

# WTS Value Added Tax Newsletter



## Editorial

Dear Reader,

It is our pleasure to present to you the WTS Global VAT News edition for Q2 2019.

This issue of WTS Global VAT News reports on recent or expected changes in VAT and GST regulations and compliance duties in **various EU and third countries**.

As announced in our WTS Global VAT News for Q4 2018, **Angola** will implement a new VAT Code from July 2019. In this issue we describe the main aspects of the new rules. In this issue we report on the Austrian Digital Tax Act 2020 which – among other regulations – introduces a digital services tax to be levied in **Austria** from 2020. In **France** a digital tax will be implemented still in 2019. Furthermore, the newsletter includes a feature about recent VAT changes in **Bulgaria**, in relation to which we would like to highlight the deferred accrual of VAT on imports which will be effective from July 2019. In addition, the newsletter reports on recent reductions of VAT rates in **China** and other measures to cut taxes.

In **Italy**, the special taxation of goods sold via online marketplaces has already been in place for special products since February 2019, based on the EU proposal for the taxation of sales via marketplaces from 2021. For **Poland**, the VAT implications of “DAC6” are detailed, along with the planned changes in the VAT law such as the mandatory split payment system and a deferred settlement of import VAT. In **Portugal**, many new compliance rules for invoices and other tax-relevant documents will be implemented in 2019. In the **United States**, the Wayfair decision led to a new focus on Sales and Use Taxes which must now also be taken into consideration by remote sellers with no physical presence in the US. The two articles from our US colleagues describe the general concept of the US Sales and Use Tax as well as the impact of the Wayfair decision on the enforcement of US Sales and Use Tax.

We hope you find our newsletter useful and welcome your feedback and suggestions.

If you have any questions regarding any aspects of this newsletter, please do not hesitate to contact us.

Yours sincerely,

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## Angola



### Angola approves implementation of VAT in July 2019

As announced in our WTS Global VAT Newsletter for Q4 2018, Angola will implement its own Value Added Tax Code on 1 July 2019 (Law no. 7/19 dated 24 April 2019).

In this context, we would like to highlight the following:

The Value Added Tax (VAT) Code will enter into force on 1 July 2019 in Angola and applies mandatorily to all taxpayers registered with the Major Taxpayers Tax Office and to the importation of goods. Taxpayers registered at other tax offices, with a turnover or importation of goods of more than USD 250,000, will be subject to an interim regime during FY2019 and FY2020. Nevertheless, taxpayers may choose to join the standard VAT regime, upon fulfilling certain requirements. The VAT Code will apply mandatorily to all taxpayers in 2021.

According to the VAT Code, all transmissions of goods and supplies of services effected for consideration, in national territory, by a taxable person and the importation of goods are subject to VAT, except certain transmissions of goods exempt of VAT, such as the transmission of essential goods, operations subject to real estate transfer tax ("SISA") and the collective transport of passengers, amongst others.

The VAT Code sets forth a flat VAT rate of 14%. For taxpayers subject to the **interim regime**, the VAT is computed by applying a tax rate of 7% to the total amount of sales and/or services rendered and reported for the previous three months, with the right to deduct up to 4% of the VAT borne on the acquisition of goods and services that are listed on the suppliers table (see below). In the event that this deduction is higher than the VAT assessed, no refund is granted.

Taxpayers under the interim regime should submit, no later than the last day of the following month, a suppliers table listing all transactions completed in the previous month in connection with acquisitions of goods or services from taxpayers covered by the standard VAT regime, as well as concerning acquisitions of services from non-resident service suppliers.

Taxpayers under the **standard VAT regime** should submit, each month, the periodic declaration and its attachments regarding the transactions completed in the previous month, with the indication of the tax due or tax credit, as well as supporting evidence for its computation. For these taxpayers, when the tax deduction is higher than the VAT computed, the excess is deducted over the subsequent periods. If, after a three-month period in which the excess has been verified, the tax credit remains and is higher than 3,409 UCFs (fiscal correction units – roughly AKZ 300,000.00 at the time of writing), the taxpayer may request a corresponding VAT refund, without prejudice to the documents that led to the tax credit being inspected.

The non-submission or late submission of the VAT electronic return is subject to a penalty of 5,862 UCFs (roughly AKZ 515,856.00 at the time of writing) per infraction, regardless of the payment of the tax due or not submitted as a consequence of the transgression, it being the case that when committed intentionally, the above-mentioned penalty will double. If the infraction is settled during the 30 days immediately following the deadline, the penalty will be reduced to half of its amount.

