WTS Value Added Tax Newsletter

Editorial

Dear Reader,

2021 is already up and running. This also holds true for the world of VAT and GST, which can be seen from the insights coming from various countries gathered in our first edition of the WTS Global VAT Newsletter 2021.

The **Czech Republic** is changing the VAT treatment for the rental of real estate, whereas **Denmark** is modifying its rules for the reconciliation of input VAT deduction in case the actual use differs from the initial intentions.

France is implementing VAT group regulations for the near future and the French Supreme VAT Court provides taxpayers with an extended timeframe for the reporting of input VAT.

Germany is narrowing the application of the tour operator margin scheme by partially excluding companies from outside of the EU.

An extension of the scope of invoices subject to the online reporting system in combination with pre-completed VAT returns can be seen in **Hungary**.

In **Ireland**, the period of temporarily reduced VAT rates is coming to an end, but companies may benefit from cash flow advantages due to a "postponed accounting" mechanism for import VAT.

Italy is taking the next steps in digitalising compliance procedures.

Latvia is tightening the payment due dates for VAT payments and refunds, but is also extending the application of reduced VAT rates.

The **United Kingdom** is aiming at reducing ties with EU VAT rules by shortening the filing deadline for input VAT recovery claims of EU businesses to 31 March 2021.

Beyond Europe, we can see **Brazil** potentially changing the tax treatment for supplies of software.

Chile is extending the scope for electronic invoicing and the same is also happening in **China**.

A new Finance Act is bringing changes for the VAT landscape in **Nigeria**.

By April 2021, the **Sultanate of Oman** will be the fourth Gulf State to introduce VAT, whereas the **Kingdom of Saudi Arabia**, having implemented VAT at an earlier stage, is extending the duration of its tax amnesty scheme.

Vietnam is implementing enforced tax collection measures by making payment service providers liable for tax debts of overseas businesses.

As the economic and social impacts of the **coronavirus disease** (COVID-19) still continue to challenge the world, WTS Global continuously updates an overview of the measures taken by various countries to respond to the tax aspects of this crisis: https://wts.com/global/insights/covid19

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

Yours sincerely,

Jürgen Scholz Gabriele Heemann

WTS Global VAT Team

wts global

Contents

Please find the complete list of all contacts at the end of the newsletter.

I. EU Member-States

Czech Republic

VAT on rental of residential properties from 2021

Rental of real estate in the Czech Republic, with a few exceptions (for instance rental of parking spaces), is VAT exempt without the entitlement to deduct input VAT from incoming transactions.

Taxpayers can decide that output VAT will apply when renting real estate to another VAT payer for economic activities. In this way, taxpayers can achieve being entitled for input VAT deduction from received transactions.

With effect from 1 January 2021, however, some exceptions have been established, in which this will no longer be possible. This applies to the rental of property for permanent residence, therefore, mainly to apartments and houses.

From 2021, the owner of the property is therefore obliged to exempt their rental from VAT, without the right to deduct VAT from input transactions.

At the same time, taxpayers must also adjust their deduction of input VAT. This adjustment is carried out for a period of 10 years beginning as of the year in which the property intended for housing had been acquired.

Example: A VAT payer bought a flat from a developer in 2020 for EUR 1.5 million. The flat was rented to another VAT payer applying VAT, which allowed the landlord to use the entitlement to deduct input VAT of EUR 150,000 in 2020.

As of 2021, the landlord will have to carry out adjustments of input VAT deduction for the next 9 years, each one at a rate of one tenth of the applied input VAT deduction. In other words, from 2021 to 2029, they will have to repay EUR 15,000 to the state budget in December.

Roman Pechacek
roman.pechacek@
alferypartner.com

Denmark

Consequences of change of intention as to the use of real estate

Whilst Denmark is implementing new VAT rules on the change of intention as to the use of real estate, the European Court of Justice has recently ruled on the Stichting case, which has affected the Danish implementation.

The main issue is how recovered input VAT should be adjusted in situations where the property is solely used for VAT exempt purposes. Depending on the circumstances, the change of use is either considered a new transaction or, if not, the recovered input VAT must be corrected.

New rules in Denmark as of 1 July 2021 – from a 10-year adjustment of recovered input VAT to an instant 20% output VAT liability of the current market value
In December 2019, the Danish Parliament passed a bill concerning change of intention as to the use of real estate.

In summary, in cases in which capital goods have been constructed or acquired for VAT-taxable purposes and later used for 100% VAT-exempted purposes, the rules have changed from an input VAT adjustment over a 10-year period to an instant output VAT liability amounting to 20% of the market value. This would have great economic consequences in an uncertain market.

Thus, the change of use of capital goods is considered a new transaction, i.e. taken out of the business and is therefore treated as a sale at the time of the change.

The Stichting case affects the implementation of Danish VAT law – change of intention in the first financial year is decisive.
In the meantime, the European Court of Justice ("**ECJ**") has ruled on a similar issue, in the Stichting Schoonzicht case C-791/18 ("**Stichting**"), which is affecting the implementation of Danish rules. The Danish Tax Agency has recently issued a guidance on altered use.

The Stichting case concerns the way in which an initial deduction of input VAT should be adjusted by a trader who constructed an apartment complex, which was intended to be used for VAT-taxable purposes. However, some of the apartments were subsequently rented out, with the result that the *first* use of those apartments was VAT exempt.

The decisive point is whether the change of intention takes place before or after the first financial year in which the construction of the property is completed.

If the change of intention takes place before the end of the financial year in which the construction of the property is completed, the taxable person is liable to repay the excess VAT which was deducted in full, if the initial deduction exceeded the amount which the taxable person was entitled to deduct. In other words, a correction of recovered input VAT must be made.

