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Challenges never cease – managing value added taxes in a continuously changing environment

Dear Reader:

We are very pleased to present our 2015 guide "**Challenges never cease – managing value added taxes in a continuously changing environment**".

Various economies around the world seem to have surmounted the substantial financial crisis resulting from the breakdown of the financial sector at the end of the last decade. At the same time new challenges resulting from external threads and internal (financial) demands of the communities continuously drive the need to increase public revenues.

Increasing tax rates that apparently burden the economy as well as the society is not the adequate answer. Instead, multi-national initiatives, incremental exchanges of data and adjustments of local tax regulations to avoid tax evasion are widely considered as being more appropriate to reach the goal of consolidated public budgets.

This approach results in public debates on BEPS[1], FATCA[2] and CRS[3]. But below the radar of the broad public numerous activities – and some times even "hidden reforms" – are taken to strengthen the taxable basis at the level of valued added taxes (VAT).

On recent example of such a "hidden reform" is the introduction of the new Quick Reaction Mechanism (QRM) within the European Union. Based on this Quick Reaction Mechanism Member States are inter alia entitled to apply, within the space of only one month, a "reverse charge mechanism" for nearly every category of goods or services which makes the recipient rather than the supplier of the goods or services liable for VAT. It has never been proven whether such an extended reverse charge mechanism will significantly improve the chances of effectively tackling complex fraud schemes, but for the vast majority of business the permanent need to follow-up on developments in a great many of jurisdictions, the resulting negotiations with business partners to rebalance the financial impacts and the ongoing amendments to the ERP-systems are only a few examples that demonstrate the administrative and financial impacts of a rather immediate extension of the reverse charge mechanism.

Another step in increasing indirect tax revenues is the tendency to enlarge the scope of the local jurisdiction and to consider more operations as being subject to local VAT. In this regard it can be observed that states refine the rules for fixed establishments for VAT purposes, tighten the rules for tax exemptions or implement force of attraction principles for services provide by electronic means. Considering the absence of double tax treaties for VAT those developments and the multiple taxation resulting hereof cause substantial financial burdens for the companies concerned.

Against this background we take the opportunity to provide a summary of certain key developments in the world of VAT, focusing on

- → (Hidden) VAT reforms that significantly impact the business model.
- → Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity.

We hope that you find our Guide useful and we thank our authors for their valuable contributions. Please feel free to reach out to us or any of our local-country authors.


Peter Jung


Jürgen Scholz

1 OECD Action Plan on "Base Erosion an Profit Shifting".
2 US-driven "Foreign Account Tax Compliance Act".
3 OECD proposals for a „Common Reporting Standard" and the „Automatic Exchange of Financial Account Information" – AEOI.

(Hidden) VAT reforms that significantly impact the business model

It is a fact that over the past 10 years there have been no structural reforms of the Argentine VAT legislation. However, this does not mean that the Argentine tax authorities have not tried to increase their revenues by extending the taxable base of VAT. One clear example was the position of the authorities to include within the taxable base of VAT the amount of income tax assumed by Argentine clients on behalf of foreign service contractors under grossing up clauses.

Similarly to the EU reverse charge mechanism, when a registered Argentine taxpayer imports a service, it must pay 10.5% or 21% VAT on the "invoiced price of the transaction". Even when the amount paid constitutes a VAT credit (creditable against VAT debits of the following period), it can lead to the excessive accumulation of VAT credits if VAT debits are not enough.

Under Section 10 VAT Act, Argentine taxpayers only applied VAT on the amount invoiced by the foreign party and excluded the income tax assumed under grossing up clauses which is never invoiced (on the contrary, it is reported separately by the Argentine taxpayers in the returns filed to the authorities). In addition, Section 44 of the regulations to the VAT Act provides that taxes on the same transaction must be excluded from the VAT taxable base.

By contrast, the tax authorities construed that the income tax paid should be included in the price of the transaction since it is not only compounded by the amount invoiced but also any other amounts paid separately, including taxes.

Even when the lower-instance judicial courts ruled in favor of taxpayers, the Argentine Supreme Court of Justice upheld the position of the authorities in a recent precedent (dated August 20, 2014) without making any references to Section 44 under which taxes on the same transaction must be excluded from the VAT taxable base.

The position of the authorities negatively impacts on business models which require the import of services as the VAT taxable base is improperly extended if grossing up clauses are agreed by the parties.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Although it is not common to identify VAT multiple taxation cases, a growing practice of the Argentine tax authorities is changing such a statement by means of delaying or rejecting VAT recovery requests of exporters.

Following the international taxation principle under which international good or service transactions must only be taxed in the country of consumption, Argentine VAT is levied solely on imports. On the contrary, in order to ensure the tax-neutrality principle, exports of goods or services are not subject to VAT and exporters are eligible to recover the VAT credits paid to their suppliers in the previous stage to exports.

However, the tax authorities are delaying (or rejecting) the recovery applications made by exporters based on strict controls which exceed the statutory (and reasonable) requirements in this type of procedure. Delays are caused by the lack of funds to face those recoveries, for which reason the authorities make use of de facto arguments to extend the procedures the longer the better (e.g. lack of staff to process recoveries, creation of new activity registries to use failures to register as a reason to delay the recovery application).

