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WTS Value Added Tax Newsletter

Editorial

Dear Reader,

It is our pleasure to present to you the WTS Global VAT News edition for Q4 2018. This issue of the WTS Global VAT News reports on recent or expected changes in VAT and GST regulations and compliance duties in various EU and third countries. We are very happy to present in this issue several articles provided by our African colleagues from **Angola, Burkina Faso, Nigeria** and **Senegal.**

In this issue, **Russia** reports on the new regulations for the taxation of electronic services which could lead to new registration duties for foreign suppliers in Russia. Also, **South Africa** will be changing its regulations regarding the taxation of electronic services from April 2019. We will report on this change and possible new registration duties for foreign suppliers in our next Newsletter.

In **Switzerland** there will come into force new registration duties for non-resident mail order companies from 2019. **New Zealand** is also planning new rules for online shopping. We provide information about these new regulations in this Newsletter.

Furthermore, there will be a lot of new regulations in connection with the ongoing digitalization. In the **United Kingdom**, new regulations regarding "Making Tax Digital" will be implemented for VAT. In **Germany**, a new liability regulation for operators of electronic marketplaces is planned from March 2019. **Italy** will introduce mandatory e-invoicing from January 1, 2019.

Hungary reports on the country's first experiences with the new live invoice reporting system, which came into force in July 2018. In their articles, **Ireland** and **Romania** present the current compliance duties for resident and non-resident companies.

In addition, this WTS Global VAT Newsletter reports on the current development of the VAT and GST compliance duties in various other countries. We hope you find our Newsletter useful and we 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 plans implementation of VAT in July 2019

Angola is the only member of the Southern African Development Community that has not yet implemented a tax like the value added tax to date. However, it plans to include a sui generis value-added tax ("VAT") in the general state budget for 2019, which is scheduled to be implemented on July 1, 2019.

Currently, in Angola, there is a consumption tax on all products produced or imported in Angola, irrespective of the origin. It also applies to the consumption of water and energy, telecommunications services, services provided in the tourism industry, consultancy services (namely tax, legal, financial, accountancy, computers, engineering, architecture, economic and real estate consulting), auditing services and legal services, private security services and others.

Inevitably, the implementation of VAT entails many challenges for the Angolan economy, among which we underline the following:

- Creation of a general, neutral and multi-stage tax
- Clear and transparent administration and implementation
- Implementation of an indirect taxation system to increase the competitiveness of the country's economy

At the moment, the General Tax Administration ("AGT") has made available for public consultation the law proposal of the "VAT" Code, which is expected to be approved soon. The entering into force of a tailor-made VAT will have an impact on the Angolan tax system, as follows:

- Increasing the taxable base
- New rules related to the taxable event and chargeability
- New methods related to the deduction of the input VAT
- New exemptions and specific regimes (e.g. Oil Sector, Financial Sector, Real State Sector, among others)
- Introduction of a new rate and new rules to compute, assess and pay the VAT
- New tax rate (a standard VAT rate of 14% is proposed at the moment with nil rating on foodstuffs and other essentials)
- New accounting and reporting obligations

It is expected that the standard VAT regime will be gradually applied and mandatory for large taxpayers during the interim period of roughly two years (2019 and 2020), and optional for the remaining taxpayers that intend to apply the VAT regime.

In fact, remaining taxpayers will be covered by a simplified scheme, under which they will not assess VAT, being obliged to proceed with a quarterly payment on the amount of half of the VAT rate, e.g., 7% (=14% x 50%) of the sales received in such period.

Upon fulfilling certain requirements, taxpayers with a turnover exceeding USD 250,000 may apply for authorization to join the standard VAT regime.

As a consequence of the implementation of VAT in Angola, several legislative changes/ revocations are expected, such as the Legal Regime of Invoicing and Equivalent Documents requirements, the Regulation of Consumption Tax (Presidential Decree no. 3-A/14, dated October 21st), the Angolan Customs Tariff Code in the items related to Consumption Tax due on the customs operations (Presidential Decree no. 3/18, dated May 9th), Angolan GAAP (Decree no. 82/01, dated November 16th), among other legislation. All these legislative changes have already been drafted and are, at this date, under approval.

New regulations like Standard Audit File for Tax (SAF-T) and Certification of Accounting/ Billing Systems are also under approval and the implementation of VAT will be completely electronic.

Finally, a new tax – Special Consumption Tax (Imposto Especial de Consumo – IEC) – will be introduced for the following products: alcoholic beverages, tobacco, collector vehicles, petroleum products and others.

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Belgium

VAT exemption for export supplies: concept exporter of record for customs and VAT purposes

When the new Union Customs Code (UCC) entered into force on May 1, 2016, a definition of exporter of record was introduced into EU customs law. Then the new key element was that the exporter of record had to be established in the EU (with the exception of travelers). On July 30, 2018, this definition changed and so the following article discusses the concept of "exporter" related to the VAT exemption for export supplies in Belgium and what this change means for customs and VAT compliance.

Under the new customs definition (article 1, 19 UCC Delegated Act) it should be easier for EU companies to act as the exporter of record. In the past, the power to determine that the goods were to be taken outside the EU was always required to act as exporter of record. Now it is sufficient that such a company is a party to the sales (export) contract.

Nevertheless, the anticipated change of customs law does not resolve the issue regarding when a non-EU company is involved. Based on a strict reading of the definition, a non-EU company cannot act as the exporter of record for customs purposes.

In its updated explanatory notes, the European Commission has explained that the UCC still provides for a transitional period. During this period, a non-EU company may continue to be named in Box 2 of the Single Administrative Document ("SAD"). This transitional period will end with the introduction of the Automated Export System.

The "exporter of record" concept also has an impact for VAT. The VAT exemption for export is applied by the person who supplies the goods and invokes this VAT exemption. Taking into account the definition of exporter for customs purposes, the exporter of record named in the SAD's Box 2 will, in a number of cases, not necessarily be the person claiming the VAT exemption for export. Under Belgian VAT law, this is a significant issue as the VAT exemption for export requires, in principle, that the taxable person claiming the export exemption is stated in Box 2.

A good example to illustrate this change is the situation of an EU company that is supplying goods for export to a non-EU company under the incoterm "ex works". As the non-EU company is responsible for the export of the goods outside the EU, this company will be the exporter of record for customs purposes. In any case, it will need to appoint an indirect customs representative for handling the customs declaration for export. Currently, this requirement means that the non-EU company is named in the SAD's Box 2, while the indirect customs representative is named in the SAD's Box 14. However, the EU supplier will invoke the VAT exemption for export. As this EU supplier is not named as the exporter in the SAD, it is impossible to prove the VAT exemption from a Belgian point of view. The Belgian tax authorities have decided to solve this issue by making a distinction within the SAD between the exporter of record for customs purposes (based on the UCC definition) and the exporter for VAT purposes (the company claiming the VAT exemption). Since May 1, 2016, the exporter for VAT purposes must be named in the SAD's Box 44 (name and VAT number), and the exporter for customs purposes must be stated in Box 2.

Significantly, this rule also applies where the exporter for customs is also the person claiming the VAT exemption for export. The exporter for VAT purposes should always be stated in the SAD's Box 44.

This is a practical solution from a Belgian perspective and it continues to apply. It is very important for companies involved in export transactions to strictly comply with these new rules, particularly regarding the references in Box 44 for the VAT exemption. This should also be remembered when the export is started in another EU country and the goods will leave the EU via Belgium. As other EU Member States do not apply similar rules for proving the VAT exemption, not complying with the Belgian guidelines could trigger issues in Belgium following a VAT audit.

