

WTS Value Added Tax Newsletter

Editorial

Dear reader,

After a hopefully relaxing summer term we come back to review the latest news regarding VAT and GST. Some of the information can be found in our third edition of the WTS Global VAT Newsletter 2022 before we sum up several important changes for 2023 in the last edition of the WTS Global VAT Newsletter, which is planned for November 2022.

In **Austria**, a new interest rule on overdue VAT credits and liabilities came into force on 19 July 2022. Furthermore, the application of the reverse charge system to rental turnover of non-resident taxpayers has been abolished from 2022.

In **France**, the countdown has commenced for the spontaneous regularisation of French VAT on distance sales by foreign operators. Until 30 September 2022, the regularisation will not incur penalties.

Germany extended the deadlines for the submission of annual VAT returns for the years 2020 to 2024 and postponed the start of the interest run for these VAT assessment periods accordingly. Furthermore, the interest rate to be applied has been decreased retroactively for interest periods as of 1 January 2019. Furthermore the Federal Fiscal Court raises concerns regarding the VAT treatment of vouchers being transferred in a distribution chain.

The **Kingdom of Saudi Arabia** has news regarding the implementation of e-invoicing from 1 January 2023, the re-launch of the tax amnesty initiative to abolish fines and penalties and provides guidance for the VAT treatment of construction services.

The Federal Inland Revenue Service (FIRS) of **Nigeria** issued guidelines on simplified VAT compliance for non-resident suppliers which helps to deal with the VAT requirements of non-resident digital service suppliers.

Our experts will be happy to answer any questions you may have.

Yours sincerely,

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Austria



I. EU Member-States

New interest rule for overdue VAT credits and liabilities

According to the ECJ (*CS und technoRent International GmbH*, 12/5/2021, C-884/19) and Austrian Supreme Administrative Court (30 June 2021, Ro 2017/15/0035) refunds resulting from the VAT assessment base or an input tax surplus are subject to interest if the refunds are not made within a reasonable period of time (see also WTS Global VAT Newsletter 4/2021). The Austrian Supreme Administrative Court affirmed a claim to interest with respect to input tax surpluses and, by way of legal analogy, applied the interest rate of 2% above the prime rate contained in Sections 205, 205a and 212a of the Austrian Federal Fiscal Code.

In the decision, the Austrian Supreme Administrative Court did not have to comment on the question of the exact start of the interest accrual. By way of comparison, Section 233a of the German Tax Code (AO) provides for interest on VAT, with interest starting to accrue 15 months after the end of the calendar year in which the tax was incurred. With the Tax Amendment Act 2022 ("Abgabenänderungsgesetz 2022"), an explicit rule for VAT interest is implemented in Austrian tax law (Section 205c of the Austrian Federal Fiscal Code). As with the claim ("Anspruchszinsen") or appeal interest ("Beschwerdezinsen"), the interest rate is 2% above the prime rate (from 27 July 2022 the effective interest rate is 1.88% per anno). The VAT interest must be at least EUR 50. If the amount is less than EUR 50, no VAT interest shall be assessed.

According to the new regulation, interest must be paid on VAT credits **and** liabilities. The interest period begins basically on the 91st day after the due date of the advance payment (in the case of a VAT liability from a preliminary VAT return), after the receipt of the preliminary VAT return (in case of a credit from a preliminary VAT return) or after receipt of the annual VAT return (in case of a VAT credit from the VAT assessment). For example, in the case of a VAT credit from a preliminary VAT return, the interest period is from the 91st day after receipt of the preliminary VAT return until the VAT credit is booked to the tax account. However, VAT liabilities resulting from the annual VAT return are subject to interest from 1 October of the following year until the VAT assessment notice is issued.

For VAT liabilities resulting from the VAT assessment, the new regulation is applicable for the whole assessment year 2022. If liabilities result from the ongoing submission of preliminary VAT returns, the new regulation is applicable for those periods for which the due date is after 19 July 2022 (effective date after announcement). However, in the case of VAT credits, the new rule applies to all procedures still open on the day after 19 July 2022.

