Deloitte.
Legal

# Noviembre 2023

## Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

# Índice de contenido

## I. Jurisprudencia



## II. Doctrina Administrativa

# III. Country Summaries

## Featured articles

### European Union

### Combined Nomenclature published

The European Commission published the latest version of the Combined Nomenclature (CN), which applies from 1 January 2024. The CN is the basis for the customs declaration of goods in the EU at importation or exportation and is used for statistical purposes.

### China

### Customs voluntary disclosure program

The General Administration of Customs has published updated guidance on its voluntary disclosure program, aiming to promote the program by expanding the scope, so importers and exporters may better use the program to improve compliance.

### India

### GST on online gaming

India's online gaming industry has become one of the largest markets globally. The GST Council is considering a proposal to levy a higher 28% tax rate on contest entry amounts. A Deloitte India report analyzes the effect of the tax rate and value of supply on tax revenues.

### Poland

### Legislative changes to VAT and other acts

A number of bills amending the VAT act and related legislation were published during October 2023. Tax amendments include KSeF related changes to JPK_V7 reporting, a new beverage packaging deposit scheme, and an extension of the cash register scheme.

## Other news

**European Union**: CESOP Implementation Monitor - update 8 November 2023

**Argentina:** Temporary revision to obligation to exchange currency for exports into pesos extended

**Australia**: ATO response to Simplot GST case: Impact for food product suppliers

**Belgium**: Update on key budget 2024 tax measures affecting the real estate sector

**Canada**: 2023 Fall Economic Statement tax highlights

**Germany**: Lower house of parliament approves draft business tax reform bill

**Germany**: Upper house of parliament does not approve draft business tax reform bill

**Greece**: VAT treatment of contracts for differences clarified

India: GST council 52nd meeting clarifies valuation of directors' personal guarantees

India: GST notices: Recent activities and next steps for taxpayers

Luxembourg: Government coalition agreement 2023-2028: Proposed tax measures

Mexico: Tax incentives for taxpayers in zones affected by Hurricane Otis

New Zealand: Repeal of "app tax" no longer expected

Poland: Changes to invoicing requirements for advance payments

South Africa: Ruling clarifies when VAT liability may arise in cases involving seconded employees

Thailand: Extension of reduced 7% VAT rate

United Kingdom: Key tax announcements in Autumn Statement for 2023

United States: State Tax Matters (3 November 2023), including indirect, sales and use tax developments in Texas, Vermont, and Washington

United States: State Tax Matters (10 November 2023), including indirect, sales and use tax developments in Missouri

United States: State Tax Matters (17 November 2023), including indirect, sales and use tax developments in Nevada

# I. Jurisprudencia

## 1. Tribunal de Justicia de la Unión Europea. Sentencia de 5 de octubre de 2023. Asunto C-146/22 (YD).

*Directiva 2006/112/CE — Artículo 98, apartado 2 — Facultad de los Estados miembros de aplicar un tipo reducido a determinadas entregas de bienes y prestaciones de servicios — Anexo III, puntos 1 y 12 bis — Alimentos similares preparados a partir del mismo ingrediente principal — Bebidas calientes preparadas a base de leche — Aplicación de tipos reducidos de IVA diferentes — Bienes que presentan las mismas características y las mismas propiedades objetivas — Bienes acompañados o no de servicios de preparación y de puesta a disposición por el proveedor.*

YD es una sociedad polaca que explota una cadena de cafés que comercializa un chocolate caliente, preparado a base de leche y de una salsa de chocolate. La sociedad en cuestión consultó a la autoridad tributaria el tipo de IVA aplicable al citado producto. En la contestación, la autoridad estableció que al tratarse de un servicio de restauración y venta de bebidas – la preparación y la entrega de la bebida al cliente – se encontraban sujetas al tipo reducido del IVA del 8%. La Sociedad impugnó el dictamen al entender que tendría que ser de aplicación el tipo reducido del 5% por analogía con la entrega de otras bebidas que incluyen base de leche.

Recuerda el TJUE que la Directiva no se opone a que un Estado determine que unos bienes incluidos en una misma categoría, se encuentren sujetos a dos tipos de IVA diferentes. No obstante, cuando se traten de entregas o prestaciones similares, que presenten propiedades análogas y satisfagan las mismas necesidades, la aplicación de tipos impositivos diferentes, supondrían una vulneración del principio de neutralidad fiscal.

Finalmente concluyó el Tribunal que el producto que entrega YD está destinado a su consumo inmediato, puesto se prepara específicamente a petición del cliente y se suministra caliente, mientras que en las otras bebidas lácteas comercializadas el consumidor no dispone de influencia en la composición de las mismas; por lo que la aplicación en este caso de tipos impositivos diferenciados no es contraria a la Directiva, ya que la elección del consumidor no se realiza en las mismas condiciones, ni con la misma finalidad.

## 2. Tribunal de Justicia de la Unión Europea. Sentencia de 5 de octubre de 2023. Asunto C-355/22 (Osteopathie Van Hauwermeiren).

*Directiva 2006/112/CE — Mantenimiento de los efectos de una normativa nacional incompatible con el Derecho de la Unión.*

Osteopathie Van Hauwermeiren (OVH, de aquí en adelante), es una sociedad belga que realiza actividades sujetas al IVA debido a su actividad económica de “otras actividades del ámbito de salud humana”. El Tribunal Constitucional procedió en 2019 a anular un artículo del Código belga de IVA en la medida en que el citado artículo no permitía conceder la exención del IVA para ciertos profesionales del ámbito de la salud que no se encontraran recogidos dentro de los mencionados en dicha disposición. Sin embargo, el mismo órgano decidió mantener los efectos anteriores al 2019 justificándose en la imposibilidad práctica

de devolver el IVA indebidamente percibido o de reclamar el pago en los casos de no sujeción. En este sentido, OVH presentó su declaración del IVA soportado solicitando su correspondiente devolución, hecho que la Administración denegó debido a que, tal y como se había acordado, se determinó mantener los efectos de la anterior ley para los hechos acaecidos antes del 2019. En este sentido, se cuestiona la posibilidad de que un Tribunal Constitucional nacional pueda mantener los efectos de una norma contraria al Derecho de la Unión basándose en la supuesta imposibilidad de llevar a cabo las devoluciones del IVA.

Indica el Tribunal que en el caso en el que las autoridades de un Estado Miembro constaten que una normativa nacional es contraria al derecho comunitario, deberán velar por que se ajuste al Derecho de la Unión lo antes posible, ya que de lo contrario se estaría actuando en contra de la primicia y la aplicación uniforme del derecho comunitario. En este sentido, concluye el Tribunal que un órgano jurisdiccional nacional no puede utilizar una disposición nacional para mantener los efectos de una norma nacional incompatible con el Derecho de la Unión, basándose en la supuesta imposibilidad de devolver el IVA percibido indebidamente a los clientes de las prestaciones realizadas por un sujeto pasivo, debido al gran número de personas afectadas o cuando esas personas no dispongan de un sistema contable que les permita identificar dichas prestaciones y su valor.

## 3. Tribunal de Justicia de la Unión Europea. Sentencia de 5 de octubre de 2023. Asunto C-505/22 (Deco Proteste - Editores).

*Directiva 2006/112/CE — Hecho imponible — Artículo 2, apartado 1, letra a) — Entrega de bienes a título oneroso — Entrega gratuita de una tableta o de un teléfono inteligente como contrapartida por la suscripción de un nuevo abono a una revista. — Concepto de "prestación única" — Criterios —Artículo 16, párrafo segundo — Apropiaciones que por necesidades de la empresa tengan como destino la entrega de los bienes a título de obsequios de escaso valor.*

Deco Proteste – Editores (en adelante, "Deco") es una sociedad portuguesa que edita y comercializa revistas que únicamente se venden mediante suscripción. En el ejercicio de su actividad, la sociedad ofrecía a los nuevos suscriptores un regalo a elegir entre una tableta o un teléfono inteligente, cuyo valor unitario siempre era inferior a 50 euros. La Administración observó que las facturas que emitía la sociedad no hacían ninguna referencia a los regalos de suscripción, por lo que entendió que deberían aplicar el IVA por dichas entregas al entender que tales regalos constituían obsequios. Deco, alegó que los regalos no constituían una liberalidad por formar parte de un paquete comercial, gracias al cual habían visto incrementadas de manera considerable sus suscripciones.

En este caso, concluye el Tribunal que se puede entender que el regalo que ofrece Deco a los suscriptores se trata de una prestación accesoria a la principal, en la medida en que el regalo que se les ofrece, permite a los suscriptores disfrutar en mejores condiciones de la suscripción a las revistas pudiendo entenderse por tanto como una única operación en el sentido de que gracias al obsequio, la compañía ha podido comprobar que el número de suscriptores ha aumentado significativamente cuando van acompañados del mismo.

## 4. Tribunal de Justicia de la Unión Europea. Auto de 5 de octubre de 2023. Asunto C-151/23 (ZSE Elektrárne).

*Directiva 2006/112/CE — Reembolso de los excesos de IVA — Reembolso tardío — Derecho del sujeto pasivo de percibir intereses de demora — Autonomía procesal de los Estados miembros — Principios de eficacia y de neutralidad fiscal — Normas nacionales que sitúan el punto de partida para el cálculo de los intereses de demora en una fecha posterior a aquélla en la que debería haberse efectuado dicho reembolso realizado en ausencia de una comprobación o inspección tributaria.*

El artículo 183, párrafo primero, de la Directiva del IVA establece que "cuando el importe de las de las deducciones exceda del IVA adeudado en un período impositivo, los Estados miembros podrán trasladar el exceso al período siguiente o efectuar el reembolso en los términos que determinen".

La cuestión prejudicial planteada por el órgano jurisdiccional remitente (Tribunal Supremo Administrativo de la República Eslovaca) radica, fundamentalmente, en si dicho precepto debe interpretarse en el sentido de que se opone a una normativa nacional según la cual, en caso de comprobación o inspección fiscal, la fecha en la que se produce el retraso en el pago de los intereses sobre el exceso de IVA que se debe reembolsar es posterior a la fecha en la que dicho reembolso debería haberse producido si no se hubiera llevado a cabo dicha comprobación o inspección.

De la jurisprudencia del Tribunal de Justicia se desprende que, si bien los Estados miembros gozan de cierta libertad para establecer el régimen previsto en el artículo 183 de la Directiva del IVA, dicho régimen no puede vulnerar el principio de neutralidad impositiva, haciendo soportar al sujeto pasivo, total o parcialmente, el peso de este impuesto.

En particular, dicho régimen debe permitir al sujeto pasivo recuperar, en condiciones adecuadas, la totalidad de la deuda resultante de este exceso de IVA, lo que implica que el reembolso se efectúe, en un plazo razonable, mediante un pago en efectivo o de forma equivalente, y que, en cualquier caso, el método de reembolso adoptado no debe exponer al sujeto pasivo a ningún riesgo financiero.

A este respecto, el TJUE ya ha declarado que el plazo para la devolución del exceso de IVA puede, en principio, ampliarse para realizar una inspección fiscal, sin que dicha ampliación deba considerarse irrazonable, siempre que la prórroga no vaya más allá de lo necesario para llevar a cabo este procedimiento de comprobación.

Asimismo, el Tribunal de Justicia ha aclarado que el régimen de aplicación de los intereses sobre el exceso del IVA está comprendido en la autonomía procesal de los Estados miembros, regida por los principios de equivalencia y de efectividad. En este sentido, y a falta de legislación de la Unión, la determinación de la fecha a partir de la cual se deben dichos intereses también entra dentro de esta noción y, por tanto, está igualmente dentro de la autonomía procesal de los Estados miembros.

Por todo ello, concluye el TJUE que el artículo 183, párrafo primero, de la Directiva del IVA debe interpretarse en el sentido de que el sujeto pasivo tiene derecho a obtener de la Administración tributaria nacional los intereses de demora sobre el exceso de IVA cuando esta Administración no haya reembolsado dicho exceso en un plazo razonable. Las

condiciones de aplicación de estos intereses están comprendidas en la autonomía procesal de los Estados miembros, enmarcada por los principios de equivalencia y de efectividad, entendiéndose que las normas nacionales relativas, en particular, al punto de partida para el cálculo de los eventuales intereses adeudados no deben tener como resultado privar al sujeto pasivo de una compensación adecuada por el perjuicio causado por el reembolso tardío de dicho exceso.

## 5. Tribunal de Justicia de la Unión Europea. Sentencia de 26 de octubre de 2023. Asunto C-249/22 (BM).

*Directiva 2006/112/CE — Artículo 2, apartado 1, letra c) — Prestación de servicios a título oneroso —Concepto — Actividades de un organismo público de radiotelevisión financiadas mediante una tasa que deben abonar las personas que disponen de receptores de radio y de televisión situados en la zona de difusión terrestre — Artículo 378, apartado 1, y anexo X, parte A, punto 2 — Acta de adhesión de la República de Austria — Excepción — Ámbito de aplicación.*

BM es una sociedad austriaca registrada como usuaria de servicios de radiodifusión en una zona cubierta por la radiodifusión terrestre de los programas de radio públicos, cuya recepción es posible mediante antena interior.

BM solicitó la devolución de las cuotas de IVA satisfechas en relación con los derechos de programa, en base a que, en su opinión, la sujeción de tales servicios al IVA era contraria a la Directiva del IVA y a la sentencia C-11/15, asunto Český rozhlas, la cual determina la exención de las actividades de radiotelevisión ofrecidas por organismos públicos sin carácter comercial. A este respecto, el órgano jurisdiccional desestimó el recurso presentado por la sociedad señalando que, en sentencias anteriores, había confirmado la tributación al IVA de los servicios de radiodifusión publica, con la única salvedad de que la recepción de los programas no requiriera la instalación de un equipo técnico muy complejo o costoso para su disfrute.

Comienza el TJUE recordando que la Directiva del IVA prevé la exención de aquellas actividades de radiotelevisión ofrecidas por organismos públicos sin carácter comercial; sin embargo, la propia Directiva permite que ciertos Estados puedan mantener la tributación que tenían establecida con anterioridad (norma de excepción), tras su adhesión a la Unión Europea. Por lo tanto, concluye el TJUE que no resulta contrario a la Directiva del IVA que se entienda sujeto al IVA una actividad de radiodifusión pública, con independencia de que dicha actividad de radiodifusión pública en cuestión esté o no comprendida en el concepto de prestaciones de servicios realizadas a título oneroso, en la medida en que con anterioridad a la adhesión a la Unión Europea estuviese así establecido el tratamiento de la referida actividad.

# II. Doctrina Administrativa

## 1. Tribunal Económico-Administrativo Central. Resolución nº 2814/2021, de 20 de septiembre de 2023.

*Hecho imponible — Operación compuesta por diversas prestaciones — Operación compleja única u operaciones independientes — Tipo impositivo — **Servicio de asistencia en carretera en caso de siniestro prestado a una compañía aseguradora y compuesto por diversas prestaciones (grúa, reparación de vehículos, desplazamiento y alojamiento, según el caso).***

Una entidad presta en nombre propio el servicio de asistencia en carretera en casos de siniestro, refacturando a su cliente —compañía de seguros— los servicios prestados (grúa, reparación de vehículos, alojamiento y transporte de personas).

La entidad prestadora de los servicios consideró que cada una de las prestaciones efectuadas debían tributar por separado, de forma independiente cada una de ellas, por lo que a los servicios prestados de alojamiento y transporte de personas les era aplicable el tipo impositivo reducido.

Por su parte, la Inspección regulariza la situación tributaria de la entidad por el importe de las cuotas indebidamente repercutidas al tipo impositivo reducido por los servicios de desplazamiento y alojamiento facturados, en la medida en que considera que el servicio de asistencia técnica prestado por ella constituye una única prestación de servicios, que debe tributar al tipo general, en tanto servicio complejo único.

El TEAC confirma el criterio de la Administración tributaria, al considerar finalmente que los servicios de asistencia en carretera prestados a la compañía de seguros por parte de la entidad, y consistentes en una pluralidad de servicios (grúa/reparación de vehículo, transporte de personas y alojamiento, entre otros), constituyen una prestación de servicios única, que debe tributar al tipo impositivo general del impuesto.

Con esta decisión, el TEAC reitera su doctrina anteriormente asentada en la resolución de 21 de junio de 2021 (número 2397/2019).

