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# INDIRECT TAX NEWS

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# AUSTRALIA

## PAYING GST ON LOW VALUE IMPORTED GOODS ON THE HORIZON

Currently, goods supplied by non-resident entities to Australian consumers or businesses do not attract GST (10%) where they are valued at less than AUD 1,000. However, from 1 July 2018 onwards, where the goods are supplied to an 'Australian consumer' (an individual or entity that is not registered or required to be registered for GST in Australia), overseas based merchants will be required to remit GST on the goods where their annual turnover exceeds the AUD 75,000 registration threshold.

Overseas based merchants are not required to remit GST where the merchant obtains the recipient's Australian Business Number (ABN) and a declaration or other information from the recipient confirming that the recipient is registered for GST.

The GST will not be collected at the Australian border from the local importer prior to the goods being released (as is the situation for goods imported with a value in excess of AUD 1,000). Instead, the GST will need to be reported and paid electronically by the non-resident supplier. The system is a 'vendor collection' model, with the Australian Taxation Office (ATO) looking for voluntary compliance by overseas merchants. However, the ATO has stressed that they will involve a merchant's local revenue authorities where double tax agreements are in place.

Further, depending on the manner in which the supply is made to the Australian consumer, the resulting GST liability on the supply may be attributed to the overseas based merchant, an electronic distribution platform (EDP), or a re-deliverer (an offshore mailbox service that provides, or assists in providing, the use of an address outside Australia to which goods are delivered, or a personal shopping service that purchases, or assists in purchasing, goods outside Australia as the agent of a recipient). Importantly, a re-deliverer will only be responsible for GST on an offshore supply of low value goods when neither the merchant nor the EDP has not paid the GST on the goods.

With the new regime commencing in a matter of months, all overseas merchants, EDPs and re-deliverers should be determining whether they will be required to register for Australian GST purposes. In advance of 1 July they should consider whether their sales exceed the registration turnover threshold (determined based on the current month and the previous eleven months or their anticipated sales levels looking forward eleven months).

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# EDITOR'S LETTER

Dear Reader,

It's my pleasure to introduce you to our first edition of BDO's Indirect Tax News for 2018.

Since our last edition the authorities in the United Arab Emirates and the Kingdom of Saudi Arabia have grasped the nettle and introduced VAT legislation effective 1 January 2018.

Continuing with news out of the middle east, it appears that increasing oil prices have led Bahrain to defer the introduction of VAT from October 2018 to 1 January 2019, which is when it's also likely to be introduced in Oman, Qatar, and Kuwait.

I'm just back from a BDO VAT Centre of Excellence meeting in Dubai, which was also attended by our colleagues from the GCC region and from BDO India where a new GST system was introduced last July. The activities going on in these regions certainly make it appear that the future of the indirect tax profession will be safe for at least another few years.

And finally, it's noteworthy that automation of indirect tax filings was high on the agenda for our meeting. I expect this topic will be the subject of future editor's notes as the year progresses.

Kind Regards from almost 'Springtime' Dublin!

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# ARGENTINA

## ARGENTINE TAX REFORM ON INDIRECT TAXES

Argentina's legislature recently approved a variety of tax changes aimed at attracting foreign investment, eliminating existing distortions, and achieving greater equity.

The amendments impact companies interested in doing business in Argentina and those that are currently operating here.

In this article we highlight changes made to Value Added Tax, Excise Tax, and the Tax on Fuels and Natural Gas.

### Value added tax

**Subject of the tax – Extension**
'Digital' services will now be subject to VAT when they are used or exploited in the country, regardless of the form of the digital service. If an intermediary is involved in the payment, the intermediary must act as collection agent. The extensions of VAT to such services applies for supplies made as of 1 February 2018.

**Export and Import**
Guidelines have been established for determining the place of economic exploitation. Under the guidelines there is 'effective use and exploitation' in the jurisdiction where the immediate use or the first act of supply is assessed by the recipient, even when the consumption is intended by the recipient.

**Return of technical credit balances**
To promote large-scale ventures, a permanent mechanism for the return of credit balances has been created, provided the credit balances related to operations performed as of 1 January 2018. The balances must be kept for more than six consecutive fiscal years and there is a credit balance in favour of the taxpayer. This treatment is applied to purchases, construction, manufacturing, and imports of fixed asset operations, other than automobiles, as well as to leased goods acquired after six months of a purchase option being exercised.