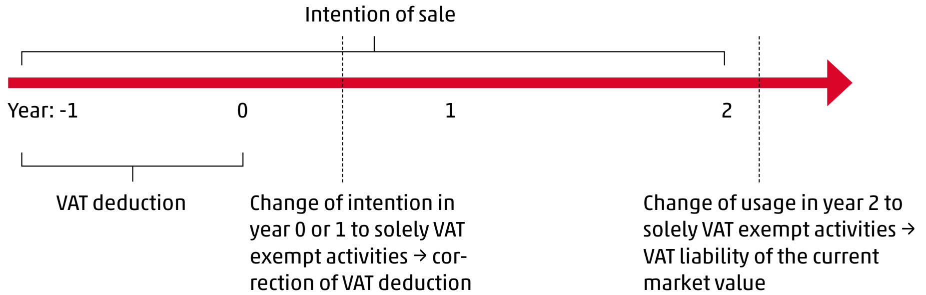
Correlation between the new Danish rules and the Stichting case
The Danish Tax Agency has not clarified the correlation between the new Danish rules and the Stichting case. However, we assume it would be as follows:

- When the change of intention takes place before the end of the financial year in which the construction of the property is completed, the taxable person must correct recovered input VAT.
- When the change of usage takes place after the end of the financial year in which the construction of the property is completed, the change is considered a new transaction. Consequently, an instant output VAT liability amounting to 20% of the market value must be settled.

We are following the development closely and recommend that businesses carefully consider their options and consequences hereof if they might change intention as to the use of real estate.

Mario Fernandez
maf@lundgrens.dk

Nadia Azaquoun
naz@lundgrens.dk



wts global

France I

Timing of input VAT deduction – favourable court ruling

The French Supreme VAT Court *(Conseil d'Etat)* has issued a ruling which, in some situations, has the effect of extending by one year the deadline by which input VAT should be claimed in French VAT returns.

According to Article 208 of Appendix II to the French Tax Code, VAT input amounts should be reported in French VAT returns no later than 31 December of the second year following the year in which the VAT for the underlying transaction became chargeable (the "input VAT deduction timeframe").

According to the French Tax Authorities and French lower courts, the starting point of the input VAT deduction timeframe was the exact date when the chargeability of VAT in respect of the underlying transaction took place.

> ***Example:*** *According to the French tax authorities, for a standard service paid on 12 November 2018, the starting point of the input VAT deduction timeframe was 12 November 2018, so that the recipient was due to report this input VAT amount in a VAT return filed no later than 31 December 2020.*

However, according to the *Conseil d'Etat*, the starting point of the input VAT deduction timeframe is the date as of which the VAT return – precisely considering the input VAT amount in question – should have been filed at the latest.

Since there is usually a delay of one month (and sometimes more) between (i) the exact date when the chargeability of VAT takes place for a given transaction and (ii) the filing date of the VAT return in which that transaction/amount should be reported, the choice made by the *Conseil d'Etat* to start the computation of the input VAT deduction timeframe as from the second date only gives more time to taxable persons to report VAT input amounts, e.g. those being initially forgotten, or to re-carry forward a VAT credit properly reported initially, but then forgotten in subsequent VAT returns.

> ***Example (continued):*** *Now, according to the French Supreme VAT Court, for a standard service paid on 12 November 2018 and for a taxpayer subject to quarterly VAT filings, the starting point of the timeframe was January 2019 (maximum filing date for the VAT return due in respect of Q4 2018, so that the recipient was due to report this input VAT amount in a VAT return filed no later than 31 December 2021).*

This rule would apply both to (i) the initial reporting of a VAT input amount and to (ii) cases where a VAT credit was initially reported in a VAT return, but then not properly carried forward from one VAT return to the other.

Anne Benoit
anne.benoit@fidal.com

Eric Cayrel
eric.cayrel@fidal.com

France II

Implementation of an optional VAT Group

The VAT group regime is going to be introduced in France, which is a true tax revolution.

France is one of the last countries to decide to implement the regime of Article 11 of the VAT Directive under which other Member States have already taken advantage of this measure. This regime allows, under an option, a group of entities to be considered as a single VAT taxable person.

Indeed, the new VAT Group allows members of the Group to supply, without VAT, any service or good to other members of the VAT Group.

The Finance Act for 2021 sets out the conditions and deadlines for the creation of such a group. Article 162 provides that, as of 1 January 2023, the VAT group will be accessible to all taxable entities that have their registered office or a permanent establishment in France. Therefore, France decided to strictly circumscribe the territorial scope of application of the French VAT group.

Furthermore, in order to constitute a VAT group, taxable entities must be closely linked to each other in financial, economic and organisational terms at the time the option for the group scheme is exercised.

The option for the group plan must be performed no later than 31 October of the previous calendar year in order to be effective during a given calendar year. Once performed, the VAT Group will compulsorily cover a period of three calendar years. For an effective date of 1 January 2023, the option must be exercised no later than 31 October 2022.

As a consequence, as of 1 January 2023, the VAT exemption regime of Article 132 of the VAT Directive implemented in France under Article 261 B of the French Tax Code (FTC) will be limited merely to sectors of general interest. Therefore, previous rulings allowing to benefit from the VAT exemption regime of Article 261 B of the FTC to Financial, Insurance, Education and low-income housing sectors will no longer be applicable. Affected businesses need to immediately anticipate this possibility and will have to look for alternative solutions.

Lastly, it should be noted that this regime will only apply to VAT, thus excluding other taxes such as corporate income tax and transfer pricing. It requires a thorough assessment not only of the gains generated by this regime but also of the constraints, the implementation and operation cost and the possible loss in terms of other taxes, if any.

Even if these provisions will be clarified by the French Tax Authorities, this VAT regime opens up new opportunities, particularly considering that it will make it possible to secure the VAT treatment of intra-group flows and to improve the cash flow of groups.

Filiz Alparslan
filiz.alparslan@fidal.com

Zaccharie Pérais
zaccharie.perais@fidal.com

Germany

TOMS no longer applicable for all non-EU companies as of 2021

Section 25 of the German VAT Act provides special regulations for travel services. According to Section 25 paragraph 1, sentence 4, of the German VAT Act in conjunction with Section 3a paragraph 1 of the German VAT Act, such transactions are deemed to be carried out in the place where the company (tour operator) operates its business. Companies that provide travel services pursuant to Section 25 of the German VAT Act must apply a margin taxation and cannot claim input tax deduction from the travel input services used. This VAT simplification is known as the Tour Operators Margin Scheme (TOMS).