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Burkina Faso

New regime for taxation of services, intangible goods, transfer of mining research permits and interests on loans

New regime for services taxation

From January 2018, the general rule for the territoriality of services is based on the place of their execution instead of their place of consumption. The exception applies when the service is executed in a foreign country but used or consumed in Burkina Faso. This is to comply with the VAT regulation implemented by the West Africa Economic and Monetary Union.

Services rendered or executed in Burkina but used outside the country are treated as export services and may entitle the supplier to claim for VAT refund if he is delivering export services at 100%. Practically speaking, it is probable that the tax authorities will issue an administrative guidance to request the provision of a residence certificate of the customer, justifying the foreign domiciliation of the customer when the service is executed in Burkina and considered as consumed or used in a foreign country.

Telecommunications services are no longer delivery of goods

Providing services of telecommunications is now treated as services while in the past it was treated as delivery of goods. Therefore, the fiscal management of cross-border telecoms transactions should be treated differently than when they were considered as delivery of goods.

Delivery of intangible goods by non-residents treated as importations of goods

Due to the previous weakness of the legislation, importations of intangibles were somehow avoiding VAT. Now it is clearly established that any delivery of intangible goods by a non-resident supplier is an importation of goods.

However, while the tangible imported goods are assessed to VAT by Customs Revenue Service, intangible imported goods VAT must be self-assessed and declared by the resident customer.

Extension of exemption from VAT to mining research permits versus taxation of interests

Before the adoption of the new unique tax code, only mining exploitation permits avoided VAT when submitted to registration fees. From now, this exemption also covers mining research permits. And this should be good news for mining operators and investors.

Conversely, interest on loans granted to local legal entities by entities other than banks and financial institutions are now liable for VAT. In the past, such interest was exempted since it was liable to stocks and securities income tax. Now, both VAT and stocks and securities income tax are applicable.

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China

VAT refund offered to tech firms

Background

In the wake of China's VAT reform in recent years, it is not surprising to find that some capital-intensive tech companies are trapped in growing VAT credit reserves due to insufficient output VAT for offsetting input VAT. This happens in instances when a taxpayer is still in its long capex investment period or its output (sale) VAT collection is too low to cover its input (purchase) VAT. Even though a taxpayer is allowed to carry over its excess input VAT credits to the succeeding months, quarters or years, it is less likely it can recover them in the foreseeable future. This symptom of recurrent hefty financing burden is drawing criticism that the VAT reform has not achieved its promise of reducing the tax burden.

New VAT refund policy

The new policy aims at relieving their cash flow pressure by offering them a refund on unutilized VAT credits. Tech firms can now apply for a refund on their leftover VAT credits accumulated so far, unveiled by a tax circular issued by China's Ministry of Finance (MOF) and State Administration of Taxation (SAT) on June 27, 2018.

The criteria for the applicants include the following:

- They should be tech firms in equipment manufacturing, R&D and modern service industries in 18 listed industries or power grid companies; Priority is given to 10 key sectors listed in the "China Manufacturing 2025" program or those certified high-tech firms; and
- They should have achieved a rating of A or B in their tax record.

The unutilized VAT credit accumulated at the end of each filing period will be refunded, but subject to a cap (being the unutilized input VAT credit balance at the end of 2017). The VAT refund amount is calculated as follows:

- VAT refund = Period-end VAT x refund rate (determined by two means below)

Applicant's tax registration date	Refund rate
Before or on Dec. 31, 2014	Total VAT credit claimed from 2015 to 2017 from three VAT documents (note) ÷ total input VAT claimed from all VAT documents in the same period
On or after Jan. 1, 2015	Total VAT credit ever claimed from three VAT documents (note) in a filing period ÷ total input VAT claimed from all VAT documents in the same filing period

Note: The three VAT documents refers to special VAT invoices, import VAT invoices and VAT payment receipts.

Correspondingly, the applicant, if eligible for the said VAT refund, is allowed to pay less VAT-based surcharges, using a lower VAT payment amount (after the refund).

WTS observation

- This VAT refund policy represents a generous and dedicated move by the Chinese government to address the financing issues distinctive for tech firms' development. It also highlights not only the strategy to realize the potential of tech firms, but perhaps also the attempt to cope with ambitious challenges from overseas competing partners.
- Not all tech firms in the selected sectors can obtain VAT refunds, only those achieving a good tax compliance rating. This sends a signal that compliance is paying off and credit rating is something worthy to pursue by operators.

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Czech Republic

Draft amendment to the VAT Act as from 2019

An extensive amendment to the VAT Act is being prepared in the Czech Republic. This amendment should, with some exceptions, come into effect as from 2019. The Government presented the draft amendment to the Lower House (Chamber of Deputies) in June 2018. As the Chamber of Deputies only started discussing the draft amendment, it may go through significant changes. However, we would like to point to some envisaged changes.

Taxation of the supply of goods with assembly by a Czech tax non-resident

The amendment shall apply to situations where both the supplier and the customer are VAT payers, the supplier being, at the same time, a Czech tax non-resident. According to the current rules, the above-described supply of goods with assembly is subject to self-assessment by the customer. According to the draft amendment, the supplier shall be obliged to issue the invoice for such a supply with Czech VAT.

Taxation of small-scale cross-border electronic services

The amendment should simplify the taxation of cross-border electronic services with an annual value not exceeding EUR 10,000. Such transactions should be taxed in the Member State in which the supplier is resident. Currently, these electronic services are taxed in the recipient's Member State.

Issuing tax documents (invoices) for services in MOSS

This positive change will concern providers of electronic services who use the Mini-One-Stop-Shop (MOSS). In issuing tax documents, these providers shall be governed only by the rules of the state in which they are registered for the MOSS scheme. Accordingly, they will not have to follow the legislation of each member state where electronic services are received.

Issuing credit and debit notes

In the future, both credit and debit notes must state the date of taxable supply which should be the date when the correction was performed. Currently, there are frequent discrepancies between how customers and suppliers show credit and debit notes in control statements.

Vouchers

In January 2019, Council Directive (EU) 2016/1065 shall become effective on the basis of which the EU Member States are obliged to unify the rules for issuing and using vouchers. Basically, single-purpose and multi-purpose vouchers will be distinguished. Single-purpose vouchers are vouchers for supplies that are sufficiently known in advance (tax rate and the place of delivery or performance). The other vouchers are the multi-purpose vouchers. The transfer of a single-purpose voucher shall be considered to be a supply of goods or services which is no longer subject to tax at the time the voucher is used. With multi-purpose vouchers, the opposite procedure shall apply.

Ban on the application of VAT to the lease of residential houses

Currently, VAT payers may decide whether or not they will tax the rent for real estate leased to another VAT payer. In the future, taxation of rents will only be possible in the case of non-residential buildings. However, this change should take effect as late as in 2021.

Claiming tax deduction before registration for VAT

According to the current legislation, persons and entities that have registered for VAT may claim VAT deductions for costs incurred within 12 months before the registration in their first tax return. According to the amendment, tax deductions may be claimed for the period of five years before the registration for VAT for long-term investments.