The VAT neutrality principle is severally restricted for second exporters who do not recover VAT credits in due time since it implies that exports are indeed subject to indirect taxation. In light of this turn of events, the double VAT taxation event is consolidated once the export from Argentina turns into a VAT taxable import in the destination country and as long as this Argentine practice is not modified.

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(Hidden) VAT reforms that significantly impact the business model

Value added tax in Brazil is known as ICMS and is a state tax levied on (i) imports of goods, (ii) domestic shipment of goods, (iii) inter-municipal or interstate transport services and (iv) communication services.

With regard to domestic transactions, the rates vary depending on the destination of the good. In the event of shipment of goods within a state's territory, as a general rule, the rates vary from 12% to 25%, depending on the good and the state. On the other hand, for interstate transactions, the rates below applies:

- 4%: transactions carried out with goods imported from abroad, or manufactured in Brazil with an import content higher than 40%;
- 7%: shipments from taxpayers located in the South and Southeast (except Espírito Santo) to taxpayers located in the North, Northeast, Middle West and State of Espírito Santo; and
- 12%: other interstate transactions between taxpayers;

Please note that in case of interstate shipments to end consumers, the state of origin will receive an amount related to the interstate rate mentioned above, and the state of destination will receive the difference between its internal rate and the interstate rate applicable in such transaction.

In accordance with the Brazilian Constitution, a supplementary law must regulate how the states grant ICMS tax incentives. In this scenario, Supplementary Law No. 24/1975 establishes that ICMS incentives can only be granted by the states in the event of prior authorization from all other states, by means of a covenant issued by the National Council of Fiscal Policy (Confaz).

Accordingly, if one state decides to grant a tax incentive without such prior authorization, the Supreme Court of Justice (STF) might rule that it is unconstitutional. Nevertheless, until such ruling by the STF, the tax incentive will be in force.

However, in order to attract more investments to their territories, the states usually grant tax incentives without the authorization mentioned above, which trigger a tax war between them.

To avoid a tax war, a Resolution Bill is in progress in the Senate (No. 1/2013), which intends to change the ICMS rate on interstate shipments to taxpayers. In accordance with this bill, there would be a gradual decrease in the rate to 4%.

Therefore, considering that the ICMS rate on interstate transaction would be only 4%, the state of origin of the product would not have much space to grant an attractive tax incentive in favor of the sender of the good.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

As mentioned above, the states usually grant ICMS tax incentives to companies that decide to invest in their territories, without the prior approval of the other States. There are some different kind of benefits, such as deemed tax credits, reduction of the taxable basis, etc.

However, in case of interstate transactions originating from a state that usually grants a tax incentive without prior approval, the state of destination of the goods may understand that the acquirer may only have ICMS credits in an amount equivalent to the ICMS that was actually paid to the State of origin.

For example, if the sender has a deemed tax credit granted by the state of origin, reducing the ICMS due on the transaction, the state of destination may disallow the acquirer to have the ICMS credit in an amount corresponding to the deemed tax credit. Therefore, it will only be entitled to the ICMS credits related to the tax actually paid by the sender.

Nevertheless, in accordance with precedents from the Superior Court of Justice (STJ), the state of destination may not disallow such ICMS credits if the tax incentive granted by the state of origin is in force, or, in other words, if there is no decision from the STF stating that such tax incentive is unconstitutional.

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Managing value added taxes in China

(Hidden) VAT reforms that significantly impact the business model

2015 will see a critical development for the VAT reform in China. Since its launch in 2012, the VAT reform has kept expanding its scope to cover service sectors one after another which used to be subject to business tax ("BT"). Aiming at phasing out BT completely, it is announced that the reform will cover in 2015 the remaining heavyweight service sectors, being property development, construction, financing and daily living services. The latest phase is considered as the most difficult and challenging due to the complexity of the operations, intensive IT system-based operation and cross-province operations of the said sectors.

Due to the reform, some companies are taxed at a higher VAT rate of 6%, 11%, or 17% as opposed to the BT rate of 3% or 5%. Though VAT works on an input / output offsetting system, the effective tax burden could vary a lot depending on the availability of input VAT credits, and how effectively the tax burden can be shifted to customers or suppliers – which is subject to negotiation to the existing and future contract terms.

Despite its already three-year transition so far, the VAT reform has brought about significant impacts and challenges not only for companies undergoing BT-to-VAT transition, but also for those under the VAT regime when they deal with each other in the following areas:

- Operation flow
- Cross-border services
- VAT burden due to insufficient input VAT credits
- Accounting system adjustments

The reform has introduced incentive schemes to encourage the export of services, and offers more opportunity to mitigate taxation issues in supply chain optimization that can hardly be achieved under the BT regime as BT often taxes on the gross transaction amount. However, the reform also poses challenges to those business models facing higher VAT rates or having limited input VAT credits.
The VAT reform has added an extra spectrum to tax planning, in addition to corporate income tax. VAT implications have even become a major consideration in some projects bearing an EBIT goal.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

VAT reform keeps expanding in breadth and depth as we enter 2015. To support the development of some service sectors, some incentives are also introduced. For example, a zero rate is offered to international transportation services, R&D services and VAT exemption to offshore services and simplified taxation methods to qualified taxpayers. Further national and local regulations are being issued to regulate and facilitate the application for these incentives.