## 2. Dirección General de Tributos. Contestación nº V2372-23, de 5 de septiembre de 2023.

*Derecho a la deducción — Actividad de autotaxi realizada mediante vehículo eléctrico cuyo punto de recarga lo tiene el empresario en su domicilio particular — Deducción del IVA soportado en la adquisición de energía eléctrica para el vehículo eléctrico afecto a la actividad de autotaxi — La empresa suministradora de la energía eléctrica no desglosa la parte correspondiente a la carga del vehículo respecto de la consumida en la vivienda particular del empresario.*

Un empresario individual realiza la actividad de autotaxi mediante un vehículo eléctrico. El punto de recarga de la batería de dicho vehículo lo tiene en su domicilio particular, y, por lo tanto, la empresa suministradora de la energía, en las facturas emitidas, no desglosa la parte que corresponde a la carga del vehículo con respecto de la del hogar del consultante.

Señala la DGT que, de acuerdo con lo dispuesto en el artículo 95 de la LIVA, se puede concluir que, en particular, las cuotas soportadas por la adquisición de energía eléctrica para el suministro del vehículo eléctrico serán deducibles siempre que su consumo se afecte al desarrollo de la actividad empresarial o profesional del sujeto pasivo y en la medida en que vaya a utilizarse previsiblemente en el desarrollo de dicha actividad económica.

Por lo tanto, el empresario podrá deducir las cuotas del IVA soportadas por la adquisición de energía eléctrica para el suministro de su vehículo eléctrico al estar su consumo, en principio, afecto al desarrollo de su actividad empresarial de prestación de servicios de transporte de viajeros mediante contraprestación.

La afectación del suministro de energía eléctrica, empleada en el vehículo, a la actividad empresarial o profesional deberá ser probado por cualquier medio de prueba admitido en derecho.

A estos efectos, cabe recordar que en el ordenamiento jurídico español rige el principio general de valoración libre y conjunta de todas las pruebas aportadas, quedando descartado como principio general el sistema de prueba legal o tasada.

## 3. Dirección General de Tributos. Contestación nº V2407-23, de 7 de septiembre de 2023.

*Hecho imponible — Operación no sujeta — Artículo 7.12º LIVA — Pago del precio o contraprestación de unos servicios de restaurante mediante criptomonedas.*

Se plantea esencialmente a la DGT por parte de una asociación de hostelería la consulta acerca de la tributación que tendrían, a efectos del IVA, los pagos que pudieran realizar los clientes, como contraprestación de los servicios de restaurante que les fuesen prestados, cuando estos abonasen dicho precio mediante criptomonedas, en el supuesto de que dicha asociación aceptase estas monedas digitales como medio de pago.

Haciendo previa mención de la jurisprudencia comunitaria existente sobre los Bitcoins, y en especial, la sentencia del TJUE de 22 de octubre de 2015, asunto C-264/14, David Hedqvist, la DGT considera que los bitcoins, criptomonedas y demás monedas digitales son divisas que constituyen medios de pagos. Siendo esto así, la conclusión alcanzada por este Centro Directivo es doble:

a) Por un lado, los empresarios o profesionales que presten los servicios de hostelería deberán repercutir la cuota del IVA correspondiente por la prestación de dichos servicios, y deberán declararla en la correspondiente autoliquidación. Por otro lado,

b) los comensales que abonen dichos servicios a través de criptomonedas, estarán efectuando una entrega no sujeta al Impuesto de acuerdo con lo previsto en el artículo 7.12º de la LIVA, que señala que la entrega de dinero a título de contraprestación está no sujeta al Impuesto.

## 4. Dirección General de Tributos. Contestación nº V2444-23, de 8 de septiembre de 2023.

*Exención — Artículo 20.uno.22º LIVA — Segundas o ulteriores entregas de edificaciones — Empresa promotora que, ante la imposibilidad de vender una vivienda, suscribe diversos contratos de arrendamiento con opción de compra de la misma, sin que se haya ejercitado dicha opción por ningún arrendatario hasta el último de ellos que sí que la ejercitará.*

El supuesto de hecho planteado trata de una entidad mercantil, dedicada a la promoción y venta inmobiliaria, que en 2008 construyó una vivienda para la venta pero que, ante la imposibilidad de venderla, en 2010 suscribe un contrato de cesión de uso con opción de compra que finalizó con el desahucio por impago del cesionario en 2013. Posteriormente, suscribió diversos contratos de arrendamiento con opción de compra sin que llegase a ejercitarse la misma por ningún arrendatario hasta el actual que, una vez transcurridos seis meses de su arrendamiento, ha decidido ejercitar la opción.

De acuerdo con estos hechos, la cuestión que se plantea es si la entrega de la vivienda, como consecuencia del ejercicio de la opción de compra por parte del último arrendatario, se encontrará sujeta al Impuesto y, en su caso, exenta.

Comienza la DGT por recordar que, en los casos de operaciones de promoción inmobiliaria con la intención de venta que no puede efectuarse, y que el promotor decide arrendar las viviendas a través de contratos de arrendamiento con opción de compra (manteniendo la intención de su venta a través del ejercicio de la opción de compra por parte del arrendatario), no cabe hablar de la existencia de los hechos imponibles de autoconsumos internos de bienes regulados en las letras c) y d) del artículo 9.1º de la LIVA. De esta forma, la decisión por parte del promotor de trasladar las viviendas que, en principio, estaban destinadas a su venta, a la actividad de arrendamiento con opción de compra, no implica la realización del hecho imponible de autoconsumo interno de bienes.

Por lo que respecta a la operación de venta de la vivienda, efectuada en el momento en que el arrendatario ejercite la opción de compra, señala la DGT que, a raíz de lo previsto en el párrafo segundo del artículo 20.uno.22º de la LIVA, se deduce que el legislador ha querido que el uso de la vivienda durante un plazo prudencial –por lo menos, dos años- agote la primera entrega, pero, a la vez, ha establecido la cautela de que dicho uso no se compute y, por tanto, no agote la primera entrega, cuando se realice por quien será su propietario en última instancia, con el objetivo claro de evitar posibles esquemas de minoración artificial de la base imponible aprovechando indebidamente la exención del arrendamiento.

Ahora bien, la DGT resalta que el precepto se refiere de forma expresa a uso, entre otros, en virtud de contratos sin opción de compra, por lo que el uso en virtud de contratos con opción de compra, por muy dilatados o sucesivos en el tiempo que sean, no pueden agotar nunca la primera entrega. Este último aspecto es de gran importancia, ya que es determinante de que, por más contratos que se sucedan de arrendamiento con opción de compra, seguirá siendo de aplicación la exclusión de la letra d´) del artículo 20.Uno.23º de la Ley 37/1992, y, por tanto, estos arrendamientos seguirán estando sujetos y no exentos del Impuesto como vía de traslado al consumo final del valor añadido de la promoción inicial.

En consecuencia, dado que la entrega de la vivienda por el promotor al arrendatario que la viene ocupando, en virtud de un contrato de arrendamiento con opción de compra, tiene la consideración siempre de primera entrega conforme a lo establecido anteriormente, el arrendamiento con opción de compra será una operación no exenta. No ha existido una entrega anterior por el hecho de que el promotor haya afectado al arrendamiento con opción de compra las viviendas inicialmente destinadas a la venta, pues, como se ha explicado anteriormente, estas operaciones no tienen la consideración de autoconsumo interno de bienes.

En estas circunstancias, concluye la DGT que la transmisión de la vivienda por parte de la entidad mercantil al actual arrendatario, mediante el ejercicio de la opción de compra por parte de este último, tendría la consideración de primera entrega, y se encontrará sujeta y no exenta del IVA.

## 5. Dirección General de Tributos. Contestación nº V2522-23, de 21 de septiembre de 2023.

*Hecho imponible — Artículo 12.3º LIVA — Autoconsumo de servicios — Inversores, propietarios de apartamentos, ceden el uso de los mismos a una sociedad encargada de su explotación como apartamentos turísticos, a cambio de una renta mensual de alquiler, si bien esos inversores conservan la posibilidad de utilizar los apartamentos durante un tiempo limitado al año.*

La sociedad consultante, promotora de los apartamentos, plantea a la DGT diversas cuestiones en relación con un supuesto en el que ella ha desarrollado una promoción urbanística que destinará a la construcción de apartamentos turísticos. Estos apartamentos se venderán a inversores con residencia fiscal en Bélgica u otro Estado de la Unión Europea.

Los inversores ceden el uso de los apartamentos a una sociedad (sociedad gestora) encargada de la explotación del negocio de alquiler de apartamentos turísticos con servicios hoteleros, a cambio de una renta mensual de alquiler. No obstante, los inversores conservan la posibilidad de uso de los apartamentos durante un tiempo limitado al año.

Una de las cuestiones planteadas por la sociedad consultante a la DGT radica en el tratamiento que, a efectos del IVA, ha de darse a la utilización de los apartamientos por parte de los inversores durante ese periodo de tiempo limitado al año.

Comienza la DGT por asumir que, de la información facilitada por la sociedad consultante, se deduce que es la entidad gestora la que, por contrato, cede a los inversores los apartamentos durante un periodo de tiempo, y lo hace de manera gratuita.

De esta forma, atendiendo a lo previsto en el artículo 12 de la LIVA, en relación con las operaciones de autoconsumo de servicios, ese Centro Directivo concluye que la cesión sin contraprestación de los apartamentos turísticos, con prestación de servicios hoteleros, por un periodo de tiempo a los inversores estaría sujeta a dicho Impuesto como autoconsumo de servicios en virtud de lo dispuesto en el artículo 12 de la LIVA, no resultándole de aplicación ningún supuesto de exención de los previstos en el artículo 20 de la referida Ley, y tributando al tipo impositivo del 10 por ciento conforme a lo previsto en el artículo 91.Uno.2.2º de la LIVA.

## 6. Dirección General de Tributos. Contestación nº V2523-23, de 21 de septiembre de 2023.

*Concepto de establecimiento permanente — Artículo 69.tres,2º LIVA — Sociedad establecida en Reino Unido, dedicada al desarrollo de software, alquila una oficina en el TIVA-ES y contratará a cinco empleados. Desde esta oficina no se prestarán servicios a terceros sino que realizará únicamente tareas de desarrollo de una aplicación que se comercializará en el Reino Unido.*

El supuesto de hecho planteado en esta consulta consiste en una sociedad, establecida en Reino Unido, que se dedica al desarrollo de software. La sociedad ha alquilado una oficina en el territorio de aplicación del Impuesto (TIVA-ES) y tiene previsto contratar a cinco trabajadores: cuatro programadores y una diseñadora para realizar parte del proceso de una aplicación informática.

La oficina tiene la consideración de establecimiento permanente en el Impuesto sobre la Renta de No Residentes y dispone de un número de identificación fiscal.

Desde dicha oficina no se prestarán servicios ni se entregarán bienes a terceros, sino que se limitará a realizar tareas de desarrollo de una aplicación que se comercializará en Reino Unido.

La oficina recibirá servicios de consultaría y asesoramiento de empresarios establecidos en territorio de aplicación del Impuesto.

De acuerdo con estos hechos, una de las cuestiones fundamentales que se preguntan por parte de la sociedad británica consultante, y sobre la que pivotan las otras cuestiones también planteadas, es acerca de la condición o no de la oficina, que contará con varios trabajadores, como establecimiento permanente a efectos del IVA.

Para dar respuesta a esta cuestión, la DGT interpreta el concepto de establecimiento permanente, regulado en el artículo 69.tres.2º de la LIVA, a la luz de la jurisprudencia del TJUE. Es por ello por lo que delimita cuatro condiciones necesarias para otorgar la condición de establecimiento permanente:

a) Gozar de una consistencia mínima o estructura apta en un Estado miembro concreto distinto del de la sede del empresario o profesional.

b) Dicha consistencia o estructura se debe concretar con la concurrencia de una cierta organización, entendida como un conjunto ordenado de medios materiales y humanos que además impliquen una cierta división del trabajo.

c) Permanencia en el tiempo del lugar fijo de negocios.

d) Autonomía en la prestación de servicios o realización de las actividades.

A juicio de la DGT, las tres primeras condiciones o requisitos se cumplen en el supuesto de hecho consultado, ya que la apertura de la oficina con la existencia de trabajadores parece evidenciar la existencia de una estructura mínima con una cierta organización y continuidad en el tiempo.

Sin embargo, respecto del cuarto requisito, la DGT determina que no concurre en el caso analizado.

Y es que la autonomía como elemento configurador del concepto de establecimiento permanente lleva consigo atribuir las operaciones al establecimiento permanente y no a la casa matriz. Ello implica necesariamente la atribución al establecimiento de elementos primordiales para el desarrollo de su actividad, así como cierto poder de decisión en la gestión de las operaciones administrativas de que se trate.

A juicio de la DGT, y de acuerdo con la información facilitada, no parece deducirse la concurrencia de este requisito en la medida en que la oficina desarrolladora de la empresa británica se constituye con la exclusiva función de realizar actividades de desarrollo de los productos de la misma, pero sin que aquélla tenga capacidad para poder concluir otros contratos y canalizar de esa forma la actividad habitual de la empresa británica en el territorio de aplicación del Impuesto.

Bajo este planteamiento, la empresa consultante británica no dispone de ningún establecimiento permanente a efectos del IVA español en el territorio de aplicación del Impuesto, ni se considera, por lo tanto, establecida en el mismo.

A mayor abundamiento, señala la DGT que la oficina que mantiene la sociedad británica en el territorio de aplicación del Impuesto se asemeja a un centro de gasto para el desarrollo de un proyecto interno que será comercializado por esta última.

## 7. Dirección General de Tributos. Contestación nº V2525-23, de 21 de septiembre de 2023.

*Hecho imponible — Entrega de bienes — Artículo 8.dos.6º LIVA — Transmisiones de bienes entre comitente y comisionista que actúa en nombre propio efectuadas en virtud de contratos de comisión de compra — Sociedad mercantil adquiere combustible y lo revende a sus clientes, que tienen la condición de empresarios o profesionales actuando como tales.*

Una sociedad mercantil polaca, que está identificada a efectos del IVA en el territorio de aplicación del Impuesto (TIVA-ES), tiene como actividad la venta de determinados productos para automóviles, principalmente, combustible.

Las transacciones se realizan utilizando una tarjeta de combustible emitida por la sociedad mercantil que identifica al vehículo y permite registrar las transacciones. La tarjeta debido a sus funciones no es una tarjeta que permita realizar pagos.

La sociedad mercantil polaca no dispone de red propia de estaciones de servicio por lo que ha celebrado contratos de suministro de bienes y servicios con proveedores locales (fundamentalmente estaciones de servicio), de forma que adquiere dichos bienes y servicios y los revende a sus clientes, que actúan siempre, como empresarios o profesionales.

Atendiendo a lo previsto en el artículo 8.dos.6º de la LIVA, que especifica que también se considerarán entregas de bienes "las transmisiones de bienes entre comitente y comisionista que actúe en nombre propio efectuadas en virtud de contratos de comisión de venta o comisión de compra", la DGT analiza los hechos descritos por la sociedad mercantil polaca en los que cabe destacar que los clientes de la sociedad mercantil

(empresarios o profesionales) adquieren el combustible mediante la utilización de tarjetas emitidas por la sociedad a nombre de los primeros (comisión de compra), de forma que permiten conocer a las estaciones de servicios proveedoras que se trata de adquisiciones de bienes o servicios efectuados por la sociedad polaca.

Asimismo, la DGT destaca que el precio del combustible se acuerda por separado entre las estaciones de servicio proveedoras y la sociedad mercantil, y entre esta y sus clientes, de forma que si la sociedad mercantil obtiene descuentos de los proveedores tiene libertad para su traslado o no a sus propios clientes. Además, dicha sociedad es responsable frente a sus clientes de los defectos que pudiera tener el combustible, y es quien responde frente al cliente en caso de reclamación de este. También asume el riesgo de impago de sus clientes, mientras que las estaciones de servicio proveedoras asumirían el riesgo de impago de ella. Asimismo, decide también sobre la gama de bienes o servicios ofrecidos a sus clientes y los lugares donde pueden comprarlos y éstos solo pueden comprarlos durante la vigencia del contrato.