The German Federal Ministry of Finance clarified, with its decree published on 29 January 2021, that Section 25 of the German VAT Act shall not apply to non-EU companies that do not have a fixed establishment in the EU. Due to the exclusion from the scope of application of TOMS rules by the new decree, the determination of the place of taxation for each individual service supplied by such non-EU tour operators, e.g. hotel accommodation, flight, etc., would have to be made based on the general rules for determining the place of services according to Sections 3a, 3b and 3e of the German VAT Act. This could result in different places of taxation, e.g. for:

- Accommodation services where the accommodation is located (Section 3a, paragraph 3 no. 1, sentence 2, letter a of the German VAT Act)
- Catering services where catering is provided (Section 3a, paragraph 3, no. 3, letter b, of the German VAT Act)
- Passenger transport where the transport takes place (Section 3b, paragraph 1 of the German VAT Act).

Depending on the particularities of the individual case, such services may lead to taxable services in Germany, whereby registration obligations for VAT purposes in Germany may arise. Furthermore, the VAT liability for some input services rendered by a subcontractor not resident in Germany might also be shifted to the recipient according to the reverse-charge procedure, ref. Section 13b of the German VAT Act, what eventually could also result in an obligation of the tour operator to get registered for VAT purposes in Germany. It also needs to be clarified which VAT rate might be applicable for which individual services, e.g. for catering services and accommodation services, the reduced VAT rate applies.

At this point, it should be underlined that also companies from non-Member State countries within Europe, such as the United Kingdom, Switzerland and Norway, are affected by this decree. In summary, given the retroactive nature of this new decree and its wide-reaching implications, affected businesses should urgently consider its impact, e.g. whether:

- their business model is subject to registration needs for VAT purposes in Germany;
- what effects the taxation will have on previously calculated profit margins; and
- how business processes should be adapted in order to reduce the disadvantages associated with the change and to use existing advantages.

Dr. Alexander Weitz
alexander.weitz@wts.de

In accordance with this decree, it will not be objected by the tax authorities if affected non-EU companies would continue applying Section 25 of the German VAT Act for travel services rendered until 31 December 2020.

Hungary

Administration relief and tightening in Hungary

As of 2021, important changes being introduced to the Hungarian legislation will come into effect, such as the relief in EKAER (electronic road transport monitoring system linked to intra-Community and domestic shipments) or concerning the administration and simplification in the fulfilment of tax obligations related to distance selling, extensions of online invoice data reporting and the introduction of the e-VAT return.

EKAER

The most important change in the EKAER rules is that, as of 2021, the obligation of requesting an EKAER number exists only regarding goods deemed to be risky under the previous regulations. These typically include food products, clothes as well as other products defined in a decree.

Distance selling

The Hungarian VAT law will be amended to be in line with EU regulations effective as of July 2021 relating to the registration of companies in the One Stop Shop (OSS) system performing distance selling to non-taxpayers.

The essence of OSS, as of 1 July, is that, if a taxable person would have to register, issue invoices, and pay VAT in more than one country as a result of B2C sales to several member states, it will be enough registering with the OSS in the home country and fulfilling tax obligations through this registration (as of 1 April, taxpayers can initiate the registration in the OSS).

Online invoice reporting system

The online invoice data reporting system moved to the next level from 1 January 2021, extending the online data reporting obligation even to sales to non-taxpayers, intra-Community tax-exempt sales, or export sales. This means that practically all invoices issued have to be reported from this date to the Hungarian tax authority. The system is ready to be used from 4 January. However, due to the pandemic, no default penalty is levied until 31 March 2021.

It is important to mention that invoices issued under the registration in the OSS system are exempt from online data reporting obligation.

Further technical innovation was introduced to the online invoice data reporting system which facilitates e-invoicing in Hungary. This means that the coming months will be a good time to move with the times for Hungarian invoice issuers by switching to e-invoicing.

e-VAT returns are on their way

Based on the current status, the Hungarian tax authority will prepare a draft VAT return for taxpayers from the 12th day of the month following the tax assessment period. This will be available based on VAT data for July 2021. The VAT return proposed by the tax authority will not qualify as a comprehensive VAT return, i.e. it would not include intra-Community transactions. For this reason, the draft return will not automatically become a valid tax return and it is up to the decision of the taxpayer to use it.

It is now clear that the aim of the Hungarian tax authority is to feed its system with as much information as possible in order to make risk assessment easier, gain as much information as possible about the transactions and make the operations of the companies more transparent in reducing the VAT gap very effectively.

Tamás László
*tamas.laszlo@
wtsklient.hu*

In return, the tax authority is providing several new features that may make taxpayers' lives easier, at least for those not having many cross-border transactions.

Ireland

VAT Updates

Standard VAT rate

On 1 September 2020, the standard rate of VAT was temporarily reduced (until 28 February 2021) from 23% to 21%. Any VAT credit note issued to a VAT registered person, which contains a VAT adjustment relating to a supply of goods or services, should show VAT at the rate in force at the time the original invoice was issued.

Filing extension for the 2020 Annual Return of Trading Details (ARTD)

Revenue has extended the filing date for the 2020 ARTD to 10 March 2021. The ARTD is currently being updated to reflect the temporary change in the standard VAT rate from 23% to 21% and should be available for filing as of 10 February 2021.

Postponed Accounting

Overview

Ireland has introduced a new mechanism to alleviate the VAT cash flow burden resulting from importation. Known as "Postponed Accounting", the mechanism is available to all accountable persons in Ireland who purchase goods from outside the EU VAT area.

Postponed Accounting enables an accountable person to self-account for VAT on imports via the VAT return, so that import VAT may, subject to the usual rules of deductibility, be reclaimed at the same time as it is declared on the VAT return. This will be a straightforward self-accounting transaction, without the need to pay the VAT at the point of importation. The VAT return has been amended to include an additional field/box PA1 to capture the value of goods imported under Postponed Accounting.

Who can make use of the new mechanism?