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Germany I

German draft bill for new regulation of electronic marketplaces

The German government has been aware of VAT evasion in relation to supplies via electronic marketplaces from non-EU countries to Germany for some time now. The government and the tax authorities are attempting to combat VAT evasion. Therefore, the German government published a draft bill on the avoidance of VAT losses on supplies of goods via the Internet, which inter alia includes the introduction of a VAT liability for operators of electronic marketplaces in case the VAT is not properly paid by the suppliers. The operators of electronic marketplaces can avoid this strict liability if they ensure the actual VAT registration of the suppliers and record mandatory information about the suppliers.

The draft bill intends to introduce two new paragraphs (paragraphs 25e and 22f) in the German VAT Act (UStG). They stipulate that the operator of an electronic marketplace is liable for the unpaid VAT on supplies taxable in Germany made via the electronic marketplace.

Depending on whether the supplier is a taxable person or not, the obligations of the operator of the electronic marketplace shall differ.

Supplier is a taxable person

In case the supplier is a taxable person, the operator of the electronic marketplace is obliged to record the following information about the supplier:

- The full name and full address of the supplier
- The tax number issued to the supplier by the competent tax office and, if available, the VAT identification number issued by the Federal Central Tax Office (BZSt)
- The beginning and end of the validity of the certificate provided by the tax authorities showing that the supplier is registered in Germany
- The location of the start of the transport or dispatch and the destination
- The time and the amount of the revenue

In case the supplier is a taxable person (company), the operator of the electronic marketplace is not liable for the unpaid VAT if he can submit a certificate issued by the tax authorities showing that the supplier is registered in Germany. The certificate does not release the operator from the liability if he knew or could have known that the supplier did not fulfill its tax obligations.

The certificate is issued to the supplier for a maximum period of three years by the competent tax office. The precondition is that the supplier appoints a receiving agent located in Germany for any correspondence with the German tax authorities. The operator of the electronic marketplace will be informed on demand by the BZSt if a certificate has been issued to the supplier.

Supplier is a non-taxable person

In case the supplier is a non-taxable person, the operator of the electronic marketplace is obliged to record the following information about the supplier:

- The full name and full address of the supplier
- The location of the start of the transport or dispatch and the destination
- The time and the amount of the revenue
- Date of birth

If the supplier claims to be a non-taxable person, the operator of the electronic marketplace is obligated to check the status of the supplier as a non-taxable person by verifying type, quantity and amount of the supplies generated continuously.

If, according to the type, quantity and amount of the supplies on the electronic marketplace, the supplier is a non-taxable person, the operator of the electronic marketplace is not liable for the unpaid VAT if he records the above-mentioned information about the supplier.

Timing

The new liability regulation for supplies via electronic marketplaces is supposed to come into force on two different dates: i) for supplies carried out by third-country companies **after February 28, 2019** and ii) for supplies carried out by German and other EU companies as well as by companies located in the European Economic Area **after September 30, 2019.**

Note

As soon as the new regulations have been adopted, companies selling goods via electronic marketplaces in Germany (with place of supply in Germany) should apply for a VAT registration certificate at the competent tax office in order to be able to present the certificate to their operator of the electronic marketplace. Otherwise, they might risk losing this business area.

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Germany II

Possible implementation of the ECJ Ruling Skandia into German VAT Law from January 1, 2019

In July 2018, the German Ministry of Finance published a draft position statement regarding the implementation of the Skandia Ruling of the ECJ (C-7/13, dated September 17, 2014) into German VAT Law.

In its Skandia decision, the ECJ ruled that the supply of services from a head office located in a third country to its branch located in a Member State results in a taxable transaction in that Member state if the branch is part of a VAT group. Currently, under German VAT law, any cross-border transactions between headquarters of companies and their branch offices are considered internal turnover, not liable to VAT, since the branch is considered a dependent part of the third-country company, regardless of the membership of the branch in a VAT group.

According to the draft position statement, the general principles of the Skandia ruling may only be applied if the head office of a group structure is located in a third country, the supplies are rendered to a branch located in a Member state and the branch is part of a VAT group according to German VAT Law. In these cases, the affiliation of the branch to a VAT group shall take priority over the affiliation of the branch to the parent company in the third country. However, there is a restriction in case the German branch is the only VAT group member established in Germany.

Scenario 1

A head office "S" in Switzerland has set up a branch "B" in Germany. Head office "S" also has a subsidiary "G" in Germany, which is part of a German VAT group together with "B". "S" renders services to "B". According to the draft statement, these supplies from "S" to "B" are taxable in Germany and can no longer be regarded as non-taxable internal turnovers.

Scenario 2

A Swiss-based head of a VAT Group "S" has a subsidiary "F" in France and several branches in Germany. "S" renders services to its German branches. The German branches form a single company according to sect. 2 (2) no. 2 s. 3 German VAT code, which is limited to Germany. As the German parts of the group structure consist of branches of "S" only, the services rendered by "S" are still qualified as non-taxable internal turnover in Germany; the principle of the Skandia ruling may not be applied.

The draft was published in order for interested parties to comment and may be altered before its final publication at the beginning of next year. According to the current wording of the draft statement, the example given (see above, Scenario 1) is the only exception to the general rule of the non-taxability of services rendered to branches located in EU Member states by third country headquarters.

The draft statement is supposed to be applied for all assessment periods that are not time-barred and consequently might also be applied for the current tax year. It shall not be contested if the above-stated amendment of the fiscal authority's opinion is not applied for transactions that are carried out before January 1, 2019. Therefore, clients should now review their intra-company service structure and implement a reporting system, if necessary.

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Hungary

Online invoice data reporting – first impressions

It has been some months now since the online reporting system was launched in Hungary. We can say that this obligation seemed to be the most challenging amendment introduced in recent years for almost all companies and accountants. It required huge efforts from the companies to create the technical background of this new obligation in time, not to mention the costs of IT development and external advisors.

The gist of the real-time invoice data reporting is that the NAV (Hungarian tax authority) requires taxpayers to provide immediate information about invoices issued with invoicing software and having a VAT amount equal to or more than HUF 100,000 (approx. EUR 320).

Although not in real-time, online data reporting of handwritten invoices or those issued using a pre-printed invoice layout also fall within the scope of live reporting. Depending on the VAT amount, taxpayers have five days or only one calendar day to report these invoices as well.

The aim of the Hungarian government with this measure was to reduce the VAT gap and the administrative burden of the taxpayers as well as to increase the efficiency of the tax inspections. The entities effected by this legislative act are taxpayers issuing VATable invoices under their Hungarian VAT ID to another entity having a Hungarian VAT ID. Accordingly, this obligation also includes non-resident companies having only Hungarian VAT registration. Such companies have neither human resources nor other physical presence in Hungary making the fulfilment of the technical requirements of the online invoice reporting a big challenge for these foreign taxpayers. Furthermore, foreign companies did not intend to invest a huge amount of money in their Hungarian administration.

Although live invoicing has been in force since July 1, 2018, there was a one-month long grace period announced by the Finance Minister. According to this measure, the Hungarian tax authority did not levy penalties until July 31 if the company registered in the online invoice reporting system and the required data of the invoices issued from July 1 was sent to the tax office by July 31 at the latest.

It is highly advised to comply with the new requirement, otherwise significant penalties can be expected to be levied. Non-compliance with this regulation may be penalized up to HUF 500,000 (approx. EUR 1,600) per invoice not or incorrectly reported.