De acuerdo con estas circunstancias, concluye la DGT que cabe deducir que la sociedad mercantil polaca estaría actuando como un intermediario o comisionista en nombre propio respecto de las entregas de combustible, por lo que su intervención como comisionista en nombre propio en la adquisición de carburante determina que se efectúen dos entregas de bienes diferenciadas, a saber, la realizada por el comercializador de carburantes a favor del comisionista que actúa en nombre propio (la sociedad mercantil polaca) y, en segundo lugar, una entrega de bienes efectuada por esta última a favor de sus clientes.

Y lo anterior con independencia de que el carburante sea entregado directamente a los clientes de la sociedad mercantil de forma directa, sin que ésta, como comisionista, tenga, en ningún momento, la posesión física del bien en cuestión.

Es importante subrayar el hecho de que la DGT considera que esta operativa difiere sustancialmente de aquellos otros esquemas basados, por ejemplo, en la centralización de la gestión del gasto por carburante por parte de un grupo empresarial en una única entidad, o la prestación de un servicio relacionado con los programas informáticos de gestión del gasto de carburante, o las adquisiciones efectuadas por los empleados de una empresa por cuenta de dicha empresa.

A este otro tipo de modelos de negocios ha hecho referencia el TJUE en las sentencias de 6 de febrero de 2003, Auto Lease Holland BV, Asunto C-185/01 y, más recientemente, la sentencia de 15 de mayo de 2019, Vega International Car Transport, Asunto C-235/18.

## 8. Dirección General de Tributos. Contestación nº V2527-23, de 21 de septiembre de 2023.

*Hecho imponible — Prestación de servicios — Servicios relacionados con operaciones de ventas a distancia de bienes importados de países o territorios terceros — Servicios de gestión de la declaración aduanera facturados al consumidor final adquirente de los bienes por parte del operador postal.*

Una persona, que cabe presumir que no es, a efectos del IVA, empresario o profesional actuando como tal, adquiere a través de una plataforma tecnológica un bien por importe inferior a 150 euros a un tercer Estado.

La plataforma tecnológica ha recaudado el IVA pero, al llegar el producto al territorio de aplicación del Impuesto (TIVA-ES), el operador postal le ha exigido ciertos gastos sobre los que ha vuelto a repercutir el Impuesto.

Se pregunta sobre la corrección del proceder del operador postal.

La DGT considera que, a la luz de los hechos, parecería deducirse que la interfaz electrónica ha considerado a dicha persona como no empresario o profesional y, a tal efecto, ha considerado que las compras realizadas por el mismo eran ventas a distancia de bienes importados, siendo, por lo tanto, de aplicación el artículo 8 bis de la LIVA, introducido por el Real Decreto-ley 7/2021 con el objeto de regular determinadas ventas que se realizaban a través de interfaces o plataformas tecnológicas.

Esta norma, como es sabido, introduce una ficción, que determina que los titulares de las interfaces digitales lleguen a tener la consideración de sujetos pasivos del impuesto, al entenderse que estos, cuando facilitan la venta a distancia de bienes importados de países o territorios terceros en envíos cuyo valor intrínseco no exceda de 150 euros, o cuando facilitan entregas de bienes en el interior de la Comunidad por parte de un proveedor no establecido en la misma a consumidores finales, han recibido y entregado en nombre propio dichos bienes y su expedición o transporte se encuentra vinculado a su entrega.

Así, si la persona consultante realiza una compra de comercio electrónico prevista en el artículo 8 bis, se crearía la ficción mencionada del proveedor asimilado de modo que el proveedor del tercer Estado (vendedor de la mercancía) realizaría una primera entrega sin transporte a la plataforma y posteriormente, la plataforma realizaría una segunda entrega al cliente final (consultante), al que le repercutiría el IVA según reglas de localización del Impuesto.

Sentado lo anterior, y respecto de los costes por gestión de la declaración aduanera cobrados a la persona consultante por el operador postal, la DGT señala que, al margen del Impuesto, las partes pueden acordar, o el operador encargado al efecto, el cobro de un importe por la gestión del despacho a libre práctica de las mercancías. En este tipo de transacciones es habitual que el transportista o el operador postal carguen estas comisiones por el cumplimiento de las formalidades aduaneras necesarias. Estas comisiones cobradas también estarán sujetas al IVA por tratarse de servicios prestados por el transportista o el operador fiscal establecido en el territorio de aplicación del Impuesto.

Por lo tanto, si efectivamente se trata de la repercusión de la gestión aduanera efectuada por el operador postal a favor de la persona consultante, concluye la DGT que constituye una prestación de servicios, que estará sujeta al IVA.

## 9. Dirección General de Tributos. Contestación nº V2554-23, de 25 de septiembre de 2023.

*Derecho a la deducción — Artículo 95 LIVA — Gastos de teléfono móvil y de internet de la vivienda de una persona física que ejerce la actividad de abogado y que cuenta en su vivienda con una habitación destinada a dicho uso profesional.*

En esta contestación a consulta, la DGT aplica por primera vez la doctrina emanada del TEAC, en su reciente resolución de 19 de julio de 2023 (resolución número 06654/2022) respecto de las cuotas soportadas por los suministros contratados en una vivienda parcialmente afecta a la actividad empresarial o profesional.

Y lo hace respecto de un supuesto de hecho en el que una persona física consultante ejerce la actividad de abogado y cuenta en su vivienda habitual con una habitación destinada a uso profesional, utilizando su teléfono móvil indistintamente para uso personal y profesional.

En dicha resolución, el TEAC acabó concluyendo lo siguiente:

*"De conformidad con lo dispuesto en el apartado cuarto del artículo 95 de la LIVA, interpretado a la luz de los artículos 168 y 168 bis de la Directiva 2006/112/CE del Consejo, de 28 de noviembre de 2006 (Directiva IVA), cabe la deducción por el sujeto pasivo de las cuotas de IVA soportadas por los gastos de suministros (agua, luz, gas) a bienes inmuebles que formando parte del patrimonio de la empresa se utilicen tanto en las actividades empresariales como para uso privado. La deducción de dichas cuotas deberá efectuarse de manera proporcional a su utilización a efectos de las actividades de la empresa".*

Pues bien, la DGT, acogiendo este criterio interpretativo del TEAC, considera, en primer lugar, que serán deducibles las cuotas del IVA soportadas por el abogado consultante por los gastos de suministros, como el gasto de internet vinculado a su vivienda, siempre que la misma se encuentre afecta parcialmente a su actividad profesional. Dicha deducción deberá realizarse de forma proporcional a su utilización en dicha actividad económica.

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

En cualquier caso, señala este Centro Directivo, que la afectación parcial de la vivienda a la actividad profesional del consultante es una cuestión de hecho y deberá ser el propio interesado quien habrá de presentar, en su caso, los medios de prueba que, conforme a derecho, sirvan para justificar la misma, los cuales serán valorados por la AEAT. En este sentido, y por lo que se refiere a la valoración de las pruebas, la DGT recuerda que en el ordenamiento jurídico español rige el principio general de valoración libre y conjunta de todas las pruebas aportadas, quedando descartado como principio general el sistema de prueba legal o tasada.

Por otro lado, y en segundo lugar, considera la DGT que no serán deducibles, en ninguna cuantía, las cuotas del IVA soportadas por los gastos de telefonía móvil del abogado consultante, pues no se refieren a un gasto de un suministro de bien inmueble, afecto parcialmente a su actividad profesional.

## 10. Dirección General de Tributos. Contestación nº V2563-23, de 26 de septiembre de 2023.

*Hecho imponible — Servicios prestados por vía electrónica — Artículo 9 bis Reglamento de Ejecución 282/2011 — Escritor que publica sus libros a través de una plataforma digital, no establecida en el territorio de aplicación del IVA español (TIVA-ES).*

La persona física consultante es un autónomo que se dedica a escribir libros que publica a través de una plataforma digital, propiedad de un empresario establecido en los Estados Unidos, que no cuenta con ningún establecimiento permanente situado en el TIVA-ES.

La DGT comienza revisando tanto la norma interna española como la Directiva del IVA y su Reglamento de ejecución número 282/2011 (especialmente, el artículo 7 y el Anexo I de este Reglamento), lo que le lleva a determinar que el servicio prestado por el consultante, consistente en elaborar libros electrónicos para su comercialización a través de una plataforma de internet, tendría la consideración de un servicio prestado por vía electrónica.

Respecto de la actuación de la plataforma electrónica, a la luz tanto del artículo 11.dos.15º de la LIVA como del artículo 9 bis de ese mismo Reglamento de ejecución número 282/2011, el cual ha sido interpretado recientemente por el TJUE en su sentencia de 28 de febrero de 2023, asunto C-695/20, Fenix Internacional, Ltd., considera la DGT que la presunción contenida en el artículo 9 bis del referido Reglamento 282/2011 respecto del supuesto objeto de consulta, será de aplicación cuando se den las circunstancias señaladas en el mismo que imposibiliten al prestador del servicio electrónico que se sirve de la plataforma, el conocimiento de la información necesaria referente al adquirente que posibilite el cumplimiento de sus obligaciones tributarias como sujeto pasivo respecto de dicha transacción. Además, como ha señalado el TJUE en dicha sentencia, si la plataforma autoriza el cargo al cliente, la prestación de esos servicios, o fija las condiciones generales de la prestación, se entenderá que actúa en nombre propio.

De esta forma, la DGT parece poder concluir que será la plataforma electrónica de descargas quien preste el servicio electrónico del suministro del libro en nombre propio y tendrá, en tal caso, la condición de sujeto pasivo del IVA en relación con los destinatarios del servicio (los adquirentes del libro electrónico).

A raíz de lo anterior, y respecto del servicio electrónico del suministro del libro efectuado por el escritor a favor de dicha plataforma, concluye la DGT que, atendiendo a la regla general de localización de las prestaciones de servicios contenida en el artículo 69.uno.1º de la LIVA, no se encontrará sujeto al IVA, al no estar el destinatario establecido en el TIVA-ES.

## 11. Dirección General de Tributos. Contestación nº V2581-23, de 26 de septiembre de 2023.

*Exención — Artículo 20.uno.18º LIVA — Servicios de mediación en operaciones financieras — Empresario propietario de una plataforma tecnológica que permite a los usuarios acceder a ofertas hipotecarias a medida.*

El empresario consultante ha creado una plataforma tecnológica que permite a los usuarios acceder a ofertas hipotecarias a medida. Los usuarios introducen determinados datos en la plataforma que permiten obtener un perfil de riesgo.

Los bancos prestamistas crean perfiles de oferta en la plataforma, es decir, crean ofertas específicas para diferentes perfiles de clientes en función de diversas circunstancias.

La plataforma selecciona y envía a los clientes las ofertas de hipotecas relevantes utilizando su tecnología personalizada. Estas ofertas se presentan al cliente para que pueda realizar una comparación siendo libre de aceptar cualquier oferta recibida. En el caso de que el cliente acepte una oferta, la plataforma recopila los documentos personales en el plazo de 4 días desde la aceptación.

Sobre estos hechos, se consulta si el servicio prestado por la plataforma puede considerarse de mediación financiera sujeta y exenta del IVA.

Planteada la cuestión en estos términos, es preciso dilucidar si la labor desarrollada por el empresario consultante puede definirse como mediación, a efectos del IVA, o si, por el contrario, debe catalogarse como un mero suministro de información o publicidad del consultante.

Según la información facilitada, parece deducirse que la plataforma, a través de su tecnología, ofrece un panel de ofertas hipotecarias a medida del cliente siendo, éste último, quien decide si aceptar o no alguna de ellas. En el propio escrito de consulta se resalta que la plataforma no asesora ni recomienda ninguna de ellas, sino que depende exclusivamente del usuario su aceptación. En caso de aceptación, la plataforma recopilaría la información personal del cliente y la remitiría al prestamista seleccionado.

Pues bien, de acuerdo con estos hechos, la DGT considera que la labor realizada por la plataforma no puede ser calificada como de verdadera mediación financiera, en la medida en que las funciones desarrolladas por la misma son ofrecer una herramienta a sus usuarios que permite comparar ofertas hipotecarias a medida, pero sin que la plataforma asesore ni avance o concluya el contrato financiero.

En tales condiciones, determina la DGT que el servicio prestado por la plataforma consultante estará en principio sujeto y no exento del IVA.

## 12. Dirección General de Tributos. Contestación nº V2583-23, de 26 de septiembre de 2023.

*Lugar de realización de la prestación de servicios — Concepto de establecimiento permanente — Artículo 69.tres.2º LIVA — Sociedad matriz luxemburguesa cuya filial española le presta servicios de control de calidad y puesta a punto de vehículos.*

Una sociedad luxemburguesa tiene previsto adquirir vehículos usados o de segunda mano a empresarios residentes en el territorio de aplicación del Impuesto (TIVA-ES) para su venta posterior en otros Estados de la Unión Europea. Con carácter previo a su envío, los vehículos serán objeto de un control de calidad y puesta a punto en las instalaciones de una filial de la consultante en territorio de aplicación del Impuesto. Esta filial facturará los citados servicios a la entidad luxemburguesa.

Se cuestiona sobre el lugar de realización de las prestaciones de servicios que efectuará la filial a la entidad luxemburguesa.

La DGT, con carácter previo al análisis del lugar de realización de las prestaciones de servicios, aborda la cuestión de si la entidad luxemburguesa, por el mero hecho de tener una filial en el territorio de aplicación del Impuesto (TIVA-ES), se considera que tiene un establecimiento permanente en este territorio, que pudiera considerarse destinatario de dichas prestaciones de servicios.

En este sentido, considera ese Centro Directivo, tras analizar la norma interna española y la Directiva del IVA tal y como ha sido interpretada por la doctrina del TJUE, que, a falta de otros elementos de prueba, no parece deducirse la concurrencia de los requisitos

necesarios para la existencia de un establecimiento permanente de la entidad consultante en el TIVA-ES por el mero hecho de contar en el mismo con una entidad, su filial, que le preste servicios de puesta a punto y control de calidad de vehículos.

No obstante, la DGT introduce dos matices a dicha consideración:

a) La sociedad luxemburguesa sí contaría con un establecimiento permanente en el TIVA-ES desde el momento en el que su filial se encontrase facultada a contratar en nombre y por cuenta de aquella e incluso, aunque no sea quien firme materialmente los contratos de venta, si negocia los elementos del contrato, dirigiendo el proceso de negociación obligando con ello a la misma. De igual manera, también contaría con establecimiento permanente

b) si la sociedad luxemburguesa pudiera disponer como si fuesen suyos de los medios humanos y técnicos de su filial en el territorio de aplicación del Impuesto, en los términos previstos en la sentencia del TJUE de 7 de abril de 2022, asunto C-333/20.

Bajo la asunción de que la sociedad luxemburguesa no dispone de un establecimiento permanente en el TIVA-ES, la DGT concluye que las prestaciones de servicios de control de calidad y puesta a punto de los vehículos, que serán efectuadas por la entidad filial, quedarán no sujetas al IVA, de acuerdo con la regla general de localización de las prestaciones de servicios prevista en el artículo 69.uno.1º de la LIVA.

## 13. Dirección General de Tributos. Contestación nº V2646-23, de 29 de septiembre de 2023.

*Derecho a la deducción — Artículo 95 LIVA — IVA soportado en la compra de ropa (trajes) que se utilizan, única y exclusivamente, para el desempeño de la actividad profesional de un abogado.*

¿Es posible deducir el IVA soportado en la compra de trajes por parte de una persona física que realiza una actividad de abogacía, y que los destina, única y exclusivamente, a la realización de dicha actividad profesional?

A juicio de la DGT, y de acuerdo con lo previsto en los artículos 95 y 108, ambos de la LIVA, sólo serán deducibles las cuotas del IVA soportado por la adquisición de bienes o servicios que se afecten, directa y exclusivamente, a la actividad empresarial o profesional, excepto en el supuesto de que se trate de bienes de inversión cuya afectación parcial permitirá la deducción parcial de las cuotas soportadas conforme a las reglas establecidas en el artículo 95.Tres de la LIVA, así como, cuando se trate de cuotas soportadas en gastos relacionados con inmuebles afectos parcialmente a la actividad empresarial o profesional, que podrán ser objeto de deducción de forma proporcional a su utilización en la actividad empresarial o profesional.

En consecuencia, concluye la DGT que los trajes objeto de la consulta, como ropa de vestir de uso general, no darán derecho a deducir las cuotas soportadas en su adquisición, en ninguna medida o cuantía, en la medida en que no pueden considerarse afectos, directa y exclusivamente, a la actividad profesional, como tampoco pueden considerarse bienes de inversión, conforme al artículo 108 de la LIVA, para considerar su afectación de forma parcial, ni se trata de gastos relacionados con bienes inmuebles, parcialmente afectos a la actividad.