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Austria



No reverse charge mechanism in the case of rental revenues of foreign property owners

In the WTS Global VAT Newsletter #1/2022, it was already reported that, based on the ECJ's Titanium case law (3 June 2021, C-931/19, Titanium Ltd), the reverse charge system must be applied for non-resident taxpayers who rent out Austrian property to entrepreneurs (in the case of B2C rentals, the reverse charge system does not apply). As a consequence, input taxes could only be claimed back by using the special VAT refund procedure.

Due to (negative) practical problems, a legal clarification has now been made in the Tax Amendment Act 2022 (Abgabenänderungsgesetz 2022). The Tax Amendment Act 2022 now returns the legal situation to "pre-titanium" by exempting the rental of Austrian property by foreign entrepreneurs from the reverse charge system in Section 19 para. 1 second clause of the Austrian VAT Act. Thus, the foreign lessor remains liable for the tax and must declare their turnover (and also input taxes) in the VAT assessment procedure.

Example

D (domiciled and habitually resident in Germany) rents business premises located in Austria to a real estate operating company and exercises the option for tax liability pursuant to Section 6 paragraph 2 of the Austrian VAT Act.

As there is no reverse charge system when renting to the real estate operating company pursuant to Section 19 paragraph 1 second clause of the Austrian VAT Act, D must declare the turnover in the VAT assessment procedure. Input tax can also be claimed in the VAT assessment procedure.

The new regulation entered into force on the day following its publication in the Federal Law Gazette. The law was promulgated on 19 July 2022. This gives the affected entrepreneurs the opportunity to still make (rental) transactions in 2022 that exclude the refund procedure.

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It must be clarified if the regulation applies for the entire year 2022, as otherwise the change would occur during the year, which could probably not be the intention of the legislator.

France



Spontaneous regularisation of French VAT on distance sales by foreign operators

The VAT regime applicable to distance sales has been amended as of 1 July 2021.

Until 30 June 2021, the regime applicable to distance sales was based on the principle of taxation of VAT in the country of destination of the goods when annual sales exceeded a threshold set by each EU Member State (threshold between EUR 35,000 and 100,000).

Since 1 July 2021, the threshold for distance sales has been harmonised and lowered to EUR 10,000 per year for all distance sales made in all member states of the European Union.

This reform allowed French Tax Authorities to note that some distance selling operators had, for the period prior to 1 July 2021, wrongly submitted all their sales in the country of departure of the goods, even though the amount of the sales exceeded the threshold set by the Member State of destination.

The operators concerned may be subject to a tax audit over a period of 10 years and, with that, significant penalties.

To avoid such consequences, the French tax authorities encourage foreign operators to regularise their situation spontaneously before 30 September 2022, with the following conditions:

Foreign operators must file a request for the regularisation before the tax department of foreign companies before 30 September 2022.

They must pay French VAT and late payment interest at the legal rate for the regularised period for which they can obtain a refund of VAT wrongly paid in the country of departure of the goods.

The period for regularisation is in principle from 2019 to 30 June 2021, unless the foreign trader can obtain a refund for the VAT wrongly paid in the Member State of departure for a longer period.

Finally, the French tax authorities will systematically inform foreign authorities of the Member State of departure of the regularisation request filed by the foreign operator and will ask them to inform of any subsequent request for VAT refund filed by the foreign operator.

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Germany



Annual VAT returns: new deadlines and interest rules

Due to the extraordinary burdens for the German taxpayers and tax authorities as a result of the impact of Covid-19, the war in the Ukraine and extensive new land tax declaration requirements in Germany, the deadlines for the submission of the annual VAT returns for the year 2020 have been extended once more by the Fourth "Corona Support Law" ("Corona-Steuerhilfegesetz") dated 19 June 2022. Similar regulations have been stipulated for the tax years 2021 to 2024. For the tax year 2025, the general filing deadlines shall apply again (end of February of the second following year).

In this connection, the start of the interest run for outstanding VAT amounts for the periods 2020 to 2024 has been adapted (usually the interest run starts 15 months after the end of the respective calendar year in which the tax was incurred).