The mechanism also allows for the return of credit balances (up to a maximum annual limit) to public service companies whose rate is reduced due to the granting of subsidies.

**Determining the fiscal credit related to employer contributions**
The ability to claim a credit with respect to employer contributions is being phased out so that by 2021, VAT fiscal credits will no longer be allowed for employer contributions.

### Excise taxes

**Tobacco**
The fixed minimum excise tax applied to packs of cigarettes has increased. Nevertheless, the tax rate was reduced to 7% on the final sale price of packs of cigarettes.

**Drinks and beverages**
Drinks with caffeine and taurine, whether these substances are supplemented or natural, are subject to the excise tax.

In relation to alcoholic beverages, the nominal rate of excise tax on whiskey, cognac, brandy, and other spirits that have at least a 30% alcohol content has increased from 20% to 26%.

With regard to the sale of beer, the normal excise rate is 14%. A rate of 8% applies to traditional beers brewed by micro, small, and medium-size companies.

**Automobiles**
Regarding automobiles, the excise rates and the vehicle models on which it is levied will be updated annually based on the variations in the Consumer Price Index (CPI) provided by the INDEC (National Statistics Board).

**Technology**
The excise tax on the provision of cell and satellite telephone services to the user has increased.

The tax rate is reduced to zero for products manufactured by beneficiary companies that can prove the products originated in a special customs area.

### Tax on fuels

The carbon dioxide emissions were included on the tax on fuels. The percentage of the fuel tax taxpayers in the agricultural, mining, and fishing sectors can claim against their income tax has been reduced.

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# CYPRUS

## VAT CHANGES RELATED TO IMMOVABLE PROPERTY

On 3 November 2017 Cyprus' Parliament fulfilled its EU VAT obligations and passed the long-expected amendments to the Cyprus VAT legislation. The amendments relate to application of VAT to the supply of building land.

The new law introduces VAT at the standard rate (19%) on the sale of non-developed building land and on the leasing/rental of business premises (under certain conditions). It also introduces the reverse charge mechanism for VAT-able supplies of land and property under a loan restructuring/force-sale arrangement.

### VAT on building land

As of 2 January 2018, VAT at the rate of 19% is imposed on the sale of non-developed building land that is intended to be used for the construction of buildings/structures in the course of carrying out a business activity. No VAT is imposed on the sale of land located in livestock, environmental, archaeological, and agricultural zones.

### VAT on leasing of immovable property used for business purposes

VAT at the rate of 19% is imposed on the leasing of immovable property (except where the lease relates to residential dwellings) to taxable persons using the leased property for VAT-able business activities. (Note that no VAT is imposed on the leasing of the property where the lessee is engaged in VAT-exempt activities.) The law provides that the lessor has the right (through an irrevocable option) to choose to opt out of the VAT charge under certain conditions.

The above provisions apply to new lease agreements concluded from 13 November 2017.

### Introduction of reverse charge provisions on certain transfers

Transfers resulting from loan reorganisation and compulsory transfers are normally made without a bank making any payment to the taxpayer. Such transactions create a VAT liability that the taxpayer clearly is not in a position to pay. For this reason, Article 11D to the main VAT Law was introduced. This article transfers the obligation for the VAT in such situations from the taxpayer to the recipient (in other words, the bank) using a reverse charge mechanism.

The provisions apply to immovable property including land and/or buildings transferred along with the land on which they are built, provided the transaction takes place before the building is first occupied.

These reverse charge provisions came into force on 2 January 2018 and will remain in force until 31 December 2019.

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# THE GULF CO-OPERATION COUNCIL STATES

## UPDATE ON INTRODUCTION OF VAT

VAT was finally implemented in the United Arab Emirates and the Kingdom of Saudi Arabia on 1 January 2018.

At the time of implementation many businesses were still unready and there were several areas of the VAT law that had not been confirmed. This created uncertainly for businesses which was compounded by changes and new rules introduced in the first few weeks after implementation. Some of the main changes and hot topics in each country are summarised below.