# III. Country Summaries

## Featured articles

### European Union

### European Commission publishes 2024 version of Combined Nomenclature

On 31 October 2023, the European Commission published the latest version of the Combined Nomenclature (CN) in the official journal, which is applicable as from 1 January 2024 through Commission Implementing Regulation (EU) 2023/2364 of 26 September 2023.

The CN is the basis for the customs declaration of goods in the EU at importation or exportation, and also is used for statistical purposes for intra-EU operations. This determines which rate of customs duty applies and how the goods are treated for statistical purposes.

The CN is updated annually and the latest amendments to modernize and adapt the CN are required to:

- Implement the gradual reduction of duty rates for products covered by the agreement in the form of the Declaration on the Expansion of Trade in Information Technology Products (ITA), as required by Council Decision (EU) 2016/971 and maintain the same tariff duty "free" treatment for certain products covered by the agreement by creating a separate CN code for these specific products;
- Take account of changes in requirements relating to statistics and to commercial policy, technological, and commercial developments by introducing new subheadings or modernizing the current structure of subheadings and to facilitate monitoring of specific goods; and
- Amend the classification of some substances in the list of non-proprietary names of pharmaceutical substances, having regard to the evolving interpretation of the Harmonized System and the CN codes, as well as advancements in scientific knowledge.

The CN was established by Council Regulation (EEC) No 2658/87 and annex I to the regulation contains the complete and up-to-date version of the CN.

### China

### Customs voluntary disclosure program updated guidance published

On 8 October 2023, China's General Administration of Customs (GAC) published updated guidance (GAC Bulletin [2023] No. 127, or Bulletin 127) on its voluntary disclosure program (VDP). Bulletin 127 aims to promote the program by significantly expanding the application scope, so that affected importers and exporters may better use the program to improve compliance. The updated guidance became effective as of 11 October 2023, superseding the previous guidance (GAC Bulletin [2022] No. 54, or Bulletin 54), and will expire on 10 October 2025.

The VDP was initially introduced into the Chinese customs regulations in 2016. The program allows importers and exporters to apply for a reduction, mitigation, or waiver of administrative penalties on certain incidences of noncompliance relating to customs regulations, provided that they report such noncompliance in writing before the noncompliance is discovered by the customs authorities. Previously, the VDP application was limited to tax-related noncompliance. The GAC introduced multiple adjustments

that are potentially favorable to importers and exporters in a draft version of the updated guidance in June 2023, notably the expansion of the application scope to include certain nontax-related noncompliance, signalling the government authorities' intention to promote the program.

## Highlights of Bulletin 127

### Tax-related noncompliance

For China's customs purposes, tax-related noncompliance generally refers to customs noncompliance relating to taxes collected by China's customs authorities (e.g., customs duty, import VAT). Therefore, customs noncompliance relating to refunds of VAT/consumption tax for exports is not considered tax-related noncompliance.

a. Timing requirement

According to Bulletin 127, administrative penalties for tax-related noncompliant activities that are reported voluntarily in the program will be waived in either of the following situations:

- The noncompliance is reported within six months from the date the activities occurred; or
- The noncompliance is reported after the six-month period but within two years from the date the activities occurred, and either the underpaid tax is less than 30 percent of the tax payable or the underpaid tax is less than RMB 1 million.

To apply for the program in the latter situation, Bulletin 127 relaxes the timing requirement to report a tax-related noncompliance by changing "one year" in the previous guidance to "two years." The extension should allow importers and exporters more time to identify and apply for the VDP for tax-related noncompliance.

b. Late payment surcharge

According to Bulletin 127, late payment surcharges may be reduced or waived for tax-related noncompliant activities that are reported voluntarily in the program and the affected importer or exporter has made corrections in a timely manner, regardless of whether administrative penalties are imposed or waived on such noncompliance.

The updated guidance appears to be more favorable to importers and exporters, as the previous guidance only granted a reduction or waiver of late payment surcharges in situations where administrative penalties were waived.

### Nontax-related noncompliance

One notable change brought by Bulletin 127 is the expansion of the application scope of the VDP to include a list of noncompliant activities where no customs duty or import VAT was underpaid. For example:

- Certain noncompliant activities resulting in an adverse impact on the administration of export refunds of VAT/consumption tax (e.g., certain errors in an export declaration resulting in the incorrect calculation of refundable VAT for exports);
- Certain noncompliant activities relating to processing trade relief;

- Certain noncompliant activities resulting in an adverse impact on customs supervision/customs statistics (e.g., certain errors in a customs declaration of duty-free goods); and
- Certain noncompliant activities violating quarantine and inspection rules.

Administrative penalties will be waived if the relevant importers or exporters voluntarily report the aforementioned nontax-related noncompliant activities through the program. Unlike the tax-related noncompliance, Bulletin 127 does not set a timing requirement for the VDP for some of the newly added nontax-related noncompliance disclosures in order to make the program more accessible.

### Application for "same noncompliance"

Bulletin 127 provides that, after a party voluntarily reports the noncompliant activities by applying for the VDP, it generally has to wait at least one year (i.e., 12 consecutive months) to apply for the VDP again for the "same noncompliance," which is further defined as the noncompliance that has the same nature and has breached the same article/paragraph of the customs regulations.

The above rule is another significant relaxation as the previous guidance does not allow the program to be used again for the "same noncompliance."

However, the program can be applied only once for noncompliance involving royalties related to the "same goods," regardless of whether the royalties were under a one-time or multiple licensing arrangements. The Chinese language of "same goods" is vague and may be interpreted as the same piece, batch, or type of goods, so further clarification is needed.

### Authorized Economic Operator (AEO) status

According to Bulletin 127, where a company with AEO status voluntarily reports customs noncompliant activities (rather than just tax-related noncompliant activities under the previous guidance) under the VDP, the company can continuously enjoy AEO-related preferential treatment during the period in which the customs authorities conduct investigations about the reported noncompliance, unless such noncompliance relates to customs quarantine matters for safety, environmental protection, and/or hygiene considerations.

### Observations

With the expansion of the application scope of the VDP to cover nontax-related noncompliance and other welcoming changes (e.g., the relaxation of timing requirement for reporting certain tax-related noncompliance), Bulletin 127 has made the program more appealing to, and accessible by, importers and exporters. The affected parties should consider taking the following actions:

- Conduct customs compliance reviews regularly to identify noncompliant activities, especially for those that must be reported in a timely manner to be eligible for the waiver of penalties;
- Assess the nature and eligibility for the VDP for noncompliant activities that have been identified, and voluntarily report them by applying for the program (if eligible);
- Establish and/or enhance the company's internal control program to improve customs compliance, focusing on the weaknesses and noncompliance identified through the regular review; and
- Seek professional assistance, where necessary.

India

## GST on online gaming: Analyzing the effect of tax rate, supply value on tax revenue

The online gaming industry in India has experienced significant growth, becoming one of the largest markets globally. The GST Council is mulling over the proposal to levy a higher 28% tax rate on contest entry amounts. The decision on the tax rate and the value on which tax is to be levied will bring clarity about the industry's viability and sustainability.

A report from Deloitte India, prepared in partnership with the Federation of Indian Fantasy Sports (FIFS), analyzes the evolution of tax regulations, forecasts the industry's growth and GST impact based on industry data, and recommends careful consideration of any GST burden increase, taking into account industry dynamics and global policies.

Poland

## Legislative changes to VAT and other acts

Several bills amending the Polish VAT act and related legislation were published during October 2023. This article provides an update on some of the relevant tax amendments, including the scope of JPK_V7 reports, a new beverage packaging deposit scheme, and an extension of the cash register scheme.

## KSeF related changes to the JPK_V7M reporting

On 24 October 2023, a draft bill was published amending the Ministry of Finance decree on the scope of data included in the JPK_V7 reporting. JPK_V7 reporting is a Polish reporting requirement that combines periodic VAT returns with transaction level data. The bill is expected to come into effect on 1 July 2024 and the Ministry of Finance is running public consultations on the changes.

The bill aims to align the regulations with the implementation of the mandatory National e-Invoicing System (KSeF) and structured e-invoicing in Poland. The main changes include:

- The requirement to include the KSeF ID invoice number in sales and purchase records, if assigned;
- Marking “OFF” for invoices issued during KSeF system failures/maintenance, to show any structured e-invoices which were not sent to KSeF;
- Marking “BFK” for invoices issued without using the KSeF (applicable to entities raising sales invoices outside the system); and
- Adapting the regulation to changes in VAT refund deadlines (providing a basic 40-day VAT refund deadline compared to the current 60 days).

Adopting the regulation as proposed would mean that entities that are not normally affected by KSeF on the sales side (e.g., foreign-based entities with a VAT registration but no fixed establishment in Poland) would have additional obligations on the purchase side, if receiving invoices raised through the KSeF. Specifically, they would need to record the KSeF ID numbers on their purchase invoices, and include these in the monthly/quarterly JPK_V7 reporting. This means entities must ensure accurate invoice data capture, which includes the KSeF ID numbers on purchase invoices.

## Cash register exemptions extended through 2024

On 24 October 2023, a draft of the Ministry of Finance decree on the entities and activities exempted from the cash register obligation was published. The draft decree prolongs the current exemptions for another year, i.e., through 31 December 2024.

In general, business-to-consumer (B2C) supplies are subject to the cash register obligation. Some exceptions are implemented by the decree, including B2C supplies totaling under PLN 200,000 per year. However, this does not apply to supplies of certain categories of goods and services, which are subject to the cash register obligation as from the very first supply.

## Introduction of beverage packaging deposit scheme

On 13 October 2023, a bill came into force amending the VAT act and certain other acts to introduce a deposit system for beverage packaging, which will be implemented as from 1 January 2025, to reduce the impact of certain plastic products on the environment in line with Directive (EU) 2018/851. Entities introducing packaged beverage products on the market (mainly retail and wholesale trade units) will be obliged to collect the empty packaging and packaging waste from consumers and refund the deposit charged, without the need for customers to present any proof of purchase. Implementation of this system requires changes to some of the existing legislation, including the VAT act.

The costs of packaging are generally included in a product's taxable basis, but this does not apply if the taxpayer supplies goods in returnable packaging, provided a deposit on the packaging was charged or determined in the agreement concerning the supply of goods. However, if a customer fails to return the packaging, the tax basis must be increased accordingly:

- On the day following the day on which the agreement states the packaging must be returned, if it is not returned within this time limit; or
- On the 60th day following the day on which the packaging was supplied, if the agreement does not specify the time limit for returning the packaging.

As a result of the changes, these VAT provisions no longer will apply to returnable, reusable packaging for beverages, which will be covered by the deposit system, as follows:

- In case of goods supplied in reusable packaging, the taxable amount will not include the value of the reusable packaging;
- If the purchaser fails to return reusable packaging, the entity introducing products in beverage packaging will have to increase the taxable amount by the value of that packaging. Return of packaging waste (destroyed reusable packaging which cannot be reused) will be deemed a failure to return reusable packaging;
- On 31 December each year, the entity introducing products in beverage packaging will have to determine the relevant adjustment to the taxable amount by determining the difference between the number of reusable packaging units placed on the market, and the number of reusable packaging units returned in a given year. If the number of returned reusable packaging units is greater than the number placed on the market in that year, the entity will have to take this difference into account when determining the adjustment for the following year;

- entities introducing products in beverage packaging will be obliged to keep records in electronic form containing data regarding reusable packaging placed on the market, in order to determine the adjustment required. Such records will have to be stored for five years and shared electronically by the taxpayer if requested by the tax authorities; and
- New definitions for reusable packaging, entities introducing packaged beverage products, and packaging waste will be added to the VAT act.

The VAT rules for determining the taxable basis for other types of packaging remain unchanged.

## Other news

### European Union

#### CESOP Implementation Monitor - update 8 November 2023

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

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

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

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

### Argentina

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

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

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

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

## ATO response to Simplot GST case: Impact for food product suppliers

On 8 November 2023, the Australian Taxation Office (ATO) published its decision impact statement (DIS) in response to the decision of the Federal Court in the Simplot case.

The court's decision, which was unfavorable to the taxpayer, was not appealed.

Briefly, the goods and services tax (GST) statutory issue in dispute in Simplot was whether a series of frozen food products supplied or imported by the taxpayer were excluded from GST-free treatment because each was "food of a kind" that is within the category or genus of " … food marketed as a prepared meal … ."The court ruled that the food products fell within this exclusion, so their supply or importation was taxable.

## ATO's response to the decision

The DIS sets out several propositions that the ATO considers flow from the decision:

- A product comprising several elements, which is regarded as a "meal component," may be taxable as "food marketed as a prepared meal" in some situations.
- This does not mean that everything which is a meal component, or any particular meal component, is "food of a kind marketed as a prepared meal." Rather, the facts, circumstances, and evidence will determine whether a meal component is "food of a kind marketed as a prepared meal."
- It will be rare that a meal component not previously understood to be taxable will now be understood to come within a class or genus of food marketed generally as having the attributes of a prepared meal (including the attributes of quantity, composition, and presentation).
- Frozen mixed vegetables, frozen crumbed chicken pieces, and frozen fish pieces are not considered as "food of a kind" marketed as a prepared meal.

## Deloitte Australia observations

The ATO view is that the Simplot decision does not necessitate any change to how it interprets and applies the GST law.

The ATO's statement that it will be "rare" that a meal component "previously understood to be non-taxable will now be understood to be taxable" suggests that the technical interpretation should not change on account of the Simplot decision. This could mean that the ATO might use the decision to support taxpayer review or audit activity in relation to prior tax periods.

However, the DIS does not make clear what the ATO means by "understood," and there is potential for this to be a significant point of disagreement with the ATO. For example, does "understanding" need to be mutual between the ATO and the taxpayer? While a ruling obtained for a particular product should satisfy this concept, it is not clear whether this will be extended to similar products for which no ruling was obtained (but a common-sense approach was adopted for an iteration of the primary product), or whether a taxpayer following accepted industry practice in the absence of directly obtaining a ruling will also be covered.

While the ATO has provided some guidance on the type of products that will not be affected by the Simplot decision (i.e., frozen mixed vegetables, frozen crumbed chicken, frozen fish pieces), the ATO's stated view is that a product is taxable where it is "… "food of a kind marketed as a prepared meal" that is within a class or genus of food marketed generally as having the attributes of a prepared meal (including quantity, composition and presentation)." Deloitte Australia's view is that this has the potential to significantly broaden the type of product that can be classified as taxable. Taxpayers will now have to determine whether a product falls within "a class or genus" of food marketed generally as having the attributes of a prepared meal—instead of whether the product is itself a prepared meal—and classify it accordingly.

The ATO appears clear in its intent to apply the expanded approach arising from the decision, and has left the door open to do so historically. Although the ATO has invited industry feedback about unforeseen consequences arising from the DIS, Deloitte Australia considers it unlikely that the ATO will back down from the approach afforded by the Simplot decision.

### Next steps

The ATO is in the process of updating the Detailed Food List and other relevant public guidance.

This is a timely point for taxpayers supplying and/or importing frozen or refrigerated food products to review whether their products potentially fall within a class or genus of food marketed generally as having the attributes of a prepared meal and thus be viewed by the ATO as taxable.

## Belgium

### Update on key budget 2024 tax measures affecting the real estate sector

Following the agreement reached by Belgium's federal government on the 2024 Budget on 9 October 2023, further details have become available with respect to the proposed measures relevant to the real estate sector, including: the introduction of a minimum five-year holding period for Belgian real estate investment funds (BE-REIFs); the nondeductibility of subscription tax; an increase in registration duties for long lease and building rights; and the removal of the reduced 6% VAT rate on demolition and reconstruction for real estate developers.

This article provides a recap of those key measures, highlighting relevant subsequent clarifications and updates, together with details of a new provision to end the so-called "tax-on-tax effect" for BE-REIFs and Belgian regulated real estate investment trusts (BE-REITs).

It should be noted that this article has been prepared on the basis of the preliminary information available in relation to the budget agreement and it is possible that there may be amendments to the proposed measures.

### Minimum five-year holding period for BE-REIFs

When an existing real estate company enters into the BE-REIF regime, a 15% exit tax is levied on latent capital gains and tax free reserves.