It is expected that further regulations will also be issued in 2015 to address complaints from some service sectors which are still struggling with heavy VAT burden due to the reform, especially logistics, freight forwarding and high-tech manufacturing sectors. Some local governments are also offering more subsidy programs to serious VAT reform victims.

It remains to be seen how far VAT reform can extend its reach or even accomplish a reform completion in 2015 by drawing in the remaining service sectors, i.e. property development, construction, financing and daily living services. Further streamlining and localization in the approval procedures for VAT exemption applications at the local levels is also expected.

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(Hidden) VAT reforms that significantly impact the business model

The application of the reverse charge mechanism in Germany slowly changes its role from a very specific norm to a second general principle on the liability for VAT.

Originally introduced for supplies of services and supplies with installations of companies not operating a fixed establishment in Germany, currently it also covers domestic transactions involving items transferred by the ways of security, the transfer of real estate and related rights, supplies of gas, electricity, cold and heat, the sale of greenhouse gas emission rights, the cleaning of buildings, supplies of certain gold products, scrap and waste materials and the sale of integrated circuits and mobile phones.

The application might already be confusing as for every class of transactions being subject to reverse charge several particular requirements apply (i.e. the supply of integrated circuits is only subject to reverse charge if the underlying economic transaction exceeds a threshold of EUR 5000, whereas the application for real estate requires an option in the notary sales and purchase agreement and the provision of cleaning services on buildings will not be subject to reverse charge if the customer does not provide a specific certificate of the tax authorities.

Additionally in 2015 the Quick Reaction Mechanism has been implemented that allows to further extend the scope of the reverse charge mechanism within one month to any further category of goods or services and some transitional schemes will expire with the result that from January 2015 onwards supplies of tablets and games consoles (under certain requirements) and from July 2015 onwards sales of a wide range of metals will become subject to the reverse charge.

The importance of a truly detailed consideration has been proven by the recent developments for the application of the reverse charge for construction works. Following to a decision of the Federal Tax Court basically refusing the application of former simplifications rules, the authorities and taxpayers do not only dispute on the repayment of several billion EUR VAT, but also on the interest surcharge of 6% p.a.. A regulation that originally should only avoid tax evasion, has now been proven as life threating for honest traders that did underestimate the underlying complexity.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Double taxation is in Germany a rather new phenomenon in the area of VAT. Historically the German tax authorities often simply followed the rules of the other jurisdiction involved to avoid any kind of double taxation. One typical example in this regard are the rules on chain supplies where German tax inspectors have some discretion to accept different models on the qualification of moved and unmoved supplies of goods.

On the other hand, new business models that benefit from the domestic infrastructure and consumption are often not covered by the general rules of taxation. In this area Germany currently makes incrementally use of deficits the international definition of PEs / fixed establishments and considers also those activities as domestic ones that are - as windmills and server units located on German grounds – operated without local staff or further entrepreneurial activities domiciled in Germany.

Additionally, also the former principle to waive taxation to avoid double taxation is now being transformed into the opposite. In audits a tendency can be recognized to tax those transactions under German laws that would otherwise – as a result from conflicting rules on the origin and destination principle – not being subject to any VAT.

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(Hidden) VAT reforms that significantly impact the business model

During the past few years, the VAT authorities have focused on fighting VAT evasion and fictitious invoices. Gradually, by 2015, a new obligation was adopted to file monthly VAT returns in electronic form only. Returns should be highly detailed and include each and every transaction and input, including sums, dates, invoice numbers and tax IDs of clients and suppliers (exceptions apply to small transactions of less than ILS 5,000, approximately € 1,120). As of 2015, the obligation was extended to corporations with an annual VAT transaction turnover exceeding ILS 1,500,000 (approx. € 337,000) and other VAT payers with an annual VAT transaction turnover exceeding ILS 2,500,000 (approx. € 561,000).

Additional legislation significantly increases sanctions for non-compliance, as well as widening the scope of actions or omissions regarded as non-compliance. Actions defined as "liable in report" are subject to special reporting procedures. The list of which is intended to grow significantly during the next year. Non-compliance was also extended to include omissions to reclaim input VAT, which might result in fines amounting to 30% of the sum of inputs.

Though the main goal of the measures taken is to fight VAT fraud, the scope and nature of the new requirements not only put a heavy burden on taxpayers, they might also result in sanctions on law-abiding taxpayers whose failure to comply resulted merely from unawareness or mistake and not from any unlawful intention.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Though Israel is not a member of the EU, Israeli corporations conducting business in the EU may be entitled, in some member states, to reclaim inputs without VAT registration. The above is based on a mechanism included in the 13th Directive allowing member states to act accordingly, taking into account reciprocity with non-member states.

Under Israeli legislation, reclaiming input VAT is possible only upon VAT registration. Such registration is contingent with burdensome procedures, including Israeli bookkeeping, filing monthly returns and appointing an Israeli resident fiscal representative.

In order to avoid double taxation without registration, a rate of 0% VAT (instead of the 18% regular rate) is awarded in some circumstances, specifically with respect to the sale of intangible property and the rendering of services to foreign residents.

However, not only is the 0% rate qualified to certain circumstances in legislation itself, during the past years VAT authorities have consistently narrowed the ability to use it also by means of interpretation. As such, in a ruling referring to 0% VAT on legal services to foreign residents, it was asserted that such a rate should apply only if the services "refer to transactions, assets and proceedings which are out of Israel and if, in addition, there is no linkage between the service to Israel, to an asset in Israel or to an Israeli resident in Israel. In addition , the foreign resident should not conduct business in Israel and should receive the services when it is outside of Israel."