Moreover, we would like to highlight the introduction of the **captive VAT regime**, which comprises the withholding (and payment to the Treasury) by the purchaser of goods and services of the VAT levied on those supplies and included in the invoice or equivalent document. The captive VAT regime applies to oil companies, State and local authorities (except state-owned enterprises), which must withhold 100% of the VAT charged on the goods and services they acquire, as well as the National Bank of Angola, commercial banks, insurers and reinsurers and telecommunications operators, which must withhold 50% of the VAT charged on the goods and services they acquire. However, the captive VAT regime does not apply to services provided by commercial banks.

In line with the implementation of VAT in Angola, other related legislative changes have entered into force, such as the revocation of the Regulation of Consumption Tax (Presidential Decree no. 3-A/14, dated 21 October), Stamp Duty (item no. 15 of the table attached to the Presidential Decree no. 3/14, dated 21 October) and Stamp Duty on Customs Duties. Amendments to the PIT Code (Law no. 9/19 of 24 April) have also entered into force, amongst others.

Finally, as also announced in our WTS Global VAT Newsletter for Q4 2018, Angola has introduced a new tax – the Special Consumption Tax (*Imposto Especial de Consumo* – IEC).

The Special Consumption Tax Code (Law no. 8/19 of 24 April) has also been published and is due to enter into force on 1 July 2019. It applies to various products such as alcoholic beverages, tobacco, collector vehicles, petroleum products and others. Special Consumption Tax applies to all products produced or imported in Angola. The tax rates may vary (between 2% and 19%) depending on the type of product and are listed in tables (ANEXO I & ANEXO II) attached to the Special Consumption Tax Code.

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## Austria



### Austrian Digital Tax Act 2020

On 4 April 2019 the Austrian Ministry of Finance submitted the draft Digital Tax Act 2020 to the public for evaluation. In addition to the introduction of a new digital tax on online advertising services, the Digital Tax Act 2020 will implement the EU e-commerce package into the Austrian Value Added Tax Act. Moreover, Austria aims to make electronic marketplaces more responsible for the collection of VAT.

#### Digital (online) advertising tax

Following the recent rejection of the Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, the EU has failed to reach an agreement regarding the enforcement of a bloc-wide digital tax on tech “MNE giants” such as Google, Apple, Facebook and Amazon. Therefore, Austria plans to introduce its own national digital tax on online advertising services, which will enter into force on 1 January 2020. The draft proposal for the digital advertising tax is based on the rejected Council Directive.

Currently, sales of traditional advertising space, such as in print media, broadcasting, posters and billboards, are subject to Austrian advertising tax. Online advertising is not taxed by the 5 per cent Austrian advertising tax. Therefore, the planned new digital services (advertising) tax will apply at a rate of 5 per cent on digital advertising revenues for companies with worldwide revenues of more than EUR 750 million and Austrian digital advertising revenues of more than EUR 25 million. The new digital services tax should cover digital advertising services in the domestic market. This means that the digital advertising tax should apply to revenues generated in Austria through sales of online advertising space, such as banner advertising and search engine advertising. One main prerequisite is that the online advertising targets Austrian internet users and is displayed on an Austrian user's device with a domestic Internet Protocol (IP) address.

The person liable for payment of the tax (tax debtor) is the online advertiser (i.e. the entity in receipt of the taxable revenues), which must calculate the tax and pay by the 15th of the second month following the date on which the tax claim arises. The tax claim arises at the end of the month in which the taxable service is rendered. Moreover, three months after the end of the financial year, the tax debtor must submit a digital services tax return for the previous year. Furthermore, the online advertiser is obliged to keep records of the online advertising services taken over, any other companies commissioned by it in this regard, the clients and the basis for calculating the digital tax.

The new regulations are due to enter into effect on 1 January 2020.

### **Implementation of the e-commerce package**

With the Digital Tax Act 2020 the Austrian legislator will also implement the e-commerce package of EU Directive 2017/2455. The goal of the e-commerce package is to strengthen taxation in the destination state.

For example, one main change is that entrepreneurs – who facilitate distance sales of goods imported from third territories to a non-taxable person, where the individual value of the goods per supply does not exceed EUR150, by using an electronic interface, such as a marketplace, a platform, a portal or something similar – shall be treated as if they had received and supplied those goods themselves. The interface will therefore owe the VAT for the distance sales themselves, whereas the deemed supply of the supplier to the interface shall be exempt from tax.

Furthermore, deliveries from third countries are currently exempt from VAT if the value of the goods does not exceed EUR 22. This tax exemption for the import of small value items will be abolished. Consequently, in future, all sales will be taxed from the very first cent. However, a new distance selling regime will be simultaneously introduced. That means the import of goods with a value of up to EUR 150 will be exempt if a VAT identification number is provided in the import declaration and the supply of goods is taxed under a special regime (Import One Stop Shop – IOSS). The IOSS will apply to all services provided by a non-EU business to non-taxable persons within the EU.