When using the system, we experienced some technical deficiencies and difficulties. For example, it may happen that we receive a failure notice back from the system even if the invoice is issued properly in line with Hungarian regulations, only the reporting went wrong. Based on the promises of the tax administration, taxpayers can check invoices issued to them and reported by other taxpayers and import this data directly to the VAT return. This is not an easy task for the time being since the data verification works only on a limited level, no combined database on invoices can be downloaded from the system, importation to the VAT return does not work at all. Unfortunately, some functions which may make the use of the online reporting system easier do not work. In summary we can say that the system in its current form is not so user-friendly. However, we truly hope that there will be a constructive discussion between the tax administration and the users of the system very soon, since there is plenty of room for improvement.

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Ireland

General VAT compliance obligations

No significant changes to VAT compliance obligations have occurred in recent years.

Under Irish VAT law, a charge is imposed on “taxable persons” who are established in Ireland for VAT purposes. A taxable person is a person who independently carries on a business – in the EU (including Ireland) or elsewhere. This definition includes a person who engages in activities that are exempt from VAT.

VAT is chargeable and payable on:
- Supplies for consideration of goods in Ireland by a taxable person
- Imports of goods into Ireland
- Supplies for consideration of services in Ireland by a taxable person
- Intra-Community acquisitions for consideration of goods by an accountable person in Ireland
- Intra-Community acquisitions for consideration of new motor vehicles and other new means of transport by all persons, whether accountable or otherwise

VAT is chargeable on goods and services. Goods include both movable and immovable objects, new and used. The registration thresholds are EUR 75,000 (goods) and EUR 37,500 (services). A party must register for VAT if turnover exceeds, or is likely to exceed, these amounts in any 12-month period. In certain circumstances, taxable persons may elect to register if their turnover is below these thresholds.

Foreign entities not established in Ireland must pay particular attention to the following:

- A non-established person (individual, corporate or other) must register for VAT if supplying goods or services in Ireland (no threshold applies)
- A person (individual, corporate or other) must register for VAT if the value of their intra-Community acquisitions exceeds EUR 41,000 in a 12-month period
- Businesses making distance sales of goods to private customers in Ireland must register if their turnover exceeds EUR 35,000 in a calendar year

VAT registered parties are subject to the following compliance duties:

VAT return

VAT reporting is monthly, bi-monthly, bi-annual or annual, the filing frequency being set by Revenue. The return must be filed and paid on or before the 23rd day of the month following the return period if filed electronically with Revenue via "ROS". VAT registered traders involved in the acquisition of goods and intra-Community supplies have additional reporting responsibilities as follows:

VIES

The VIES system applies to intra-EU trade only. VAT registered traders are required to submit periodic returns of their EU supplies. There is no threshold for VIES reporting. The return periods are at the discretion of Revenue and must be filed by the 23rd day of the month following the return period (if filed electronically).

Intrastat

Intrastat is a system for collecting statistics on the physical movement of goods (not services) between the Member States of the EU. If imports from other EU States exceed EUR 500,000 p.a. or exports to other Member States exceed EUR 635,000 p.a., detailed monthly Intrastat returns must be filed. The return must be filed on or before the 23rd day of the month following the return period (if filed electronically).

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Italy I

Mandatory e-invoicing goes live from January 1, 2019

Wide application of e-invoicing to fight VAT fraud and to increase the standardization and the digitalization of the processes: as of January 1, 2019, in Italy e-invoicing will become mandatory for all B2B and B2C supplies of goods and provisions of services.

As recently clarified, e-invoicing will be mandatory only for persons who are **established** in Italy, while cross-border transactions shall be reported in a new, specific reporting. Even if the article of the law expressly states that e-invoicing is mandatory for all B2B and B2C supplies of goods and services between parties that are resident, established or registered for VAT purposes in Italy (Art. 1, Para 909, Law No. 205/2017), following the EU Council decision n. 2018/593, dated April 16, 2018 (authorizing Italy to introduce this special measure) the Italian Tax Authorities have clarified that e-invoicing will be mandatory only for persons established in Italy (see Circular Letter No. 13 issued on July 2, 2018, Para 1.2). So non-resident taxable persons (without a permanent establishment in Italy) and having only a VAT registration in Italy will not be obliged to adopt said new rules; they could receive (from suppliers established in Italy) e-invoices, provided that they can receive – upon request – also the paper copy of the invoice.

Focusing on the main requirements of B2B and B2C e-invoices, they can be summarized as follows:

- E-invoices must be issued in XML format not containing macro-instructions or executable codes
- E-invoices must be issued according to a specific pattern, although in the future additional patterns could be used moving from other European patterns or standards
- To create e-invoices, the Italian Tax Authorities will make several tools available, i.e. a web portal, a stand-alone software and an app. Alternatively, e-invoices could be created using third party software, provided that it is compliant with the related technical instructions provided by the Italian Tax Authorities.
- E-invoices must be electronically transmitted to the exchange data system called "SDI"
- E-invoices can be transmitted by (or received by) an appointed intermediary
- E-invoices are transmitted to the SDI using (alternatively) one of the following tools:
  - Certified email (so called "PEC service")
  - Italian Tax Authorities web portal or app (so called "Fatture e corrispettivi")
  - Cooperation system using internet web services, via HTTPS protocol (so-called "SdI-Coop service") or Data exchange system using remote computers, via FTP protocol (so called "SdIFtp service"); these two options can be implemented only after the transmitting party has obtained a kind of "certification" by the SDI, attesting that the IT infrastructure of the transmitting party is able to communicate with the SDI.
- If some requirements are met, e-invoices transmitted via SDI can be electronically kept using the Italian Tax Authorities' freely available archiving service.

Particular attention shall be paid to the procedure for creating and transmitting the invoice and related **timing**. In case of e-invoices, general VAT rules still apply, so the e-invoice must be issued when the transaction is deemed to be performed for VAT purposes, i.e. (apart from specific circumstances) by the end of the day when the goods or the services are supplied. As stated by the Italian Tax Authorities (Regulation No. 89757/2018 and Circular Letter No. 13/2018):

- The date of the e-invoice is the date stated in the specific box "Date" in the e-invoice
- The invoice must be immediately transmitted to the SDI. Only during the initial implementing period (whose duration has not been specified) will a possible minor delay in the transmission of the e-invoice not cause penalties, provided that this delay will have no impact on the timely VAT calculation and subsequent payment;
- In case of rejection by the SDI, the e-invoice will be treated as not having been issued; however, it could be correctly re-transmitted within the following five days, without incurring in any infringement.

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Italy II

VAT group option from 2019

On September 19, 2018 the Italian Tax Authorities approved the form "AGI/1", to be used to opt for the Italian VAT group as from 2019 by November 15, 2018: The option is binding for a three-year period and is automatically renewed for each subsequent year.

The provision was released according to the Ministerial Decree issued on April 6, 2018, which contains the implementing details of the Italian VAT group, introduced by the Budget Law 2017 (Law No. 232/2016).

This Law was subsequently modified by the Budget Law 2018 (Law No. 205/2017), in order to directly transpose (into Italian law) the outcome of the Court of Justice of the European Union's (ECJ) decision in the Skandia Case (Case C-7/13), providing for the transactions between a branch/main establishment belonging to an Italian or EU VAT group and its Italian or foreign main establishment/branch to be deemed as carried out between a VAT group and a third party, and so to be relevant for VAT purposes (being the taxable basis, by the way, also subject to specific rules).