In our opinion, such interpretation is too narrow and should not necessarily be considered as binding. It significantly increases the risk of double taxation of foreign companies and may also be construed as breaching the principle of reciprocity in international VAT relations.

In the short run, practical solutions should be reached, either by liberal interpretation or specific tax arrangements. In the long run, legislative measures should be taken to avoid, or at least significantly decrease, the risk of double taxation.

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(Hidden) VAT reforms that significantly impact the business model

Prior to an amendment on December 23, 2014, the VAT Act then in effect provided that when games, audio or video files or other software used by mobile communication devices or computers ("Electronic Services") are supplied in Korea through marketplaces such as the App Store, the imposing of VAT depends on whether the developer of the Electronic Services ("Developer") and the entity operating the marketplace are Korean entities.

Specifically, VAT was imposed if the Electronic Services were supplied in Korea through a marketplace operated by a Korean entity, and also if the Electronic Services were supplied in Korea through a marketplace operated by a foreign entity and the Developer was a Korean entity. However, if the Developer was a foreign entity, supply of such Electronic Services was not subject to VAT in Korea, creating a tax fairness issue.

In light of the above, the VAT Act was amended on December 23, 2014 to resolve the tax fairness issue while increasing tax revenues, adding a provision imposing VAT on the supply in Korea of Electronic Services by a non-resident or foreign entity without a permanent establishment in Korea ("Foreign Entity"). VAT is payable by the Foreign Entity if the Foreign Entity directly supplies the Electronic Services in Korea. Otherwise, VAT is payable by the operator of the marketplace if the Electronic Services are supplied through a marketplace. The amended VAT Act comes into effect on July 1, 2015.

As such, a foreign Developer or a foreign marketplace operator is now obligated to report and pay VAT on Electronic Services supplied in Korea pursuant to the amended VAT Act, resulting in an increased supply price of Electronic Services. Moreover, in order to specify the transactions subject to VAT in Korea, it may be necessary to implement a system differentiating the revenue from Electronic Services to be supplied in Korea from that supplied in other jurisdictions.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Korea follows the destination principle and imposes VAT on goods and services supplied in Korea while not on goods or services supplied outside Korea. As such, there is no double-taxation issue regarding VAT, in principle.

However, while it is relatively easy to determine the location of supply of tangible goods which may be visually verified, it may be difficult to clearly determine the location of supply of services. As such, there is a possibility of double-taxation on a single service transaction.

The VAT Act defines the location for supply of services as "the place where services are supplied or facilities, rights, or other goods are used" (Article 20(1)(1) of VAT Act). However, in case of services, and particularly Electronic Services, it is not clear whether such location will be determined to be the location at which the person supplying the Electronic Services is located or at which the person consuming the Electronic Services is located.

For example, the Korean tax authorities view a non-resident or foreign entity engaging in electronic commerce through a website hosted on a server located in Korea as having a permanent establishment in Korea (Established Rules Written Regulations 1105 dated October 22, 2014). As such, even if a user located outside Korea connects to a website hosted on a server located in Korea and receives Electronic Services, the Korean tax authorities may impose VAT because the Electronic Services were supplied in Korea. However, it is possible that a foreign tax authority will also impose VAT on the same transaction because the Electronic Services were used in that jurisdiction, resulting in double-taxation. It will be necessary to continue monitoring whether there will be any legislative solutions to this issue.

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International VAT Meeting 2015

Seminar | Düsseldorf | June 22, 2015 | 09:00 a.m. – 18:00 p.m.
MARITIM Hotel Düsseldorf | MARITIM-Platz 1

Representatives from the German Federal Tax Office, from German based multinationals as well as VAT and customs & trade experts from Brazil, China, India and the African Region – Use this opportunity to obtain valuable knowledge and experience on actual trends in these markets!

Dear Sir or Madame,

We are pleased to welcome to this year's meeting Mr. Lindgens, Department for Combatting VAT Fraud at the German Federal Tax Office, VAT and customs & trade experts from the Emerging Markets Brazil, China, India and for selected countries in the Africa Region as well as representatives from German based multinationals. They will share their experience with indirect taxes and investments as internationally acting companies in their markets. WTS would like to invite you to the International VAT Meeting 2015 in Düsseldorf.

During this one day seminar the highly complex indirect tax systems in Brazil, China and India will be presented. We discuss particularities of indirect tax systems in selected countries of the African region as well. Apart from information on the most recent develop-ments of laws and legislations in those countries you will also get an insight and experience reports on risk areas and optimization chances. The focus will be in indirect taxes and customs in relation to the implementation of investments and trading in those countries.

We are proud to welcome highly experienced specialist of our International WTS Network. Experts from Brazil, China and India are joining us for this seminar as speakers. For selected English and French speaking countries of the African region **Mr. Andrew Ogutu**, Manager at WTS, Munich and central contact person for the **African Tax Desk in Germany**, as well as **Ms. Sonja Wiesner**, Director at WTS, Munich and central contact person for indirect taxes in the **competence area International Project Consulting** at WTS Germany, will be the presenters.