The implementation of the e-commerce package shall enter into force on 1 January 2021.

### Obligations for electronic marketplaces from January 2020

Operators of online platforms or electronic marketplaces enabling supplies or other services over it must record detailed information about individual traders using their site and forward the information to the Austrian tax authorities (electronically on request). One main prerequisite is that the operator does not itself become the debtor of the VAT. The recorded information must include, for example, annual turnover, customer names as well as records concerning stocks, and aims to ensure that VAT has been correctly accounted for. Details are regulated in the Value Added Tax implementing regulation ("*Sorgfaltspflichten-Umsatzsteuerverordnung*"). If the obligations are not fulfilled, the operator of the electronic marketplace or online platform will be held liable for the tax. This rule shall concern, for example, services within the framework of the "sharing economy" or distance sales within the EU. If the e-commerce package enters into force in 2021, operators who become the debtor of the VAT shall no longer be subject to this obligation.

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The new regulations are due to enter into effect on 1 January 2020.

## Bulgaria



### VAT news 2019

#### Deferred accrual of VAT on imports

With effect from 1 July 2019, Bulgaria will apply the so-called deferred accrual of VAT (or reverse-charge mechanism) on imports of certain goods (pursuant to art. 211 of the EU VAT Directive). The newly introduced rules will be applicable to certain categories of taxable persons and will cover the importation of the goods listed in Appendix No. 3 to the VAT Act. The list of goods includes ferrous and non-ferrous metals, ores, organic and non-organic chemical products (i.e. the goods referenced in Chapters 25, 26, 28, 29 and Chapters 72–80 of the Combined Nomenclature).

The importers who are entitled to apply the deferred accounting of VAT should meet all of the following conditions:

- (i) they must have been registered for VAT purposes under the general VAT registration rules at least six months prior to the import,
- (ii) they should not have any outstanding public liabilities, and
- (iii) the customs value of each item declared for import must be equal to or higher than BGN 50,000 (approx. EUR 25,500).

The right to input VAT deduction is applied through the monthly VAT return submitted by the importer by including the import customs declaration and the protocol for VAT reverse charge in the monthly VAT sales and purchase ledgers. Thus, the importer is entitled to enjoy input VAT deduction without the import VAT being effectively paid to the customs office upon importation of the goods.

### Triangular operations

Following the latest amendment to the Implementing Regulation to the VAT Act, the conditions which should be cumulatively fulfilled so that the triangulation simplification applies are as follows:

- (i) The supply of goods must be carried out between three taxable persons;
- (ii) A VAT-registered person in member state A (transferor) supplies the goods to a VAT-registered person in member state B (intermediary). Subsequently, the intermediary from state B supplies the same goods to the end customer registered in member state C (acquirer);
- (iii) The goods should be transported directly from member state A to member state C;
- (iv) The intermediary should not be registered for VAT purposes in either state A or state C. Nevertheless, this condition shall be deemed fulfilled even in the event that the intermediary is VAT-registered in member state A or C, but has performed the intra-Community acquisition of the goods under its VAT ID number issued in member state B.
- (v) The acquirer accounts for the VAT due in relation to the supply.

### VAT treatment of vouchers

The Vouchers Directive (EU) 2016/1065 of 27 June 2016 was implemented in Bulgarian VAT law as of 1 January 2019. The newly adopted provisions introduce the terms 'single-purpose voucher' and 'multi-purpose voucher' and establish the rules for their VAT treatment.

The new rules will apply for vouchers issued after 31 December 2018.

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## China



### New VAT policies for tax cuts

#### Background

The VAT reduction was first announced by Premier Li Keqiang in the government work report to the 13th National People's Congress. After that, China's State Administration of Taxation (SAT), Ministry of Finance (MOF) and General Administration of Customs (GAC) jointly issued Announcement [2019] No.39 to formally announce the massive reduction of VAT.

This is the sixth round of tax reductions since the replacement of business taxes by VAT in 2012. This VAT reduction is expected to boost the development of China's economy, especially the manufacturing sector.

### Reduction of VAT rates

The adjustments are summarised below:

Types	Old rates (effective until 31 March 2019)	New rates (effective from 1 April 2019)
VAT rates for general VAT taxpayers' sales activities or imports	16% 10%	13% 9%
Agricultural products	10% 12%	9% 10% (Note 1)
Export VAT refund rates	16% 10%	13% 9%
VAT refund rates for goods bought by visitors	11%	11% (Note 2) 8% (Note 3)

Notes:

1. For those products used in production or consigned processing and subject to sales VAT at 13%.
2. For goods taxed at 13%.
3. For goods taxed at 9%.