### United Arab Emirates (UAE)

**Designated Zones**

The VAT law provides for certain fenced areas to be treated as 'outside the State' for VAT purposes. Cabinet Decision No. (59) of 2017 was published on 9 January 2018 on the Federal Tax Authority (FTA) website providing a list of fenced areas that have been designated as Designated Zones. The implementation date of the decision was back dated to 1 January 2018.

**Pharmaceutical products and medical equipment**

The law includes a zero-rate relief for certain medicines and medical equipment identified in a 'Decision by the Cabinet'.

Cabinet Decision No. (56) of 2017 was published on 9 January 2018 on the FTA's website confirming that the supply of Medications and Medical Equipment (defined in the decision) registered with the Ministry of Health and Prevention, or imported with its permission or approval, would be subject to tax at zero rate. The implementation date of the decision is back dated to 1 January 2018.

Cabinet Decisions on Charities, Tourist Refund Scheme, Government Bodies, and Sovereign activities have yet to be issued.

**Commercial property**

Just a few days into the new tax the FTA announced that a person buying a commercial property has to register with the FTA and pay the VAT amount directly to the FTA.

A user guide has been issued setting out the steps to be followed.

As yet, the FTA has not provided specific guidance on how this will impact developers – for example the liabilities and responsibilities a developer will have.

Unofficially we understand that a credit will be given to the developers once VAT is paid to the FTA by the buyers of a commercial property.

**Saudi Arabia not an 'implementing state'**

The UAE has made several unofficial announcements that the Kingdom of Saudi Arabia will not be treated as an Implementing State for the purposes of international trade. This would mean that goods and services exported to, and imported from, Saudi Arabia will be treated in the same way as imports and exports from the rest of the world.

### Kingdom of Saudi Arabia (KSA)

**Healthcare and education**

KSA applies VAT at the standard rate of 5% to healthcare and education services. However, on 6 January a royal decree was issued that states that the Saudi government will bear the VAT burden of private healthcare and education services for Saudi citizens. The relief will operate similarly to a zero rate. The VAT return has been changed to include special boxes to declare sales affected by the relief.

**Private homes**

The sale of a residential property is subject VAT in KSA but a special relaxation will be applied to Saudi national citizens buying their first homes. These first-time buyers will not pay VAT on homes costing up to SAR 850,000. Like the healthcare and education changes explained above, this relief was not announced until after VAT had been introduced. It is still not entirely clear how it will be applied.

**VAT registration for non-established businesses**

A non-established business may become liable to register for VAT in KSA if it makes supplies of goods and services in the Kingdom. There is no registration threshold for such businesses.

When a VAT registration of this kind is required the non-resident business must first register for Zakat (a religious levy) and income tax. It must also appoint a 'tax representative' who will be jointly liable for tax debts.

These two conditions are proving difficult and in some cases impossible for businesses to meet. The registration for other taxes potentially exposes a company to significant additional compliance obligations. In addition, it is very difficult to finds a tax representative – there is no clear guidance from the General Authority for Zakat and Tax (GAZT) and very few individuals or organisations have been willing to put themselves forward.

Unofficially we have heard that GAZT is now accepting that non-established businesses cannot register and are advising that any VAT (at least on business-to-business transactions) should be paid by the customer by means of a reverse charge.

### The rest of the GCC – Bahrain, Kuwait, Oman, and Qatar

All of the other GCC countries are expected to implement VAT by 1 January 2019. Bahrain has unofficially announced that its target date will be October 2018.

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# INDONESIA

## UPDATE ON VAT EXEMPTION ON BASIC NECESSITY GOODS

Under Indonesia's Value Added Tax Law, VAT is generally not imposed on goods considered basic necessities. Article 4A, Paragraph 2(b) of the VAT law lists 11 items considered basic necessities: rice, grain, corn, sago, soybean, salt, meat, eggs, milk, fruit, and vegetables.

### The changes

In a decision of 28 February 2017 (Decision No. PUT-39/PUU-XIV/2016 (PUT-39)), the Constitutional Court granted a review of this list of goods. The court considered the legal standing of Article 4A, Paragraph 2(b) and the meaning of basic necessity. The court concluded that the types of basic necessities the public needs is not limited to the 11 types of items described above.