Their specific know-how will be complemented by presentations from business representatives having gained wide experience in their globally operating companies on the management of projects and the optimization of processes with a particular focus on indirect taxes as a potential cost factor. We are pleased that **Mr. Komander, Head of Tax at Hochtief AG** und **Mr. Risse, Head of Tax and Customs at Henkel GmbH & Co KG** agreed to share their experiences with us.

Furthermore, we are proud that **Mr. Lindgens, Department for Combatting VAT Fraud at the German Federal Tax Office** will join us for a presentation. He will focus on the German Tax Authorities with respect to indirect taxation of the international trade and in particular of the trading activities with China.

The **first part of the seminar** will be panel sessions in the morning. Besides the experience reports from the business representatives, the country experts will give a general overview of the complex indirect

tax systems in their countries. They will highlight burning tax issues arising from the implementation in practice and the approach by the tax authorities in these countries as well as most recent or envisaged changes in the laws and legislation. Thus, each participant in the seminar shall get an overview on the indirect taxonomy in those countries.

Furthermore, we will give you an impression on the chances to minimize, manage and optimize indirect taxes provided that a strategic and integrated view is taken on local and international VAT, customs and trade regulations as well as the provisions on the determination of transfer prices.

In the **second part of the seminar** you can register for different country work¬shops. Those will allow a discussion in small groups accompanied by the respective country expert. You can raise questions on actual indirect tax issues and practical problems you might be facing in your daily business. We will also discuss indirect tax consequences of different trading and investment alternatives in the country. In this respect you can join three country-specific workshops followed by a final podium session with a discussion and summary of the day.

The seminar will mainly be held in English language.

Please select three country-specific workshops in the online registration that you are planning to attend.

Our speakers

- Udayan Choksi; VoxLaw, Indien
- Ulrich Komander, Hochtief AG
- Bernhard Lindgens, Bundeszentralamt für Steuern
- Martin Ng, WTS Consulting (Shanghai) Ltd., China
- Andrew Ogutu, WTS Steuerberatungsgesellschaft mbH
- Robert Risse, Henkel GmbH & Co. KG
- Ricardo M. Debatin Silveira, Machado Associados, Brasilien
- Fernando Teles da Silva, Machado Associados, Brasilien
- Sonja Wiesner, WTS Steuerberatungsgesellschaft mbH

Venue/time

Düsseldorf | June 22, 2015
09:00 a.m. – 18:00 p.m.
Maritim Hotel Düsseldorf
Maritim-Platz 1 | 40474 Düsseldorf

Participation fee & conditions

The participation fee is **EUR 350.00 plus VAT** (incl. seminar handouts, lunch and refreshments). The fee is payable after the receipt of the invoice. You will receive a confirmation of registration immediately after receipt of your registration. The registration is binding. Should you wish to withdraw from the seminar which we have to be notified of in writing, we will be glad to accept a replacement participant. Otherwise, any cost incurred by us will be charged: For cancellations up to two weeks before the event we will charge EUR 200.00, after that we will have to charge the full fee.

Interested?
Please either register online (www.wts.de), via Email (kerstin.hermle@wts.de) or via Fax at +49 (0) 211/20050-950 until June 10th, 2015.

For any requests regarding the content of this seminar please do not hesitate to contact

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(Hidden) VAT reforms that significantly impact the business model

VAT Challenges for 2015
Principal Effects for Maquiladoras
One of the most significant VAT reforms, in force since 2014, could impact the business model of those companies (foreign and domestic) whose activities encompass any of the following: export maquila programs, car or vehicle assembly industries, or car parts for their introduction into bonded deposit, strategic bonded deposit, authorized supplier programs, etc. (i.e. maquila regime).

Until 2013, just before the maquila regime was reformed, companies under such regime had certain benefits as regards VAT, i.e.: (i) being able to import their manufacturing materials and export them by determining – calculating – VAT, but without being obligated to pay it; and (ii) they could withhold VAT from national suppliers and credit it immediately, thereby not having to outlay VAT for such supplies – no cash flow needed – (this actually generated a VAT refund situation for the supplier, rather than the maquila company).

The above involved financial benefits for companies under this regime, since they did not generate favorable VAT balances upon exporting the goods at the 0% VAT rate applicable to exportations, subject to refund proceedings, coming from VAT transferred to them by their suppliers.

As a consequence of the VAT reforms, starting from 2014, on a general basis, companies under the maquila regime lose these benefits, and shall be subject to: (i) pay VAT on their temporary importations of materials and machinery and equipment; and to (ii) pay the VAT transferred to them by their suppliers.

The VAT reforms recently enacted translated into maquila companies having to outlay VAT through payments to their suppliers or on their importations and to recover the same through refund requests once they export the goods manufactured. Such operating profile involves a constant cash flow subject to refund, dealing with refund claim procedures, with the correlative financial cost implied.

However, a more beneficial tax regime shall be applicable for the maquila company provided that the Tax Authority (i.e. Mexico's revenue collection service) grants an annual certification, pursuant to the administrative provisions in force. Such certification is essentially based on proven inventory control.

In this regard, certified companies will be able to apply a credit against the VAT for their account on imports made by them. The VAT thereby credited cannot be credited or subject to refund at a later time, since essentially no VAT was outlaid upon importing the goods.

Alternatively, non-certified companies shall be able to leave the VAT unpaid if they can grant collateral (surety bonds) on the VAT to the Mexican government.