### Preferential policy for input VAT credit

- The input VAT on immovable properties or immovable properties under construction can be credited at one time instead of over two years.
- Expanded input VAT credit scope – The input VAT for domestic passenger transportation services may be credited.
- Additional 10% deduction of input VAT – Qualified enterprises in production or livelihood services industries are granted a further 10% input VAT deduction for the period from 1 April 2019 to 31 December 2021.

### VAT refund policy for unused VAT credits

Businesses can apply for a refund of unused VAT credits incurred since 1 April 2019, provided that certain criteria are met. The VAT refund amount is calculated as follows:

Refund = unused VAT credit × proportion of input VAT × 60%

- Proportion of input VAT = (Input VAT + VAT receipt issued by customs + tax receipt accumulated from April 2019 to present) / total input VAT over the same period.

### WTS observation

- The new round of VAT reductions came into force on 1 April 2019, but there are still some uncertainties, e.g. the process for input VAT credit for passenger transportation services and VAT refunds for unused VAT credit. The government is expected to release more detailed implementation articles or formalities in due course.



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- The tax burdens of many industries (e.g. manufacturing, transportation and construction, etc.) will be significantly reduced. Companies in these industries are advised to check their current and future contracts to manage the impact of this tax reduction. Further discussions with suppliers and customers will be necessary.
- The policy provides for a transitional treatment (i.e. the applicable export VAT refund rates for the period prior to 30 June 2019).
- Not all taxpayers can obtain a VAT refund – only those that have been awarded a good tax compliance rating. It sends a signal that compliance is paying off and that a good credit rating is something all operators should endeavour to achieve.

## France



### France introduces its own tax on digital services

On 6 March 2019, the French Minister of Economy and Finance announced a draft law implementing a tax on digital services. This draft law was adopted on 8 April 2019 by the French National Assembly and will be submitted to the French Senate on 21 May 2019 before being definitively adopted.

This tax will be levied on companies in the digital sector that generate a significant portion of their value from the participation of internet users located in France.

The tax is largely based on the European Commission's proposal for a common system of a digital services tax applicable to digital services, which is currently under negotiation. It responds to an immediate need for tax fairness and will apply until international tax rules have been adapted in order to tax the digital presence of these companies. Thus, the French tax on internet giants must be the first step towards a more ambitious project led by the OECD between now and 2020.

The tax will be set at 3% for digital revenues generated in France. More precisely, this tax will be levied on the three types of activity that generate the most value: targeted online advertising, data sales for advertising purposes, and the connection of internet users through platforms, in particular marketplaces. These services will be taxed according to the proportion of internet users' activities carried out in France.

E-commerce and digital services are not concerned. In addition, communication services, payment services and regulated financial services are also exempt.

Furthermore, only digital companies with a large audience and high revenue will be affected. Indeed, two tax thresholds are provided for: EUR 750 million of digital services taxable worldwide and EUR 25 million of digital services taxable in France. The proportion of turnover generated in France will be determined by applying a coefficient of digital presence in France, determined by a pro rata calculation of French users, to the worldwide turnover.

At this stage and awaiting discussions before the Senate, the official government press release indicates that this tax amount will be a deductible expense from the corporate tax base.

The tax will be levied in April of each year. It will be subject to two instalments, one in April and one in October, each equal to at least 50% of the amount of tax due for the previous year, with a regularisation being carried out when the return is filed. In 2019, only one instalment will be paid in October based on the proportion of services attached to France over the period between the entry into force of the law and 30 September 2019. For the regularisation of the tax for the year 2019, the proportion of services attached to France will be determined over the period between the entry into force of the law and 31 December 2019.

The tax authorities' statute of limitations should be extended from three to six years from the year in which the tax is due.

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The French government estimated that the yield from this tax will amount to EUR 500 million per year.

## Italy



### Marketplace to buy & sell VAT fulfilments

In order to combat VAT fraud in online transactions, a specific measure has been adopted in Italy in 2019 (Art. 11-bis, Para 11-15, Law Decree 135/18, converted by Law 12/2019).

The focus is on "sensitive" products, i.e. mobile phones, games consoles, tablet PCs and laptops. Before now, these products were already under special scrutiny. In fact, Italy has implemented the reverse charge mechanism with regard to B2B supplies of these products carried out during the distribution phase, which occurs prior to the retail phase.

Now, new VAT measures have been implemented, focusing on B2C supplies of these products that are facilitated by entities (so called "marketplaces") through the use of an electronic interface, i.e. a virtual market, platform, portal or similar means. In operational terms, if the related requirements are met, the marketplace is deemed to have received and then sold the goods.

#### Subject matter and scope

An entity (referred to as a "marketplace") which, through the use of an electronic interface, i.e. a virtual market, platform, portal or similar means, facilitates the following transactions is deemed to have received and then sold the underlying goods.

As mentioned above, the relevant goods are:

- mobile phones,
- games consoles,
- tablet PCs and
- laptops.