As from 1 January 2024, a minimum five-year "standstill" period would be introduced in relation to BE-REIFs *(gespecialiseerde vastgoedbeleggingsfondsen (GVBF)/fonds d'investissement immobiliers spécialisés (FIIS)* implying that entities entering into the BE-REIF regime would be required to remain in the regime for a minimum period of five years.

The same five-year standstill period would apply to ownership of shares obtained in a BE-REIF in return for the contribution of real estate into the BE-REIF. The standstill period would apply to all the shares obtained in exchange for the contribution, which would have to be held for an uninterrupted period of five years as from the date the shares were acquired.

If the five-year standstill period is not satisfied, an additional 10% corporate income tax (CIT) would be imposed, increasing the initial exit tax rate to 25%.

Update: Based on the information currently available, it is our understanding that the additional 10% CIT would also apply to mergers or (partial) demergers into a BE-REIF. However, in this case, it would be sufficient for the BE-REIF to retain its status for five years as from the date of inclusion in the BE-REIF list, to avoid the additional (de)merger tax; it does not seem to be necessary for the BE-REIF to exist for another five years after the (de)merger.

Update: The rule would only apply to BE-REIF regime exits or transfers of shares into a BE-REIF following a contribution as from 1 January 2024 and not to earlier BE-REIF conversions or contributions if it would appear, as from 1 January 2024, that the five-year standstill period would not be respected. It seems that the rule would not apply to BE-REITs.

### End of "tax-on-tax effect" for BE-REIFs and BE-REITs as from financial year 2024

Companies such as BE-REIFs and BE-REITs *(gereglementeerde vastgoedvennootschappen (GVV)/sociétés immobilières réglementées (SIR))* are, in principle, only subject to tax on the total of disallowed items (excluding capital losses, write-offs on shares, and exceeding borrowing costs under the 30% of EBITDA interest limitation rule) and on benefits received other than at arm's length.

CIT and provisions for CIT qualify as disallowed items that in principle, are included in the taxable base of a BE-REIF or BE-REIT, giving rise to the "tax-on-tax effect."

The tax-on-tax issue led to a long-standing debate questioning whether CIT should be included in the taxable base of a BE-REIT or BE-REIF. Following court cases in 2016 (Belgian Constitutional Court) and 2019 (Supreme Court), the debate ended and CIT has subsequently been considered part of the taxable base of a BE-REIT or BE-REIF.

New provisions: As part of the proposed 2024 budget measures, the government intends to mitigate the tax-on-tax effect, i.e., CIT would no longer have to be included in the taxable base of a BE-REIT or BE-REIF.

This provision would apply as from tax year 2025, in relation to financial years starting on or after 1 January 2024.

### Nondeductibility of subscription tax

Investment vehicles such as BE-REITs and BE-REIFs are subject to an annual subscription tax in Belgium imposed on net assets placed in Belgium at a rate of 0.0925% and 0.01%, respectively.

As part of the Federal Budget 2023 measures, the Program Law of 26 December 2022 provided that 80% of the subscription tax due as from 1 January 2023 would be nondeductible. Under the 2024 budget agreement, subscription taxes due as from 1 January 2024 would be fully nondeductible.

This provision would apply as from tax year 2025, in relation to financial years starting on or after 1 January 2024.

**Update:** Nondeductibility of the subscription tax would no longer lead to a tax-on-tax effect (see "End of "tax-on-tax effect" issue for BE-REIFs and BE-REITs as from financial year 2024," above).

### Increase in registration duties for long lease and building rights

Currently the standard registration duties in relation to the granting or transfer of long lease rights *(erfpacht/emphytéose)* and building rights *(recht van opstal/droit de superficie)* amount to 2% on the aggregate value of the (periodical) remuneration and charges.

The budget agreement proposes to increase this rate to 5%. No changes are anticipated with regard to the registration duties applicable to "normal" rental agreements (generally 0.2%).

No further details regarding the entry into force of this measure are currently available, although it is expected to apply to deeds notarized on or after 1 January 2024. The 2% rate is expected to remain available for deeds notarized prior to 1 January 2024, even if the deed is subject to condition precedent(s) to be fulfilled after 1 January 2024.

### Reduced 6% VAT rate on demolition and reconstruction no longer available to real estate developers as from 1 January 2024

As already announced, the existing VAT arrangements for demolition and reconstruction would be significantly restricted as from 1 January 2024.

The temporary 6% rate for the sale of dwellings would not be extended and would end on 31 December 2023, so that the sale of rebuilt dwellings as from 1 January 2024 would be subject to VAT at the standard rate.

**Update:** The draft explanatory memorandum shared with Deloitte Belgium contains some unexpected provisions. It states that the reconstruction should follow the demolition within a "reasonable time" to maintain the link between the demolition and reconstruction so that it constitutes one project. This requirement is not included in the current legislation nor in the draft legislation and the reason for the additional condition is unclear.

With reference to the *Wet Breyne* (the legislation regulating the sale of housing "off-plan" in Belgium), the memorandum also states that advanced billing would not be possible and therefore specific measures to bill works not yet carried out are not considered as useful. The current legislation includes a specific rule that advance billing of up to 25% is allowed. It is unclear and open to debate whether *any* advanced billing, even below 25%, would be considered as prohibited under the proposed new rules.

## Canada

### 2023 Fall Economic Statement tax highlights

Canada's Deputy Prime Minister and Minister of Finance, the Honorable Chrystia Freeland, presented the 2023 Fall Economic Statement in the House of Commons on 21 November 2023.

A summary of the tax highlights contained in the Fall Economic Statement is provided below.

### What wasn't there

- There were no broad increases to personal or corporate tax rates, no increases in goods and services tax (GST), or harmonized sales tax (HST), and no new taxes on wealth, inheritance, or capital. The capital gains inclusion rate remains at 50%.
- No updated draft legislation or detailed rules were announced on existing tax proposals, including interest deductibility limitations, the global minimum tax, amendments to the general anti-avoidance rule, modifications to the alternative minimum tax, or hybrid mismatch arrangements.
- Several details on previous budget initiatives were not mentioned, including potential updates on the review of the scientific research and experimental development (SR&ED) program (including work on a potential patent box regime), which was first announced in Budget 2022.

### Timelines for the clean economy investment tax credits announced

The government announced a more detailed implementation timeline for various clean economy investment tax credits. While many of these investment tax credits were previously announced, the various consultation processes underway have meant that none of the investment tax credits have been introduced in parliament.

- Carbon capture, utilization, and storage (CCUS) investment tax credit—legislation to be introduced this fall;
- Clean technology investment tax credit—legislation to be introduced this fall;
- Clean hydrogen investment tax credit—legislation is targeted to be introduced in early 2024;
- Clean technology manufacturing investment tax credit—legislation is targeted to be introduced in early 2024;
- Clean electricity investment tax credit—legislation is targeted to be introduced in fall 2024; and
- Labor requirements for investment tax credits—legislation to be introduced this fall.

### Other announcements related to building Canada's clean economy

Design elements for the clean hydrogen investment tax credit were announced, including a description of eligible clean ammonia production equipment. Additional details regarding the calculation of the carbon intensity for hydrogen projects and compliance mechanisms were announced. The clean hydrogen investment tax credit will be subject to a consultation on draft legislation, to be launched this fall.

The clean technology and clean electricity investment tax credits are proposed to be expanded to include waste biomass systems, having relevance to the forestry, agriculture, and utilities sectors. The expansion, as it pertains to the clean technology investment tax credit, would be applicable to eligible equipment that is acquired and becomes available for use on or after 21 November 2023, while the clean electricity investment tax credits would be available as of the date of Budget 2024 for projects that did not begin construction before 28 March 2023.

The Canada Growth Fund will be the principal federal entity issuing carbon contracts for difference. It will allocate, on a priority basis, up to CAD 7 billion of its current CAD 15 billion in capital to issue all forms of contracts for difference and offtake agreements.

The government will advance the development of an Indigenous Loan Guarantee Program to help facilitate Indigenous equity ownership in major projects in the natural resource sector. Next steps will be announced in Budget 2024.

### Proposed new concessional loan tax treatment

There was a concern prior to the release of the Fall Economic Statement that any loan advanced by a government (or a government agency including crown corporations) to a taxpayer should be assessed with respect to whether the loan included any concessions in the terms that may otherwise have been construed as government assistance in light of the decision in *CAE Inc. v. Canada*, 2022 FCA 178, in which the full principal amount of a concessional loan (meaning a loan that did not bear interest or that bears interest at below-market rates) was included in income as government assistance.

In the Fall Economic Statement, the government proposed to provide amendments and clarity that bona fide concessional loans with reasonable repayment terms from public authorities will generally not be considered government assistance. The proposed amendment would come into force as from 21 November 2023.

### Enhancements for employee ownership trusts

Budget 2023 proposed employee ownership trusts to encourage the transfer of all or part of eligible businesses to employee groups. The Fall Economic Statement provides a meaningful enhancement to the proposed rules by allowing an exemption of capital gains on the first CAD10 million realized on the sale of a business to an employee ownership trust, subject to certain restrictions. It remains to be seen how this enhanced capital gains exemption would intersect with the alternative minimum tax, which includes a minimum amount of income on the realization of certain other capital gains subject to exemptions. This exemption would be in effect for the 2024, 2025, and 2026 years.

### Possible pension fund investment restriction relief

The government is considering the removal of a restriction applicable to pension funds from holding more than 30% of the voting shares of investments in Canada. There is no indication of a possible effective date.

### Ongoing progress on previously announced tax measures

The government confirmed its intention to proceed with the implementation of the digital services tax (DST), with forthcoming legislation that would allow the government to determine the coming into force date. The Digital Services Tax Act, most recently released in draft on 4 August 2023, allows for the government to determine the coming into force date no earlier than 1 January 2024, in respect of revenues earned as of 1 January 2022. The proposed DST is a tax equal to 3% on revenue from certain Canadian digital services for relevant taxpayers.

The government also reconfirmed its intention to enact legislation to implement a global minimum tax in line with the OECD's Global Anti-Base Erosion (GloBE) model rules. The Fall Economic Statement contained proposals to expand the tax exemption for international shipping activities to all Canadian-resident corporations in order to bring Canada's rules in line with international norms and associated provisions in the OECD's GloBE model rules.

Building on several government initiatives were clarifications and amendments to previously announced measures, including:

- Budget 2019 introduced the Canadian journalism labor tax credit. The Fall Economic Statement increases the maximum expenditure per employee from CAD 55,000 to CAD 85,000. The tax credit rate would be temporarily increased from 25% to 35% for a period of four years as from 1 January 2023 through 31 December 2026.
- Budget 2023 proposed to deny financial institutions a deduction for dividends on shares that are mark-to-market property effective 1 January 2024. The Fall Economic Statement affirms the budget proposal, but also includes an exception to permit financial institutions to deduct dividends on taxable preferred shares.

### Proposed new joint venture election rules for GST/HST

The government proposed that the GST/HST joint venture election rules, which historically have been quite restrictive, be adjusted to include several components, most notably:

- Eliminate the requirement that joint venture activities be eligible activities per the legislation or regulations, thus opening up this election to more activities;
- Limit the availability of these elections to those that are registered for GST/HST purposes, engaged all or substantially all in commercial activities, and not be a public sector body or listed financial institution; and
- Replace the current deeming measures with revised measures to clarify certain historical ambiguities.

Draft legislation proposals were released for public consultation, concurrently with the Fall Economic Statement. Feedback is requested by 15 March 2024.

### Underused housing tax filing requirements curtailed

The Underused Housing Tax Act took effect on 1 January 2022, which resulted in broad compliance obligations for common structures for many Canadians, including residential properties held within a Canadian corporation, trust, or partnership. The initial filings for the 2022 calendar year, originally due 30 April 2023, were previously extended twice and are now due on 30 April 2024.

The Fall Economic Statement proposes to eliminate filing requirements for certain Canadian owners, including those that hold residential properties within certain Canadian corporations, Canadian partnerships, and Canadian trusts. Such changes would take effect for the 2023 calendar year. Certain residential condominium units owned by a single building owner are also exempt from filing, effective for the 2022 calendar year. Finally, late filing penalties are reduced for individuals from CAD 5,000 to CAD 1,000 and for corporations from CAD 10,000 to CAD 2,000, effective for 2022 filings. These changes were reflected in draft legislation released concurrently with the Fall Economic Statement, which is open for comment until 3 January 2024.

### Non-compliant short-term rentals

The Fall Economic Statement proposes to deny income tax deductions for expenses incurred, including interest expense, to earn short-term rental income in provinces and municipalities that have prohibited short-term rentals. Denial of income tax deductions would also be extended where a short-term rental

operator is not in compliance with local applicable law and requirements. These measures would take effect on 1 January 2024. Additional funding is proposed in support of municipal enforcement of restrictions on short-term rentals.

## Germany

### Lower house of parliament approves draft business tax reform bill

On 17 November 2023, the lower house of the German parliament voted in favor of the business tax reform bill ("Growth Opportunity Act") that had been entered into the formal legislative process by the government on 30 August 2023. The approved bill includes a multitude of tax measures covering tax incentives, individual income tax, corporate income tax, and other tax law provisions.

Compared to the draft bill that was originally introduced by the government, the following noteworthy changes are included in the bill. For the most part, these changes are based on recommendations provided by the upper house of parliament in a statement dated 20 October 2023.

- The investment period for the proposed climate investment grant would be shortened by two months. Instead of becoming effective for investments made after 31 December 2023, the climate investment grant would now be granted for investments made after 29 February 2024. The investment period would run until 1 January 2030 as originally proposed by the government.

- The minimum taxation rules limiting the offset of a net operating loss (NOL) carryforward against current year profits would be relaxed from 2024 to 2027 as originally proposed. During this period, a taxpayer would be allowed to offset 75% of current year income exceeding EUR 1 million against NOL carryforwards instead of 80%, as originally proposed. Under current rules, the offset is limited to 60% of current year income. After 2027, the 60% limitation for the offset of any remaining current year profits would be reinstated. The approved changes would apply for corporate income tax and local trade tax purposes.

- The loss carryback period for individual and corporate income tax purposes would be increased from the current two years to three years, as originally proposed, but the increased maximum amount of EUR 10 million for a loss carryback for corporate taxpayers would only be granted for 2024 and 2025 instead of becoming permanent (currently, the maximum amount of EUR 10 million is limited to losses generated from 2020 to 2023, and after 2023 the maximum amount decreases to EUR 1 million again). As from 2026, the maximum amount for a loss carryback for corporate taxpayers would be EUR 5 million. No carryback of losses is permitted for local trade tax purposes.

- For purposes of the interest deduction limitation rules, the originally proposed "de-fragmentation clause" no longer would be pursued. Under the originally proposed rule, the EUR 3 million threshold no longer would have applied on a separate per-entity basis but on a group basis where one person or persons acting in concert control various entities that are engaged in the same business. Since this proposal has been dropped, the EUR 3 million threshold would continue to apply on a separate per-entity basis.

- The introduction of a "maximum interest barrier rule" no longer would be pursued (the rule deleted from the approved bill). As suggested by the upper house of parliament, an amendment to the arm's length requirement for financing relationships would be introduced in section 1 of the Foreign Tax Act instead, in order to align the German transfer pricing rules with chapter X of the 2022 OECD transfer pricing guidelines. This is based on an earlier proposal that was already discussed in 2019 as part of

the ATAD Implementation Law. At that time, however, the proposal to amend the arm's length requirement in the Foreign Tax Act had not been successful. The newly proposed sections 1 (3d) and 1 (3e) of the Foreign Tax Act would include the following amendments:

- In order to comply with the arm's length principle for intercompany cross-border financing arrangements, the taxpayer would have to provide plausible evidence about (i) the ability to service the debt (interest and principal) during the entire term of the debt, and (ii) the financing need and the business purpose for the borrowing.

- The arm's length character of the interest rate generally would have to be established based on the refinancing conditions that would apply with an unrelated third party and based on the credit rating for the entire multinational enterprise group. An escape clause would allow the taxpayer to argue that, based on the relevant facts, an interest rate higher than the one based on the group's credit rating could be at arm's length (derivative group credit rating).

- The intercompany provision of financing services, back-to-back financing arrangements, and treasury functions generally would be deemed to be low-function risk services for purposes of the arm's length principle and for calculating an arm's length remuneration. The taxpayer would have the possibility to prove the contrary, i.e., that a higher remuneration would be justified based on actual higher risk bearing.

