales…) necesarios para el desarrollo de su operativa, que se han efectuado sobre la base de lo dispuesto en el artículo 32 de la Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público.

En este sentido, la consultante se cuestiona si las operaciones descritas estarían sujetas al IVA.

El artículo 7.8º de la Ley del IVA, con la redacción dada por la disposición final décima de la Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, enumera las entregas de bienes y/o prestaciones de servicios que estarán sujetas al IVA cuando una de las partes tenga la consideración de entidad del sector público.

Indica el citado Centro Directivo, a modo de ejemplo, que no se consideran servicios prestados en zona de aeropuerto los servicios de soporte en el desarrollo de planes de innovación, servicios de asesoramiento o soporte en operaciones generales de la empresa. Por el contrario, sí se consideran servicios aeroportuarios, los servicios de ingeniería para la ejecución de obras en campos de vuelo, o centros de carga, servicios de adecuación de los sistemas de información de aeropuertos a nuevas tecnologías, el suministro, instalación y mantenimiento de aplicaciones informáticas de gestión aeroportuaria, trabajos y estudios técnicos de contaminación acústica y atmosférica o servicios de asistencia en sistemas de tratamiento de equipajes.

En consecuencia, señala la DGT que los servicios que no se puedan considerar servicios prestados en zona de aeropuerto estarán no sujetos al IVA cuando se presten en favor de la sociedad consultante, íntegramente dependiente de la Administración del Estado, por entidades públicas empresariales estatales, sociedades mercantiles estatales de capital

100% públicos, con independencia de que su participación en el capital sea directa o indirecta, o de cualquier otra persona o entidad dependiente de la Administración General del Estado.

Por el contrario, los servicios aeroportuarios, incluidos en la letra d´) de la letra F) del artículo 7.8º de la Ley del IVA, estarán en todo caso sujetos al IVA, aunque se presten en favor de la sociedad consultante, íntegramente dependiente de la Administración del Estado, por entidades públicas empresariales estatales, sociedades mercantiles estatales de capital 100% públicos, con independencia de que su participación en el capital sea directa o indirecta, o de cualquier otra persona o entidad dependiente de la Administración General del Estado.

3. Dirección General de Tributos. Contestación nº V0510-23, de 3 de marzo de 2023.

Asociación sin personalidad jurídica – Condición de Sujeto Pasivo – Derecho a deducir el IVA soportado.

La consultante es una asociación, sin personalidad jurídica, creada para participar en una convocatoria de subvenciones públicas por el desarrollo de Proyectos Estratégicos para la Recuperación y Transformación Económica (PERTES), que con financiación pública se encuadra en el ámbito de la automoción. En particular, en relación con proyectos para el desarrollo y la fabricación del vehículo eléctrico, que realizarán de forma independiente cada uno de sus miembros de la asociación.

La consultante se cuestiona si tiene la condición de empresario o profesional a efectos del IVA, así como la deducibilidad de las cuotas del IVA soportadas derivadas de los gastos comunes de gestión y participación en el programa.

En primer lugar, en relación con su condición de empresario o profesional a efectos del IVA, la DGT concluye que, al consistir la actividad realizada por la consultante en la adquisición de los servicios necesarios para que sus miembros puedan participar en la convocatoria del proyecto, la misma no tendrá dicha condición, al no realizar ninguna actividad económica, no teniendo derecho a deducir las cuotas soportadas en ninguna proporción.

Sin perjuicio de lo anterior, dicho Centro Directivo establece que los miembros de la asociación tendrán derecho a deducirse las cuotas del IVA soportadas, de manera proporcional, mientras las facturas que documenten la operación consignen de forma distinta y separada la porción de la base imponible y cuota repercutida a cada uno de los miembros.

Asimismo, indica la DGT que en el caso de que uno de los miembros, en el ejercicio de su actividad empresarial o profesional, realice entregas de bienes o prestaciones de servicios para la asociación, como proveedor externo e independiente, tendrá derecho a la deducción de las cuotas soportadas atendiendo a su porcentaje de participación, en los términos anteriormente expuestos.

Finalmente, si la consultante efectúa operaciones que se puedan entender referidas a una actividad empresarial o profesional, asumiendo el riesgo o ventura que derive de las mismas, la asociación tendrá la consideración de sujeto pasivo del IVA, teniendo, por tanto, derecho a la deducción de las cuotas del IVA soportadas para la realización de la referida actividad profesional o empresarial.

4. Dirección General de Tributos. Contestación nº V0558-23, de 8 de marzo de 2023.

Organización de torneos en línea de videojuegos a nivel mundial – Sujeción al IVA.

El consultante tiene como actividad principal la organización de torneos en línea de videojuegos a nivel mundial. Para poder participar en estos torneos, los participantes deberán abonar una cuota que les permitirá el acceso. En este contexto, el consultante se plantea si la cuota que pagan los participantes está sujeta al IVA.

En primer lugar, el punto (4) del Anexo I del Reglamento (UE) nº 282/2011, del Consejo, de 15 de marzo de 2011 por el que se establecen disposiciones de aplicación de la Directiva 2006/112/CE, relativa al sistema común del IVA en referencia al Anexo II de la citada Directiva incluye como servicios prestados por vía electrónica en su letra e) *"el acceso automatizado a juegos en línea que dependen de Internet, o de otra red similar, en los que los jugadores se encuentran en lugares diferentes*." Por ello, entiende la DGT que, de la información aportada en el escrito de consulta, puede concluirse que los servicios prestados por la consultante tienen la consideración de servicios prestados por vía electrónica.

A continuación, se plantea dicho Centro Directivo cuál es la regla de localización aplicable a los mismos, para poder determinar la sujeción al IVA de estos. En este sentido, entiende la DGT que los servicios objeto de consulta consistentes en consistentes en el acceso a juegos en línea por personas que no tienen la consideración de empresarios o profesionales, se entenderán realizados en el territorio de aplicación del IVA cuando el destinatario se encuentre establecido en territorio de aplicación del Impuesto o se cumplan los requisitos citados en el artículo 70. Uno.8º de la Ley del IVA.

Finalmente, en relación con el devengo del Impuesto, conforme al artículo 75 de la Ley del IVA, considera este Centro Directivo que se producirá cuando se ejecute o se preste el servicio de organización el cual, normalmente, coincidirá con el inicio del torneo o partida respectiva.

Sin embargo, si el pago de las cuotas se produce con anterioridad al inicio del torneo, el devengo del Impuesto se producirá en el momento en que se realice dicho pago, conforme lo dispuesto en el artículo 75. Dos de la Ley del IVA.

5. Dirección General de Tributos. Contestación nº V0593-23, de 13 de marzo de 2023.

Renting de vehículos – Prestación de servicios – Deducción del IVA soportado.

Los consultantes son entidades mercantiles que han contratado un servicio de renting de vehículos para ponerlos a disposición de determinados empleados (comerciales y directivos) con el fin de que estos los utilicen en el desarrollo de su actividad laboral, permitiéndoles, al mismo tiempo su utilización para fines privados.

Los comerciales no tienen opción de elegir el vehículo ni tampoco a renunciar al mismo pues el mismo está vinculado al desarrollo de su puesto. No efectúan pago alguno por el mismo ni ven disminuido su salario.

La opción por parte del directivo de acogerse a esta posibilidad es totalmente voluntaria, pueden elegir entre diversos modelos dentro de una gama de marcas y precios y el hecho de acogerse o no a la misma no implica una disminución o aumento de su salario, respectivamente. Pueden renunciar a la cesión del vehículo, pero dicha cesión no comporta ninguna otra contrapartida.

Las consultantes solicitan aclaración sobre si la puesta a disposición de los vehículos a determinados empleados sin efecto sobre su salario puede considerarse una prestación de servicios a título onerosa a efectos del IVA.

La DGT comienza su análisis estableciendo que las remuneraciones en especie a los trabajadores de las empresas no constituyen operaciones realizadas a título gratuito, puesto que se efectúan en contraprestación de los servicios prestados por los trabajadores en régimen de dependencia.

No obstante, y tras citar tanto al TJUE como al TEAC, se concluye que aquellos supuestos en los que exista una relación directa entre el servicio prestado por el empleador (retribución en especie) y la contraprestación percibida por el mismo (trabajo personal del empleado) se produce una prestación de servicios efectuada a título oneroso a efectos del IVA.

De forma similar, la DGT especifica que en el caso de los vehículos, únicamente se considerará retribución en especie la parte proporcional del uso que se realice de los mismos que se destine a las necesidades privadas del trabajador.

La DGT analiza posteriormente de manera específica el escenario planteado por las consultantes y, dado que el trabajo desarrollado por los empleados que perciben la retribución en especie y el salario percibido por el mismo no dependen de la percepción o no de esta retribución en especie, habrán de considerarse servicios efectuados a título gratuito.

Teniendo en cuenta lo anterior, se analiza el derecho a la deducción de las consultantes:

- En relación con los vehículos de directivos, la operación estará fuera del ámbito de aplicación del IVA en la medida en que se asimile a una atención a los mismos. Por ello, no podrán ser deducidas ninguna de las cuotas de IVA soportadas en la adquisición.

- La cesión de los vehículos a los comerciales se tratará de un autoconsumo de servicios para fines propios de la empresa, operación que quedará no sujeta al IVA. Por ende, la deducción se efectuará en función del grado de afectación de los vehículos.

6. Dirección General de Tributos. Contestación nº V0617-23, de 16 de marzo de 2023.

Servicios prestados por vía electrónica – Tributación a efectos del Impuesto.

La consultante es una entidad de creación de contenido en una plataforma de “streaming” con sede en Estados Unidos, en la cual los usuarios pagan una suscripción al canal. La plataforma gestiona el contenido y los pagos del canal abonando al consultante un porcentaje de la suscripción del canal.

La consultante solicita aclaración respecto a la tributación a efectos del IVA.