Accountable persons who are registered for VAT and Customs & Excise (C&E) at 11:00 pm on 31 December 2020 will be given automatic entitlement to Postponed Accounting.

VAT registered traders who are not registered for C&E at 11:00 pm on 31 December 2020 who wish to import goods into Ireland from that point in time must register for C&E. Once registered for C&E, they will be given automatic entitlement to Postponed Accounting.

In order to make use of Postponed Accounting, an accountable person must be in compliance with certain conditions and requirements.

wts global

Buying goods from outside the EU for personal use

As of 1 July 2021, all non-EU imports, regardless of value, will have Irish VAT applied and collected, whereas currently, there is a de minimus value exemption of €22 applied in assessing liability to VAT. This change will, in effect, increase the cost of purchase for Irish-based customers which may have an impact on sales into Ireland by non-EU based businesses.

Andrew Gelling
andrew.gelling@agellingtax.com

Italy

Main news regarding VAT compliance

Two years following the implementation of mandatory e-invoicing via SDI, a further step forward to fully digitalised compliance procedures and pre-drafted VAT-relevant ledgers and returns is being taken.

Pre-drafted VAT ledgers and returns

Starting with transactions performed as of 1 January 2021 onwards, the Italian Tax Authorities will make available – on an experimental basis – pre-drafted VAT ledgers, quarterly VAT communications and yearly VAT returns. Said procedure will involve VAT-taxable persons being established in Italy only. To prepare these documents, the Italian Tax Authorities will use the data retrieved from electronic invoices, electronic communication of cash register data, VAT communication of cross-border transactions and any other useful information available in the Tax Authorities database. At the end of each quarter, each taxpayer could then check the pre-drafted VAT ledgers and confirm, complete or possibly modify them, so that the Italian Tax Authorities could have a preliminary VAT computation and then prepare the pre-drafted quarterly VAT communication and, at year-end, also prepare the pre-drafted yearly VAT return. Such an automatism, however, may not have a specific benefit for taxpayers, given that there still is a fair amount of information that will not be available to the Italian Tax Authorities in due time, so that (ultimately) the risk is that (in most cases) the pre-drafted documents will be incomplete.

Digitalised VAT communication procedure

To accelerate the process to a fully digitalised procedure, it has already been announced that, as of 1 January 2022, the VAT communication of cross-border transactions (which, at present, shall be filed on a quarterly basis) should be filed using the same XML format used for e-invoices via SDI and the filing should occur in shorter terms. Specifically, (1) as regards outgoing transactions, the VAT communication of cross-border transactions shall be filed by the same deadline for issuing the related sale invoice; whilst (2) as regards incoming transactions, the VAT communication of cross-border transactions shall be filed by the 15th of the month following the receipt of the purchase invoice or the date when the transaction was made. As a matter of fact, this would imply an increase in tax fulfilments for taxpayers being established in Italy.

Increased fight against VAT fraud

The cross-use of data being made available to the Italian Tax Authorities from different sources and databases would enable a further fight against VAT fraud. As announced in the Finance Bill 2021, a specific task force will be employed to cross-check data and information, in order (1) to detect taxpayers who benefit from the special rules reserved to so-called "habitual exporters" without meeting the specific requirements; (2) to prevent the issuance of so-called "letters of intent" in which the underlying requirements are missing; (3) to block "letters of intent" which had been issued without meeting the specific requirements and also (3) to inhibit the issuance of e-invoices mentioning an invalid "letter of intent". For the sake of completeness, under "habitual exporter rules", if specific requirements are met, a VAT-taxable person (so-called "habitual exporter", who can also be a non-resident VAT-taxable person having a direct VAT registration in Italy or a fiscal representative) can have VAT "exempt" purchases (including import of goods), by (electronically) notifying to the supplier (or to the Customs office) a specific declaration, a so-called "letter of intent".

Chiara Mejnardi
chiara.mejnardi@ra-wts.it

Latvia

New VAT regulations

New tax payment deadline and payment details

As of 1 January 2021, a new payment deadline has been set for VAT which is calculated by submitting regular VAT returns, which is the 23rd day of the month following the reporting period (it was previously the 20th day of the following month). When submitting a VAT payment notification (e.g. for purchasing a new means of transport from another EU country or for VAT payable to the budget after deregistration from the Latvian VAT register), VAT must be paid within 3 working days.

As of 1 January 2021, all tax payments, including VAT, must be paid to a new unified tax account of the tax authorities. Regarding the tax payments administered by the Latvian customs authorities (import duty, import VAT and excise duty), the existing budget accounts still have to be used. The respective payments to the unified tax account will have to be made only as of 2023.

Input VAT refunds

According to the new VAT overpayment refund procedure, in the event of an excess of input VAT over output VAT, a refund of VAT must be made by the tax authorities to a taxpayer within 30 days after filing a VAT return. Only in certain cases do the tax authorities have the right to delay the refund of the overpaid VAT (for example, in cases of tax audit or request for additional information).

Reduced VAT rates

The period of application of the reduced VAT rate of 5% for the supply of certain types of fresh fruit, berries and vegetables, including washed, peeled and packaged types, uncooked or otherwise prepared (for example, frozen, salted, dried) is extended until 31 December 2023. Previously, it was set until 31 December 2020.

As of 1 January 2021, a reduced rate of 0% VAT applies to the supply of the Covid-19 vaccine, registered in accordance with pharmaceutical regulations and in vitro tests recognised in the European Union and to the supply of services closely related to that vaccine and tests. The provision will be valid until 31 December 2022.

E-commerce

Latvia has implemented new VAT rules of e-commerce, in accordance with the amendments to Directive 2006/112/EC and will start to apply them as of 1 July 2021. The new rules also include that import VAT will be due on all low-value goods imported into Latvia from non-EU countries (currently, the importation of goods for personal use with a value not exceeding EUR 22 is exempt from VAT).

Kristīne Erele
kristine.erele@sorainen.com

II. Further countries

Brazil

A Possible New Future for Digital Taxation

Addressing the taxation of goods and services in Brazil has been a challenge for several decades, especially in view of the substantially different tax treatment of each one. One of the main challenges in this regard results from the fact that Brazil splits the taxation of goods and services mainly between the State VAT (ICMS) – levied on transactions with goods – and the Municipal Service Tax (ISS) – levied on other services listed in the law.