As a result of the court's conclusion, to provide legal certainty and to implement the court's decision, on 16 August 2017 the Minister of Finance issued a new regulation (No. 116/ PMK.010/2017 (PMK-116), which is effective on 14 September 2017 and SE-39/PJ/2017 (SE-39) on 27 November 2017). The regulation clarifies that VAT is not imposed on 13 basic necessities: rice and grain, corn, sago, soybean, salt, meat, eggs, milk, fruit, vegetables, yam, spices, and sugar. The regulation also lists the criteria and details for determining what constitutes a basic necessity for purposes of exemption from VAT.

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# ITALY

## ELECTRONIC INVOICING AND OTHER BUDGET CHANGES

The Italian Budget Law 2018 (Law n.205 of 27 December 2017) introduced several changes to the Italian VAT. Among the changes announced are changes to the VAT rates and rules related to electronic invoicing. In addition, VAT registers will no longer have to be printed; they can be maintained electronically and printed if required in a tax inspection.

### VAT rate changes

Under the Budget Law, the lower VAT rate of 10% will be applicable throughout 2018 but it is expected to increase to 11.5% on 1 January 2019 and to 13% on 1 January 2020.

Also, the ordinary rate of 22% will be applicable throughout 2018, but it is expected to increase to 24.2% on 1 January 2019, to 24.9% on 1 January 2020, and to 25% on 1 January 2021.

### Electronic invoicing

The Budget Law has mandated that, with effect from 1 January 2019, all VAT taxpayers must issue electronic invoices (E-invoicing) in business-to-business (B2B) transactions. This requirement is aimed at combating tax avoidance and VAT fraud.

The rationale for this move is so that the Tax Authority can gather information in real time. This will allow them to better determine whether VAT declared and paid correlates with the invoices issued and received. The entire process will be controlled through the *Sistema di Interscambio Nazionale* and it will yield a harmonised digital format for invoices (xml).

So-called economic operators, which are businesses or other organisations that supply goods, works, or services within the context of market operations, can use intermediaries to send and receive E-invoices, but the liability remains on the economic operators. Economic operators involved in the petrol supply chain, as well as those in the public procurement chain, must begin using E-invoicing by 1 July 2018. Transactions at duty-free shops will be required to be done using E-invoicing starting 1 September 2018.

E-invoices will have to be transmitted to the Tax Authorities by the last day of the month following the date the document is issued or received.

### VAT registers

VAT sale and purchase ledgers that can track the digital systems are now considered the primary record for VAT. The ledger must be printable, in case it is required for inspection. Also, the data reported in the ledger must always be up to date within 60 days from the time of the VAT transactions.

### Update of the split payment regime

The split payment regime has been extended. Since July 2017, most public bodies and companies listed on the Italian Stock Exchange have come under the split payment regime. Since 1 January 2018 the following bodies are also covered by the split payment regime:

- National, regional, and local public economic entities, including special companies and public service companies;
- Foundations whose equity is owned 70% or more by public administrations;
- Subsidiaries controlled, directly or indirectly, by any type of public administration, entity, or company subject to the split payment regime; and
- Subsidiaries 70% or more controlled by any type of public administration, body, or company subject to the split payment regime.

### VAT grouping

From 1 January 2018, Italian VAT grouping rules have been aligned based on the Court of Justice of the European Union's (CJEU's) Skandia America judgement (ECJ C-7/13), which focused on the relationship between a parent company and its fixed establishment. The CJEU found that where an entity in one State supplies goods and services to its fixed establishment situated in another State and the supplier belongs to a VAT group, the supply is considered carried out by the VAT group for an entity not belonging to the same group, and vice versa.

In conclusion, a foreign fixed establishment of an entity that is part of a VAT group will be considered not included in the VAT group. As a result, operations carried out by the company towards its fixed establishment located abroad and vice versa, will be considered taxable for VAT purposes.

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# LATVIA

## DOMESTIC REVERSE CHARGE MECHANISM

Starting in 2011, to reduce the scale of VAT fraud, Latvia introduced a domestic VAT reverse charge mechanism. Currently, the reverse charge mechanism applies to goods and services provided in the following eight industries:

1. Timber and services related thereto;
2. Construction works and construction materials;
3. Scrap metal and services related thereto;
4. Mobile telephones, integrated circuit devices, game consoles, tablet PC's, and laptops;
5. Household electronics;
6. Cereals and industrial crops;
7. Scraps of precious metal;
8. Metalwork and related services.