Los servicios prestados por la consultante consistentes en suministrar contenido audiovisual en formato electrónico para su visionado a través de una plataforma de internet tienen la consideración de servicios prestados por vía electrónica, en virtud del artículo 69.Tres.4º de la Ley del IVA.

Por otro lado, la DGT alude a la reciente jurisprudencia del TJUE, sentencia de 28 de febrero de 2023, asunto C-695/20, Felix Internacional Ltd., para analizar si la plataforma en línea que facilita la distribución de los vídeos actúa ante los adquirentes en su propio nombre, entendiéndose que ha recibido y prestado, por sí misma, los servicios en cuestión.

En este sentido, se entiende que la plataforma en línea actúa en nombre propio cuando la misma autoriza el cargo al cliente o fija las condiciones generales de la prestación de los referidos servicios, teniendo en ese caso la condición de sujeto pasivo del Impuesto en relación con los destinatarios del servicio.

Por tanto, los servicios prestados por la consultante a la plataforma no se encontrarán sujetos al Impuesto en la medida que esta última no está establecida ni tiene su residencia habitual en el territorio de aplicación del Impuesto.

7. Dirección General de Tributos. Contestación nº V0624-23, de 16 de marzo de 2023.

Obras de renovación y reparación en vivienda – Tipo impositivo – Rectificación cuotas repercutidas.

El consultante, persona física, contrató a una empresa para la realización de unas obras de renovación y reparación en su vivienda, cuyo uso es, exclusivamente, particular. Dicha empresa expidió inicialmente facturas repercutiendo al consultante el tipo reducido del 10%, modificando dichas facturas de forma posterior, repercutiendo al consultante el tipo general del Impuesto (i.e. 21%).

El consultante desea conocer si debe soportar la nueva cuota del IVA repercutido en las facturas rectificativas recibidas.

La DGT, considera que de acuerdo con el artículo 89. Tres de la LIVA, no procedería la rectificación de las cuotas inicialmente repercutidas al consultante dado que dicha modificación no está originada por una elevación legal del tipo impositivo ni por una modificación de la base imponible, sino por una incorrecta determinación de dicho tipo impositivo y su destinatario no actúa como empresario o profesional a efectos del Impuesto.

Finalmente, este Centro Directivo concluye indicando que lo anterior, no exime a la entidad constructora de ingresar la diferencia de cuotas derivada de la incorrecta determinación del tipo aplicable en los términos señalados en el referido artículo 89. Cinco de la LIVA.

8. Dirección General de Tributos. Contestación nº V0647-23, de 17 de marzo de 2023.

Usufructo de vivienda – Entidades gestoras de programas públicos de apoyo a la vivienda.

Entidad mercantil que tiene por actividad la gestión de activos inmobiliarios y que va a ceder en usufructo varias viviendas de su propiedad a Ayuntamientos y otros organismos públicos para que, a su vez, estos las arrienden a terceros que cumplan determinados requisitos. El organismo público usufructuario alquilará las viviendas a terceros a precios reducidos o las cederá gratuitamente en determinados supuestos. La consultante asumirá el 50% del coste de las obras que hubiera que realizar en las viviendas, que serán contratadas y abonadas por el usufructuario correspondiente, refacturándole posteriormente dicho importe a la consultante.

La consultante desea conocer si la cesión en usufructo de las viviendas se encontraría exenta del Impuesto sobre el Valor Añadido, la determinación del devengo y la base imponible, así como la posible sujeción al Impuesto de la refacturación parcial del coste de las obras. Del mismo modo, aclaración sobre qué ha de entenderse por "entidades gestoras de programas públicos de apoyo a la vivienda".

En primer lugar, la DGT señala que, entre otros, tanto los arrendamientos de bienes como las cesiones del uso o disfrute de bienes, se considerarán prestaciones de servicios a efectos del Impuesto sobre el Valor Añadido.

Así, la cuestión a resolver es si el arrendamiento o usufructo de un inmueble, así como el subarrendamiento puede quedar exento, por destinarse exclusivamente como vivienda, siempre y cuando la cesión posterior no se realice en el ejercicio de una actividad empresarial.

Conviene señalar que la DGT advierte nuevamente de la necesidad de indicar concreta y específicamente la persona o personas físicas usuarias últimas de la vivienda en los supuestos de subarrendamiento para la aplicación de la exención.

Respecto a las entidades gestoras de programas públicos de apoyo a la vivienda, se considera que incluye a aquellas entidades que gestionan o ejecutan programas diseñados para facilitar el acceso a la vivienda y, por lo tanto, los usufructos suscritos para destinar los inmuebles a estos programas de ayuda quedarían sujetos a la exención prevista en la Ley del IVA.

En cuanto al devengo de la operación y la determinación de la base imponible, conviene recordar que el usufructo es una operación de tracto sucesivo y por tanto, el devengo de la operación se producirá, con la exigibilidad de la parte del precio que comprende cada percepción, siempre y cuando no existan pagos anticipados. Así las cosas, la base imponible de los usufructos será el importe total de la contraprestación pactada por las partes.

Finalmente, respecto a la refacturación de gastos de la obra, es necesario en aras de determinar la tributación, distinguir cuando ésta se refiere única y exclusivamente a un gasto soportado por el sujeto pasivo que se refactura a su cliente o, por el contrario, la refacturación del gasto se realiza en el marco de una entrega de bienes o de una prestación de servicios respecto de los que podría tener la consideración de accesorio.

9. Dirección General de Tributos. Contestación nº V0688-23 y nº V0689-23, de 22 de marzo de 2023.

Explotación en arrendamiento de inmueble – Derecho a deducir – Devolución del Impuesto.

La consultante es una entidad establecida en Francia que va a adquirir un edificio radicado en el territorio de aplicación del Impuesto que será destinado a arrendamiento de oficinas. La consultante no dispone de medios personales o materiales propios sino que va a contratar a una empresa especializada la gestión de los arrendamientos.

La consultante solicita aclaración de la contestación vinculante de 14 de febrero de 2023, consulta V0244-23, sobre si tiene derecho a deducir y solicitar la devolución / compensación de las cuotas soportadas por la explotación en arrendamiento del inmueble en ejercicios previos al cambio normativo introducido por la Ley 31/2022, de 23 de diciembre por la vía del procedimiento del artículo 115 de la Ley del IVA.

La DGT concluye que, de forma excepcional, la consultante podrá ejercer su derecho a la deducción respecto de las cuotas soportadas por la explotación en arrendamiento del inmueble en ejercicios previos al cambio normativo mencionado por el procedimiento previsto en el artículo 115 de la Ley del IVA en la medida en que no haya transcurrido el plazo de caducidad para ejercitar el derecho a la deducción establecido en la Ley del IVA.

10. Dirección General de Tributos. Contestación nº V0691-23, de 22 de marzo, de 2023.

Derecho real de garantía y concurso de acreedores – Modificación de la base imponible del IVA por créditos incobrables.

La entidad consultante ejecutó un proyecto de una instalación compleja para una entidad mercantil. Con el fin de garantizar el cobro, la consultante se reservó un derecho de prenda sobre la instalación.

Después de haber pagado una parte del precio de la instalación, la destinataria de esta entra en concurso, habiendo sido reconocido el crédito que ostenta la consultante por el importe pendiente como un crédito con privilegio especial por parte de la administración concursal.

Finalmente, dicha administración comunicó a la consultante la venta del activo y la parte que le corresponde a la consultante por tal venta, habiendo sido su crédito reclasificado de crédito con privilegio especial a crédito concursal ordinario.

De acuerdo con lo anterior, se plantea la consultante si cabría el procedimiento de modificación de la base imponible a efectos de recuperar el IVA ingresado y no cobrado.

En primer lugar, advierte la DGT que la consultante no procedió, de acuerdo con el artículo 80.Cinco.1º a), con la modificación de la base imponible en el plazo previsto por el artículo 80.Tres para créditos concursales, dado que en el momento en que se declaró el concurso de acreedores del deudor, el crédito que ostentaba seguía garantizado en su totalidad con un derecho real de prenda.

No obstante lo anterior, la DGT alerta de que el criterio anterior debe matizarse a la vista de recientes resoluciones del TEAC recaídas en sendas reclamaciones, 00/4904/2019 y 00/05865/2019, ambas de 18 de mayo de 2022, en las que se analiza, en base a jurisprudencia comunitaria así como del Tribunal Supremo, cuándo debe entenderse que se inicia el plazo para modificar la base imponible en caso de créditos garantizados.

Pues bien, los plazos recogidos en el artículo 80, apartados Tres y Cuatro, conforme las citadas resoluciones del TEAC, han de computarse desde que los créditos controvertidos adquirieron la naturaleza de incobrables con la recepción, en este caso, del certificado de naturaleza incobrable del Administrador Concursal, pues con anterioridad a dicha fecha se encontraban garantizados.

Conforme todo lo anterior, entiende este Centro Directivo que sería extrapolable al supuesto objeto de consulta en los mismos términos expuestos por el TEAC, en la medida que existiera una cancelación de la garantía real correspondiente y certificación emitida por la administración concursal en la que se hiciera constar que los créditos adeudados a la consultante han resultado finalmente incobrables tras la fase de liquidación del concurso.

11. Dirección General de Tributos. Contestación nº V0758-23, de 28 de marzo de 2023.

Promoción de activos inmobiliarios – Bonificación – Menor base imponible del precio de venta.

La consultante tiene por objeto social la promoción de activos inmobiliarios. Con el objeto de promocionar las ventas otorgará a los compradores de inmuebles una bonificación consistente en el pago de parte del tipo de interés a satisfacer por los compradores que opten por financiar la operación.

La consultante se cuestiona si la bonificación concedida supone una menor base imponible del precio de venta del inmueble a efectos del Impuesto sobre el Valor Añadido.

La DGT alude a la jurisprudencia del Tribunal de Justicia de la Unión Europea, sentencia de 15 de mayo de 2001, asunto C-34/99, Primback. En este sentido, concluye que la base imponible por la venta del bien inmueble no se verá minorada por los pagos realizados por la entidad consultante a entidades financieras, al constituir éstas, un pago por tercero de la contraprestación satisfecha por el adquirente del inmueble a la entidad financiera por el servicio de financiación que le presta.