Such controversies have taken even greater proportion in connection with the taxation on the digital economy, as Brazilian laws are not clear as regards the nature of the digital goods that are marketed (be they goods or services).

In the late 1990s, the Brazilian Federal Supreme Court (STF) analysed two cases regarding the taxation of software, understanding that: (a) the licensing of the rights to use a software between its owner (licensor) and the licensee is not a transaction with goods subject to the ICMS; and (b) the sales of physical copies of standard software in stores are transactions with goods subject to the ICMS. Also, it was acknowledged that it is possible to request the development of a software from scratch (tailor-made), which could typify a service.

Based on these decisions, the lower courts and federal and state tax authorities have construed an interpretation in which: the marketing of standard software is considered as a transaction of goods subject to the ICMS, regardless of whether they are delivered by physical means or by download; and the development of a software by order is considered as a service subject to the ISS. However, municipalities never agreed upon such interpretation, as the licensing of the rights to use software is legally considered as service subject to the ISS, thus charging this tax on any transaction with software.

In October 2020, the STF has begun judging Direct Actions of Unconstitutionality (ADI) 1945 and 5659, in which it evaluates the constitutionality of state law on the levy of the ICMS on transactions with software delivered by means of download. The majority of STF Justices has voted against the levy of the ICMS on software licensing agreements, pending the opinion of one Justice.

Based on this judgement, it is possible to predict a substantial change in the current case law and tax authorities' approach towards software taxation, under which – regardless of the type of software and its form of delivery – it cannot be considered as a transaction with goods. As a result, there will be legal grounds to construe that transactions with software are considered as a service for tax purposes. Hence, the conflict between the levy of the ICMS and ISS is most likely resolved in favour of the municipalities.

Aside from the revolution regarding the generally accepted tax treatment of software, a revision of the approach of the federal tax authorities – which accept that transactions with standard software should be taxed as transactions with goods – can be expected. Such

Júlio M. de Oliveira
jo@machado associados.com.br

Gabriel Caldiron Rezende
gcr@machado associados.com.br

revision might substantially increase the tax burden on the import of software by download because, on the one hand, as bodyless goods, transactions were generally not subject to customs taxation and, on the other hand, as a service, it will be subject to a heavy tax burden.

With the expected conclusion of the STF judgement in 2021, a new year will most likely bring a new future for the taxation of software in Brazil.

Chile

Mandatory nature of the electronic invoice in Chile

As of 1 January 2021, issuing electronic invoices for sales and services in Chile is mandatory for taxpayers that invoice electronically. For taxpayers that do not issue electronic invoices, said measure is mandatory as of 1 March 2021.

Electronic invoicing started in 2014 in Chile and was gradually implemented until its completion in 2018. Electronic invoicing is an improvement on innovation that joins this previous effort.

Another obligation that arose is the obligation to specify, on the invoice, the amount that corresponds to 19% of the VAT paid, so it will be possible to know which amount corresponds to taxes.

With this innovation, the trader can send the invoice to consumers via WhatsApp or by email.

Some of the advantages of electronic invoices are:

- In practical terms, it entails simplicity in the digital record of the documentation. The monthly invoice ledger will no longer have to be created manually. However, from now on, purchases and sale ledgers can be reviewed online and the information can be linked directly to the Internal Revenue Service.
- Digital storage of information: prior to the issuance of electronic invoices, there were various obligations related to paper invoices, such as the obligation to print tax documents, bring said documents in person to the Internal Revenue Service for stamping, as well as the obligation to keep the originals for 6 years and, in some cases, even longer, with significant storage costs. This disappears with the digital storage and recording of information.
- In terms of collection, it entails the formalisation of informal trade with its consequent increase in collection.

To achieve this goal, the Internal Revenue Service has provided a free mobile application that issues electronic documents. Users can also choose private electronic invoice providers, of which there are several in the market.

Loreto Salas
lsalas@ egbabogados.com

China

E-invoicing for newly registered taxpayers

China has recently announced a nationwide implementation of VAT e-invoices. The e-invoicing would be introduced to all the newly-registered taxpayers in China by the end of January 2021, covering all invoice recipients.

E-invoicing is becoming popular due to its advantages in issuing, keeping, inspection and cost savings. An e-invoice is an electronic version of a VAT special invoice with the same legal effect, usage and requirements as those governing paper invoices.

All province or equivalent-level tax authorities are given the discretion to determine the quota for new taxpayers to obtain electronic VAT invoices for the first time within the national scope of the maximum invoice value and the maximum quantity per month. After the setting, taxpayers can still apply for a higher quota to meet their increasing business need.

After applying for the e-invoices online, taxpayers can issue e-invoices on an invoice service platform with a security token "Ukey" and arrange a remote delivery. Taxpayers can issue VAT special invoices either in electronic or paper versions. However, taxpayers should issue a paper version if a customer so requests.

In the event of any sales return, incorrect invoicing, cancellation of service or sales discounts, the invoicing party or the recipient can conduct an online application for a credit note. Taxpayers can then issue a credit note after obtaining the tax authority's automatic verification online. For anyone intending to use e-invoices for tax return purposes, deduction of input VAT, export tax refund or any other tax refund, they are required to confirm the purposes via the VAT invoice online system.

E-invoices are also recognised as the qualified voucher for supporting any claims for the reimbursement of expenses and keeping the records for those taxpayers who adopt electronic bookkeeping practice.

E-invoices can facilitate a quick and safe transaction with the advantages of being easy to process, fast to collect, convenient to deliver, efficient to manage and economical in documentation. Furthermore, e-invoicing can enable enterprises to improve financial analysis, embark on electronic accounting and boost economic digitalisation. However, to date, it has only been introduced to new companies. It is expected that the new e-invoicing practice will soon cover all companies and sectors. Companies are advised to prepare for it, in terms of the selection of IT software and APPs, setting up an e-invoicing process with customers and suppliers and proper adjustments to bookkeeping measures.