- The proposed amendment to the arm's length definition of intercompany cross-border financing arrangements would not be limited to situations where the lender does not have sufficient substance and activities as originally proposed are part of the maximum interest barrier rule. The proposed amendment would be limited to cross-border financing arrangements and would not affect pure domestic German financing arrangements. The proposed amendment would become effective as from fiscal year (FY) 2024.

- The proposed changes to certain rules for the taxation of partnerships and their individual partners would now become effective as from 2024 and not as from 2025 as originally proposed.

- The dual consolidated loss (DCL) rules for tax consolidated groups (section 14 (1) No. 5 of the Corporate Income Tax Code) would be abolished with effect as from 2024. Based on the reasoning provided by the finance committee of the lower house, the cancellation of the highly controversial rule is a reaction to the introduction of the general anti-hybrid rules/double deduction rule in section 4k of the Income Tax Code as from 1 January 2020.

- The transition period for the introduction of mandatory electronic invoicing for VAT purposes would be extended from one year to two years (1 January 2025 through 31 December 2026) for business-to-business (B2B) transactions and from two years to three years (1 January 2025 through 31 December 2027) for small companies (i.e., companies with revenue of up to EUR 800,000 in the preceding FY). The general 1 January 2025 starting date for the introduction of mandatory electronic invoicing would not change.

- The application of the reduced VAT rate for gas and heat supplies would be terminated as from 29 February 2024 instead of 31 March 2024.

- For purposes of the exemption from real estate transfer tax (RETT) for certain transactions between a partnership and its partners (sections 5 and 6 of the RETT Code), the application of the current rules would be extended through 31 December 2024. There has been some doubt whether these

exemption rules would still be applicable after a change in the commercial law and a resulting change in the legal characteristics of partnerships. The one-year period is aimed at providing additional time for the legislator to perform a more detailed analysis of the consequences of the change in the legal characteristics of partnerships and to find a comprehensive solution.

- The highly criticized mandatory disclosure and reporting requirement for certain purely domestic tax planning arrangements as set forth in the original draft bill remains unchanged and, despite the high criticism, is not being abolished.

The tax reform bill still has to be approved by the upper house of parliament; a discussion and vote on the bill are scheduled for 24 November 2023. In case the upper house does not approve the bill (which seems somewhat likely), the bill would be forwarded to the conference committee of the upper and lower houses of parliament to find a compromise that would be acceptable to both chambers. Even if the conference committee needs to get involved, it might be possible to finalize the draft bill as late as the last session of the upper and lower houses of parliament in 2023, on 15 December.

### Germany

#### Upper house of parliament does not approve draft business tax reform Bill

On 24 November 2023, the upper house of the German parliament withheld its approval of the business tax reform bill ("Growth Opportunity Act") that was approved by the lower house of parliament on 17 November 2023 and forwarded the tax reform bill to the conference committee of the upper and lower houses of parliament for further consideration and to find a compromise. The pending tax reform bill includes a multitude of tax measures covering tax incentives, corporate income tax, individual income tax, and other tax law provisions. Key measures contained in the bill are the introduction of a climate investment grant and changes to the net operating loss (NOL) carryback period, the minimum taxation rules for the use of NOL carryforwards, and the interest deduction limitation rules.

The upper house of parliament did not criticize specific measures in the bill in its session on 24 November 2023 but rather the financial burden that would be imposed on the federal states and local municipalities as a result of the bill. It also expressed disapproval that the federal government did not sufficiently include the federal states in the legislative process.

The bill will now be considered by the conference committee to find a compromise that would be acceptable to both chambers. It is currently unclear whether it will be possible to reach agreement before the last session of the upper and lower houses of parliament in 2023 on 15 December, or whether discussions will continue into 2024. Based on a 15 November 2023 decision of the federal constitutional court that a reallocation by the federal government of EUR 60 billion in unused debt unlocked during the COVID-19 pandemic to fund its green transition project violates constitutional principles, there is significant budget pressure that may limit the room for negotiations between the two chambers.

### Greece

#### VAT treatment of contracts for differences clarified

Following the submission of individual queries by interested parties regarding the VAT treatment of revenue arising from contracts for differences (CFDs), Greece's Independent Authority of Public Revenue (IAPR) released Circular E. 2066/2023 on 2 November 2023, clarifying that CFDs should be treated as a supply of services subject to VAT at the standard rate of 24%. (Contracts for differences are financial contracts that pay the differences in the settlement price between the open and closing trades.)

In addition, the circular provides more broadly that the VAT exemption of article 22 of the Greek VAT Code (Law 2859/2000, based on article 135(1)(f) of the EU VAT directive (2006/112/EC)) applies only to revenue arising from derivatives traded on a securities market and does not explicitly cover revenue arising from derivatives that are not so traded (i.e., over-the-counter (OTC) derivatives, such as CFDs).

However, the circular does not provide an effective date and thus does not clarify which transactions fall within its scope.

In light of the above, questions remain not only regarding the effective date of the circular, but also regarding the VAT treatment of revenue arising from OTC derivatives in general. To this end, further guidance is expected to be issued by the Ministry of Finance.

## India

### GST council 52nd meeting clarifies valuation of directors' personal guarantees

At its 52nd meeting on 7 October 2023, India's goods and services tax (GST) council made various recommendations with respect to: changes in the tax rates on goods and services; measures for trade facilitation; the amnesty scheme for filing appeals; directors' personal guarantees on loans; and legislative amendments to make the input service distributors (ISD) mechanism for distributing input tax credits (ITCs) mandatory.

### Changes to GST rates

The GST council made the following recommendations:

### Goods

- The GST rate notification would be amended to include extra neutral alcohol (ENA) as subject to GST at 18%. ENA used for the manufacture of alcoholic liquor for human consumption would be outside the scope of GST. Legislative amendments are to be proposed by the Law Committee;
- The GST rate on "food preparation of millet flour in powder form, containing at least 70% millets by weight" is proposed to be changed to:
    - 0% if sold other than in prepackaged and labeled form; or
    - 5% if sold in prepackaged and labeled form;
- Currently, integrated GST (IGST) is applicable at 5% on the value of a foreign going vessel if it converts to a coastal run. A conditional IGST exemption is recommended on relevant foreign-flagged vessels when they convert to a coastal run, subject to reconversion to a foreign going vessel within six months;
- The GST rate on molasses is proposed to be reduced from 28% to 5%; and
- Clarification is to be issued that imitation zari thread or yarn made from metalized polyester film/plastic film is subject to GST at 5%. No refund would be allowed on metalized polyester film/plastic film under the inverted duty structure.

### Services

- E-commerce operators supplying bus transportation services have been liable for GST on these supplies instead of the bus operator as from 1 January 2022 under section 9(5) of the Central Goods and Services Tax Act, 2017. The GST council has recommended that bus operators organized as companies should be excluded from the scope of this provision;
- All goods and services supplied by Indian Railways should be taxed under the forward charge mechanism;
- Supplies of water, public health, sanitation conservancy, solid waste management and slump improvement, and upgrades supplied to government authorities should be exempted from GST; and
- A clarification should be issued with respect to taxing services for processing barley into malt at 5% instead of 18%.

### Trade facilitation measures

The GST council has recommended the following trade facilitation measures:

- An amnesty scheme for appeals where taxpayers were unable to file appeals within the prescribed time limit against orders issued under specified provisions of the GST Act on or before 31 March 2023, or the appeals against these orders were rejected solely on the grounds of the expiry of the limitation period. Taxpayers would be allowed to file an appeal on or before 31 January 2024 only on payment of an enhanced predeposit, equivalent to 12.5% of the disputed tax, out of which at least 2.5% would have to be paid in cash;
- Clarification regarding the taxability of personal or corporate guarantees as follows:
    - The provision of a director's personal guarantee would be subject to GST if a company pays consideration in lieu of obtaining the guarantee. If no consideration is paid by the company, the open market value of the service is zero and no GST would be payable;
    - Corporate guarantees would be subject to GST. The value would be the higher of 1% of the amount of the guarantee, or the consideration payable, irrespective of whether full ITC is available to the recipient of the services; and
    - Suitable amendments to the GST rules are proposed with respect to prescribing the valuation methodology for corporate guarantees;
- Amendments to the GST Rules to facilitate the automatic restoration of provisionally attached property after one year;
- The issue of circulars to clarify the place of supply of the following services:
    - Transportation of goods, including by mail or courier, where the location of the supplier or the recipient of services is outside India;
    - Advertising services; and
    - Colocation services;

- Remittances received into a special INR vostro account (as permitted by the Reserve Bank of India) relating to services would qualify as an export of services. A clarification in this regard is recommended by the GST council; and
- Suppliers of goods or services (except certain commodities such as pan masala, tobacco, gutkha, etc.) to a special economic zone developer or unit for authorized operations would be allowed to make these supplies on payment of IGST, and eligible for a refund.

### Other recommendations

The GST council also recommended changes to the GST law to amend the scope of the ISD mechanism and to make the distribution of ITC for common services through the ISD mandatory.

Amendments were also suggested to the minimum and maximum age limits of the president and members of the GST Appellate Tribunal. In addition, an advocate with 10 years of substantial experience in litigation under indirect tax laws in VAT tribunals, high courts, and other specified jurisdictional bodies, would be eligible for the appointment as a judicial member.

### Deloitte India comments

There was considerable ambiguity regarding the valuation of guarantees provided by directors or related parties in a personal capacity where no consideration was charged for the guarantee, including guarantees provided by a holding company for its subsidiary, leading to varied approaches being adopted by taxpayers and demands being raised by authorities on this issue. The clarification would remove this uncertainty, although it will also be important to understand and analyze the possible impact of the clarification on other similar related party transactions under dispute.

The clarification of the various place of supply rules is also important. The clarification regarding the export position on cross-border transportation by mail or courier has been long anticipated and the clarification on advertising services was also expected, although it is unclear if it relates to cross-border or domestic transactions.

Given that the provisions around ISD are soon to be amended so that distribution of ITCs on common services is through the ISD mechanism only, businesses may wish to commence a review to of their relevant systems and processes.

The issue of eligibility for membership of the GST Appellate Tribunal was already being challenged before the Supreme Court, resulting in delays in setting up tribunals. The recommendations regarding the age limit of the president and members, as well as the inclusion of advocates as judicial members, would speed up the creation process, which is greatly needed.

India

## GST notices: Recent activities and next steps for taxpayers

During September 2023, Indian taxpayers subject to goods and services tax (GST) may have received multiple GST notices for various issues, including the recovery of alleged shortfalls in GST payments, reversals of input tax credits (ITCs), or the recovery of erroneous refunds. Notices were also issued on matters involving the interpretation of legal provisions and rulings by the Supreme Court, high courts, and advance ruling authorities, thereby affecting a broad range of taxpayers and industries. This article provides an overview of the recent notices issued, deadlines, and suggested next steps for affected taxpayers.

## Background

The notices for financial year (FY) 2017-18 had to be issued by 30 September 2023 to fall within the deadline for a "normal period of limitation." However, companies should be aware that the tax authorities have until 5 August 2024 to issue any demand notices for FY 2017-18 if the "extended period of limitation" under section 74 of the Central Goods and Services Tax Act, 2017 (CGST Act) applies (i.e., by alleging fraud or the willful suppression of facts).

The next set of show cause notices (SCNs) for FY 2018-19 and FY 2019-20 are expected to be issued by the end of December 2023, and the time limits for filing appeals against the demand order on Form DRC-07 should be monitored.

## Relevant legal provisions

Section 73 of the CGST Act provides that a notice can be issued by the relevant authorities to recover tax potentially underpaid or unpaid, or refunded in error, for reasons other than fraud**,** under the normal period of limitation. This means that the following time limits apply:

- A notice to initiate the enquiry must be issued at least three months prior to the order date.
- The order confirming the demand must be issued within three years from the date that the annual return was filed, or the refund issued.

Section 74 of the CGST Act provides that a notice can be issued by the relevant authorities to recover the tax potentially underpaid or unpaid, or refunded in error, for reasons of fraud, willful misstatement, or the suppression of facts to evade tax, under the extended period of limitation. This means that the following time limits apply:

- The order must be issued within five years from the date the annual return was filed, or the refund issued.
- The notice must be issued at least six months prior to the order date.

The government has periodically previously extended the timeline for the authorities to issue orders.

## Limitation period for underpayment or nonpayment of GST liability, or incorrect ITC claims

| Particulars | FY 2017-18 | FY 2018-19 | FY 2019-20 |
|---|---|---|---|
| Extended deadline to issue a notice under section 73(2) of the CGST Act | 30 September 2023 | 31 December 2023 | 31 March 2024 |
| Extended deadline to issue an order under section 73(10) of the CGST Act | 31 December 2023 | 31 March 2024 | 30 June 2024 |
| Deadline to issue a notice under section 74(2) of the CGST Act (extended limitation period) | 5 August 2024 | 30 June 2025 | 30 September 2025 |
| Prescribed date to issue an order under section 74(10) of the CGST Act (extended limitation period) | 5 February 2025 | 31 December 2025 | 31 March 2026 |

## Recent trends

The tax authorities have increased their efforts to issue notices for multiple years, primarily focusing on FY 2017-18 and FY 2018-19.

Some of the trends observed are as follows:

- Notices covering the same period being issued simultaneously by central as well as state GST authorities;
- Notices being issued to taxpayers by uploading them directly onto the Goods and Services Tax Network (GSTN) portal. Where companies have missed responding to these notices, it has resulted in recovery proceedings or the issuance of an ex-parte order;
- Unscheduled visits by GST officers at multiple company locations simultaneously, requesting documents and invoices;
- Pending unresolved audits or assessments under section 65 of the CGST Act covering FY 2017-18, even though the standard limitation period has lapsed;
- Enquiry letters being issued to major companies focusing on particular sectors or industries subsequent to amendments to related laws, or after Supreme Court rulings;
- Incomplete consideration of taxpayer's responses to assessments, due to the deadlines to issue notices; and
- Notices being issued on a best judgment basis, based on figures in the taxpayer's profit and loss accounts, and ignoring the actual data submitted in GST returns.

For FY 2017-18, the tax authorities would have to finalize and issue an order under section 73 by 31 December 2023.

Issuance of an order would also trigger payment of a predeposit of 10% of the tax demand at the first appellate level (with a cap of INR 500 million) and an additional 20% of the tax demand (with a cap of INR 1 billion) for contesting the order, thereby affecting the taxpayer's working capital.

## Next steps

Taxpayers may wish to consider the following actions to review their systems and processes in light of the tax authorities' recent activities:

- Track notices received: Establish a comprehensive tracking system or repository to monitor all notices received, both on a national level and also in all Indian states. The GSTN portal should be checked regularly to identify any new notices uploaded and ensure that a response is filed without delay, and that the notices or replies are uploaded under the correct tab on the GSTN portal.
- Maintain a repository of documents: Documents relating to demand notices or orders such as agreements, credit notes, manual invoices if any, other declarations (e.g., Forms GSTR 2A and 3B), and correspondence received from the tax authorities should be collated and filed securely.

- Standardize procedures: Standardized processes should be in place to reply to notices covering similar matters for subsequent periods. For example, a standardized process for the issuance of a certificate by a chartered accountant should be followed for all suppliers, where appropriate.
- Adopt a consistent approach in replying to notices: A template could be created to standardize replies to enable the taxpayer's team to replicate previous replies when a new notice is issued, thereby avoiding delays in responding.
- Engage proactively with the jurisdictional officers: Proactively engaging with the jurisdictional authorities to understand the broad approach followed at the relevant state or jurisdictional level, explaining submissions made, and clarifying queries may avoid unscheduled visits, or the issuance of summons.
- Conduct audit readiness exercises: Given the deadlines to issue notices of 31 December 2023 for FY 2018-19 and 31 March 2024 for FY 2019-20, taxpayers could undertake audit readiness exercises or even mock audits to assess the level of risk, and take corrective actions on a proactive basis.
- Exercise the option to file a writ petition where necessary: The option to file a writ petition before the jurisdictional High Court may be explored in circumstances involving a challenge to a provision of the GST legislation or rules, or an order passed without jurisdiction, or in violation of the principles of natural justice.

The next set of SCNs for FY 2018-19 and FY 2019-20 is expected to be issued by the end of December 2023, and the deadlines for filing appeals against a DRC-07 order should be constantly monitored.