IV. Country Summaries

Featured articles

Australia-UK

Australia-UK free trade agreement: Preparations for goods traders

On 4 May 2023, the Australian government announced that the Australia-United Kingdom Free Trade Agreement (A-UKFTA) will enter into force on 31 May 2023.

The A-UKFTA is a comprehensive trade agreement that covers a wide range of issues including trade in goods; trade in financial, professional, telecommunications, and other services; digital trade; investment; labor mobility; public procurement; and intellectual property matters, as well as commitments on important sustainability issues, such as environmental protection and labor rights.

Trade in goods benefits

In relation to trade in goods, key measures include:

- Upon entry into force, more than 99% of Australian goods exports to the UK will enter the UK free of customs duty. This will affect approximately 10% of Australian goods exported to the UK that currently continue to attract UK import duty;

- Phased expansion of UK tariff quota volumes (i.e., limiting the volume of tariff-free imports) for certain Australian agricultural products such as sheep and beef meat, with all tariff quotas to be eliminated in full within 10 years;

- Upon entry into force, almost all currently remaining import tariffs on UK goods imported into Australia will be removed. This will eliminate customs duty on a range of UK products including machinery, transport equipment, mechanical and electrical equipment, cars, prepared foods, and fashion goods; and

- For imports of certain UK iron and steel products, import tariffs will be removed over five years. For imports of certain UK cheese products, import tariffs will be removed over six years.

Preparations for businesses engaged in trading goods between Australia and the UK

With the A-UKFTA commencing on 31 May 2023, affected businesses that have not done so already should be reviewing the terms of the agreement to identify the potential benefits available for their imported goods.

These benefits will not be automatic—a claim for preferential tariff treatment will need to be made for every consignment, and will depend on the goods satisfying the relevant rules of origin for the A-UKFTA. The agreement allows for this requirement to be satisfied by way of a declaration of origin, generally completed by the exporter or producer of the goods and provided to the importer before the goods arrive in the country of import.

Consideration should also be given to whether certainty about the origin of particular goods is required. If so, an advance ruling from the customs authority of the country of import should be sought. Under the agreement, advance rulings will remain in effect for at least three years, although the practice of the Australian Border Force is to issue advance rulings for five years.

Preparation for implementation may also involve the review and possible renegotiation of contracts with UK counterparts, to address relevant matters such as those relating to origin, and related obligations and entitlements if the origin of the goods is challenged by the authorities.

Australia

Federal Budget 2023-24 tax developments

The Australian Treasurer Jim Chalmers delivered the Federal Budget 2023-24 ("Budget") on 9 May 2023 with the theme "Stronger foundations for a better future." This article provides an overview of the key tax proposals for individuals and businesses.

Individuals

One of the centerpieces of the Budget is the AUD 16.4 billion cost of living package, which comprises the Energy Price Relief Plan together with increased support payments to many recipients of government payments.

The key announcements are:

- The Energy Price Relief Plan will support approximately 5.5 million households and around 1 million small businesses;
- The base rate of working age (JobSeeker) and student payments will increase by AUD 40 per fortnight as from 20 September 2023;
- There was no announcement about any changes to personal income tax rates, including the stage 3 changes which are legislated to apply as from July 2024;
- The government recommitted to its announced change to reduce the tax concessions available to individual superannuation account balances above AUD 3 million; and
- There were also no further announcements on other matters such as the proposed individual residency test reforms.

Cost of living package

The government has announced an AUD 14.6 billion cost of living plan which packages up a number of announcements to provide help with power bills, bring down out-of-pocket health costs (by capping the price of medicines on the Pharmaceutical Benefits Scheme (PBS)), support vulnerable Australians, create more affordable housing, and boost wages (aged care workers).

Energy Bill Relief Fund

The government will provide AUD 1.5 billion over two years from 2023–24 to establish the Energy Bill Relief Fund to support targeted energy bill relief to eligible households and small business customers, which includes pensioners, Commonwealth Seniors Health Card holders, Family Tax Benefit A and B recipients, and small business customers of electricity retailers. Eligible households that receive existing state and territory rebates will have this new rebate applied to their bill automatically as from 1 July 2023.

Energy price relief rebates will be available as from 1 July 2023, cofunded by the commonwealth, states, and territories. An AUD 250 commonwealth rebate will be available to eligible households in New South Wales, Victoria, Queensland, South Australia, and Tasmania delivering AUD 500 in power bill relief in total (including state contributions).

An AUD 175 commonwealth rebate (generally AUD 350 in total bill relief) will be available to eligible households in the Australian Capital Territory, Northern Territory, and Western Australia.

An AUD 325 commonwealth rebate will be available to eligible small businesses in each state, which translates to an AUD 650 benefit for small businesses in states that have matched the relief.

Support for vulnerable Australian households

The government will increase support for people receiving working age payments including the JobSeeker Payment. This measure will increase the base rate of working age and student payments by AUD 40 per fortnight. This increase applies to the ABSTUDY, Austudy, Disability Support Pension (Youth), JobSeeker Payment, Parenting Payment (Partnered), Special Benefit, and Youth Allowance as from 20 September 2023.

Eligibility for the existing higher single JobSeeker Payment rate for recipients aged 60 years and over will be extended to recipients aged 55 years and over who are on the payment for nine or more continuous months.

The government will also extend eligibility for Parenting Payment (Single) to support single principal carers with a youngest child under 14 years of age (previously under eight years of age).

Increased rent and housing assistance

The government will increase the maximum rates of the Commonwealth Rent Assistance (CRA) allowances by 15% to help address rental affordability challenges for CRA recipients.

The government will also introduce a number of housing measures to increase support for social and affordable housing across the country and improve access for home buyers, including:

- Expanding the criteria for eligibility for the Home Guarantee Scheme; and
- Extending the deadline for all existing Homebuilder applicants to submit supporting documentation from 30 April 2023 to 30 June 2025.

Personal taxation

Passenger movement charge increase

The passenger movement charge will be increased from its current level of AUD 60 to AUD 70 per departure from Australia, as from 1 July 2024. Subject to limited exceptions, the charge is applicable to both citizens and non-citizens, 12 years and older, and is normally collected by carriers on behalf of the government when tickets are sold to passengers. It is estimated that this measure will increase passenger movement charge receipts by AUD 520 million over the five years from 2022-23.

Exempting lump sum payments in arrears from the Medicare levy

The government will exempt eligible lump sum payments in arrears from the Medicare levy as from 1 July 2024. Eligibility requirements will ensure that relief is targeted to taxpayers who are genuinely low-income and should be eligible for a reduced Medicare levy.

Superannuation

Government updates on superannuation tax rate for large balances

The government recommitted to its announced changes to reduce the tax concessions available to individual superannuation account balances above AUD 3 million.

As from 1 July 2025, the tax rate applied to earnings attributable to superannuation account balances above AUD 3 million will be 30%. These measures will not affect individuals with total superannuation balances of less than AUD 3 million nor will this change affect that portion of an individual's balance below the AUD 3 million threshold.

The government has confirmed that interests in defined benefit schemes will be appropriately valued and will have earnings taxed under this measure in a similar way to other interests. This will ensure commensurate treatment.

The introduction of this measure is estimated to affect around 80,000 people and increase receipts by AUD 2.3 billion in the first full year of receipts collection (2027-28). Over the five years from 2022–23, it is estimated to increase receipts by AUD 950 million and increase payments by AUD 47.6 million. This includes AUD 50 million in receipts associated with updating the notional contribution calculation methodology, applicable to all defined benefit members.

Business taxes

Australia has confirmed the implementation timeline for the OECD/G20 Pillar Two global minimum tax rules starting from 2024. The most significant revenue impact in the Budget is AUD 7.6 billion, comprising goods and services tax (GST) and other tax receipts expected to be collected from an expanded GST compliance program. In addition, the Australian Taxation Office (ATO) has received significant other funding to continue other compliance activities.

The key announcements are:

- Australia has announced the implementation timeline and costings for the OECD/G20 Pillar Two global minimum tax;
- The government will expand and strengthen part IVA (the general anti-avoidance rule);
- As previously announced, the government will collect an additional AUD 2.4 billion over the forward estimates from modifications to the petroleum resource rent tax (PRRT);
- The patent box initiatives announced by the Coalition government will not proceed;
- Small and medium businesses will benefit from an additional deduction for spending on electrification and more efficient use of energy;
- There will be a one-year temporary increase in the instant asset write-off to AUD 20,000 for small business;
- Superannuation contributions to be paid on payday as from 1 July 2026; and
- Significant additional funding for the ATO.

Cross-border taxation developments

Implementation of a global minimum tax and a domestic minimum tax

Australia has announced the implementation of the OECD/G20 Pillar Two global minimum tax. Pillar Two will establish a global minimum tax rate of at least 15% under a globally agreed set of rules that will require groups to undertake annual calculations on a country-by-country basis. The government has confirmed Australia's intention to implement Pillar Two in line with the OECD timeline, consistent with the United Kingdom and European Union states.

Australia will implement a domestic minimum tax for income years beginning on or after 1 January 2024, to ensure that Australia retains taxing rights over undertaxed Australian profits.

Further, the following measures will also be introduced:

- The income inclusion rule (IIR) is to apply to income years beginning on or after 1 January 2024; and
- The undertaxed profits rule (UTPR) is to be effective 12 months later (income years beginning on or after 1 January 2025).

The measures will apply to multinational enterprises with a global turnover above EUR 750 million (i.e., approximately AUD 1.2 billion) and will apply to Australian headquartered multinational enterprises as well as Australian subsidiaries of foreign parents. These measures will greatly increase the compliance burden on in-scope Australian groups and Australian subsidiaries of multinationals.

The measure is forecast to increase revenue by AUD 370 million and increase payments by AUD 110 million over the five years from 2022-23.