Ened Du
ened.du@wts.cn

Nigeria

Finance Act 2020: Highlights of the VAT reform

The Finance Act 2020, including several updates for VAT, was signed into law by President Muhammadu Buhari on 31 December 2020 and became operative from 1 January 2021.

VAT reforms in the 2020 Finance Act

1. VAT exemption: the list of exempt goods and services provided for under Parts 1 and 2 of the First Schedule to the Value Added Tax Act (VATA) has been further expanded to include:

   a. commercial aircrafts, commercial aircraft engines and commercial aircraft spare parts;
   b. airline transportation tickets issued and sold by commercial airlines;
   c. hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.

2. Effective date for new VAT rate: The controversies on the effective date for the implementation of the new VAT rate of 7.5% has been laid to rest as this has been specified in the amended Section 4 of VATA dated 1 February 2020.

3. Registration by non-residents: According to Section 10 of the amended VATA, non-residents supplying taxable goods and services to Nigeria are now specifically required to register with the Federal Inland Revenue Service (FIRS) and obtain a Tax Identification Number (TIN). However, the Act permits a non-resident, in this instance, to appoint a representative for the purpose of complying with this registration requirement.

4. Time of supply of goods and services: the new Act amended Section 2 of the VATA and gave an elaborate explanation of when a supply of goods or services is deemed to have taken place, given that "supply", in this sense, plays a pivotal role in the determination of VAT liability.

   Generally, a supply is deemed to take place at the time an invoice or receipt is issued by the supplier. The amendment, however, differs for certain specific business arrangements and specifies the time of supply for connected persons, rental agreements, payments made in instalments and credit arrangements.

Conclusion

Although the Finance Act 2020 contains a handful of updates on VAT, the updates are welcome developments and show the commitment of the Nigerian government to constantly improve the ease of doing business, by providing timely updates in the applicable tax laws to reflect current economic realities.

Kelechi Ugbeva
*kelechi@
blackwoodstone.com*

Oman

Introduction of VAT in Oman

On 12 October 2020, His Majesty, the Sultan of Oman, issued Royal Decree No. 121/2020 promulgating VAT in Oman. VAT is expected to be implemented in Oman as of 16 April 2021.

Back in 2008, all six GCC States, i.e. the UAE, KSA, Bahrain, Oman, Kuwait and Qatar initiated discussions on implementing VAT across the GCC. It was not until November 2016 that all six States executed the GCC Common Framework Agreement for VAT. In January 2018, the UAE and KSA introduced VAT, followed by Bahrain in January 2019. The Sultanate of Oman will be the fourth Gulf State to introduce VAT in April 2021. The other two States, i.e. Qatar and Kuwait, are expected to introduce VAT in 2022. Oman's VAT regime follows the Common VAT Agreement of the States of the Gulf Cooperation Council, but does have a few deviations from what we have seen implemented in the UAE, KSA and Bahrain.

The introduction of VAT will be a significant change for businesses in Oman. VAT has a broad scope and businesses will need to consider the impact of VAT on key areas including all transactions, supply chains, contracts and IT systems.

1. Taxability

VAT at the rate of 5% will be levied on most goods and services, including the importation of both goods and services into Oman and also on free supplies. Some supplies will be exempt, whilst a few will also be zero-rated. Whilst one cannot deduct the input VAT when supply is exempt, one can claim input tax when supply is zero-rated.

Amongst others, Oman VAT Law provides that the following supplies shall be **zero-rated:**

- Specified food products
- Medicine and medical equipment
- Export of goods and services
- International transport and related services
- Supply of investment gold, silver and platinum
- Supply of rescue aircraft, rescue boats and auxiliary ships
- Supply of crude oil and its oil derivatives and natural gas

Oman VAT Law **exempts** the following supplies:

- Financial services
- Provision of health care and associated goods and services
- Provision of education and associated goods and services
- Undeveloped lands (bare lands)
- The resale of residential real estate
- Local passenger transport
- Renting real estate for residential purposes

Oman is the first country in the GCC to exempt health care and education services in its VAT law, whereas the other three implementing States, i.e. the UAE, KSA and Bahrain, have zero-rated such supplies. This could potentially increase the cost of such services in Oman.

2. Registration

Oman has decided to adopt a staggered VAT implementation (similar to Bahrain) - dependent on the level of annual turnover of taxable supplies (standard rated and zero-rated). VAT registration will be completed in the following stages.

Stage	Turnover OMR	Timelines	Effective date
1	1 million and above	1 Feb 2021 to 15 March 2021	16 April 2021
2	500,000 to 999,999	1 April 2021 to 31 May 2021	1 July 2021
3	250,000 to 499,999	1 July 2021 to 31 Aug 2021	1 October 2021
4	38,500 to 249,999	1 Dec 2021 to 28 Feb 2022	1 April 2022

The mandatory registration threshold is likely to be Omani Rial (OMR) 38,500 (approximately EUR 82,200), whilst the voluntary registration is to be set at OMR 19,250 (approximately EUR 41,100).

3. Filing obligations

Businesses are required to file VAT returns with the tax authority electronically. It is expected that the VAT period will be a minimum of one month and VAT payments and returns need to be filed within 30 days of the end of the tax period. Furthermore, businesses are required to keep VAT records for a minimum of ten years.

4. Penalties for non-compliance

Compared to the other GCC States that have implemented VAT, the penalties provisions in the Oman VAT Law are less harsh.

Consumer Impact

As has been the experience with the other three GCC States, there will be an increase in demand in the run-up to the introduction of VAT and a fall immediately thereafter, with a marked increase in inflation. Therefore, retailers should expect to see consumers pre-order goods and services ahead of the introduction date and will need to stock up to provide for the rush. Typically, the demand for high-value items such as electronics, furniture, luxury items, cars, etc. increases before the introduction of VAT.