Below is a summary of the special filing deadlines and interest runs for 2021 to 2024:

Tax year	Filing deadline	Start of interest run
2020	31/08/2022	01/10/2022 (21 months after the end of the tax year)
2021	31/08/2023	01/10/2023 (21 months after the end of the tax year)
2022	31/07/2024	01/09/2024 (20 months after the end of the tax year)
2023	31/05/2025	01/07/2025 (18 months after the end of the tax year)
2024	31/04/2026	01/06/2026 (17 months after the end of the tax year)

In addition, the interest rate for outstanding VAT amounts has been changed for interest periods as of 1 January 2019 from 6 per cent per annum to 1.8 per cent per annum, based on the second law regarding the changes of the German Tax Code (AO) and the implementation law for the German Tax Code (EStG) dated 12 July 2022. The changes were made after the previous interest rates had been determined to be unconstitutional in 2021.

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Germany



Federal Fiscal Court: transfer of vouchers in distribution chains

Since 1 January 2019, special taxation rules have applied to vouchers. Due to different taxation consequences, a distinction must be made between so-called single-purpose vouchers (cf. Section 3 paragraph 14 German VAT Act) and so-called multi-purpose vouchers (Section 3 paragraph 15 German VAT Act) when issuing or transferring vouchers. A single-purpose voucher is assumed if the place of the supply of goods or services to which the voucher relates and the VAT due for these transactions are definite at the time the voucher is issued. For single-purpose vouchers, VAT is therefore already incurred when the voucher is issued or transferred, whereas for multi-purpose vouchers, the actual redemption and the associated purchase of goods and services leads to the incurrence of VAT.

In a decision dated 16 August 2022 (XI S 4/21) on the suspension of the enforcement of a tax assessment, the Federal Fiscal Court expressed doubts regarding the criteria for classification as a single-purpose voucher.

The applicant sold credits in the form of voucher cards or voucher codes, which enabled the acquiring private individuals to top up their user accounts and thus acquire digital content. The supply of these services, which from a VAT perspective are indisputably to be regarded as services provided electronically, was carried out by another entrepreneur from whom the applicant acquired the vouchers via another intermediary.

Contrary to the applicant's opinion, the tax office treated the vouchers as single-purpose vouchers, because the determinability of the place of performance shall only be required for the supply for which the voucher was intended, i.e. the stage of selling the voucher to the customer, cf. Section 3.17 paragraph 2 clause 1 German VAT Application Directive (UStAE). Since the redemption of the vouchers by the customers should in principle only be possible in the country in which they reside, both the place of the supply of the service to which the voucher relates and the VAT due for these transactions would already be determined at the time the voucher was issued or transferred.

Although the Federal Fiscal Court considers the view of the tax office to be basically covered by the wording of Section 3 paragraph 14 clause 1 German VAT Act, it nevertheless has serious doubts about this interpretation: this is because if a trader transfers a single-purpose voucher in their own name, the transfer of the voucher is also to be regarded as the supply of the goods or services to which the voucher relates, cf. Section 3 paragraph 14 clause 2 German VAT Act. Thus, in the case of single-purpose vouchers, the fact that the place of supply has to be definite could also include the sales stages of the voucher that may precede the sale of the voucher to the customer, e.g. via the issuer/maker, any other transferring traders and the dispenser of the voucher. If an overall view of the chain of transfers of the voucher up to its dispensation were to be taken, a single-purpose voucher could only be assumed if the place of supply (for the service finally obtainable through the voucher) for each transfer of the voucher and also the final issue of the voucher were in the same Member State. Otherwise, the criterion of the "place of performance" pursuant to Section 3 paragraph 14 clause 1 of the German VAT Act would not be fulfilled and a multi-purpose voucher would have to be assumed.

In the case in dispute, this overall view of the chain would lead to the transfer of the vouchers between the issuer and the transferring traders being taxable in a different Member State than the issuing of the vouchers by the applicant to its customers. The background to this is that the determination of the place of supply for services provided electronically between entrepreneurs is governed by Section 3a paragraph 2 of the German VAT Act, resp. Art. 44 VAT Directive, whereas in the case of the purchase of such services by private individuals, their place of residence is decisive (Art. 58 VAT Directive).

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The decision was issued in interim relief and the further clarification of the doubts raised by the Federal Fiscal Court is reserved for the pending appeal proceedings (XI R 21/21).

Further countries

Saudi Arabia



E-invoicing phase II "linkage and integration"

Zakat, Tax & Customs Authority (ZATCA) revealed that the implementation of the linking and integration phase for e-invoicing will start on 1 January 2023, with the establishments that were selected within the first group. They emphasise that the establishments included in the same group were identified based on the standard of the volume of revenues subject to VAT for the year 2021, for establishments whose revenues exceed 3 billion riyals (approx. EUR 805,000).