Expanding the general anti-avoidance rule in the income tax law

The government will expand and strengthen part IVA (the general anti-avoidance rule) for income years commencing on or after 1 July 2024, regardless of when schemes were entered into. This measure appears to relate only to the general provisions of part IVA, rather than other measures such as the multinational anti-avoidance law or the diverted profits tax.

Part IVA will be expanded so as to also include the following:

- Schemes that reduce tax paid in Australia by accessing a lower withholding tax rate on income paid to foreign residents. It is expected that the measure is seeking to ensure that part IVA can be applied in a case where the liability to withholding tax is reduced but not eliminated, as well as a case where the liability to withholding tax is eliminated (reduced to nil); and
- Schemes that achieve an Australian income tax benefit, even where the dominant purpose was to reduce foreign income tax. To date, the general provisions of part IVA have been premised upon there being a sole or dominant purpose to obtain a relevant Australian tax benefit. This proposal seeks to ensure that part IVA can apply where there is an Australian tax benefit even where the sole or dominant purpose was to obtain a foreign tax advantage. It is not yet clear what purpose threshold will apply to the Australian tax benefit.

Energy and resources

Proposed changes to the PRRT

On 7 May 2023, the treasurer advised of significant changes to the design of the PRRT. The package of proposed changes, which include integrity reforms, is expected to increase tax receipts by AUD 2.4 billion over the forward estimates. The key announcements are:

- The government has released the *Petroleum Resource Rent Tax: Review of Gas Transfer Pricing Arrangements Final Report* (GTP Review) prepared by Treasury, together with the government's response. The government will proceed with eight of 11 recommendations by the GTP Review:
    - As from 1 July 2023, the government will limit deductible expenditure to the value of 90% of PRRT assessable receipts in respect of each project in the relevant income year (applied after mandatory transfers of exploration expenditure). The amounts that are unable to be deducted because of the cap will be carried forward and uplifted at the government long-term bond rate;
    - As from 1 July 2023, the government will update the PRRT general anti-avoidance rule and the arm's length rule to clarify their application to the Petroleum Resource Rent Tax Assessment Regulation 2015; and
    - As from 1 July 2024, the government will modernize the PRRT for emerging developments in liquefied natural gas (LNG) project structures, better reflect the contributions and risks of the notional entities that comprise the LNG value chain, align the regulations with current transfer pricing practices, and provide appropriate integrity rules for the regime; and
- Further, the Labor government's response to the Callaghan Review, in respect to recommendations that were accepted but not implemented by the previous government has been released. The government will proceed with eight recommendations made by the Callaghan Review.

The government will consult on final design and implementation details for the deductions cap and on the draft gas transfer pricing rules later this year. Consultation on other policy changes (recommendations from the Callaghan Review and anti-avoidance rules) will occur in early 2024. The Petroleum Resource Rent Tax Assessment Regulation 2015 will not be remade until the legislation implementing the deductions cap has been enacted.

Clarifying the tax treatment of "exploration" and "mining, quarrying, and prospecting rights"

The government will amend the PRRT legislation to clarify that "exploration for petroleum" is limited to the "discovery and identification of the existence, extent and nature of the petroleum resource" and does not extend to "activities and feasibility studies directed at evaluating whether the resource is commercially recoverable."

This measure is consistent with the commissioner of taxation's administrative treatment and written binding advice as set out in TR 2014/9, which applies as from 21 August 2013. The amendments will apply to all expenditure incurred as from 21 August 2013.

This measure will also clarify that mining, quarrying, and prospecting rights (MQPRs) cannot be depreciated for income tax purposes until they are used (not merely held) and will limit the circumstances in which the issue of new rights over areas covered by existing rights lead to tax adjustments. These amendments apply in respect of all MQPRs acquired or started to be used after the time of announcement (7.30 pm (AEST) on 9 May 2023 (Budget night)).

The government states that these amendments are designed to ensure the PRRT and income tax legislation operates as intended following the Full Federal Court's decision in *Commissioner of Taxation v Shell Energy Holdings Australia Limited [2022] FCAFC 2.*

Innovation incentives

Patent box announcements will not proceed

The government formally announced that the three separate patent box measures announced by the former government will not proceed. These included a patent box regime for Australian medical and biotechnology patents together with a patent box regime for agricultural and low-emissions innovations sectors.

Screen production incentives

The government will amend existing screen- and production-related tax incentives as follows:

- Increase the location offset rebate rate to 30% while increasing the minimum qualifying Australian production expenditure thresholds to AUD 20 million for feature films and AUD 1.5 million per hour for television series;

- Funding of AUD 6.9 million over four years as from 2023–24 (and AUD 1.8 million per year ongoing) for Ausfilm to continue to market Australia as a destination for screen production;

- Funding of AUD 0.5 million over three years as from 2024–25 (and AUD 0.2 million per year ongoing) for the Australia-India Audio-Visual Co-Production Agreement to enable eligible producers to access the producer offset, a refundable tax offset for approved Australian expenditure; and

- With the digital games tax offset provisions currently before parliament, additional funding of AUD 12 million over four years as from 2023-24 (and AUD 3 million per year ongoing) for Screen Australia to support Australian interactive games businesses to grow operations and capitalize on emerging opportunities.

Reduce compliance costs for general insurers

The insurance industry has been concerned to ensure the current tax legislation for insurance companies is updated to reflect changes under the new accounting standard, *AASB 17 Insurance Contracts,* which applies for income years commencing on or after 1 January 2023. The new accounting standard applies to all insurance entities and aligns to the global accounting standard IFRS 17.

The government announced it will introduce legislation to amend the tax law under division 321 to minimize the regulatory burden facing the general insurance industry, to ensure that the tax laws will align to the new accounting standards, and hence allow the continued use of audited financial reporting information under AASB 17, as the basis for their tax returns.

The measure will have effect for income years commencing on or after 1 January 2023.

It is not yet clear as to the effect of this announcement for life insurance companies under division 320, and whether any transitional measures will be introduced in respect of any tax impacts on transition from the current to the new accounting standard.

Small and medium business tax measures

Small business energy incentive

The government announced an additional 20% deduction on spending that supports electrification and more efficient use of energy for eligible businesses with annual turnover of less than AUD 50 million. Up to AUD 100,000 of total expenditure will be eligible for the incentive, with the maximum bonus tax deduction being AUD 20,000 per business.

Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024. Eligible expenditure will include investment in electrifying heating and cooling systems, upgrading to more efficient fridges and induction cooktops, and installing batteries and heat pumps. Full details of eligibility criteria will be finalized in consultation with stakeholders. Certain exclusions will apply such as electric vehicles, renewable electricity generation assets, capital works, and assets that are not connected to the electricity grid and use fossil fuels.

Temporary increase to the instant asset write-off threshold

Small businesses, with aggregated annual turnover of less than AUD 10 million, will be able to immediately deduct the full cost of eligible assets costing less than AUD 20,000 that are first used or installed ready for use between 1 July 2023 and 30 June 2024. The AUD 20,000 threshold will apply on a per asset basis. Assets valued at AUD 20,000 or more (which cannot be immediately deducted) can continue to be placed into the small business simplified depreciation pool and depreciated at 15% in the first income year and 30% each income year thereafter.

The provisions that prevent small businesses from re-entering the simplified depreciation regime for five years if they opt out will continue to be suspended until 30 June 2024.

Tax administration relief for small business

The government will introduce reforms to cut paperwork and reduce the time small businesses spend doing taxes:

- As from 1 July 2024, small businesses will be permitted to authorize their tax agent to lodge multiple single touch payroll forms on their behalf, reducing paperwork;

- As from 1 July 2024, small businesses will benefit from faster, safer, and cheaper income tax refunds by reducing the use of checks; and

- As from 1 July 2025, small businesses will be permitted up to four years to amend their income tax returns, reducing the burden of making revisions.

Small business PAYG and GST installment relief

The government will amend the tax law to set the GDP adjustment factor for pay as you go (PAYG) and GST installments at 6% for the 2023–24 income year, a reduction from 12% under the statutory formula.

The 6% GDP adjustment rate will apply to small businesses and individuals who are eligible to use the relevant installment methods (up to AUD 10 million aggregated annual turnover for GST installments and AUD 50 million annual aggregate turnover for PAYG installments) in respect of installments that relate to the 2023–24 income year and fall due after the enabling legislation receives royal assent.

Small business lodgement penalty amnesty

A lodgement penalty amnesty program is being provided for small businesses with aggregate turnover of less than AUD 10 million to encourage re-engagement with the tax system. The amnesty will remit failure-to-lodge penalties for outstanding tax statements lodged in the period from 1 June 2023 through 31 December 2023 that were originally due during the period from 1 December 2019 through 29 February 2022.

Investment incentives

Tax incentives to increase the supply of rental housing

The government will offer incentives to increase the supply of rental housing by changing arrangements for investments in build-to-rent accommodation.

For eligible new build-to-rent projects where construction commences after 7.30 pm (AEST) on 9 May 2023 (Budget night), the government will:

- Increase the depreciation rate from 2.5% to 4% per year; and
- Reduce the withholding tax rate for eligible fund payments from managed investment trusts (MITs) to foreign residents on income from newly constructed residential build-to-rent properties after 1 July 2024 from 30% to 15%, subject to further consultation on eligibility criteria.

This measure will apply to build-to-rent projects consisting of 50 or more apartments or dwellings made available for rent to the general public. The dwellings must be retained under single ownership for at least 10 years before being able to be sold and landlords must offer a lease term of at least three years for each dwelling. The reduced MIT withholding tax rate for residential build-to-rent will apply as from 1 July 2024. Consultation will be undertaken on implementation details, including any minimum proportion of dwellings being offered as affordable tenancies and the length of time dwellings must be retained under single ownership.

Extending the clean building MIT withholding tax concession

The government will extend the clean building MIT withholding tax concession to data centers and warehouses. This measure will extend eligibility for the concession to data centers and warehouses that meet the relevant energy efficiency standard, where construction commences after 7.30 pm (AEST) on 9 May 2023 (Budget night). This measure will apply as from 1 July 2025.