What's Next

Businesses that have not yet begun their VAT implementation projects will need to start preparing by evaluating their current position, available resources and VAT-readiness plan. Being a transactional tax, VAT is expected to have an extensive impact across transactions, business units, departments and the overall business. The VAT Law published appears to be exhaustive (in comparison with other GCC VAT Laws) and could be used by the businesses to initiate the VAT implementation exercise.

Broadly, the VAT implementation would involve the following steps/processes:

1. VAT impact assessment, i.e. identifying the VAT treatment for every business transaction
2. VAT fiscal impact, i.e. ascertaining the financial impact on account of VAT (impact on cash flow, working capital, etc.)
3. IT impact, i.e. ascertaining the impact on the accounting system
4. Process and documentation impact, i.e. defining the processes under VAT
5. Transition management

Based on the VAT implementation in other GCC countries, there have been certain challenges encountered during the process, such as lack of seriousness, delayed start of the implementation project, not appointing an implementation consultant, relying on tax positions being discussed at tax groups or industry forums rather than relying on the Law with respect to specific business scenarios, etc. It is important that Omani businesses consider the experience/learnings from the other GCC VAT implementation to avoid penal consequences.

The Oman Tax Authorities have issued guidance (https://taxoman.gov.om/portal/web/taxportal/vat-tax) on preparing for the implementation of VAT throughout the business. The guide encourages businesses to act early and provides examples of steps that should be taken in order to ensure a successful implementation project. Whilst the guide is brief and does not go into the specific detail of a full VAT implementation change management project, it does indicate that the Oman Tax Authorities expect businesses to undertake sufficient planning in order to be compliant on a timely basis with the law.

Businesses continue to await the publication of the final Oman VAT Regulations in the coming weeks.

Deepak Agarwal
deepak.agarwal@dhruvaadvisors.com

Saudi Arabia

Tax amnesty

As a part of the mitigation of the COVID-19 pandemic impact on Saudi economic activities, the minister of finance circulated a new resolution no. 2303 dated 21/01/2021 extending the tax amnesty for another six months until June 2021 (effective from the release date). The relief scheme was introduced earlier in 2020, providing taxpayers with the opportunity to regularise their tax positions and historic tax exposure regarding KSA corporate income tax, withholding tax and VAT and is limited to tax penalties imposed on late payment, late filing and VAT declaration amendments. In addition, payment of the full amount of the original tax liability due is a must in order to benefit from the aforementioned waiver.

The resolution introduced a scale of benefits as a percentage based on the period in which the tax liability has been paid:

Tax liability payment date	**Percentage of fine to be waived**
Between January and end of March 2021	100%
Between April and end of May 2021	75%
Starting June 2021 to 30 June 2021	50%

The amnesty also applies to penalties imposed due to tax assessments raised by the GAZT on tax returns submitted before 21 January 2021.

It should be noted that the following penalties are excluded from the tax amnesty scope:

- Penalties imposed by the GAZT for other than late filing, late payment and VAT declaration amendments
- Penalties imposed due to tax evasion breaches
- Penalties already paid before the release date (21 January 2012)

In this regard, international businesses can take advantage of the tax amnesty scheme as well as multinational groups with a permanent establishment tax exposure in KSA.

Mohamed Ibrahim Sultan
sultan@sadagahcpa.com

United Kingdom

Deadline for UK VAT Refund Applications

Under the normal EU refund process, EU businesses that are not registered or registrable in the UK for VAT but have incurred UK VAT can submit a claim to recover that VAT, subject to certain conditions. Those claims would normally need to be submitted through the portal of the applicants' country before the end of September of the calendar year following the refund year; that is, under normal circumstances, the deadline for businesses to submit their 2020 UK VAT refund claims should be 30 September 2021.

However, due to the end of the Brexit transition period, as of 1 April 2021, access to the EU refund process will be limited to EU VAT. Consequently, EU businesses wishing to claim UK VAT incurred between 1 January 2020 and 31 December 2020 must submit their claims through the portal of their home territory by **31 March 2021.**

UK VAT Refunds for 2021 and Beyond

Where EU businesses incur UK VAT as of 1 January 2021, the UK is continuing with the refund scheme used for non-EU businesses (commonly referred to as 13th Directive refund claims), but this will be extended to EU businesses. Therefore, EU businesses will be able to continue to reclaim UK VAT, even where they are not registered for VAT in the UK. However, please note the different refund years and claim deadlines for this scheme. The claim year runs from 1 July to 30 June and refund claims must be made by **31 December**. Claims are made using the manual completion of VAT form 65A and there is no current option to submit the claim electronically.

Alistair Winning
alistair.winning@
fticonsulting.com

wts global

Vietnam

Increased efforts to enforce tax payment

Value Added Tax ("**VAT**") exposure of non-resident companies in Vietnam is regulated by the law on VAT and implemented by the Circular 103/2014/TT-BTC ("**Circular 103**") on Foreign Contractor Withholding Tax ("**FCWT**"). This is not new. What is new is the regime realising the increased efforts to enforce tax payment. It included, in the past, what now is discussed as Digital Service Tax ("**DST**").

The enforcement of the DST is regulated in the Law on Tax Administration ("**LTA**"), effective as of 01 July 2020 and the Decree 126/2020/ND-CP ("**Decree 126**"), effective as of 05 December 2020.

The new regulations strengthen the effectiveness of the tax collection towards digital service activities of e-commerce traders and other digital service businesses without a permanent establishment ("**PE**") in Vietnam ("**Taxpayer**"). Said taxpayer is required to conduct registering, declaring and paying tax in Vietnam or to authorise another entity to do so on behalf of the taxpayer.

The taxed subject is the income of the taxpayer from Vietnam. The imposed taxes are the VAT, the Corporate Income Tax ("**CIT**") and for business individuals the Personal Income Tax ("**PIT**"). The applicable tax rates are as defined in Circular 103 unless they will be defined differently in more detailed regulations in the near future.