Besides, an additional benefit in force since 2014 was granted to the certified maquila companies by presidential decree. Such benefit consists of the option of taking credit of the tax transferred and subject to withholding, derived from the transfer of the goods (subject of the maquila regime) made by the resident abroad for tax purposes, in the same month in which such transfer was carried out; instead of applying the referred tax credit on the next month following the transfer of goods, as the general rule sets forth.

The above translates in financial benefits as well, deriving from the fact that companies applying such benefit do not generate favorable VAT balances subject to refund proceedings.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Besides general measures to strengthen its tax revenue, Mexico has currently no regulations in place which could cause a regularly double taxation.

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(Hidden) VAT Reforms that significantly impact the Business Model

Nigeria is currently seeking to derive more revenue through indirect taxes such as VAT and other consumer related taxes. Due to the falling global price of crude which serves as the major revenue base of Nigeria, the Government in a bid to introduce VAT reforms has presented a Bill to amend the VAT Act. The Bill, among other things, proposes to increase the VAT rate from the current rate of 5% to a three category rate: 0% rate if the supply or import is zero-rated, 10% for supply or import of general goods and services and 20% in any other case.On the most basic level, this could mean an increase in prices of goods and services and a likely corresponding decrease in the consumption of VATable goods and services.

The bill also introduces the following:

- An omnibus clause which brings all profit making activities other than wage earning activities within the ambit of the VAT Act.
- A VAT free annual turnover of up to N6 Million on the basis of which a taxable person shall be liable to VAT.
- A taxable person who fails to collect tax is liable to pay a penalty of 150% of the amount not collected, plus 5% interest above the Central Bank of Nigeria re-discount rate.
- A more comprehensive list of VAT exempt items.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Nigeria practices Federalism with power shared among the three tiers of government – the Federal, State and Local Government. At present, the Nigerian VAT Act is the Federal legislation governing consumption of goods and services. However, several States in Nigeria also have laws that tax consumption of goods and services already covered by the VAT Act. In Lagos State, for example, there are several regimes of taxes similar to the VAT such as the Sales Tax Law and Hotel Occupancy and Restaurant Consumption Tax Law of Lagos State which impose a 5% tax on consumption of goods and services. In the Federal Capital Territory, there is the entertainment tax imposed on users of places of entertainment at the rate of 5%. These fees and taxes are levied upon goods and services whose consumption is already being taxed as VAT by the Federal Government, this duplication of taxes can amount to multiple taxation.

The legality of the consumption tax is still being litigated at the Supreme Court but for the time being, Lagos State continues to impose and collect its consumption tax.

Also the 2015 Fiscal Policy Measure on Luxury Surcharge, which was contained in the 2015 Budget Statement imposed a consumption charge on luxury travel consumables and services. However, it should be noted that tax cannot be imposed by a budget statement until that budget statement. Until the 2015 Budget Statement is enacted into law, the 2015 *Fiscal Policy Measure on Luxury Surcharge* remains unenforceable.

Other instances on areas of multiple taxation include fees charged as Industrial Training Fund (1% of total payroll), National Inland Waterways Authority's (NIWA) fees which are charged for the use of waterways or to persons within the NIWA's right of way, etc. All these fees have the ultimate effect of significantly increasing the cost of doing business in Nigeria. These fees are not termed taxes in their various enabling laws, however, they bear all the characteristics of a tax in the sense that they are compulsory, backed by law and impose sanctions for non-compliance.

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(Hidden) VAT reforms that significantly impact the business model

The Philippine VAT system treats purchases and imports that are attributed to zero-rated sales (pertaining mostly to export sales) as effectively free from the VAT burden. But the VAT-exempt nature of purchases and imports is not availed by the purchaser at the time of the transaction. A buyer is still required to pay VAT (also known as input tax) to his suppliers or to the customs authority in cases of importing. But if the input VAT is not utilized against the VAT liability on other transactions, the purchaser is allowed to recover the same through a refund.

This is meant to make seller-exporters internationally competitive by refunding or crediting input taxes attributable to export sales, or to provide such sellers relief from the burden of the VAT on their local purchases of goods and services and imports. Thus, the VAT refund process is a critical part of the Philippine VAT system.

The refund mechanism though is not an easy process. It involves filing an administrative claim with the tax bureau. And a judicial appeal to the tax court is also available to taxpayers whose claims are not favorably acted upon by the tax bureau.

This already complicated refund process is even made more difficult by the issuance of a new policy by the current administration of the tax bureau. Instead of streamlining the refund application process, the new policy makes compliance more burdensome by imposing impractical and unrealistic requirements that are very difficult to comply with, or by prescribing additional requirements not found in the law.

One of the features of the new policy is that in case of inaction by the tax bureau on administrative refund claim within a 120-day period, the claim is deemed to be refused. Failure to appeal the inaction to the tax court after the lapse of the 120-day period renders the claim no longer pursuable. In essence, in the event of inaction on the part of the tax bureau, the taxpayer is left with no choice but to elevate the refund claim to the tax court. Otherwise, a refund will no longer be available. The process is costly to the taxpayer.