The transactions covered by these new VAT measures are:

- distance sale of the relevant goods that are imported from non-EU countries and that have an intrinsic value not exceeding EUR 150.00;
- B2C sale of relevant goods within the EU by non-EU taxable persons.

For the above purposes, it has been assumed that the person selling the goods through the electronic interface is a taxable person and that the person purchasing the goods is a non-taxable person.

### **Obligations of marketplaces**

As a result of the new VAT measures, the marketplace becomes the person liable for payment of VAT to the tax authorities.

In other words, the transaction is split into two subsequent sales:

- the supply from the supplier to the marketplace (B2B transaction); and
- the supply from the marketplace to the end customer (B2C local sale).

With regard to the supplies of goods carried out, the marketplace shall:

- have adequate documentation; such documentation shall be sufficiently detailed so that the tax authorities of the EU Member States in which the underlying transactions are taxable can check that the related VAT has been recognised correctly;
- upon request, make available such documentation, in electronic format, to the EU Member States involved;
- retain such documentation for a period of 10 years (following the year in which the transaction was performed).

If the marketplace is established in a State that has not signed a mutual assistance agreement with Italy, said marketplace must appoint an intermediary who will act in its name and on its behalf.

With regard to ongoing VAT fulfilments referred to during the initial period of implementation of these new VAT measures, specific postponements of the related deadlines have been granted (see DPCM 28 February 2019).

### **Entry into force**

The new VAT measures under analysis shall apply with effect from 13 February 2019, i.e. the date of the entry into force of the law converting Law Decree 135/2018.

### **Interaction with EU rules**

These new VAT measures seem not to be covered by the EU rules currently in force, so interested persons could ask the EU Commission to take subsequent actions.

As a matter of fact, these new VAT measures have been applied early in 2019 to a scope of products limited to those items listed above, prior to the full entry into force of the new rules on 1 January 2021 in line with the amendments to Directive 2006/112/EC (art. 14 and 14-bis) as set forth by Directive 2017/2455/EC.

### **Expected developments**

At the time of writing this newsletter, the Italian government is discussing a possible change to the current measure. Based on the draft available at present, the purpose is to replace the general VAT liability with the obligation to file (on a quarterly basis) the details

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of all the sales facilitated through the electronic interface. This would imply an extension of the application of the measure that would cover the sale of all kinds of products (and not only mobile phones, games consoles, tablet PCs and laptops) and, at the same time, it would limit the VAT liability to the case where the marketplace omits to file the quarterly communication (or files an incomplete communication) and is unable to demonstrate that the VAT has been paid by the supplier.

## Poland I



### Important changes in VAT

#### Mandatory "split payment system" in Poland

The EU Council recently issued an implementing decision authorising Poland to introduce a mandatory "split payment system" for certain goods and services. The mandatory split payment system is designed to replace the current reverse charge mechanism in force for specific goods and services (e.g. copper wire, glass waste, paper and cardboard waste, secondary raw material from plastic, a vast range of construction works). However, in accordance with the Council's decision, the existing list of goods and services subject to the reverse charge mechanism will be expanded to include, for example, vehicle parts and accessories, coal, motor fuels, animal and vegetable oils and fats, and computers. Consequently, the list of goods and services subject to mandatory split payment will include 152 product groups.

The mandatory split payment mechanism will apply to supplies between taxable persons, including those not established in Poland.

The EU Council has agreed for the system to be operative between 1 March 2019 and 28 February 2022. However, the changes have not yet been formalised into a published legislative proposal. The Director of the VAT department at the Polish Ministry of Finance has admitted in a recent interview that the mandatory split payment will not come into force until January 2020 at the earliest.

#### Cash-free import VAT settlement limited from 1 May 2019

Polish VAT regulations provide for two possibilities of import VAT settlement. In general, the VAT amount is reported in a customs declaration and paid to the customs authorities along with the customs duties at the time of importation. Then, the import VAT may be deducted in a VAT return.

Polish VAT regulations provide for a simplified cash-free procedure for import VAT. When applied, the VAT is reported in a VAT return through a reverse charge mechanism (input VAT = output VAT) instead of its payment to the customs authorities. To apply this simplification, some formal requirements must be met.

The simplified procedure for import VAT is popular along Polish taxable persons as it positively impacts cash flow (no VAT is paid to the customs authorities). However, from 1 May 2019 the possibility of applying this procedure will be restricted.

This results from the implementation of the EU's Union Customs Code (UCC), through which new regulations regarding permits (authorisations) to use the simplified procedures have been introduced. Going forward, the customs declaration shall be lodged in the taxable person's own name and on their own behalf or via an indirect representative. The use of permits obtained by a direct representative will no longer be possible.