### Deloitte India comments

The upcoming deadlines for issuing GST notices have put companies on alert. With multiple notices, short response deadlines, and potential financial consequences, it is crucial for companies to be prepared. By establishing efficient tracking systems and proactively engaging with the tax authorities, businesses can navigate these challenges and mitigate the impact on their operations and finances. In these uncertain times, preparation and timely actions are key to protecting the interests of companies operating in the complex landscape of GST compliance.

## Luxembourg

### Government coalition agreement 2023-2028: Proposed tax measures

Following legislative elections in October 2023, the new Luxembourg government officially issued the text of its 2023-2028 coalition agreement (in French only) on 20 November, setting out, among others, the tax measures envisaged for the next five years. These measures must be included in draft legislation and be submitted to and approved by parliament before they can become law.

The new government states that its economic policy will be based on a socio-liberal sustainable market and a balance between efficiency and solidarity.

Through the implementation of a responsible and sustainable economic policy, the government wants to ensure that Luxembourg's AAA credit rating is maintained, a rating that demonstrates Luxembourg's financial strength and is a guarantee of its economic attractiveness.

In the public services sector, the government wants to encourage the digitalization and modernization of its services, promote the simplification of administrative procedures, as well as explore the possibility of generalizing the principle of "silence equals agreement" in these procedures, after analyzing the areas in which it could apply.

Below is a summary of the proposed financial sector, tax, and housing measures that the government intends to enact into law in the coming years.

### Proposed financial sector measures

In the coalition agreement, the government expressed its intended objectives regarding the financial sector, which continues to be fundamental to Luxembourg's economy. In particular, the government stated that it will:

- Continue to actively support the financial sector's development, diversification, and promotion;
- Ensure that it provides a legal framework favorable to alternative funds and the development of digital assets;
- Continue to focus on the development of sustainable, socially-responsible, and innovative financial products, positioning Luxembourg's financial center as an international hub for sustainable finance and supporting, among other things, initiatives in the field of fintech as well as gender finance;
- Actively participate in the development of European and international regulations in the field of finance and taxation to ensure that the specificities of Luxembourg and its financial center are considered; and
- Analyze the possibility of reducing the subscription tax for actively managed UCITS-ETF funds and for investment funds investing in sustainable economic activities.

### Other proposed tax measures

The government intends to continue developing Luxembourg's network of double tax treaties.

At the EU level, the government is committed to proceeding according to the principle of "the whole directive and nothing but the directive" to ensure accurate transposition of EU directives into domestic legislation. It is also committed to defending the principle of unanimity in EU tax matters, ensuring that the specificities of each member state are considered. Moreover, the government intends to oppose the introduction of a tax on digital and financial transactions.

In addition, the coalition agreement proposes the following measures:

- Proposed corporate tax measures:
    - Adjust the corporate income tax and municipal business tax rates to bring them closer to the average in OECD countries in the medium term. Based on the OECD Corporate Tax Statistics report issued on 21 November 2023, the average combined statutory tax rate is 21.1%;
    - Explore the possibility of tax reductions for small and medium-sized enterprises;
    - Support companies investing in the sustainable and digital transition as well as in research and development. To this end, the tax credit system would be supplemented; and

- Analyze the taxation of the transfer of companies with the aim of promoting their sustainability.

- Proposed individual tax measures:
  - Adapt the personal income tax scale as from 1 January 2024 by reducing the tax burden on low- and middle-income without increasing the top marginal tax rate;
  - Introduce a single tax class as from 2026. As an interim measure, relief would be provided for individuals belonging to tax class 1a (i.e., widowed individuals, single parents, and individuals aged 65 and older);
  - Introduce a tax allowance up to a certain level of income for individuals entering work;
  - Set up a tax regime encouraging individuals to invest in innovative startups in the sustainable and digital transition field;
  - Make the deductibility of certain expenses more advantageous and flexible, including for supplementary pension schemes;
  - Clarify and simplify the tax treatment of benefits in kind granted by companies to their employees;
  - Strengthen the profit-sharing bonus regime ("prime participative") and the inpatriate regime to support the recruitment and retention of talent;
  - Encourage the participation of employees in the capital of the enterprises that employ them;
  - Analyze how the tax framework for remote working could be clarified;
  - Analyze the treatment of gifts to lineal descendants to facilitate the transfer of assets; and
  - Agree not to introduce a wealth tax for individuals or an inheritance tax for lineal descendants.
- Proposed housing measures: As from the 2024 fiscal year, the government would adopt certain measures to stimulate the housing construction market, namely:
  - Increase the accelerated depreciation rate for properties built for rental purposes and increase the length of the depreciation period. The total amount of the tax relief would be capped;
  - Reduce the capital gains tax on property sales;
  - Introduce a new "Bëllegen Akt" tax credit for investments in rental housing by individuals;
  - Increase the "Bëllegen Akt" tax credit for the acquisition of a primary residence;
  - Increase the tax deductible amounts for interest expenses incurred on properties occupied, or intended to be occupied, by the owner;
  - Continue the work carried out by the previous government to reform the property tax and introduce a national tax on unoccupied dwellings and the mobilization of land; and

- Provide a tax exemption for premiums paid by companies to rent a home, which would be capped and reserved for young employees whose income level does not exceed a certain threshold.

- Proposed VAT measures: The government proposes to increase the amount of the tax benefit arising from the reduced VAT rate for the construction or renovation of a main dwelling, which is currently limited to EUR 50,000 (it is worth noting that the tax benefit was EUR 60,000 from 2008 to 2011). However, this is subject to approval by the European Commission.

Mexico

### Tax incentives for taxpayers in zones affected by Hurricane Otis

The Mexican government issued a decree, effective as from 31 October 2023, providing tax incentives for taxpayers that have their fiscal domicile, agency, branch, or any other establishment located in a zone affected by Hurricane Otis ("affected taxpayers").

The incentive allows an immediate 100% deduction for investments in new or used fixed assets in the municipalities of Guerrero state that are located in the zones indicated in the Natural Disaster Declaration to be issued by the competent authority. This benefit is available from October through December 2023 when reporting for the year in which these goods were acquired. The 100% rate applies to the original investment amount. However, the fixed assets must be exclusively and permanently utilized in these zones for replacement, reconstruction, or rehabilitation purposes, except when involving automobiles, automobile armoring equipment, or any other fixed asset that is not individually identifiable, together with aircraft other than those involved in crop dusting.

Taxpayers that have contracted damage insurance for fixed assets declared as a partial or total loss due to Hurricane Otis may only apply the tax incentive to the amounts in excess of those recovered as insurance compensation and that are invested in the acquisition of fixed assets.

Affected taxpayers that make payments for salaries and, in general terms, for the provision of independent personal services may pay the income tax (ISR) withheld during October, November, and December 2023 in three equal installments, as long as the dependent personal service for which these payments are made is provided in the affected zones. The first installment must be paid in January, the second in February, and the third in March 2024, without the payment of restatement, surcharges, or fines.

Affected taxpayers may make the definitive value added tax (IVA) and excise tax (IEPS) payments due in October, November, and December 2023 for acts or activities related to their fiscal domicile, agency, branch, or any other establishment located in the affected zones in three equal installments. The first installment is payable in January, the second in February, and the third in March 2024, without the payment of restatement, surcharges, or fines.

An exemption is granted regarding the obligation to make estimated ISR payments for October, November, and December 2023, or the third and fourth quarters of 2023, as the case may be, on income obtained by affected corporate taxpayers that pay tax according to titles II or VII, chapter XII of the Income Tax Law (LISR) (simplified trust regime (RESICO)) and affected individual taxpayers who pay tax according to title IV, chapter II, section I (business and professional activities), section III (technological platforms), and chapter III (lease of real property) of that law, as long as this income is attributable to their fiscal domicile, agency, branch, or any other establishment located in the affected zones.

Affected individual taxpayers who pay tax according to title IV, chapter II, section IV of the LISR (RESICO) are exempt from the obligation to make monthly tax payments for October, November, and December 2023, as long as this income is attributable to their fiscal domicile, agency, branch, or any other establishment located in the affected zones.

Affected individual taxpayers who pay tax according to title IV, chapter II, section II of the LISR in effect until 31 December 2021 under the tax incorporation regime (RIF) may postpone filing their tax returns for the fifth and sixth bimonthly periods of 2023 but must file no later than February 2024, as long as this income is attributable to their fiscal domicile, agency, branch, or any other establishment located in the affected zones. However, they must continue to pay tax under the RIF if they have failed to file two consecutive tax returns or on three occasions.

Affected individual taxpayers referred to in article 113-A, final paragraph of the LISR (technological platforms) may postpone making ISR payments for October, November, and December 2023 without the payment of restatement, surcharges, and fines but must pay no later than February 2024, as long as this income is attributable to their fiscal domicile, agency, branch, or any other establishment located in the affected zones.

During the second semester of 2023, affected taxpayers that are exclusively engaged in agricultural, livestock, fishery, or forestry activities and that pay tax according to title II, chapter VIII of the LISR and opt to make half-yearly estimated ISR payments pursuant to rule 1.3. of the "Ruling on administrative facilities granted to different taxpayer sectors in 2023," published in the official gazette on 3 March 2023, may opt to file their monthly IVA returns for that semester in conformity with the Value Added Tax Law (LIVA), without their decision to file half-yearly estimated ISR payments being considered noncompliance with the terms of the ruling.

IVA refund applications filed through December 2023 by affected taxpayers for recoverable balances generated prior to December 2023 will be resolved in half the time specified in article 22 of the CFF (i.e., within 20 days). However, this will not apply to taxpayers that:

- Are presumed, pursuant to article 69-B of the Federal Tax Code (CFF), to have issued electronic tax invoices (CFDIs) for nonexistent transactions, once their name has been published on a list in the official gazette and on the website of the Service Tax Administration (SAT);
- Request a refund based on tax receipts issued by taxpayers included on the list referred to in the preceding bullet;
- Have their digital stamp certificates cancelled pursuant to article 17-H, section X, of the CFF; and
- Prior to the enactment of the decree, have been subject to an inspection to verify the lawfulness of the recoverable balances.

Individuals who have their home in the affected zones and pay tax according to title IV of the LISR (general provisions for individuals) do not have to treat as taxable income any income obtained as economic or monetary support from companies or trusts authorized to receive deductible donations for ISR purposes, as long as this economic or monetary support is not received from related parties and is utilized for the reconstruction or rehabilitation of their home.

Taxpayers that have their fiscal domicile outside the affected zones, but have a branch, agency, or any other establishment located in these zones, as well as taxpayers that have their fiscal domicile within these zones, but have a branch, agency, or any other establishment outside them, are only entitled to the benefits granted by the decree based on the income, assets, tax withholdings, acts or activities, and expenses of the branch, agency, or any other establishment, or those attributable to the fiscal domicile located in the affected zones, as the case may be.

For the period from October through December 2023, taxpayers that meet the decree's eligibility conditions must do so for all the estimated, monthly, or definitive payments referred to in the decree and that are pending as of its effective date (i.e., as of 1 October 2023).

For the purposes of article 82, section IV of the LISR and article 138 of the Regulations of the Income Tax Law (RLISR), civil organizations and trusts authorized to receive donations pursuant to this law are deemed to fulfill their authorized corporate purpose when they make donations to affected individuals for the reconstruction or rehabilitation of their home.

Taxpayers are deemed to have their fiscal domicile, branch, agency, or any other establishment in the affected zones when they have filed the required notice with the Federal Taxpayers' Registry prior to 24 October 2023.

The application of the benefits contained in the decree will not give rise to any refund or compensation other than that to which taxpayers deciding not to apply these benefits would be entitled.

The SAT is expected to issue the omnibus tax rules needed to ensure the correct and proper application of the decree.

### New Zealand

#### Repeal of "app tax" no longer expected

As from 1 April 2024, platforms operating ride-sharing, food delivery, and short-term accommodation services (referred to as "listed services" in the legislation) in New Zealand will be required to charge GST on these listed services, even if the underlying owner/driver is not GST registered and makes under NZD 60,000 per year.

It is important to note that these changes are specific to listed services only and do not extend to other sectors, even if they are sold through a platform. Commonly referred to as "the app tax," these adjustments reflect an effort to align taxation with the platform or "gig" economy. The legislation is already in place, but many aspects only come into effect as from 1 April 2024.

#### Recent election outcome

Both the National Party and Act New Zealand campaigned on a tax policy that included repealing the GST rules for the platform economy. However, as a result of coalition negotiations, New Zealand's new prime minister has verbally confirmed that these would no longer be subject to repeal by the incoming coalition government. This surprise announcement means that the new rules are expected to go ahead as planned with a commencement date of 1 April 2024. This has significant implications for businesses operating in the platform economy, especially for those who may not have made system updates or changes under the assumption that the rules would be repealed. There are also implications for the underlying owners and drivers.

### Overview of the GST platform rules

The rules extend and expand existing GST marketplace rules to cover listed services, making more activities effectively subject to GST. Notably, suppliers operating through these platforms will not need to register for GST themselves if they continue to make under NZD 60,000 per year; instead, the platforms will be responsible for charging, collecting, and remitting GST on the services provided.

A notional "input tax credit" of 8.5% of the value of the supply will be allowed, effectively applying GST to 6.5% of the service value. This credit is to be passed on to the underlying supplier by the platform (presumably as a deduction from commission charges). This 8.5% credit is intended to compensate the unregistered underlying owner/driver for the GST they have paid on their operating costs. For suppliers already registered for GST, no additional credit will be provided, and they will continue to claim GST input tax credits on their costs; however, if they do not opt out of the platform rules, they will be treated as making a zero-rated supply to the operator of the electronic marketplace (and the supplier should not return GST on the payments by the final customer to the platform).

The comments below focus on short-term accommodation services but are equally applicable to ride-sharing and food delivery platforms.

### Implications for accommodation providers

#### Larger operators (hotels and holders of management rights)

Broadly speaking, hotels, motels, hostels, etc., making annual GST taxable supplies of more than NZD 500,000 have the option to opt out of the platform rules, without requiring the platform's consent. An alternative opt-out path is available for those with over 2,000 nights listed annually, though this requires agreement with the platform, and at a practical level many of the operators with over 2,000 nights will also exceed NZD 500,000 per annum. By opting out, the hotel would effectively continue as normal (i.e., the hotel would remain responsible for collecting and remitting GST on the gross value of accommodation services provided).

Providers unable to opt out must carefully assess and plan for any necessary system changes. Additionally, for short-term accommodation managed by a third party, a clear understanding of legal arrangements is essential to determine the "underlying supplier" under the rules, whether it be the unit owner or the manager.

#### Holiday-home owners

There will be different implications for GST registered and unregistered accommodation providers.

#### Accommodation providers who are not currently GST registered

- The platform will be required to charge 15% GST on the nightly rental (and any other related fees charged, e.g., cleaning fees) on each booking made through their platform on or after 1 April 2024 (even if the accommodation provider earns under the NZD 60,000 per year GST threshold from the accommodation). This means that there could be a mix of stays after 1 April 2024 that are not caught by the new rules (as the booking was made prior to 1 April 2024).

- The 15% GST charged by the platform will in effect be split, with 6.5% of the GST being paid to Inland Revenue and the remaining 8.5% of the GST charged being paid to the accommodation provider by the platform as a "flat-rate credit" (presumably as a deduction from commission charges). Receiving the flat-rate credit means that GST cannot be claimed by the actual unregistered owner based on actual expenses incurred.
- While the supply of the accommodation will be subject to GST, the changes do not bring the underlying property itself into the GST net. This means that if the property is sold in the future it will not be subject to GST if the owner of the property is not otherwise required to be GST registered.
- If substantive capital expenditure is expected, such as a renovation or extension, there may be a benefit in registering for GST. However, the key downside is that the property will be bought into the GST net, and it may be subject to GST if it is sold or there is a change in use. Further advice should be obtained.
- It is very important to remember that if supplies through the platform ever exceed NZD 60,000, either through increased rental or acquiring another property, there will still be a requirement for the accommodation provider to register for GST (see below).