The new policy discourages some taxpayers from pursuing the recovery of their unutilized input VAT credits. In effect, it nullifies the incentives granted by law to VAT zero-rated taxpayers and/or transactions. Such a tax policy does not augur well for the government's foreign investment agenda.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Export sales eligible for VAT zero-rating include the export of services. These pertain to services rendered to persons engaged in business conducted outside the Philippines. For the sale of service to a non-resident client to be VAT zero-rated, all that the service provider needs to show is that the recipient of the service is doing business outside the Philippines. However, the courts had interpreted this to mean that the client should not also be doing business in the Philippines. Both the fact that the client is a non-resident entity doing business outside the Philippines and at the same time not doing business in the Philippines must be shown. And a series of recent court decisions require that documentary evidence, such as registration documents in the country of the foreign client as well as negative certification from the Philippine registration authority that the client is not registered in the Philippines. A service agreement which is usually the only available document related to the service does not suffice even if the service agreement clearly indicates the country of the client.

The tax bureau had followed suit in requiring this documentary evidence. In cases of an audit, examiners tend to impose VAT without readily available documents. The supposedly VAT-exempt nature of the transaction is suddenly disregarded. This effectively results in a multiple taxation because a transaction taxed at zero percent is suddenly taxed at the regular VAT rate.

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(Hidden) VAT reforms that significantly impact the business model

Russian tax authorities introduced automated VAT – electronic invoices system
Beginning in the first quarter of 2015, Russian tax authorities will be accumulating tax return information from the ledger of purchases, ledger of sales, and VAT invoices in one global information resource (hereinafter – system). With this system, Russian tax authorities will be able to verify the information provided by the counterparties, specifically input and output VAT invoices. Both counterparties should have identical information within the invoices, otherwise mistakes may be considered as unjustified tax deductions. To avoid problems, use of electronic document management of invoices may be appropriate.

Information from the budget of purchases and budget of sales, accordingly, were added to the VAT return starting in 2015. Now, certain taxpayers' VAT returns will only be accepted if it was submitted in electronic form. Furthermore, every taxpayer that submits a tax return in electronic form should provide tax authorities with an option for electronic communication on VAT issues. For example, tax authorities will use this form of communication for sending requests regarding the obligatory visit to the tax authority. Also, during a desk tax audit, tax authorities are able to carry out detailed verification procedures including visits to the taxpayer's premises to review the VAT offset claimed by the actual taxpayer's activity.

If the taxpayer does not follow up on a request in 6 business days after receipt of the request, tax authorities may decide to suspend the taxpayer's bank account transactions. To avoid the risks associated with a late reply to the tax authorities' request, it is better to appoint a single person responsible for all requests from tax authorities.

We recommend Russian VAT payers to take special care with regards to the following:

- collection of information from VAT books and verification of it with the counterparties to avoid tax claim mismatch with the data in the counterparties' books
- IT systems of the company, which should be checked to be able to comply with the tasks associated with provision of documents
- Establishing proper contact with the tax authorities to deal with the requests in the course of desk tax audits

As for the good news, the deadline for submission of VAT return (declaration) was extended until the 25th of the month following the expiration of the tax period. This gives taxpayers 5 additional days to prepare the declaration.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

Besides general measures to strengthen its tax revenue, Russia has currently no regulations in place which could cause a regularly double taxation.

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(Hidden) VAT reforms that significantly impact the business model

As of June 1, 2014, foreign suppliers of certain 'electronic services' are required to register for VAT in South Africa where the provision of such services is made to the South African resident or payment is made from a South African bank account and the value of such services has exceeded R 50,000. In the past, e-commerce transactions were taxed by a reverse charge mechanism. The local consumer was required to pay VAT on imported e-commerce goods and services. However, compliance levels were very low, one of the reasons being that individuals are not aware of such provision in the Act. As a result, VAT was not paid to SARS.

The old treatment also disadvantaged local suppliers in a way that consumers were able to get the same product elsewhere in the world without paying VAT, whereas the local supplier could supply the same product plus VAT.

Electronic services are defined in the Act to include the following:

- Educational services if the person supplying the educational services is not regulated by an educational authority in that export country.
- Games and gambling
- The provision of any information system services.
- The supply of an Internet-based auction service facility.
- The administration, maintenance and technical support of or in relation to any blog; database; information system; or website
- The supply of any e-book, film, images, music and software
- The subscription service to any blog, journal, magazine, newspaper, games, internet-based auction service, periodical, publication, social networking service, webcast, webinar, web site, web application and web series

The amendments do not create a new revenue stream for the tax authorities – the transactions targeted have always been subject to VAT, but the reverse charge mechanism rendered the proper collection of such impossible. The new provision shifts the burden from the local recipient to the foreign supplier.

It may be difficult for the South African Revenue Service to enforce compliance.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

On or about January 31, 2014, the North Gauteng High Court confirmed a preservation order granted to SARS over the South African assets of Mark Krok.

The case dealt with an international treaty between South Africa and Australia which, inter alia, provided for mutual assistance between the two countries in respect of enforcing tax debts. The Australian tax authorities had assessed the taxpayer (who had assets in South Africa) for tax and requested SARS to assist it with enforcement in terms of the treaty. SARS applied for a preservation order against the taxpayer in the High Court and the court granted the order.

In light of this case, SARS may very well intend to rely on current or future international treaties to enforce the VAT Act in other jurisdictions.