This measure will also raise the minimum energy efficiency requirements for existing and new clean buildings to a six-star rating from the Green Building Council of Australia or a six-star rating under the National Australian Built Environment Rating System. The government will consult on transitional arrangements for existing buildings. These changes will support investment in energy efficient commercial buildings, and in turn, reduce energy usage and energy bills for commercial tenants.

Superannuation

Superannuation contributions to be paid on payday

As from 1 July 2026, employers will be required to pay their employees' superannuation at the same time as their salary and wages.

Unpaid superannuation contributions are a chronic issue in the system, with the ATO estimating the net superannuation guarantee gap for 2019-20 to be 4.9% or AUD 3.4 billion. More frequent super payments will reduce the risk of non-payment, allow employees to keep better track of their payments, and support better retirement outcomes. It will be particularly beneficial for those in lower paid, casual, and insecure work who may otherwise miss out when superannuation is paid less frequently. The treasurer has noted more frequent superannuation payments will make employers' payroll management smoother with fewer liabilities building up on their books.

To further strengthen the system, the ATO will receive additional resourcing to help it detect and act on unpaid superannuation payments. The government will also set enhanced targets for the ATO for the recovery of payments.

Treasury and the ATO will consult closely with industry and stakeholders on the design of these changes with the final design considered in the 2024-25 Budget.

Amendments in respect of superannuation NALI provisions

On 24 January 2023, treasury released a consultation paper considering options to amend the non-arm's length income (NALI) provisions for superannuation funds. The NALI provisions are an integrity measure to prevent income from being diverted into superannuation funds to benefit from lower rates of tax compared to other entities, particularly the marginal rates applying to individual taxpayers. Where income is deemed to be derived from a non-arm's length transaction, it is taxed at the highest marginal rate of 45%.

Following feedback from industry on the consultation paper, the government has announced changes to their original proposal for amendments to the NALI provisions. As a result:

- Large Australian Prudential Regulation Authority (APRA) regulated funds will be exempt from the NALI provisions for both general and specific expenses;

- Self-managed superannuation funds (SMSFs) and small APRA regulated funds (SAFs) will have income taxable as NALI, limited to twice the level of a general expense. Fund income that is taxable under these provisions will exclude contributions; and

- All expenditure occurring prior to the 2018-19 financial year will be exempted.

Additional funding for ATO

The government will provide additional funding for the ATO (and other regulators) including but not limited to:

- AUD 588.8 million to the ATO over four years as from 1 July 2023 to continue a range of activities that promote GST compliance. This measure is estimated to increase GST receipts by AUD 3.8 billion, and other tax receipts by AUD 3.8 billion, over the five years as from 2022–23. These activities are aimed at ensuring businesses meet their tax obligations, including accurately accounting for and remitting GST, and correctly claiming GST refunds. Funding through this extension will also help the ATO develop more sophisticated analytical tools to combat emerging risks to the GST system;

- AUD 89.6 million to the ATO to extend the Personal Income Tax Compliance Program for two years as from 1 July 2025 and expand its scope as from 1 July 2023. This measure is estimated to increase receipts by AUD 474.9 million;

- Additional funding over four years as from 1 July 2023 to enable the ATO to engage more effectively with businesses to address the growth of tax and superannuation liabilities. This measure is estimated to increase receipts by AUD 718 million;

- AUD 21.8 million over four years from 2023–24 (and AUD 1.4 million per year ongoing) to the ATO to lower the tax-related administrative burden for small businesses;

- AUD 4.4 million in resourcing to the ATO to administer and ensure compliance with proposed changes to the PRRT;

- AUD 40.2 million to the ATO in 2023–24, to improve data matching capabilities to identify and act on cases of superannuation guarantee underpayment by employers and funding for consultation and co-design; and

- AUD 1.9 million over two years from 2023–24 to establish a public registry of beneficial ownership of companies and other legal vehicles, including trusts.

Indirect taxes

Road user charge to increase by 6% annually

The road user charge (RUC) will be increased annually by 6% on 1 July in 2023, 2024, and 2025. In dollar terms, the RUC will increase by 1.6 cents per liter (c/l) to 28.8 c/l on 1 July 2023 (currently 27.2 c/l), followed by further increase to 30.5 c/l on 1 July 2024 and to 32.4 c/l on 1 July 2025.

The effect of the higher RUC will be to reduce the level of fuel tax credit entitlement for businesses using petrol or diesel in heavy vehicles traveling on public roads. This measure is forecast to decrease the government's expenditure on fuel tax credits by AUD 1.1 billion over four years from 2023-24.

Increased tobacco duty

The Budget includes an extra AUD 3.3 billion over five years from increased tobacco duty, comprising:

- Three 5% increases over three years (in addition to the normal twice-yearly CPI-based increases), starting on 1 September 2023; and

- Bringing the impost on loose-leaf tobacco products into line with cigarettes by progressively lowering the "equivalization weight" from 0.7 to 0.6 grams. These decreases will occur on 1 September each year from 2023 through to 2026.

As well as making tobacco products less affordable in this way, the government will direct AUD 737 million to programs that address the harm caused by smoking and vaping, discourage their uptake, or support quitting, and expand compliance activity to address illicit tobacco.

Streamlining excise administration for fuel and alcohol: delayed start date for some measures

The start date for some components of the "Streamlining excise administration for fuel and alcohol" package will be delayed by 12 months to 1 July 2024. The changed start date applies to the measures that will:

- Remove overlapping Australian Border Force and ATO systems;

- Streamline license application and renewal requirements;

- Remove regulatory barriers for certain excise and excise equivalent customs goods (including lubricants, bunker fuels for commercial shipping industries, and vapor recovery units); and
- Provide a public register of entities that hold excise licenses to store or manufacture excise and excise equivalent customs goods.

Introduction of cost recovery arrangements for clearance of low value imported cargo flagged

In the context of an announcement about funding to strengthen Australia's biosecurity system, the Budget papers mention the government's intention to partially offset the cost by introducing cost recovery arrangements for the clearance of low value imported cargo, a measure expected to raise AUD 81.3 million over three years as from 2024–25.

Finland

Amendments to VAT Act proposed following Finland's accession to NATO

A Finnish government proposal (HE 2/2023 vp) published on 20 April 2023 is pending that would amend the VAT Act to comply with certain requirements of the EU VAT directive (2006/112/EC) that are applicable following Finland's accession to the North Atlantic Treaty Organization (NATO) on 4 April 2023. According to the proposal, domestic supplies of goods or services to the armed forces of another NATO member jurisdiction that is taking part in joint defense efforts outside of its jurisdiction would be exempt from VAT (i.e., the input tax on purchases would be refundable); supplies of goods and services to other EU member states to benefit such joint defense efforts also would be VAT exempt. In addition, imports of goods to Finland to benefit joint defense efforts would be VAT exempt. The changes to the VAT Act are intended to take effect at the earliest possible date.

Finland

Summary of SAC rulings regarding right to deduct VAT on stock market listing costs

Finland's Supreme Administrative Court (SAC) issued two final rulings (KHO:2023:33 and 1193:2023) on 21 April 2023 regarding the right to deduct VAT on costs related to the listing of a company on the stock market.

The SAC ruled that the right to deduct VAT on listing costs should be determined based on the purposes for which the services were acquired (i.e., deductibility depends on whether the services were acquired for purposes of business activities of the company that are subject to VAT). According to the rulings, VAT on costs related to the stock market listing generally was deductible for the company, except for VAT on costs that related to sales of shares by existing shareholders that occurred in connection with the listing, since these costs related to the interests of the shareholders rather than to business activities of the company that are subject to VAT. The SAC did not comment on how the appropriate deductible portion of the listing costs should be determined, but referred the cases back to the Finnish Tax Administration.

India

Purchaser claiming input tax credit has burden of proving purchase is genuine

India's Supreme Court (SC), in a decision published on 13 March 2023, held that a purchaser claiming eligibility for the input tax credit (ITC) under the Karnataka Value Added Tax Act, 2003 (KVAT Act) has the burden of proving the genuineness of the purchase transaction.

Background and facts of the case

The taxpayer purchased goods for the purpose of resale and claimed ITC. The assessing officer disallowed the ITC claim on the grounds that the sellers either had their registration canceled or had filed "nil" returns (i.e., they reported no income and thus denied the sales) such that the assessing officer doubted the genuineness of the purchase transactions.

The purchaser filed an appeal before the first appellate authority, which dismissed the case on the grounds that the burden of proof laid out in section 70 of the KVAT Act for claiming ITC had not been met.

The purchaser then filed an appeal before the Karnataka VAT Appellate Tribunal. The tribunal allowed the ITC and reversed the order of the assessing officer and the first appellate authority, finding that the purchaser should not suffer due to the sellers' default.

The tax authorities appealed to the Karnataka High Court (HC), which dismissed the case and allowed the purchaser to claim ITC on the grounds that the sale price had been paid to the sellers by cheque and the sellers had issued tax invoices.

The tax authorities appealed the Karnataka HC's decision to the SC.

Contentions of the tax authorities

The tax authorities made the following arguments:

- In cases where the assessing officer doubts the genuineness of a purchase transaction (e.g., where it is found that the transaction is only a paper transaction, or in cases where the seller's registration is canceled), the purchaser should not be entitled to ITC.
- The burden is on the purchaser to prove the transactions/financial transfers.
- This burden of proof is slightly higher than showing that financial transactions took place and should consist of showing an actual movement of goods. The mere production of invoices or payment to the seller by cheque is not sufficient to discharge the burden of proof under section 70 of the KVAT Act.
- The tax authorities cannot recover taxes from unregistered sellers or sellers who have filed "nil" returns.
- The purchaser must prove an "actual" payment of tax and "actual transfer of goods" to claim ITC; paper transactions are not sufficient.