According to the Italian VAT group provisions, taxable persons that (i) are established in Italy (so also including Italian branches of foreign entities) and that (ii) since July 1 of the previous year are closely linked to each other due to specific "financial", "economic" and "organizational" connections (i.e., that form a group) can opt for a VAT group starting from January 1 of the relevant year, according to an "all-in, all-out" principle (no cherry picking within the group).

Moreover, as a general rule, if the "financial" link is met (meaning that two or more taxable persons established in Italy are directly or indirectly linked by controlling interests, or are directly or indirectly controlled by the same entity), it is assumed that the "economic" and "organizational" links are met as well, thus making it possible to opt for the VAT group.

Once set up, the VAT group is treated as a single taxable person, liable for all the VAT obligations and able to exercise all the rights pertaining to its participants; as a consequence, it (i) has a sole VAT identification number, (ii) periodically determines (as a group) its VAT position (debit or credit), (iii) files the VAT returns and (iv) pays any VAT due to the Tax Authorities (or asks for a VAT refund).

The supplies of goods and the services rendered among the participants of a VAT group are outside the scope of VAT, while transactions between any of the participants and a third party are deemed to be carried out between the VAT group and the third party – as a consequence, the VAT group option is expected to be chosen mainly by financial and insurance groups, which have limitations on input VAT recovery.

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Kazakhstan

Changes regarding VAT from 2018

Since January 1, 2018, a new tax code has been effective in Kazakhstan. In general, most of the provisions related to VAT did not change significantly compared to the previous tax code. However, there are some minor clarifications and changes that were introduced in the new tax code:

VAT registration

The previous tax code provided two options for taxpayers to register for VAT purposes – of necessity or voluntarily. A taxpayer had a mandatory obligation to register when its turnover exceeded 30,000 monthly calculation index (MCI). This threshold (30,000 MCI) remained in the new tax code (in the previous tax code, the government had planned to reduce the 30,000 MCI threshold down to 25,000 MCI in 2018, 20,000 MCI in 2019 and 15,000 MCI in 2020).

The timeframe for VAT registration is reduced to one day and taxpayers will be VAT payers from the date when the application was submitted. Prior to these changes taxpayers could become VAT payers only from the first of the following month after the application was submitted. In addition, for the purposes of VAT registration the previous requirements to provide the tax authorities with documents that served as evidence of the company's location (for instance, rental/lease agreements for office space) and evidence that turnover exceeded 30,000 MCI have been abolished now.

Invoice issuance

Beginning from January 1, 2018, legal entities that are under monitoring (large Kazakhstani taxpayer legal entities that are monitored by tax authorities) bear the obligation to issue e-invoices and beginning from January 1, 2019, all VAT taxpayers will be obliged to issue e-invoices.

Restrictions for VAT deductions

Some minor clarifications have been introduced to the article of the tax code that regulates situations when input VAT cannot be deducted, i.e. when there is no date, number of invoice, no identification number, etc.

VAT refund

Changes were introduced in order to optimize VAT refunds:
- no cross-check tax audit of suppliers that issue e-invoices;
- time limitation for VAT refund is reduced to 30 business days (regular time limitation is 55 business days or 155 calendar days depending on certain requirements) when the following conditions are met: 100% issuance of e-invoices; not located in the "risk zone", all suppliers issue e-invoices.

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Netherlands

VAT topics budget 2019

On September 18, 2018, the Dutch Government announced the budget for 2019. Below we summarize the VAT relevant topics.

VAT

Reduced rate

As of January 1, 2019, the reduced VAT rate (for food, hotel stay, pharmaceutical products, books, etc.) will be increased from 6% to 9%. The old rate of 6% can be applied regarding advance payments for supplies invoiced in 2018 which will be carried out in 2019.

Small businesses

Currently, individual persons with small businesses can receive a reduction of the payable VAT when their annual payable VAT amount is less than EUR 1,883. As from January 1, 2020, the regulation will be applicable for all small businesses, so for both individual and legal persons (resident in the Netherlands or with a Dutch permanent establishment for VAT purposes). Instead of a reduction of the payable VAT, the Dutch turnover can be exempted when it is less than EUR 20,000. When an entrepreneur requests this exemption, it will be applicable for at least three years.

E-commerce

Council Directive 2017/2455 will be incorporated in the Dutch VAT legislation as from January 1, 2019. As a result of this, the so called Mini One-Stop Shop (MOSS) will include an annual threshold of EUR 10,000 regarding certain cross border e-commerce services to private individuals (electronic, telecommunication and broadcasting services). Cross-border turnover below this threshold is taxable in the country where the entrepreneur is established unless the entrepreneur opts to have the services taxed in the country of its customer.

Sports exemption

Due to the ECJ case Bridport and West Dorset Golf Club (C-495/12) and unsuccessful combat of tax avoidance structures by the Dutch Tax Authorities, more activities will be included in the Dutch VAT exemption for sport and sport-related activities as from January 1, 2019. As a result of the expanded exemption, more VAT entrepreneurs will not be able to reclaim input VAT on large investments. These entrepreneurs can apply for a subsidy from the Ministry of Health, Welfare and Sports.

Tax liability

Currently, taxpayers try to avoid tax collection by the Dutch Tax Authorities by, for example, liquidating the legal person that is liable to pay taxes (e.g., VAT). As from 2019, the Dutch Tax Authorities can redress the tax claim to the beneficiaries when they knew or should have known that the tax claim would be avoided by their actions (e.g., liquidation of the legal person).

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New Zealand

New Zealand continues to extend online shopping GST rules

Following the introduction of GST on imported digital services in 2016, the New Zealand government is proposing to require offshore suppliers to collect GST on purchases of low-value goods (NZD 1,000 or less) made by New Zealand consumers who are not registered for GST from October 2019.

Technically, GST has always been payable on imports of low-value goods. However, until recently there has been an understanding that the customs service will not collect less than NZD 60 worth of GST (the amount imposed on goods worth NZD 400), as it was not considered cost-effective.

In recent years, the growing popularity of internet shopping websites has given rise to a perception among New Zealand businesses that they are being unfairly disadvantaged by the GST de minimis. This is because, due to the rise of internet shopping websites, consumers can purchase many low value items (the primary examples are books and "fast fashion" clothing) GST-free from Amazon, eBay and other online retailers.

In order to address this disparity, the Government has proposed new rules which will require offshore suppliers to collect GST on low value goods at the point of sale. GST will continue to be collected at the border for goods over NZD 1,000.

Offshore suppliers will be required to register and return GST if their total supplies in a 12-month period to New Zealand consumers are equal to or greater than NZD 60,000. This is the same threshold for GST registration that applies to New Zealand-resident businesses and non-residents supplying services into New Zealand.

The proposal also includes specific rules for marketplaces and "re-deliverers".

Marketplaces

When certain conditions are satisfied, where an offshore supplier sells its goods through a marketplace, the new rules deem that the marketplace has made the supply in the course or furtherance of its taxable activity. Accordingly, the marketplace will be required to register and return the GST on the supply instead of the supplier.

Electronic marketplaces will be required to register, whereas non-electronic marketplaces may register with the Commissioner's approval.

An "electronic marketplace" must have the following attributes:
1) the marketplace must allow underlying suppliers to make supplies of remote services through the marketplace to customers;
2) the marketplace must be operated by electronic means, including by a website, internet portal, gateway, store, distribution platform or other similar marketplace; and
3) the supplies made by the marketplace must be made by electronic means.