Enforcement of tax collection through intermediate parties

The crucial and new point is the enforcement of the tax payment through intermediate parties. This is introduced because, despite the adoption of the tax self-declaration by the taxpayer, some taxpayers ignored the tax exposure in the past. To fill the gap, in the event that the taxpayer fails to comply with the obligation to declare and pay tax, the tax authorities have the right to issue an enforcement decision and impose tax collection, including the enforcement through commercial banks and/or Intermediary Payment Service Providers ("**IPSP**"). According to Article 27.3 LTA, commercial banks have the right and obligation to "deduct and pay tax of overseas organisations and individuals engaging in e-commerce activities generating income in Vietnam", which is elaborated in Article 30, Decree 126. If goods and services of the overseas suppliers are paid for by credit card or other methods causing the commercial bank or IPSP to be unable to deduct tax, the commercial bank or IPSP is required to provide monthly reports on the amounts transferred to overseas suppliers to the General Department of Taxation.

The tax authority can request the commercial banks and IPSP, other private organisations and other authorities to provide the information needed for enforcement. This refers especially to the details of the bank accounts and payment transactions.

In the event of tax compliance failure or likewise, the tax authority can publish the taxpayer information on its website.

Ms. Nguyen Bao Lam
*nguyen.bao.lam@
lawyer-vietnam.com*

Nguyen Thi Hang Nga
*wolfram.gruenkorn@
wtsvietnam.com*

wts global

Contact

Czech Republic
Roman Pechacek
roman.pechacek@alferypartner.com
T +420-221 111 777
WTS Alfery s.r.o.
Vaclavske nam. 40
110 00, Prague 1
www.alferypartner.com

Denmark
Mario Fernandez
maf@lundgrens.dk
T +45 5361 5859
Nadia Azaquoun
naz@lundgrens.dk
T +45 2167 3090
Lundgrens Law Firm P/S
Tuborg Boulevard 12
2900 Hellerup
www.lundgrens.dk

France I
Anne Benoit
anne.benoit@fidal.com
T +33 1 55 68 14 42
Eric Cayrel
eric.cayrel@fidal.com
T +33 6 15 20 09 43
Fidal
4 – 6 Avenue d'Alsace
92982 Courbevoie
www.fidal.com

France II
Filiz Alparslan
filiz.alparslan@fidal.com
T +33 1 55 68 17 17
Zaccharie Pérais
zaccharie.perais@fidal.com
T +33 6 58 56 89
Fidal
4 – 6 Avenue d'Alsace
92982 Courbevoie
www.fidal.com

Germany
Dr. Alexander Weitz
alexander.weitz@wts.de
T +49 (0) 211 20050-719
WTS Steuerberatungsgesellschaft mbH
Klaus-Bungert-Straße 7
40468 Düsseldorf
www.wts.de

Hungary
Tamás László
tamas.laszlo@wtsklient.hu
T +36-1-887-37-48
WTS Klient Adótanácsadó Kft.
Stefánia út 101-103
H-1143
www.wtsklient.hu

Ireland
Andrew Gelling
andrew.gelling@agellingtax.com
T +353 1 6760675
Andrew Gelling Tax Consultants
Charter House
5 Pembroke Row
Dublin 2
www.wts.com

Italy
Chiara Mejnardi
chiara.mejnardi@ra-wts.it
T +39 011 433 83 51
WTS R&A Studio Tributario
Corso Re Umberto, 10
10121 Torino
www.ra-wts.it

Latvia
Kristīne Erele
kristine.erele@sorainen.com
T + 371 26139383
ZAB Sorainen
latvia@sorainen.com
Kr.Valdemara 21
LV-1010, Riga
www.sorainen.com

wts global

Contact

Brazil
Júlio M. de Oliveira
jo@machadoassociados.com.br
Gabriel Caldiron Rezende
gcr@machadoassociados.com.br
T + 55 11 3819 4855
Machado Associados
11th floor
Av. Brigadeiro Faria Lima, 1656
01451-918 São Paulo – SP
www.machadoassociados.com.br

Chile
Loreto Salas
lsalas@egbabogados.com
EGB Abogados
Avenida Vitacura 2939 oficina 2202
7550011
www.egbabogados.com

China
Ened Du
ened.du@wts.cn
T +86 (21) 50478665-215
WTS China Co., Ltd.
Unit 031, 29F Hang Seng Bank Tower
No.1000 Lujiazui Ring Road
200120 Shanghai
www.wts.cn

Nigeria
Kelechi Ugbeva
kelechi@blackwoodstone,com
T +234 9033 501 613
Blackwood & Stone LP
22A Rasheed Alaba Williams Street, Lekki 1
Lagos
www.blackwoodstone.com

Oman
Deepak Agarwal
deepak.agarwal@dhruvaadvisors.com
T +971 4 240 8477
WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101,
Business Bay
P. O. 127165, Dubai, UAE
www.wts-dhruva.com

Saudi Arabia
Mohamed Ibrahim Sultan
sultan@sadagahcpa.com
T+966 12 606 0183
Sadagah, Certified Public Accountants & Consultants
King's Road Tower, 8th floor, Office # 806,
King AbdulAziz Road
Jeddah 21472
www.sadagahcpa.com

United Kingdom
Alistair Winning
alistair.winning@fticonsulting.com
T +44 (0)20 3727 1534
FTI Consulting LLP
200 Aldersgate
Aldersgate Street
London, EC1A 4HD
www.fticonsulting.com

Vietnam
Ms. Nguyen Bao Lam
Nguyen Thi Hang Nga
nguyen.bao.lam@lawyer-vietnam.com
wolfram.gruenkorn@wtsvietnam.com
T + 84 28 7302 5771
WTS Tax Vietnam Co., Ltd.
172 Hai Ba Trung
70000 Ho Chi Minh City
www.wtsvietnam.com

wts global

About WTS Global

With a representation in over 100 countries, WTS Global is one of the leading global tax practices offering the full range of tax services without the constraints of a global audit firm. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The exclusive member firms of WTS Global are carefully selected through stringent quality reviews. They are typically strong local players in their home market being united by the ambition of building the tax firm of the future. WTS Global effectively combines senior tax expertise from different cultures and backgrounds be it in-house, advisory, regulatory or digital.

For more information please visit **wts.com**

Imprint

WTS Global
P.O. Box 19201 | 3001 BE Rotterdam
Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com | info@wts.de