Contentions of the taxpayer

The taxpayer made the following arguments:

- The burden of proof to claim ITC under the KVAT Act was met and the genuineness of the transactions was proven by producing invoices and payments made by cheque such that the taxpayer is eligible to claim ITC.
- If a seller does not pay tax, it is improper to recover the tax from the purchaser. Appropriate procedures should be followed to recover the tax from the seller.

- The KVAT Act and related rules do not require any other document or obligation for the purposes of establishing ITC eligibility.

- Purchasers wishing to make an ITC claim must make sure that the seller's registration is active and that the seller has issued tax invoices. Once the purchaser demonstrates compliance with these conditions, ITC cannot be denied just because the seller has failed to meet the requirements of the KVAT Act.

- ITC could be denied where the purchaser fails to exercise due diligence regarding the registration status of the seller. However, denial of ITC to a purchaser who has taken all necessary precautions fails to distinguish between a purchaser who has acted in good faith and one that has not.

Observations of the SC

In reaching its decisions, the SC made the following observations:

- The burden of proving the correctness of an ITC claim lies with the purchaser. A claim of being a bona fide purchaser is not enough and sufficient to discharge the burden of proof and such burden cannot be shifted to the tax authorities.

- The production of invoices or payments made by cheque is not enough and cannot be said to be discharging the burden of proof provided for in section 70 of the KVAT Act.

- A purchaser claiming ITC must prove the actual purchase transaction by providing details of the transaction and documents such as the name and address of the seller, details regarding the vehicle used to transport the goods, the payment of freight charges, an acknowledgement that delivery of the goods was taken, tax invoices and payment particulars, etc.

- In the case under consideration, the assessing officer doubted the genuineness of the transactions based on the evidence and materials available on the record.

- The purchaser has not produced any further supporting materials to discharge the burden of proof although this was needed as, in some cases, the registration of the sellers were canceled or the sellers denied the sales.

SC ruling

In restoring the order of the tax authorities and quashing the orders of the second appellate authority and the Karnataka HC, the SC held that:

- The production of invoices and/or payments by cheque is not sufficient and cannot be said to meet the burden of proof laid out in section 70 of the KVAT Act.

- If the purchaser fails to establish and prove the physical movement of goods on which ITC has been claimed, the assessing officer is justified in rejecting the ITC claim.

- The findings of the second appellate authority and the Karnataka HC were erroneous as the purchaser failed to prove the genuineness of the transactions.

- Producing a tax invoice is one of the requirements but cannot prove the actual physical movement of goods which is required to be proved.

- In the absence of any further convincing material to prove the genuineness of the transactions, the assessing officer was justified in denying the ITC.

Deloitte India comments

Although the ruling of the SC is in the context of discharging the burden of proof under the KVAT Act, similar burden of proof provisions exist in the Goods and Services Tax Law (GST law). Therefore, this ruling could have implications under the GST law. Accordingly, it is important for purchasing taxpayers to exercise due diligence when checking the legitimacy of sellers and to maintain robust documentation, including documentation reflecting the movement of goods to prove the genuineness of purchase transactions.

Luxembourg

New circular addresses VAT consequences of employers providing company cars to staff

On 28 April 2023, the Luxembourg VAT authorities issued Circular n° 807 bis (in French only) providing details regarding the application of decision C-288/19[1] of the Court of Justice of the European Union (CJEU) and complementing Circular n° 807 of 11 February 2021 on the VAT consequences of employers providing company cars to their employees. The new circular is also a useful reminder that Luxembourg employers must carefully consider the application of VAT in Luxembourg and other EU member states when they provide such cars.

Background

Traditionally, in Luxembourg as in the rest of the EU, providing a car to an employee who uses it, at least partly, for private purposes was considered a "self-supply" subject to VAT in the employer's member state, regardless of the employee's member state of residence.

This interpretation has evolved since the CJEU ruled in case C-288/19 that the provision of a car by an employer to an employee should be treated as hiring a means of transport against remuneration when the following conditions are met:

a. The employee pays for the use of the car; or

b. The employee gives up a part of their remuneration as consideration for the car; or

c. The ability to use the vehicle is not contingent on the employee forgoing other benefits; and

d. The employee has the right to use the car for private purposes and to exclude other persons from using the car for an agreed period of more than 30 days,[2] and the car remains permanently at the employee's disposal, including for private purposes.

---

[1] C-288/19, QM v. Finanzamt Saarbrücken, 20 January 2021.

[2] If the agreed period is for less than 30 days and all the other conditions of the CJEU decision are met, the rent would be subject to VAT in the member state where the car is placed at the disposal of the employee. Such a case is most probably theoretical and certainly exceptional.

Such a service is taxable in the member state where the employer is established or in the member state where the employee is resident when that state is different. Therefore, a Luxembourg employer providing such a service to staff residing in Belgium, France, Germany, and Luxembourg (which is a frequent situation, considering that a large portion of the Luxembourg workforce is made up of residents from the three neighbouring countries) must consider VAT payment in these four jurisdictions.

Should these conditions not be met, the employer-provided vehicle would, in principle, be considered a self-supply subject to VAT in the member state of the employer.

For more detailed comments regarding the CJEU decision and Circular n° 807, we refer to the following newsletters: CJEU's preliminary VAT ruling on the provision of vehicles by Luxembourg employers to staff members residing abroad–Advocate General's opinion (C-288/19) (23 September 2020) and The CJEU's decision (C-288/19) and Circular 807 of the Luxembourg VAT authorities on the provision of vehicles by employers to staff members residing abroad (8 March 2021).[3]

Circulars n° 807 and 807 bis of the Luxembourg VAT authorities

Circular n° 807, issued by the Luxembourg VAT authorities on 11 February 2021, reiterated the contents of the CJEU decision without adding any further details or explanations, except to say that Luxembourg employers may have VAT obligations in jurisdictions where their employees reside. We higlighted in our March 2021 newsletter (discussed above) that no date of entry into force was provided in the circular and that, due to its general wording, it seems that the VAT authorities considered that the CJEU decision also applies to cars provided to Luxembourg resident employees.

The Luxembourg VAT authorities provide additional information in the complementary circular issued on 28 April, Circular n° 807 bis. In particular, the circular states that the car is considered to be provided "against remuneration" (and thus within the scope of the CJEU decision) when, in their contractual relationship, the employer and the employee agree on a cash amount available to the employee for the provision of a company car or on criteria to determine this amount in cash. This is also the case when they agree in the employment agreement (or an appendix to this agreement) that the employee is entitled to a "car budget."

Circular n° 807 bis provides useful guidance about the taxable basis subject to Luxembourg VAT when the employer-provided car is treated as a supplied service and when the employee is a Luxembourg resident:

- In line with articles 28(3)(a) and 29 of the Luxembourg VAT law, the taxable basis is the "normal value," i.e., the price that would be paid between unrelated parties in normal market conditions and that could not be lower than the costs borne by the employer. This prevents undervaluation designed to reduce the amount of VAT payable to the Luxembourg tax authorities.

- If the employer leases the car, it is accepted that the "normal value" is at least equal to the rent or leasing fees paid by the employer to the car leasing company and all other costs borne by the employer in connection with the car.

- When the employer is the owner of the car, the normal value is at least equal to the depreciation value of the car calculated over a period of five years and all other costs borne by the employer in connection with the car.

---

[3] Input newsletter | Deloitte Luxembourg | Tax | Newsletters

- When the car is also used for professional purposes, it is accepted that the taxable basis could be reduced accordingly. The circular does not provide details on how to determine this reduction, but a "log-book" method may be considered.

This indirectly confirms our understanding that, in Circular n° 807, the Luxembourg VAT authorities considered that the CJEU decision also applies to cars provided to Luxembourg residents (as stated above).

If a Luxembourg employer has applied the traditional "self-supply" method in the past and the employer-provided car is now considered a supplied service as a result of the CJEU decision, the employer should amend its previously filed Luxembourg VAT returns during the five-year limitation period (i.e., the five-year period as from 31 December of the year when the VAT becomes due or deductible). This could be seen as an implicit acknowledgment that the Luxembourg VAT authorities consider that its two circulars and the CJEU decision are already applicable without a formal, precise date of entry into force.

Deloitte Luxembourg comments

Circular n° 807 bis is a useful reminder that Luxembourg employers should carefully consider how the CJEU's decision affects them and their employees residing in Luxembourg or in other EU member states where they may have to pay local VAT. The circular also provides some useful guidance when cars provided to Luxembourg resident employees fall within the scope of the decision.

Malaysia

Tourism tax regulatory updates (April 2023)

This article summarizes some recent tourism tax (TTx) developments in Malaysia as at April 2023, which include amendments to the TTx regulations for accommodation operators and the TTx regulations for digital platform service providers (DPSPs) that primarily are intended to prescribe the information required to be included on invoices, receipts, credit notes, or debit notes relating to TTx. In addition, new regulations were released relating to the "compounding" of TTx offenses (a procedure that allows a penalty to be imposed in lieu of prosecution for an offense, under certain conditions). The Royal Malaysian Customs Department (RMCD) also issued a new TTx policy that extends a limited concession through 31 December 2025 that permits the accommodation operator, rather than the DPSP, to collect TTx and remit the tax to the RMCD under certain circumstances.

As brief background, TTx has been in effect since 1 September 2017, and accommodation operators (e.g., hotels) have been required to collect TTx from tourists staying at their premises. The TTx at a rate of MYR 10 per room, per night has been required to be collected by the accommodation operator and then paid to the RMCD.

On 1 January 2023, the collection requirements were due to change, when new rules were intended to require online travel platform operators facilitating online bookings of accommodations in Malaysia (DPSPs) to collect, report, and remit TTx in relation to any bookings made through their platform. However, the RMCD issued the Tourism Tax Policy No. 1/2023 to provide a limited concession through 31 March 2023 to allow the party receiving the payment for the booking of the accommodation premises from the tourist to be the party responsible for charging, collecting, accounting for, and remitting the TTx to the RMCD. As described further below, the limited concession has now been extended through 31 December 2025.