Although the UCC entered into force on 1 May 2016, a three-year-transitional period was introduced to allow time for the reassessment of permits.

The transitional period will soon come to an end. Consequently, from 1 May 2019 a taxable person will only qualify for the simplified import VAT settlement if:

- it has been granted the status of Authorised Economic Operator (AEO), or
- it has been granted its own customs simplification authorisation, or
- it cooperates with a customs agency that has the appropriate authorisation and acts as its indirect representative.

Bearing in mind the above, a reassessment of permits and representative agreements shall be made.

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## Poland II



### DAC6 Directive – Mandatory Disclosure Rules (MDR) for domestic VAT arrangements

Poland has brought forward the transposition date of the Council Directive (EU) 2018/822 (DAC6 Directive) into Polish legislation. The obligation of reporting tax arrangements has been in force since 1 January 2019 – this is 18 months earlier than the deadline of 1 July 2020 required by the DAC6 Directive. Moreover, the Polish MDR legislation is much wider in scope in comparison to the provisions laid down in the EU regulations.

Despite the fact that the Polish act transposes the DAC6 Directive, both acts differ significantly. Under the Polish MDR legislation the obligation of reporting is extended as compared to EU regulations to include not only cross-border arrangements, but also domestic tax arrangements if the taxpayer is a "qualified beneficiary" within the meaning of the law. Furthermore, Poland introduced a few additional hallmarks.

Consequently, the implementation of the Polish MDR legislation imposes some obligations with respect to VAT. If an arrangement concerns only VAT it may fall under the obligation of reporting in Poland as a domestic tax arrangement (cross-border arrangements covering only VAT are not reportable). According to explanations provided by the Polish Ministry of Finance, this obligation does not, however, arise in the case of, e.g.:

- choosing VAT taxation of real estate transactions by waiving voluntary VAT exemption, and
- activities regarding past transactions aimed at proper VAT settlement (VAT compliance).

Tax arrangements which concern only VAT are reportable if the first activity regarding this arrangement was conducted in the period from 1 November 2018 onwards. For those from 2018, the deadline of 30 June 2019 is generally applicable.

Tax arrangements commencing after 1 January 2019 are reportable within 30 days of the day the scheme is made available for the client, ready for implementation or offered, whichever is sooner.

However, the authorities confirmed that delays in complying with reporting obligations under MDR will not have adverse consequences for those required to report, provided full compliance was ensured by 28 February 2018. Importantly, the deferred reporting deadline does not apply to disclosures concerning any time after 29 January 2019. A compliance delay of up to two further months (i.e. where compliance is ensured between 1 March and 30 April 2019) will, however, be treated only as a light infringement.

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Any failure to meet a reporting obligation may be subject to a fine of up to PLN 21.6 million (approx. EUR 5 million).

## Portugal



### Invoices and other tax-relevant documents: new rules

Decree-Law No. 28/2019 of 15 February 2019 ("DL 28/2019") consolidates and updates Portuguese obligations for invoices and other tax-relevant documents.

DL 28/2019 entered into force on 16 February but includes some measures that apply in a phased manner, as described below.

DL 28/2019 is applicable to all taxable persons that carry out taxable transactions subject to Portuguese invoicing rules. The new article 35-A added to the Portuguese VAT Code transposes article 219-A of the VAT Directive, which clarifies when the issuance of an invoice for a taxable supply is subject to Portuguese rules.

#### **Exclusive use of certified invoicing programmes**

Obligation of exclusive use of invoicing programmes certified by the Portuguese Tax Authority ("PTA") to issue invoices and other tax-relevant documents

- i) by taxable persons with their head office or fixed establishment in the Portuguese territory or
- ii) by taxable persons that perform taxable transactions to which Portuguese VAT rules apply,

whenever one of the following conditions is met:

- Turnover exceeding EUR 75,000 in 2019 (from 2020: EUR 50,000);
- Use of invoicing software or
- Obligated to have, or opted for, organised accounting.

This obligation has to be fulfilled by the taxpayers concerned from **1 July 2019**. The PTA has a list of currently available certified invoicing programmes and is also expected to provide a free billing application (invoicing software).

### **Exemption from printing or transmitting e-invoices in transactions with non-taxable persons**

Taxpayers are exempt from the printing of paper invoices or the electronic transmission of PDF invoices to customers/recipients when recipients are non-taxable persons (except where they request it), provided that the following conditions are cumulatively fulfilled:

- The tax identification number of the purchaser is included in the invoice;
- Invoices are processed and communicated to the PTA through a certified computer programme, and
- The taxable person has opted for the transmission of invoices in real time to the PTA.