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(Hidden) VAT reforms that significantly impact the business model

As for many developing countries, value added tax is a key revenue resource for Turkey. In recent years, significant progress has been made in order to rationalize and enhance the capacity of the Turkish tax system. To align its tax structure with international standards, new treatments and incentives have been introduced under the Value Added Tax Reform package. These reforms constitute an important step toward a more effective tax enforcement. Although Turkey still needs new reforms to strengthen and expand its own revenue raising capacity. The new tax policy path, taken but not completed yet, encompasses a number of reforms to further simplifying and modernizing the Turkish VAT system.

Almost all tax reforms aim to extend the tax base and increase revenue. But the new reform package in Turkey also encompasses incentives to promote efficiency and transparency in the VAT regulations. Against this background, to clarify the matter and make the process simpler and more accessible, all VAT General Communiqués published (123 General VAT Communiqués in total) have been revoked and the principles relating to the application of the Value Added Tax Act have been summarized in a single communiqué. Imperfections in the language have been abridged and some passages rewritten to create a consistent interpretation to prevent misunderstandings and legal issues.

With the introduction of the new VAT application General Communiqué, eligibility for accelerated refunds is extended to more companies. Enterprises who submit at least three criteria[1] are able to get their VAT refund within five days. Furthermore, the period to correct deficiencies of tax refunds is extended from 30 days to 3 months. The requirement of an average number of minimum 350 employees is also lowered to 250.

The Ministry of Finance has also taken various austerity measures to preclude weakness in the system which could cause revenue losses due to misapplications or fraud. In particular, falsified invoices meant to lower tax assessments and an immense loss of state taxes. Punitive sanctions like banning tax evaders from any commercial proceedings are launched to deter these fraudulent activities.

A further enhancement that has been realized to modernize and simplify the VAT refund system is the implementation of a VAT electronic refund track system. The procedure for reimbursement of VAT has been replaced by a new electronic procedure, thereby ensuring a quicker and transparent refund to claimants. Since May 2014, the pilot program has been expanded nationally. This system will provide all taxpayers with quick and direct information concerning the status of their request for a tax refund. To improve the performance and thereby increase the efficiency and effectiveness of the tax system, taxpayers are able to assess the performance of the Tax Administration.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

The most instances of double taxation occur as a result of having different interpretations of domestic regulations on service deliveries within Turkey utilized by non-residents. In the area of VAT, Turkey applies the credit mechanism in order to recover the VAT incurred. A person liable to VAT is entitled to deduct all the tax already paid at a previous stage.

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1 Previously taxpayers had to satisfy four criteria: total assets, total tangible assets, equity, net sales amount.

(Hidden) VAT reforms that significantly impact the business model

New electronic VAT system in Ukraine
The new electronic VAT system was implemented in Ukraine in the "test mode" starting from February 1, 2015. The "test mode" will last until June 1, 2015. If the "test mode" is found to be unsuccessful, this system will be canceled or modified.

The new electronic VAT administration system aims to maintain automatic records of taxpayers and their VAT liabilities. As of January 1, 2015, taxpayers were automatically registered within the electronic VAT administration system.

All VAT invoices and adjustments to them must be:

- issued exclusively in electronic format, no paper copies are required for the accounting purposes;
- registered in the Unified Register with certain exceptions. Registration is required even for VAT invoices issued for the services from non-residents with place of supply in the customs territory of Ukraine.

Failure to register VAT invoices in time causes the application of respective penalties.

VAT taxpayers have no right for VAT credit based on a complaint against the supplier, which VAT invoices were issued with mistakes or not registered in the Unified Register, as was the case before January 1, 2015.

VAT invoices may be registered in the Unified Register only on exceeding the amount of input VAT over the output VAT, i.e. on the so-called 'registration amount'. If the 'registration amount' has a negative value, registration in the Unified Register is blocked and the taxpayer has to transfer a sufficient amount of funds to a special VAT account from a current bank account.

VAT liabilities shall be paid only from special VAT accounts. If the funds placed on the VAT account are less than VAT liabilities to be paid, a taxpayer must to transfer a sufficient amount of funds.

Latest developments in the national practice or legislation that might result in multiple taxation of one economic activity

VAT base determination: influence on business transactions
The tax base for VAT shall consist in the event of supply of:

- purchased goods/ services – no less than their purchase price;
- produced goods/ services – be less than the cost of production (prime cost);
- non-current assets – no less than their book (residual) value at the beginning of the reporting period according to the accounting data.

This new rule influences the transactions of the sale of goods with a discount and marked-down goods, inventories and fixed assets that have lost their consumer properties, so-called advertising sales and other marketing and advertising activities, free transfer of goods/ services. In such events, taxpayers are required to pay VAT liabilities on the difference between the contractual value and purchase price/cost of production/book value. In the given economic situation in Ukraine, taxpayers have already felt a negative impact of this new rule.

According to the Tax Code, the transactions in question may formally be viewed as unrelated to the business activity of the taxpayer and, as such, the tax authorities may claim to charge additional VAT liabilities from purchase price/cost of production/book value of such goods due to their non-commercial usage; i.e. this will lead to double taxation of such transactions which, in fact, should not be the case.

'Old' VAT receivables
During the declaring campaign of February 2015, taxpayers faced artificial obstacles in following scenario "a" of utilizing old VAT receivables caused by manipulations of state authorities with the sub-legislative act on electronic VAT administration and a new form of VAT return. Such manipulations led to the situation when taxpayers with a considerable amount of VAT receivables (including the amounts of a VAT refund) have to pay VAT liabilities in cash.

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