### Accommodation providers who are already GST registered

- The default position is that the platform will be required to charge GST on the nightly rental (and any other fees charged) on each booking made through the platform on or after 1 April 2024. If this occurs, the underlying GST registered accommodation provider must zero-rate their deemed supplies to the platform.
- Many operators who earn over NZD 500,000 are expected to opt out of the platform rules and continue to account for and pay GST themselves (as discussed above).
- Where the platform rules apply (and the operator has not opted out), the GST payable on the guest stay will be paid to Inland Revenue by the platform. The accommodation provider will need to include this income as a zero-rated supply in GST returns.
- The accommodation provider will need to inform the platform about its GST registeration status so that the platform does not claim and pass on the 8.5% flat-rate credit. If this is received in error, it must be repaid to Inland Revenue. Further communications on this are expected in the coming weeks.
- Any future sale of the property is treated as it is now, i.e., it will either be a zero-rated sale if it is to a GST registered person who will use it for a taxable activity, or a sale subject to GST at 15% if sold to an unregistered person. However, if the principal purpose for which the land was held was not taxable, the new (and separate) transitional repayment rules (discussed below) may be used, which can allow for capital assets to be taken out of the GST regime in certain situations, which can remove the liability to return GST on any future sale of the property.

For more details on the rules, please see the Inland Revenue special report: Marketplace rules for listed services (June 2023)

### New transitional repayment rule

If a property was acquired prior to 1 April 2023 and acquired predominantly for private use, taxpayers have until 1 April 2025 to remove the property from the GST regime. This will likely be attractive for those whose main purpose was personal use and who have only been renting out their properties for a few months each year. However, there is an initial financial cost as any GST inputs claimed in relation to capital expenditure on the property must be repaid (together with any further nominal/change of use GST adjustment if the property was zero-rated when acquired).

Likewise for assets purchased on or after 1 April 2023, there is the potential to elect that any sale of the capital assets is not subject to GST, provided that no GST has been claimed on the asset, and the asset has never been used for the principal purpose of making taxable supplies.

### Conclusion

The 1 April 2024 deadline is fast approaching, and anyone involved in providing short-term accommodation may wish to carefully consider how they may be affected by these new rules. This is particularly important as many people may have assumed a change in government would mean the new rules would be repealed.

As these changes unfold, more detailed communications are expected from platform operators. For personalized guidance and next steps tailored to your situation, advice should be sought.

## Poland

### Changes to invoicing requirements for advance payments

The bill implementing mandatory structured e-invoicing in Poland was finally published in the official journal on 11 August 2023. Although the bill centers on the introduction of the mandatory e-invoicing regime as from 1 July 2024, it also contains other changes to the VAT law which are effective from various earlier dates. One of these is an amendment to the invoicing of advance payments, which came into force on 1 September 2023.

In general, the receipt of an advance payment triggers an obligation for the supplier to raise a valid VAT invoice for the amount received. Once the supply is carried out, the supplier is obliged to raise another invoice for the supply, quoting the advance payment invoices already issued, and decreasing the amount due on the final invoice by the amount of advance payment received. According to the wording of the VAT law, this is applicable even if the advance payment is received for the full amount of the supply. Advance payment invoices, as well as regular invoices, must be raised no more than 60 days before the tax point of the supply, and no later than 15 days following the month in which the tax point occurred.

Further to the changes introduced under the bill, an invoice for advance payments may not need to be issued if the taxpayer receives all or part of the payment for the supply in the same month in which it is performed. In such cases, the taxpayer may raise only one invoice for the supply; however, it must provide both the date of the supply and the date of receipt of the advance payment (if known, and different from the date of the invoice).

This amendment aims to minimize the amount of VAT documentation raised by taxpayers each month if the tax points for the advance payment and the supply occur in the same reporting period.

## South Africa

### Ruling clarifies when VAT liability may arise in cases involving seconded employees

In a judgment dated 20 September 2023, South Africa's North Gauteng High Court ruled against Citibank South Africa, and for the South African Revenue Service (SARS), by stating that imported services value-added tax (VAT) was due on the services acquired from various home country offshore entities as a result of employees seconded to Citibank South Africa. These employees were sent from other countries to work at the bank's local operations in South Africa. The judgment provides clarification on the circumstances in which a VAT liability may be considered to arise in a situation in which employees are seconded to South Africa from abroad.

Citibank South Africa argued that although the employees retained their home country employment contract, under South African law, these persons become employees of Citibank South Africa. In this regard, Citibank South Africa further argued that the employees placed their "productive capacity" at the disposal of Citibank South Africa and that these persons were similarly under the supervision and control of Citibank South Africa. The home country employer would pay the salary to the employee and recover this cost from Citibank South Africa. The payment from Citibank South Africa to the home country was remuneration as defined in the relevant legislation, and employees' tax (Pay As You Earn (PAYE)) was withheld and paid to SARS. Citibank South Africa stated that the home country employer was merely paying the salary as an agent on behalf of Citibank South Africa.

SARS disputed that the seconded individuals were employees of Citibank South Africa. The revenue authority stated that the home country entity pays the salaries of these individuals and that the payments made by Citibank South Africa are for services rendered (i.e., making the employees available to Citibank South Africa) by the home country entity.

The court found in SARS' favor, and essentially that Citibank South Africa's argument failed on two accounts:

- Citibank South Africa failed to show that it was the employer of the seconded employees; and
- Citibank South Africa could not prove that the amounts paid to the home country entity constituted remuneration.

Where multinational groups re-deploy employees across multiple jurisdictions and in particular to South Africa where the local company is subject to a partial exemption for VAT purposes, the employment structure must be carefully considered to mitigate unnecessary VAT costs. It seems from this judgment that it is crucial to determine who the real employer is. In this case, the court found that the employees were formally employed by the home country and there was no evidence to support that the seconded employees were employed by Citibank South Africa.

## Thailand

### Extension of reduced 7% VAT rate

A Thai royal decree (No. 780) issued on 15 September 2023 provides that the reduction of Thailand's statutory VAT rate from 10% to 7% (inclusive of municipal tax) is extended for an additional year. The statutory VAT rate applies to the sale of goods, the provision of services, and importations, and the extension is effective from 1 October 2023 to 30 September 2024.

## Key tax announcements in Autumn Statement for 2023

On 22 November 2023, the UK Chancellor of the Exchequer, Jeremy Hunt, presented his Autumn Statement for 2023. The focus was on five areas: reducing debt, cutting tax and rewarding hard work, delivering world-class education, building domestic sustainable energy, and backing British business. As had been widely speculated, the chancellor announced several tax cuts. Key tax announcements include permanent full expensing for certain capital expenditure by companies and reductions in national insurance contributions (NICs).

This article provides a summary of the main tax announcements. For more detailed commentary and analysis, visit Deloitte UK's dedicated Autumn Statement 2023 website.

### Headline tax announcements

### Full expensing made permanent

The chancellor has announced that the government will make full expensing for capital expenditure on certain assets permanent, i.e., 100% first year allowances for companies investing in plant and machinery and 50% first-year allowances for special rate assets. The current expiry date of 1 April 2026 will be removed in the Autumn Finance Bill 2023. The government will also launch a technical consultation on wider changes to further simplify the UK’s capital allowances legislation.

### Research and development (R&D) tax relief changes

The current R&D expenditure credit (RDEC) and R&D tax relief for small and medium-sized enterprises (SMEs) schemes will be merged for accounting periods beginning on or after 1 April 2024 and legislation will be in Autumn Finance Bill 2023. The rate offered under the merged scheme will be implemented at the current RDEC rate of 20%. The notional tax rate applied to loss makers in the merged scheme will be the small profit rate of 19%, rather than the 25% main rate currently set in the RDEC. For the same periods, the intensity threshold in the R&D intensives scheme will also be reduced from 40% to 30%, which the government expects will allow around 5,000 extra SMEs to qualify for an enhanced rate of relief. A one-year grace period will provide certainty for companies who dip under the 30% threshold that they will continue to receive relief for one year.

### Key NIC changes

The main rate of primary class 1 employee NICs will be reduced from 12% to 10% as from 6 January 2024.

The main rate of class 4 self-employed NICs will be reduced from 9% to 8% as from 6 April 2024.

Self-employed individuals will no longer be required to pay class 2 NICs as from 6 April 2024.

### Investment zones

The government has announced four new investment zones in England: the East Midlands Investment Zone, the Greater Manchester Investment Zone, the West Midlands Investment Zone, and the West Yorkshire Investment Zone. A second investment zone in Wales, focusing on the Wrexham and Flintshire region was also announced. Details of all investment zones will be confirmed by summer 2024. In addition, the investment zones program in England will be extended from five to 10 years.

### Freeports

The government has announced that the window to claim freeport tax reliefs in England will be extended from five to 10 years through September 2031. For freeports in Scotland and Wales, the reliefs will also be extended from five to 10 years, subject to agreement with the devolved administrations.

### Business rates

The small business multiplier will be frozen in 2024/25.

Retail, hospitality, and leisure relief will be extended up to a GBP 110,000 cash cap per business.

The standard rate multiplier will be uprated in line with consumer price index (CPI) inflation.

### Stamp duty

As from 1 January 2024, the growth market exemption, a relief from stamp duty and stamp duty reserve tax (SDRT), will be extended to include smaller, innovative growth markets. In addition, as announced in September, the government confirmed that as from 1 January 2024, the existing 0% charges under stamp duty and SDRT on issues (and certain related transfers) of securities onto foreign markets, will be brought permanently into UK law following the changes in the Retained EU Law (Revocation and Reform) Act 2023 taking effect.

### Offshore receipts in respect of intangible property (ORIP) and undertaxed profits rule (UTPR)

The government will repeal the ORIP rules with effect for income arising as from 31 December 2024, as a welcome simplification measure given that the policy objective will be addressed by the Pillar Two rules. The Pillar Two UTPR will take effect for accounting periods beginning on or after 31 December 2024. The government will also make technical amendments to the multinational top-up tax and domestic top-up tax legislation through the Autumn Finance Bill 2023.

### Key indirect tax measures

Duty rates on all tobacco products increased by retail price index (RPI) plus 2% and on hand-rolling tobacco by RPI plus 12% as from 6 pm on 22 November 2023.

Alcohol duty rates will be frozen until 1 August 2024.

Vehicle excise duty (VED) rates for cars, vans, and motorcycles will be increased in line with the RPI as from 1 April 2024. VED rates for heavy goods vehicles (HGVs) and the HGV levy will be maintained at 2023-24 levels for 2024-25, as from 1 April 2024.

The van benefit charge and the car and van fuel benefit charges will be maintained at 2023-24 levels for 2024-25.

The scope of the current VAT zero rate relief on women’s sanitary products will be extended to include reusable period underwear as from 1 January 2024.

### Key net zero measures

The rate of the following taxes will increase in line with the RPI:

- Aggregates levy (as from 1 April 2024 and as from 1 April 2025);

- Air passenger duty (as from 1 April 2024); and
- Landfill tax (as from 1 April 2024).

Plastic packaging tax will be increased in line with the CPI as from 1 April 2024; and

The main and reduced rates of climate change levy will be frozen as from 1 April 2025.

As from February 2024, the VAT relief available on the installation of energy-saving materials will be expanded by extending the relief to additional technologies, such as water-source heat pumps.

### Tax administration

The government has confirmed a new criminal offense for promoters of tax avoidance who continue to promote avoidance schemes after receiving a stop notice, and a new power enabling HM Revenue & Customs (HMRC) to bring disqualification action against directors of companies involved in promoting tax avoidance, with effect from royal assent to Autumn Finance Bill 2023.

As from 6 April 2024, compliance with VAT obligations will be added to the construction industry scheme gross payment status (GPS) compliance test and HMRC's powers will be expanded to remove GPS immediately in cases of serious noncompliance involving VAT, income tax self-assessment, corporation tax self-assessment, and pay as you earn (PAYE).

Those under the GBP 30,000 turnover threshold will remain outside the scope of Making Tax Digital for now. Some administrative simplifications also will be made to the initiative.

### Other announcements

Other announcements made by the chancellor include the following:

- Following consultation, the government is expanding and simplifying the income tax cash basis for the self-employed and partnerships as from 6 April 2024, for 2024-25.
- An exemption from the electricity generator levy for receipts from new electricity generating stations, where the substantive decision to invest is taken on or after 22 November 2023.
- Tax relief for payments by oil and gas companies into decommissioning funds where this relates to the repurposing of assets within the oil and gas corporation tax ring fence for use in carbon capture, usage. and storage activities, and removal of corresponding asset value payments for those assets from the charge to the energy profits levy.
- The government will consult on proposals to bring remote gambling (over the internet, telephone, television, and radio) into a single tax.
- Gross gaming yield bandings used to determine the rate of gaming duty will be frozen as from 1 April 2024.
- The national living wage will increase by 9.8% to GBP 11.44 per hour with the age threshold lowered from 23 to 21 years old.
- Investment in HMRC's debt management capability.

United States

## State Tax Matters (3 November 2023)

The 3 November 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
  - Hawaii: Department of Taxation addresses implementation of new elective passthrough entity-level tax
  - Kansas: Department of Revenue notice addresses corporate income tax rate reduction to 3.5% as from 1 January 2024
  - Michigan: Taxpayer asks US Supreme Court to review decision on apportionment formula validity as applied to gain from deemed asset sale
  - Michigan: Tax Tribunal holds in taxpayer's favor that subsidiary was not unitary with parent
  - New Jersey: Division of Taxation addresses convenience of the employer rule for nonresidents who never physically work in-state
  - Ohio: Press release addresses new law on Ohio resident credit for passthrough entity state and local tax (SALT) cap taxes imposed by other states
  - Utah: State Tax Commission updates nexus publication for businesses, including varying standards by tax type
  - Wisconsin: New law updates state conformity to many federal income tax changes
- Sales/Use/Indirect:
  - Texas: Comptroller of Public Accounts proposes changes to local tax situsing rule
  - Vermont: Guidance addresses taxation of prewritten software accessed remotely (software as a service (SaaS), infrastructure as a service (IaaS), and platform as a service (PaaS))
  - Washington: Department of Revenue addresses taxation of goods received by Canadians in Washington near border
- Other/Miscellaneous:
  - Maryland: Digital advertising gross revenues tax refund denial notices give taxpayers only 30 days to appeal

United States

## State Tax Matters (10 November 2023)

The 10 November 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Articles:
  - "Alternative Apportionment: Essential In Today's Single-Sales-Factor World"
  - "State Corporate Income Tax Due Dates—Disruption and Realignment"
- Income/Franchise:
  - Hawaii: Department of Taxation addresses implementation of new elective passthrough entity-level tax
  - Louisiana: Department of Revenue explains new law providing some passthrough entity tax revisions
  - Maine: Supreme Judicial Court holds sourcing is determined using market member method rather than market client method
  - New Jersey: New and updated bulletins reflect corporation business tax (CBT) law changes involving combined reporting and banks
  - Texas: Comptroller addresses new law increasing no-tax-due total revenue threshold and eliminating filing of certain franchise tax returns
  - Texas: Recent election suggests voters support prohibition against imposing an individual wealth or net worth tax
- Gross receipts:
  - Ohio: Commercial activity tax (CAT) agency exclusion did not apply to reimbursements from management fee contracts
  - Washington: Supreme Court agrees to hear case on whether investment funds are eligible for investment income deduction
- Sales/Use/Indirect:
  - Missouri: Supreme Court affirms intercompany resales of configured information technology (IT) equipment qualify for exemption
- Property:
  - Texas: Recent election suggests voters support certain legislatively established property tax cuts

The newsletter also features a recent Multistate Tax Alert: "Massachusetts Life Sciences Center Tax Incentive Program expected to open in December 2023"

### State Tax Matters (17 November 2023)

The 17 November 2023 edition of *State Tax Matters* includes coverage of the following US state tax developments:

- Income/Franchise:
  - California: Limited time resolution for some eligible transactions subject to non-economic substance transaction (NEST) penalty is extended
  - Colorado: Department of Revenue adopts rule changes on federal conformity and qualified business income (QBI) deduction addback
  - Michigan: New law amends some administration and procedures for city income taxes
  - North Carolina: Department of Revenue's failure to meet procedural deadline voids tax assessment involving intercompany transactions
  - Oregon: Recent election suggests City of Salem voters reject 0.814% payroll tax on businesses
  - Texas: Supreme Court denies petitions for review in multiple cases involving the sales factor treatment for sales of securities
- Gross receipts:
  - Washington: Appellate court affirms bank's in-state activities satisfied business and occupation (B&O) tax physical presence nexus requirement
- Sales/Use/Indirect:
  - Nevada: Credit card processing fee included on invoice of taxable sale is subject to sales tax

---

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