### **Electronic archive**

Invoices and other tax-relevant documents issued or received in paper form can be digitised and stored in electronic form. When the documents are in paper form, the archive must be stored in the Portuguese territory, while if they are in electronic form, the file may be stored in any EU Member State, subject to the prior authorisation of the PTA.

Taxable persons are obliged to notify the location of the archive to the PTA within **30 days following the publication of the ordinance** that alters the models of the declarations of commencement and of alterations of activity (to be published).

### **Notification on establishments**

Obligation to notify the following information to the PTA:

- Identification and location of the establishments where invoices and other tax-relevant documents are issued;
- Identification of the equipment used for the processing of invoices and other tax-relevant documents;
- The number of the programme's certificate used in each piece of equipment, where applicable;
- Identification of distributors and installers of billing solutions.

This information must be electronically notified through the PTA portal, until **30 June 2019, or within 30 days after the beginning of the activity** of the taxable person, for the taxable persons who initiate activity after 31 May 2019.

### **Deadline for communicating invoice details (SAF-T-files)**

The time frame for communication to the PTA of the invoice details (most frequently done through the submission of the SAF-T file) has been shortened:

- During 2019 – until the 15th of the month following the date of issuance;
- From 1 January 2020 – until the 10th of the month following the date of issuance.

### QR code and single document code

As of **1 January 2020**, invoices and other tax-relevant documents must include a two-dimensional barcode (QR code) and a single document code, to be defined by Government ordinance.

### Prior notification of documents' series numbers

Taxable persons shall be responsible for sending an electronic notification to the PTA regarding the identification of the series numbers used in the issuance of invoices (prior to their use) and other tax-relevant documents by each establishment and suitable processing means (unique invoice code: UUID).

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For each document series number notified, the PTA will assign an additional (tax office) code for each invoice which should be referenced on the invoice.

## United States I



### US Sales & Use Tax vs VAT: What's the difference?

If you have been tracking US Sales and Use Tax over the last few years, you may have heard about the Wayfair case and its impact on US Sales and Use Tax. In order to understand Wayfair, we wanted to give a quick overview of US Sales and Use Tax and some insight on the areas you'll need to focus on when doing business in the US.

In Europe you are most familiar with VAT. Although both Sales and Use Tax and VAT are indirect taxes, the implementation of the two taxes is very different. We'll discuss how Sales Tax is implemented and highlight some of the differences between US Sales and Use Tax and traditional European VAT.

#### What's the difference between US Sales and Use Tax and VAT?

Value Added Tax (VAT) is a form of indirect tax that is imposed at different stages of production on goods and services. Sales and Use Tax (often referred to collectively as "Sales Tax") is only imposed on the end user of the goods or services. So unlike VAT, we try to impose Sales Tax on the very last sale, i.e. the sale to the ultimate user of the goods and services. The idea is the tax is due at first "use" of the goods or services, not when it goes from one stage of production to the next.

Since Sales Tax is imposed only once, there is no concept of input tax credits, nor do we take credit for Sales Tax paid on items procured. Since conceptually, only the end user should pay the Sales Tax, items purchased that later become resold goods or materials, including raw materials used in the production of new goods, are exempt from tax at the time of purchase using either prescribed manufacturing exemptions in the state of production or via resale exemptions.

There is no federal Sales and Use Tax in the United States. Although many proposals have been put forward over the years, no form of federal Sales Tax or VAT has ever taken hold in the US. Sales and Use Taxes are implemented at state level in the US. Taxes can be imposed at multiple levels within the state (state, county, city and potentially defined taxing districts).



There are certain Sales Taxes that can be implemented below the state level in the US. If you do business in the states of Alabama, Colorado, Louisiana or Alaska or Puerto Rico, you may also be subject to city or county taxes that are administered by the local authority, not the state itself.

Since taxes are administered at a state level, tax rates and the taxability of goods and services vary from state to state. Although there are some common themes, each state (and sometimes locality) has the right to impose tax on different goods or services depending on their adopted laws. There are still four states – Delaware, Montana, New Hampshire and Alaska – that have no Sales Tax at the state level (Alaska and Montana do have some taxes administered locally).

In the US, states generally try to tax the sales of tangible personal property and certain enumerated services. Exemptions for personal use goods, medical devices, prescription drugs and professional services are common in the states, but rules vary from state to state. In certain cases, in lieu of an exemption a reduced rate may exist for certain goods and services. Many states have broad-based manufacturing exemptions that allow for the purchase of goods used in the manufacturing process at reduced or nil rates, but again the rules vary from state to state; it is vital that you check locally before you assume an exemption exists.

Since Sales Taxes are administered state by state, we always have the question of where to charge the tax, ergo which locality's rules apply to a sale. Generally, we use the "ship to" address as the situs for where to charge the tax. In order to determine whether a business is required to register and collect a jurisdiction's tax, we used the "physical presence standard", which was put into place via case law in the 1990s. The predominant theory was that physical presence would be required to trigger "nexus" or taxable presence in a particular jurisdiction. So remote sales were not deemed sufficient to establish nexus and therefore not sufficient to compel a business to register and collect a jurisdiction's Sales Tax.