As this stage, additional requirements are as follows:

- › Linking the electronic billing systems of taxpayers with the authority's system.
- › Issuing electronic invoices based on a specific formula.
- › Including a number of additional elements in the invoice.

Zakat, Tax & Customs Authority re-launches tax amnesty initiative

ZATCA announced the re-launch of the initiative to abolish fines and exemption from penalties regarding all tax laws managed by ZATCA, for a period of six months, starting from 1 June 2022 until 30 November 2022, with the aim of mitigating the economic effects of the establishments as a result of the COVID-19 pandemic.

The authority clarified that the fines included in the exemption decision are as follows:

- › Penalty for late registration
- › Penalty for late payment
- › Penalty for late filing of returns in all tax systems
- › The fine for correcting the return for VAT
- › In addition to fines for field control violations related to the application of electronic billing

The relief is not granted for penalties related to tax evasion and penalties that had been settled before the issuance date.

Zakat, Tax & Customs Authority provides a guide for applying VAT to the contracting sector

The authority has worked to emphasise the importance of the guide in providing more clarifications to the taxpayers and assisting them in understanding the application of VAT in relation to the construction services and the contracting sector in the Kingdom of Saudi Arabia.

The guide illustrates the following points:

- › Construction services
- › Services related to taxable real estate
- › Providing a full explanation about the tax due date for enterprises contracting with government agencies
- › The date of issuing the tax invoice

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Nigeria



Guideline on VAT requirements of non-resident digital service suppliers

Following the new regime for value-added tax for non-resident persons in Nigeria, the Federal Inland Revenue Service (FIRS) issued 'The Guidelines on Simplified Compliance for Value Added Tax (VAT) for Non-Resident Suppliers' (the guidelines).

The guidelines deal particularly with the following VAT compliance affairs: requirements for VAT registration under the regime; procedure for registration for VAT by non-resident suppliers (NRS); supplies that are taxable in Nigeria; appointment of NRS as VAT collection agents; procedure for remittance of tax collected; procedure for deregistration; general obligations of NRS under the act.

The guidelines define an NRS as a non-resident person who makes a supply by digital, electronic or other means and includes an intermediary who makes a supply on behalf of a non-resident person. Paragraph 26.0 of the guidelines defines the intermediary as any person, a digital interface or platform that facilitates the supply of goods, services or intangibles through electronic or digital means or that is responsible for issuing the invoices and collecting payment for the supply on behalf of the underlying suppliers. According to the guidelines, whoever makes a supply is obligated to register for VAT in Nigeria, charge VAT at the rate of 7.5% on its invoice and collect and remit it to the relevant tax authority in Nigeria.

According to paragraph 5.1. of the guidelines, any NRS making a supply through digital or electronic platforms is appointed a collector agent of the FIRS to charge, collect and remit VAT to the FIRS. A collector agent may not deduct input tax on supplies B2B. Since the issue of the guidelines, Amazon, Zoom, Facebook and Twitter have issued company VAT policies for supplies to Nigeria. For instance, Amazon Web Services EMEA SARL (AWS Europe), in issuing invoices to B2B and B2C customers in Nigeria, includes VAT at 7.5% for its web cloud services. AWS Europe customers are therefore obliged to pay the total amount on the invoice to AWS Europe, who will remit the VAT to FIRS. AWS Europe determines the tax address based on the tax reference number of the customer, billing address and customer contact address.

Facebook VAT policy for Nigerian customers obliges customers to pay the whole VAT to Facebook, as it is a collector of VAT. Where customers of B2B supplies are entitled to recover input VAT or are exempted from VAT, the customer may recover its VAT from the FIRS using its TIN (referred to as VAT ID by the Facebook VAT policy for Nigerian customers).

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Conclusion

The FIRS may determine penalties and assess estimated VAT for non-resident electronic and digital service suppliers to B2B and B2C in Nigeria who fail to register, charge, collect and remit VAT to the FIRS. It is also worth mentioning that the guidelines are not applicable to the supply of goods electronically or digitally until January 2024. Also, the guidelines do not apply to professional and consultancy services that are not automated but provided via the internet, broadcasting and telecommunication services.

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About WTS Global

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