Tourism tax for accommodation service providers (operators)

The Tourism Tax Regulations 2017 (TTR) for accommodation operators were amended via the Tourism Tax (Amendment) Regulations 2023, which were gazetted on 1 March 2023 and are effective as from 2 March 2023. The salient points of the amendments to the TTR are as follows:

- New regulation 5A is inserted, which prescribes the following particulars to be included on invoices or receipts in relation to accommodation premises provided to the tourist:
    - The invoice or receipt serial number;
    - The date of the invoice or receipt;
    - The name, address, and TTx identification number of the operator; and
    - The number of accommodations and nights for each accommodation provided.
- Subregulation 6(5) is amended to prescribe the following particulars to be included on credit notes or debit notes:
    - The serial number of the credit note or debit note;
    - The date of issuance of the credit note or debit note;
    - The name, address, and TTx identification number of the operator;
    - The serial number and the date of the original invoice or receipt;
    - The reason for the issuance of the credit note or debit note;
    - The number of accommodations and nights for each accommodation provided; and
    - The rate and amount of tourism tax chargeable.
- Regulation 8 is amended to prescribe the manner of submitting TTx returns (Form TTx-03). Such returns are to be submitted electronically via the RMCD's MyTTX portal, or in any manner that the Director General of the RMCD may determine.
- Regulation 9 is amended to state that the payment of TTx, penalties, surcharges, or any other amount of money is to be made through electronic banking, or in any manner that the Director General of the RMCD may determine.

Tourism tax for DPSPs (online travel platform operators)

The Tourism Tax (Digital Platform Service Provider) Regulations 2021 ("DPSP regulations") for online travel platform operators were amended via the Tourism Tax (Digital Platform Service Provider) (Amendment) Regulations 2023, which were gazetted on 1 March 2023 and are effective as from 2 March 2023. The salient points of the amendments to the DPSP regulations are as follows:

- New regulation 4A is inserted, which prescribes the following particulars to be included on invoices or receipts in relation to the booking of accommodation premises made by a tourist:
    - The invoice or receipt serial number;

    - The date of the invoice or receipt;
    - The name, address, and registration number of the DPSP; and
    - The number of accommodations and nights for each accommodation provided.
- Subregulation 5(3) is amended to prescribe the following particulars to be included on credit notes or debit notes:
    - The serial number of the credit note or debit note;
    - The date of issuance of the credit note or debit note
    - The name, address, and registration number of the DPSP;
    - The serial number and the date of the original invoice or receipt;
    - The reason for the issuance of the credit note or debit note;
    - The number of accommodations and nights for each accommodation provided; and
    - The rate and amount of tourism tax chargeable.
- In subregulation 7(3), the deadline to make payments of tax is clarified by stating that payment is due "not later than" the last day of the month following the end of each taxable period.
- New subregulation 15(3) is inserted, which provides that regardless of whether the deadline to submit the TTx return for DPSPs (Form TTx-03A) and make payments of TTx falls on a holiday in Malaysia or in the jurisdiction in which the DPSP is established, the deadline remains unchanged and is not extended to the next business day.

Compounding for TTx offenses

The Tourism Tax (Compounding of Offences) Regulations 2023 were gazetted on 1 March 2023 and are effective as from 2 March 2023. The regulations prescribe the following as "compoundable offenses" (i.e., offenses for which a penalty may be imposed in lieu of prosecution):

- All offenses committed that are specified under the Tourism Tax Act 2017 (TTA), except for those under sections 39 and 58 of the TTA (relating to the obstruction of a customs officer or violations of the obligation of secrecy);
- All offenses committed that are specified under the TTR; and
- All offenses committed that are specified under the DPSP regulations.

Upon the receipt of any information or complaint indicating that an offense that may be compounded has been committed, the RMCD may, with the written consent of the public prosecutor, issue an offer to compound the offense.

An offer to compound an offense will be valid for a period of 14 days, or for an extended period that may be granted by the RMCD. If full payment of the amount specified in the offer is made (by bank draft) by the end of the 14-day period or the end of an extended period granted by the RMCD, no further proceedings will be taken against the person that was found to have committed the offense.

If payment of the amount specified in the offer is not made within the specified period, prosecution may be initiated against the offender without further notice.

Extension of limited concession under Tourism Tax Policy No. 2/2023

The RMCD issued the Tourism Tax Policy No. 2/2023 on 13 April 2023, which extends the limited concession provided under the RMCD's Tourism Tax Policy No. 1/2023, from 1 April 2023 to 31 December 2025.

In summary, with regards to accommodation premises booked online via a DPSP's online travel platform, the party that receives the payment from the tourist (the DPSP or the accommodation operator) will be responsible for collecting, accounting for, and remitting the TTx to the RMCD, under the concession. In other words:

- If payment for the online booking of accommodations by the tourist is made directly to the DPSP via its online travel platform, the DPSP would be the party responsible for charging, collecting, accounting for, and remitting the TTx to the RMCD.
- If payment for the online booking of accommodations by the tourist is made directly to the accommodation operator upon checking in or checking out of the accommodation, the accommodation operator would be responsible for charging, collecting, accounting for, and remitting the TTx to the RMCD. This would be done in the same manner as for bookings that have been made directly with the accommodation operator, under subsection 7(1) of the TTA.

Deloitte Malaysia's comments

The TTR and DPSP regulations were mainly amended to prescribe the particulars required to be included when issuing invoices or debit and credit notes in relation to TTx. Accommodation operators or DPSPs that are not able to produce tax-compliant documents are required to seek a waiver from the RMCD of the obligation to produce such documents.

We welcome the extension of the "grace period" up to the end of 2025 that is provided through the concession under Tourism Tax Policy No. 2/2023. With the extension, it is hoped that the implementation of TTx may be carried out in a smoother manner for DPSPs.

Philippines

Regulations provide updates to VAT zero-rating certification

The Philippines Bureau of Internal Revenue issued in April 2023 Revenue Regulations (RR) No. 3-2023, which provides updates on the VAT zero-rating of certain sales of goods and services and the requirement for VAT zero-rating certification, as follows:

- The local purchase of goods relating to the following services are not entitled to VAT zero-rating unless proven by the registered export enterprise (REE), with supporting evidence, to the concerned Investment Promotion Agency (IPA) that the local purchase of goods is directly attributable to the registered activity or project of the REE:
    - Janitorial services;
    - Security services;

    - Financial services;
    - Consultancy services;
    - Marketing and promotion; and
    - Services rendered for administrative operations, such as human resources, legal, and accounting.
- The following local services are not entitled to VAT zero-rating unless proven by the REE, with supporting evidence, to the concerned IPA that the local services are directly attributable to the registered activity or project of the REE:
    - Janitorial services;
    - Security services;
    - Financial services;
    - Consultancy services;
    - Marketing and promotion; and
    - Services rendered for administrative operations, such as human resources, legal, and accounting.
- If the purchased goods and services are used in both the registered project or activity and administrative operations, the REE will adopt a method to best allocate the same. If proper allocation could not be determined, the said purchase of goods and services will be subject to 12% VAT.
- Health maintenance organization plans acquired by REEs for its employees who are directly and exclusively involved in the operations of their projects or activities and forming part of their compensation package are considered as directly and exclusively used in the registered project or activity of the REE, subject to existing laws, rules, and regulations (i.e., limited to employees and excluding dependents of employees).
- The VAT zero-rating on local purchases of goods and services is based on the VAT zero-rating certification issued by the concerned IPA, without prejudice to the conduct of post audit/investigation/verification by the BIR. For this purpose, local suppliers of goods and services of REEs are no longer required to apply for approval of VAT zero-rating with the BIR. All applications with accompanying VAT zero-rating certification by the concerned IPA that have been received but not acted upon by the BIR upon the effective date of the regulations will be accorded VAT zero-rating treatment from the date of filing of such application, subject to post audit by the BIR.

Philippines

VAT returns no longer required to be filed monthly

On 13 January 2023, the Philippines Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 5-2023, providing the transitory provisions for the implementation of quarterly filing of VAT returns.

For transactions occurring as from 1 January 2023, VAT-registered taxpayers are only required to file a quarterly VAT return (BIR Form No. 2550Q) within 25 days following the close of each taxable quarter. Monthly VAT declarations on BIR Form No. 2550M are no longer required.

The BIR has provided guidance on filing deadlines for taxpayers with the following quarter-end dates:

Quarter ending	December 2022 transactions	January 2023 transactions	February 2023 transactions
31 January 2023	File 2550M not later than 20 January 2023	File 2550Q not later than 27 February 2023	2550M not required
28 February 2023	File 2550M not later than 20 January 2023	2550M not required	File 2550Q not later than 27 March 2023
31 March 2023	File 2550Q not later than 25 January 2023	2550M not required	2550M not required

Philippines

VAT-registered persons allowed to continue to file VAT returns monthly

On 10 May 2023, the Philippines Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 52-2023, which clarifies that VAT-registered persons have the option to continue to file and pay VAT monthly using BIR Form No. 2550M. This is in response to the issuance of RMC No. 5-2023, which changed the VAT filing requirement from a monthly to a quarterly basis, and the response from taxpayers requesting that they be allowed to continue to file and pay VAT on a monthly basis. The monthly filing of BIR Form No. 2550M will have no prescribed deadline.

Poland

Details of VAT intragroup transaction reporting published

On 30 March 2023, the Polish Ministry of Finance published a decree (in Polish only) establishing the transaction information required to be reported by VAT group members, along with a template for providing the submissions. The details must include information regarding the VAT group member receiving the supply and the date of the supply, the date and number of the relevant supporting documentation, a description of the goods or services, their unit price, and the gross amount of the transaction.

VAT grouping was implemented in Poland with effect as from 1 January 2023, and members are required to maintain simplified records of their intragroup transactions (even if VAT-neutral). The reports must be run on a monthly basis and provided electronically to the tax authorities by the 25th day of the month following the reporting period. However, through 30 June 2023, these reports are only required upon request.