Payment providers have been excluded from the definition of "electronic marketplace".

Re-deliverers

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Re-deliverers are a service used by consumers when an offshore supplier does not offer shipping to New Zealand. The consumer can elect to have the goods delivered to the re-deliverer, which is an intermediary address. The re-deliverer will then deliver the goods to the New Zealand consumer for a fee. The new rules will require re-deliverers to register for and to return GST in respect of the goods that they re-deliver to a New Zealand address.

The NZD 60,000 GST registration threshold will apply to both marketplaces and re-deliverers.

Nigeria

VAT – Changes in compliance duties in Nigeria

Under Nigerian law, value added tax (VAT) is chargeable on the supply of VATable goods and services, at the rate of 5% per transaction. It is important to note that the laws regulating VAT in Nigeria exempt certain goods and services from VAT liability, and also classify certain goods and services as zero rated, i.e. VAT is charged on such items at the rate of 0%.

VAT is largely regulated by the Value Added Tax Act CAP V1, LFN 2004 (as amended), and the Avoidance of Double Taxation Agreements. The following laws are also relevant to the administration of VAT in Nigeria:

- Value Added Tax (Amendment) Act 2007
- Value Added Tax (Modification) Order 2018
- Value Added Tax (Amendment) Bill 2018. The provisions of this law will only take effect when it has been passed by the National Assembly.

Nigerian VAT laws are ordinarily applicable to residents of Nigeria, and require all taxable persons to register with the Federal Inland Revenue Service (FIRS) for the purpose of collection and remission of VAT. However, a non-resident company that carries on business in Nigeria is also required to register for VAT purposes using the address of the person with whom it has a subsisting contract in Nigeria. A non-resident company is to include VAT in its invoice and this VAT shall be remitted by the person to whom the goods and services were supplied in Nigeria.

Before the recent amendments, the following goods and services were VAT exempt:

1. All medical and pharmaceutical products;
2. Basic food items;
3. Books and educational materials;
4. Baby products;
5. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment;
6. All exports;
7. Plants, machinery and goods imported for use in the Export Processing Zone or Free Trade Zone;
8. Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations;

9. Tractors, plows and agricultural equipment and implements purchased for agricultural purposes;
10. Proceeds from the disposal of short-term federal government of Nigeria securities and bonds;
11. Proceeds from the disposal of short-term state, local government and corporate bonds (including supranational bonds);
12. Medical services;
13. Services rendered by community banks, the People's Bank and mortgage institutions;
14. Plays and performances conducted by educational institutions as part of learning;
15. All exported services.

The following items were zero- rated:
1. Non-oil exports;
2. Goods and services purchased by diplomats;
3. Goods and services purchased for use in humanitarian donor-funded projects.

Amendments

Further to the 2018 amendments introduced by the Value Added Tax (Modification Order) 2018, the following items are now exempt from VAT:
1. Leases and rentals on residential property;
2. Transport services for public use;
3. Life insurance;
4. Education and training conducted by public or non-profit educational institutions;
5. Services rendered by unit microfinance banks and mortgage institutions.

Other amendments introduced by the VAT Amendment Bill 2018 (note that these amendments will only become effective when the bill has been duly passed by the National Assembly), include the following:
1. The scope of exempt and zero-rated goods and services is now limited to oil exports only. It implies that other export goods and services will now only be zero-rated instead of being exempted from VAT.
2. The tax net for VAT has also been expanded to include intangible properties, meaning that activities such as assignment of rights are now VATable.
3. The obligation on the recipient of foreign services to deduct VAT on payments due to such non-resident company is now specifically spelled out.
4. A taxable person who fails to issue an invoice for supply of services will now be required to self-account for the tax on the value of the transaction to the relevant tax authority.

Implications of the amendments on non-resident companies

Further to the above-mentioned amendments, non-resident companies carrying on business in Nigeria are required to note the following obligations:
1. Residential property leases and rentals, transport services for public use, life insurance, education and training conducted by public or non-profit educational institutions, services rendered by unit microfinance banks and mortgage institutions are now excluded from VAT.

2. Non-resident companies shall now be required to charge VAT on exports of goods and services (except oil exports) at the rate of 0%.
3. Non-resident companies that have assigned their subsidiary resident companies the right to use their trademark are now required to charge VAT on such arrangements.
4. Non-resident companies will be unable to escape VAT liability on services rendered to resident companies as the VAT is now required to be deducted at source.
5. Non-resident companies that are liable to deduct and remit VAT from taxable transactions will now be held responsible for the tax in the event they fail to do so.

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Romania

General VAT compliance obligations and registration requirements

Romanian VAT payers include local companies, as well as non-resident companies registered for VAT purposes in Romania, either directly, in the case of EU companies, or through a fiscal representative, in the case of non-EU companies (non-EU companies are obliged to register for VAT purposes through a fiscal representative).

A Romanian VAT payer will submit to the tax authorities the following VAT returns: (i) VAT return code 300 including all transactions performed during the month, submitted by the 25th of the following month/quarter; (ii) VAT return code 390 including EU Intra-Community acquisitions and sales, submitted by the 25th of the following month; (iii) VAT return code 394 including the Romanian domestic transactions, submitted by the 25th of the following month/quarter. Depending on the volume of the transactions, Intrastat statistical reports can be submitted in respect of the goods exchanged with other EU Member States by the 15th of the following month.

The VAT registration procedure is simplified for non-resident companies which intend to register for VAT purposes in Romania, compared with local companies. Although both procedures require the provision to the tax authorities of documents justifying the intention to perform an economic activity in Romania, we consider it of interest to present the VAT registration procedure for local companies, as such procedure is burdensome or even arbitrary.

The Romanian tax authorities want to fight against VAT fraud through a rigid VAT registration procedure applicable to Romanian companies. Thus, the tax authorities analyze various topics, allocate negative points for each topic (the exact scoring is not public) and compute the overall scoring by adding 100 points to the sum of the allocated points. If the overall scoring is below 51 points (hence, the negative aspects prevail), the fiscal risk is high and the VAT registration is rejected.

Having considered the above, we present below some aspects which should be avoided by Romanian companies registering for VAT purposes (the below examples are not exhaustive).

A Romanian company should not have its headquarters within a lawyer's office and the period of use of the headquarters should be more than one year. The company should perform its activity in its headquarters and/or working units.

The administrators/shareholders (with more than 25% of the shares) should not have committed fiscal offenses/crimes and they should not have been administrators/shareholders in other Romanian companies in the following cases: insolvent/bankrupt/ fiscally inactive/trade registry inactive/with annulled VAT registration/with overdue taxes.

The company should have employees other than the economic director/head accountant.

It is also interesting that the Romanian tax authorities consider it a negative aspect if at least one of the administrators is a non-Romanian tax resident individual and the company applying for the VAT registration has a share capital below RON 45,000.

Consequently, if a Romanian company does not have employees, has a foreign individual as administrator, has a minimum share capital and headquarters in the premises of a service provider, its VAT registration process is not straightforward, even if the new company has a serious business plan.

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Fortunately, Romanian branches of foreign companies/EU companies registering directly for VAT purposes in Romania are not subject to the above VAT risk analysis.

Russia

Russian VAT regulation and recent changes regarding electronic services

Russian VAT was inapplicable to services rendered in electronic form until January 2017. Before the designated date, such services could be rendered without any indirect taxation in Russia.