This question of nexus or taxable presence is what the fuss has been about the last few years. As internet sales became more dominant in the marketplace and sellers no longer had to meet with their customers face to face, more and more businesses were outside the requirements and therefore states' revenues suffered. Brick and mortar stores were at a disadvantage and states began to look for new ways to implement requirements on remote sellers.

### **Enter Wayfair.com...**

The Supreme court decision overturned *Quill Corp. v. North Dakota* (1992), which had held that the Commerce Clause of the US Constitution barred states from compelling retailers to collect sales or Use Taxes in connection with mail order or internet sales made to their residents unless those retailers have a physical presence in the taxing state.

### **It's all about nexus**

Economic nexus, marketplace nexus, reporting requirements, affiliate nexus, click-thru nexus ... These are all new terms we've added to the indirect tax lexicon over the last few years. The states have now moved towards a more "economic" based nexus model that attempts to identify those businesses gaining a benefit from the states' markets and subsequently force them to collect and remit their state and local taxes.

## United States II



### US Sales & Use Tax: How to execute post-Wayfair decision

In my last article, I covered the difference between US Sales and Use Tax (SUT) and VAT. If you have been tracking SUT recently you may have heard about the Wayfair case and its impact on US Sales and Use Tax. In this article, I cover how to execute SUT post-Wayfair decision.

#### Reporting requirements

As states' Sales Tax revenues declined due to remote sales, they reacted with more aggressive enforcement and auditing of existing taxpayers and policy changes that sought to increase the taxable base. The concept of sales reporting and notification requirements was introduced in Colorado to potentially identify untaxed sales and compel the purchasers to self-assess the Use Tax.

Seven states implemented reporting requirements before Wayfair. More states announced immediately after the decision that they would also enact reporting requirements. Reporting requirements don't require businesses to officially register to collect the state Sales Tax; rather, they establish thresholds for annual reporting that would be required in lieu of collecting. Reports may have to be sent to customers indicating the total amount of tax-free purchases they made. Those same reports may also have to be sent to state taxing authorities.

After Wayfair, states that were on constitutionally shaky ground are now firmly justified and these requirements may have already been implemented. This is one of the first important areas to address post-Wayfair. Those responsible for Sales Tax collection and remittance should ask themselves:

- Does my business operate in one of the states that have already implemented reporting requirements?
- Are there more states enacting changes that take effect in the fourth quarter that I need to worry about?
- What type of data do I need to report to my customers and taxing authorities?

Reporting requirements could have a multitude of effects. Obviously, customers who have not been self-assessing Use Tax might take a second look at their purchases and their procedures knowing that their vendors are now required to report to taxing authorities. Our clients are primarily large corporations, and we have seen some of these companies compel their vendors to collect the state's tax. Don't be surprised if some customers request that you charge Sales Tax going forward. It may be a requirement for their continued business.

#### Registration

Once a business has decided that it is going to collect these taxes, it needs to look at requirements to do business in the state. Registration is usually a simple process but may vary by state. A business has the option of registering centrally, but if it does so, it may be automatically registered for all states that participate in the programme. Be prepared to provide some personal information for owners or officers. This seems simple enough, but the scrutiny over the security of personal data could make this a challenge.

### Exemption documentation

In the old paradigm, a distributor would only register where it had physical locations. Distributors are generally exempt from Sales Tax collection because their sales are for resale. Wayfair is not going to change that. If a company's sales are for resale, it may be compelled to register, but not necessarily collect the state tax. It will, however, have documentation requirements under the new regime. The burden of collecting and maintaining exemption documentation is on the seller. Although it may not have a Sales Tax collection burden, if it is required to register, it must maintain exemption documentation to ensure that during an audit, those sales are not deemed taxable and included in its assessment.

Businesses should consider automation in this area, too. The burden of collecting and validating certificates is not an easy one – it's an ongoing process. New customers must be set up and documentation will need to be received and maintained. In addition, many states have mandated that certificates expire either annually or every two years, so this is a process that will require maintenance.

The other issue is that this task usually must be shared between two groups. Tax does not want to be involved in accounts receivable operations or setting up new customers – nor should it be. Here again is where automation can help, as the company may be able to develop a workflow that includes a tax review but does not hold up the process for new customers and invoicing.

### Conclusion

Businesses should start considering the potential changes and their effects. Sales and Use Taxes are indirect taxes, that if passed on to customers minimise the impact to the bottom line. If a business doesn't properly implement or consider these issues, it becomes liable during audit.

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