The scope of the data to be included in the reports is more detailed than that submitted by taxpayers for the purposes of their regular monthly VAT reporting. The Ministry of Finance has justified the request for such detailed information with the need to counteract the possibility of tax evasion by members of the VAT group.

Poland

CJEU rules on VAT treatment of supply at electric vehicle charging points

On 20 April 2023, the Court of Justice of the European Union (CJEU) issued its judgment in case C-282/22 on the VAT treatment of the supply provided at electric vehicle charging points. The judgment was issued in response to a preliminary question referred to the CJEU in 2022 by the Polish Supreme Administrative Court.

The CJEU ruled that the following activities are a supply of goods, not services, under the EU VAT Directive:

- Providing access to devices for charging electric vehicles, including the integration of the charger with the vehicle operating system;
- Ensuring the flow of electricity to the vehicle's batteries within appropriately adapted parameters;
- Providing the necessary technical support to users; and
- Providing special IT applications enabling users to reserve a connector, view transaction history, and deposit funds in a digital wallet for use as payment for vehicle charging activities.

The court found that these activities form one complex supply, with the provision of electricity being the key element.

Companies that treat electric vehicle charging as the provision of a service for VAT purposes therefore have acted incorrectly and may need to adjust their relevant VAT calculations. The ruling affects a number of VAT elements that turn on whether a supply is of goods or services, such as the determination of the place of supply and the tax point. The VAT rate used also may need to be reviewed as, under the Polish anti-inflation shield, the rate for the supply of electricity had been reduced to 5%.

The ruling is an important addition to the growing number of VAT issues relating to electric vehicles.

Poland

Draft bill mandating use of structured e-invoicing system approved

On 17 May 2023, a draft bill implementing the mandatory use of structured e-invoicing and the National e-Invoicing System (KSeF) in Poland was approved by the Council of Ministers. The bill now proceeds to the next stage of the legislative process, which is consideration by the lower chamber of parliament.

The draft bill does not contain any significant changes compared to the previous versions of the proposal. However, provisions concerning the obligation to include the KSeF invoice number in the payment reference were moved from the entrepreneurs law into the VAT Act, which may raise concerns as to whether the requirement would then be applicable to all VAT payers, including those not previously affected by the provisions of the entrepreneurs law.

The legislative process is expected to be finalized by the end of June or the beginning of July 2023, allowing affected taxpayers one full year to prepare for the upcoming changes currently due to come into force on 1 July 2024. As from this date, a structured e-invoice would, in principle, be the only admissible way to document taxable transactions carried out by VAT taxpayers that have a registered seat or a fixed establishment in Poland.

Saudi Arabia

Draft bill mandating use of structured e-invoicing system approved

On 17 May 2023, a draft bill implementing the mandatory use of structured e-invoicing and the National e-Invoicing System (KSeF) in Poland was approved by the Council of Ministers. The bill now proceeds to the next stage of the legislative process, which is consideration by the lower chamber of parliament.

The draft bill does not contain any significant changes compared to the previous versions of the proposal. However, provisions concerning the obligation to include the KSeF invoice number in the payment reference were moved from the entrepreneurs law into the VAT Act, which may raise concerns as to whether the requirement would then be applicable to all VAT payers, including those not previously affected by the provisions of the entrepreneurs law.

The legislative process is expected to be finalized by the end of June or the beginning of July 2023, allowing affected taxpayers one full year to prepare for the upcoming changes currently due to come into force on 1 July 2024. As from this date, a structured e-invoice would, in principle, be the only admissible way to document taxable transactions carried out by VAT taxpayers that have a registered seat or a fixed establishment in Poland.

United States

State Tax Matters (5 May 2023)

The 5 May 2023 edition of **State Tax Matters** includes coverage of the following US state tax developments:

- Income/Franchise:
    - **Georgia:** New law updates state conformity to Internal Revenue Code (IRC) and decouples from Tax Cuts and Jobs Act changes to IRC section 174
    - **Illinois:** Department of Revenue adopts changes to special apportionment rules involving sales-inducement payments
    - **New York:** Budget extends expiring business income tax rates and increases Metropolitan Commuter Transportation Mobility Tax (MCTMT) rate
    - **Pennsylvania:** Department of Revenue addresses corporate income tax treatment and apportionment of electricity
    - **Washington:** Department of Revenue explains meaning of “domicile” and allocation rules under new capital gains tax
    - **Wisconsin:** Department of Revenue summarizes ruling on intercompany royalties, business purpose, and economic substance
- **Sales/Use/Indirect:**
    - **Georgia:** New law taxes certain retail purchases and sales of specified digital products
    - **Indiana:** Software purchased before July 2018 deemed exempt because no possessory interest

- Michigan: Notice explains implementation of new law exempting delivery and installation charges
- Wisconsin: Department of Revenue summarizes ruling on taxability of online platform's secondary ticket sales

The newsletter also features a recent Multistate Tax Alert: "Alabama Tax Tribunal rules that nonresident's income from Alabama company is subject to tax"

United States

State Tax Matters (12 May 2023)

The 12 May 2023 edition of State Tax Matters includes coverage of the following US state tax developments:

- Administrative:
  - Indiana: New law creates State and Local Tax Review Task Force to issue report by 1 December 2024
  - Maryland: New law creates Taxpayer Advocate Division within the Office of the Comptroller
  - Montana: New law says cryptocurrencies and nonfungible tokens (NFTs) used as payment methods are not taxable
- Income/Franchise:
  - Georgia: New law allows more entities to make passthrough entity tax election
  - Indiana: New law updates state conformity to Internal Revenue Code and addresses NOLs, R&D deduction, and mobile workforce
  - Maryland: New law narrows definition of "captive REIT" subject to dividends paid deduction addback
  - New York: Administrative law judge holds that federal Internet Tax Freedom Act preempts taxation of receipts from certain telecom services
- Gross receipts:
  - Washington: Department of Revenue proposes changes to rule addressing sourcing of services for business and occupation tax purposes
- Sales/Use/Indirect:
  - California: Trade association asks US Supreme Court to review case involving online remote sellers
  - Colorado: New law permits retailers to pay retail delivery fee on behalf of purchasers
  - Michigan: New law expands industrial processing exemption to include activities performed on some aggregate products and materials

- Washington: US District Court holds sales of gift cards for video game digital currency are not exempt

- Other/Miscellaneous:

  - Kentucky: Public Service Commission asks US Supreme Court if incentive to purchase in-state versus out-of-state coal is valid

  - Louisiana: Appellate court affirms dismissal of franchise fee suit against streaming platform companies

  - Maryland: Supreme Court vacates decision invalidating gross receipts tax on digital ad services

The newsletter also features a recent Multistate Tax Alert: "Treasury releases guidance on Superfund excise taxes"

United States

State Tax Matters (19 May 2023)

The 19 May 2023 edition of State Tax Matters includes coverage of the following US state tax developments:

- Administrative

  - California: Comments on revised proposed Office of Tax Appeals rule changes are due 26 May 2023

- Income/Franchise:

  - Colorado: New and amended rules on foreign-source income and net operating losses are effective 30 May 2023

  - Iowa: New law allows some entities to make a passthrough entity (PTE) tax election

  - Missouri: Department of Revenue proposes rescission of withholding rule addressing pandemic-related telecommuting

  - Missouri: Department of Revenue adopts permanent rule implementing new optional PTE-level tax

  - New York: Receipts from certain buy/sell arrangements cannot be included in receipts factor

  - North Carolina: Trial court reverses administrative law judge's holding that disallowing related party deductions was unconstitutional

  - Tennessee: Department of Revenue notices explain new law adopting single sales factor and Tax Cuts and Jobs Act (TCJA) bonus depreciation

- Credits/Incentives:

  - North Dakota: New law creates tax credit for some purchased manufacturing machinery and equipment used for automation

- Sales/Use/Indirect:
    - Alabama: Appellate court affirms dealer's sales of prepaid wireless service plans are not taxable
    - Colorado: Department of Revenue summarizes new law revising implementation of the retail delivery fee
    - Michigan: Treasury comments on new law expanding industrial processing exemptions as it relates to aggregate
    - North Carolina: Facilitation of money deposits for telecom's customers is not taxable prepaid wireless calling services
    - Washington: New law says state exemptions, credits, and deductions apply identically to local ones
- Unclaimed property:
    - Delaware: Reminder—Response deadline for 2023 unclaimed property voluntary disclosure agreement (VDA) invitation letters is 25 May 2023
    - Indiana: New law addresses virtual currency and requires its liquidation before filing report
- Other/Miscellaneous:
    - Maryland: Comptroller addresses state high court's digital ad gross revenues tax ruling

The newsletter also features recent Multistate Tax Alerts:

- "Georgia imposes sales tax on certain digital products and decouples from TCJA changes to IRC section 174"
- "Georgia enacts changes to pass-through entity tax"
- "Iowa enacts pass-through entity tax election"
- "Tennessee enacts several changes to business tax and franchise and excise tax laws"
- "Tennessee enacts changes to sales and use tax laws"

United States

State Tax Matters (26 May 2023)

The 26 May 2023 edition of State Tax Matters includes coverage of the following US state tax developments:

- Income/Franchise:
    - Iowa: Department of Revenue asks for requests for guidance on new passthrough entity tax election by 7 June 2023
    - Montana: New law eliminates list of approximately 40 tax haven countries and jurisdictions

    - Montana: New mobile workforce law includes 30-day threshold for nonresident withholding
    - Montana: New law creates elective passthrough entity tax with refundable credit
    - Oregon: Tax Court addresses inclusion of commodities hedging receipts in company's sales factor
    - South Carolina: New law updates state conformity to Internal Revenue Code
    - Virginia: Taxpayer may choose manufacturer's special apportionment method on amended return
- Unclaimed property:
    - Montana: New law addresses virtual currency and requires its liquidation when filing report
- Property:
    - Texas: Supreme Court prohibits localities from entering into contracts on contingent-fee basis

The newsletter also features a recent Multistate Tax Alert: "New York enacts 2023-2024 Budget Act"

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

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

Atentamente,
Deloitte Legal