The constitution of VAT regarding electronic services

The Federal Law no. 244-FZ was published on July 3, 2016 (hereinafter, the Law) and amended the Russian VAT treatment of a number of internet digital services and actually introduced VAT regarding electronic services alongside a definition of electronic services for Russian tax purposes. These rules came into force on January 1, 2017.

Currently Russian VAT is applied to the digital services designated in article 174.2 of the Russian Tax Code. The mechanism of VAT payment depends on the type of purchaser of the services, which may be of two types:

- **Purchaser is a legal entity or an individual entrepreneur** – in this case, a Russian purchaser or Russian selling agent shall pay VAT to the budget in a capacity of a tax agent.
- **Purchaser is an individual (not registered as an individual entrepreneur)** – in this case, VAT shall be paid to the budget by a foreign service provider or by a foreign selling agent. In this case, foreign entities are liable to register for VAT purposes in Russia.

After providing the Russian tax authorities with all documents required, the tax authorities register the company and arrange access to the company's online personal account within 30 working days. The account thereafter can be used to communicate with Russian tax authorities and file tax returns.

According to the Law, digital services are determined as services provided via the internet or other similar electronic networks. There is an extensive list of digital services covered by the law, including, inter alia:

- provision of rights for use of software, databases
- sales of electronic content
- provision of trading platforms
- provision of domain names, web hosting services
- broadcasting of TV or radio channels
- provision of advertising services in the internet
- data storage and processing, etc.

It is important for a foreign legal entity to organize accordingly the sales of the electronic services to Russian consumers. It is important to understand the role of the foreign legal entity in the supply chain (a service provider or an intermediary involved in the payment, for example, agent, commission agent, attorney, etc.) These circumstances influence their obligation to be registered for Russian VAT purposes.

The latest significant changes in legal regulation of "electronic" VAT

In November 2017, the final amendments to No. 335-FZ were adopted.

The current mechanism of the tax agent in the provision of electronic services by foreign companies to Russian legal entities and individual entrepreneurs registered with the Russian tax authorities will be completely excluded from Russian tax legislation from January 1, 2019.

Therefore, starting from January 1, 2019, foreign electronic-service providers, as well as foreign intermediary legal entities, will be required to register for VAT purposes in respect of such supplies (B2B).

Since January 1, 2018, when providing services in electronic form by foreign legal entities, intermediaries which are the subjects of the national payment system, as well as communication operators specified in the Federal law "on the national payment system" are not recognized as tax agents.

From January 1, 2019, the obligation to calculate VAT will be assigned to foreign legal entities that provide electronic services, regardless of who the buyer is – an individual, individual entrepreneur or a legal entity.

Foreign legal entities engaged in business activities participating in negotiations directly with buyers of services based on contracts of assignment, commission agreements, agency agreements or other similar agreements with foreign legal entities providing services in electronic form shall be obliged to register with the tax authorities of the Russian Federation and pay VAT.

Foreign legal entities which provide services in electronic form to legal entities and individual entrepreneurs registered with the Russian tax authorities have to apply for registration with the tax authorities of the Russian Federation no later than February 15, 2019, in case they are not yet registered with the Russian tax authorities.

We assume that foreign companies that provide or participate in the provision of electronic services should be prepared to meet the requirements of the Russian VAT legislation in 2018. They should take into consideration the rules for VAT taxation of electronic services and consider following the next steps:

- Analyze the foreign company's activities to identify operations that may be subject to VAT on electronic services;
- Assess the possibility or necessity of changing the business model to comply with the VAT rules and mitigation of tax risks;
- Consider modification of the mechanism for VAT payment in supply chains;
- Analyze and develop methods for the separate accounting of input VAT for Russian companies that provide electronic services to foreign customers.

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Senegal

VAT changes 2018

On March 30, 2018 the Senegalese legislator adopted Law no. 2018-10 amending certain provisions of the Senegalese Tax Code.

This reform covers several taxes including the business tax, the transfer price regulations, VAT and other taxes.

With regard to VAT, the major changes are related to the definition of the delivery of goods, transactions subject to VAT by option, goods and services exempt from VAT, "Précompte" (withholding) VAT, the suspension of VAT regime and the VAT refund.

1. Definition of "delivery of goods"

The new Article 352.1 of the amended Senegalese Tax Code defines the "delivery of property" as the transfer of the power to dispose of tangible goods as the owner. The former provision referred only to goods without specifying whether they were tangible or intangible goods. Law 2018-10 amending the Senegalese Tax Code limits the definition of the delivery of goods only to tangible goods.

2. Transactions subject to VAT by option

Sales of fishery products were subject to VAT by option under Article 353.1 of the Senegalese Tax Code. With the reform of March 2018, this option is no longer possible.

3. Goods and services exempt from VAT

Paragraph 16 of Article 361 of the Senegalese Tax Code provided exemption only for the international transport of passengers from or to destinations abroad.

The 2018 reform adds to this exemption services directly related to international transport of passengers from or to destinations abroad.

In addition, paragraph 25 of the same article provided exemption of deliveries and services performed for the benefit of the holders of licenses seeking mineral or petroleum substances for the period of validity of their licenses and their renewals.

The new Article 361.25 of the Senegalese Tax Code now exempts from VAT the subcontractors of the holders of research licenses for mineral or petroleum substances accredited as such.

Other exemptions regarding VAT are provided in this same law no. 2018-10, in particular under points 26, 27 and 28 of Article 361.

These new exemptions are relating to:

→ Until December 31, 2021, deliveries and imports of agricultural equipment and services, the list of which will be fixed by joint order of the Minister of Finance and the Minister in charge of Agriculture. The accredited beneficiaries of investment programs for equipment or agricultural installations issued after January 1, 2013 and which have given rise to a suspension of VATx are legally entitled to the exemption provided for by the Senegalese Tax Code (Article 361.26);
→ Deliveries of equipment intended for the production of renewable energies, the list of which will be fixed by joint decree of the Minister in charge of Renewable Energies and the Minister in charge of Finances as well as the deliveries of renewable energies by their producers (Article 361.27).
→ Interest and fees on loans granted to the state (Article 361.28).

4. "Précompte" (withholding) of VAT

The new Article 372.3.f extends until December 31, 2019 the "précompte" of VAT to be operated by customers for transactions covered by any contract paid by public institutions, national companies and the operators or concessionaires of public services, notably concerning water, electricity and the telephone, carried out by taxpayers holding a NINEA (fiscal identification number).

Without this amendment, this regime shall no longer apply from January 2017.

5. Regime of suspension of VAT

The new Article 373.1 includes the importations within the scope of the regime of the suspension of VAT for taxpayers benefiting from an authorization in the Investment Code.

The former provision covered only sales, deliveries and services carried out with clients benefiting from an authorization in the Investment Code.

The VAT suspension regime provided for agricultural equipment is converted into a direct exemption in compliance with Article 361.26.

The regime of suspension of VAT under a lease or Islamic financing contract is repealed.

6. VAT refund

Law no. 2018-10 of March 30, 2018 amending certain provisions of the Senegalese Tax Code provided in Article 390.1 for the refund of the VAT credit for the consumption of energy by agricultural producers until 2021, except for premium fuel.

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Switzerland

New mail-order regulations from January 1, 2019

Background

As per January 1, 2019, the regulations regarding mail order shipments in the Swiss Value Added Tax (VAT) Act are being revised. The intention of this revision is to place foreign suppliers on an equal footing with domestic suppliers. The current unequal treatment arises from the fact that no VAT is levied on imports of goods (import tax) if the tax amount is CHF 5 or less (so-called small consignments). In addition, the delivery of goods is also not subject to domestic VAT (domestic tax). Small consignments from abroad can thus be obtained without having to pay any VAT, whereas the same consignments are subject to domestic tax if purchased from a domestic supplier subject to Swiss VAT.

New legal situation from January 1, 2019

If a foreign mail order company generates at least CHF 100,000 turnover per year from small consignments to Switzerland, its deliveries will be deemed to be domestic supplies. As a result, it will be subject to tax in Switzerland and must register for Swiss VAT purposes. Tax liability triggers when the turnover limit of CHF 100,000 is reached.

As of the entry of the foreign mail order company in the Swiss VAT register, not only the small consignments of the mail order company will be considered as domestic supplies, but also all other consignments (i.e., where the import tax amount is more than CHF 5). As a result, all shipments of such mail order companies to Switzerland will be subject to domestic tax.

If, on the other hand, a foreign company is entered in the Swiss VAT register due to other supplies provided in Switzerland, and if this company also ships small consignments from abroad to Switzerland, these small consignments continue to be considered foreign turnover. Deliveries from small consignments will thus not become domestic supplies until the turnover of CHF 100,000 per year from such deliveries to Switzerland is reached.

Review of VAT liability and registration

Anyone who achieves a turnover of at least CHF 100,000 in 2018 from small consignments will be liable to tax from January 1, 2019 and must be entered in the Swiss VAT register if it is to be assumed that such deliveries will also be carried out in 2019.

If a mail-order company starts shipping small consignments to Switzerland after January 1, 2019, its shipping and transport deliveries will be deemed provided in Switzerland and it will become subject to Swiss VAT as soon as the turnover of CHF 100,000 from small consignments per year is reached. It must then be entered in the VAT register.

Companies or persons who meet the requirements for tax liability must register for Swiss VAT purposes with the Swiss Federal Tax Administration (FTA). The foreign company or person must appoint a tax representative resident or domiciled in Switzerland. In addition, a security must be provided by means of cash or a bank guarantee from a bank domiciled in Switzerland.

Practical note: The FTA provides a list of mail order companies entered in the Swiss VAT register. This list enables companies entrusted with customs clearance to clarify whether import tax is to be charged to the recipient of a parcel or to the taxable mail order company.

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Ukraine

VAT exemption for supply of software products

Supply of IT services and software products is the most rapidly developing economic sphere in the world and, in particular, in Ukraine. In 2017, Ukraine was recognized as the best country to provide IT outsourcing services[1], with a total export volume of approximately USD 3.6 billion (third place in contribution to the GDP of Ukraine after agriculture and metallurgy).

Considering the high level of competition on the world market of software development, the Ukrainian government introduced a few tax benefits for transactions on supply of software products to maintain the competitiveness of domestic software developers.

According to the provisions of the Tax Code of Ukraine, the supply of software products as well as transactions with software products for which the payment is not deemed to be royalties are temporarily VAT exempt until the end of 2022. This exemption does not cover transactions on the transfer of software rights, payments for which are considered as royalties, as such transactions are VAT-exempt under the general rule.

Taking into account that software products are constantly changing and evolving, in order to apply the above VAT exemption, it is necessary to understand what is included in "software products". Based on the definition given in the Tax Code itself, "software products" include the results of computer programming in the form of operating systems, computer programs or their components, any changes, updates, add-ons for computer programs, websites, cloud-based services, as well as cryptographic information security tools.

As no questions usually arise when it comes to the supply of operating systems or computer programs, some problems may still appear in case of the supply of cloud-based services. Local tax authorities further explain that the supply of cloud-based services is VAT-exempt when the customer gets the right to use the software as an end-user for its own purposes (e.g., storage of data or online accounting services). Whereas the mere provision of information or specific data with the use of cloud-based services without granting the customer actual access to the software itself will not entitle software suppliers to apply the VAT exemption.

Another issue that may arise is that contracts between software suppliers and their customers are not always limited to the supply of software products but also include the provision of support-related and other accompanying services. If such accompanying services are indistinguishably linked to the software products and included in their price (e.g., installation, setup, testing, fixing bugs, etc.), they are also exempt from VAT. But in cases when accompanying services are not included in the price of software products and/or provide for further technical assistance in the course of the use of the software, such services are not considered VAT-exempt. In the latter case, the supply of software products and the supply of accompanying services must be split in the contract and regarded as separate transactions, one of which will be VAT-exempt and the other not.

In order to avoid any mistakes with accruing and paying VAT for transactions on the supply of software products, the parties should thoroughly stipulate the contractual terms, determine whether the supplied software products and accompanying services are covered by the VAT exemption and split the contract if at least one of the transactions within its framework is VATable.

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1 According to the data provided by Global Sourcing Association.

United Kingdom

Making tax digital – VAT

What is it?

Making tax digital is the UK Government's attempt to ensure that all VAT records and submissions are electronic. It will initially apply for VAT returns with effect from April 1, 2019 for businesses trading in the UK above the UK VAT registration threshold (currently GBP 85,000). From this date, businesses must use "functional compatible software" which is software, or a collection of different pieces of software that allows or provides:

- The retention of records digitally (i.e., transactional data);
- A link through a platform to electronically provide the UK tax authority (HMRC) with information and VAT returns; and
- A link through a platform to receive information from the HMRC.

HMRC's intention for the above is twofold, firstly to ensure most UK VAT registered businesses have a software package in which their VAT records/transactional data are kept (businesses will no longer be able to keep manual ledgers). Secondly, to ensure that the information flows to the VAT return schedule electronically (i.e., without manual input) and transposition errors are avoided when the VAT return is submitted.

What is functional compatible software?

Functional compatible software is either a software package which both records transactions and links to the UK tax authorities systems for the submission and receipt of information, or a collection of software that achieves the same purpose.

There are a number of financial software/ERP providers that are developing add-ons to enable their packages to be fully regarded as functional compatible software. However, it is accepted that software such as spreadsheets can form part of the functional compatible software and "bridging software" or "API enabled spreadsheets" can be used to link to HMRC's system to allow for the electronic submission of VAT returns. Where a spreadsheet is used, there must be digital links from the software containing the transactional data to the spreadsheet. In practice, this means exporting data directly from the financial software to the spreadsheet rather than manually entering values. However, the digital link requirement does not fully come into force until March 31, 2020, although the VAT return must still be submitted electronically.

HMRC is currently undertaking a pilot program to test the software being developed to provide the link to the HMRC's systems for the submission of the VAT returns.

What does this mean in practice?

Most businesses will already have in place an accounting package in which the digital records are maintained. Therefore, most if not all of the relevant data (i.e., the tax point for sales and purchases, value of supply, output VAT, input VAT and for sales, the rate of VAT) will already be retained electronically.

While it is possible that some businesses will have one piece of software that is fully making tax digital compliant, for many businesses bridging software will be needed to submit the

VAT returns. Where an agent is used to prepare and submit VAT returns, the agent will also need to purchase making tax digital compliant software or bridging software for the submission of the VAT returns.

What other information needs to be submitted?

Supplementary data can be submitted, however, the only mandatory information that needs to be submitted is the information contained in the nine boxes of the current UK VAT return. Businesses will not be required to submit any transactional data along with their VAT return.

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