A 2017 EU report on the VAT gap indicates that Latvia has continued to reduce its VAT gap. Since 2011, Latvia's VAT gap has decreased by 14%. The fact the VAT gap is decreasing demonstrates that a reverse charge mechanism is a reasonable tool for closing one's domestic VAT revenue gap.

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# LUXEMBOURG

## 'LAND-RELATED' SERVICES IN LUXEMBOURG – LIABILITY TO VAT REGISTER

### Definition of supplies of services connected with an immovable property in Luxembourg

Land-related services are among the most debated exceptions to the general business-to-business (B2B)/business to customer (B2C) rules in terms of the place of supply of services. Under Article 47 of Directive 2006/112/CE, which derogates from the principles laid down by Articles 44 and 45 of the same directive, some services are subject to tax where the land is situated, rather than where the supplier or the recipient are located.

Since the adoption of Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 and the Explanatory Notes on 'EU VAT place of supply rules on services connected with immovable property', which entered into force in 2017, the rules, even if still subject to interpretation in some cases, should now be harmonised across EU Member States.

With the vitality of Luxembourg's real estate market (offices, retail, and residential), many non-Luxembourg operators are active locally and so it is crucial for them to correctly assess their potential local VAT liability.

To illustrate this, the Luxembourg VAT authorities consider the following types of services as taking place in Luxembourg:

- Surveying and assessing a property;
- Valuing a property, including for insurance or financing purposes;
- Maintaining, renovating, and repairing of a building or permanent structure (including such work as cleaning windows or the façade, decorating an office space, and so on);
- Arranging the sale or lease of land or property;
- Carrying out property management services on behalf of the owner. Many Real Estate Investment Funds (REIFs) are located in Luxembourg but they have properties located elsewhere. Services related to the management of a property investment portfolio are not considered to fall under the specific place of supply rule of Article 47 of the Directive. As a result, such services are generally subject to tax (but exempt) in Luxembourg because they fall under the general B2B rules (Article 44 of the Directive).

### Land-related services vs. installed goods

In some instances, the distinction between the supply of land-related services and the supply of goods that are installed by the supplier (Article 36 of the Directive) is rather difficult to make. While both are taxable in the country where the installation takes place, there might be some differences in the reporting treatment of the transactions in Luxembourg versus how it is reported in other countries (for example, where the supplier is located). Where the supplier contracts for the supply of standard goods without any alteration to meet the client's specifications, there is no real question of the place of supply, even if the contract requires the supplier to install or assemble those goods (on its own or via someone acting on its behalf). Such supplies are a supply of goods where the installation service is ancillary and so it is treated as a supply of goods. However, if the service element becomes predominant because there is consulting, design, or diagnostic work or if bespoke alterations/adaptations are included in the contract, then the supply is more likely to be considered a land-related service, with the supply of the goods incidental, for example, construction or repair services.

### Mandatory Luxembourg VAT registration for non-Luxembourg VAT taxable persons

The Luxembourg VAT law does not provide for a general 'reverse charge' mechanism that would apply to land-related services. Even in a B2B situation where the Luxembourg customer is VAT registered locally, the VAT liability cannot be shifted to the recipient of the supply.

When a non-Luxembourg company supplies services in connection with an immovable property in Luxembourg, it must register for VAT in Luxembourg. Luxembourg VAT authorities, together with social security officers and police, regularly conduct VAT audits on building sites. Fines of up to EUR 10,000 can be imposed for non-registration.

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# THE NETHERLANDS

## AJAX IN THE VAT-CHAMPIONS LEAGUE! NO SELECTIVE APPLICATION OF REDUCED VAT RATE FOR A SINGLE SUPPLY COMPRISED OF TWO DISTINCT ELEMENTS

The Court of Justice of the European Union (CJEU) recently gave its judgement regarding the application of different VAT rates on a single supply of services that contains two distinct elements.

### The CJEU World of Ajax case

In the World of Ajax case (18 January 2018, C-463/16) a Dutch football club offered guided tours of its stadium. The tours included a visit to the club's football museum. In dispute was whether the different elements of this single supply should be separated for the purposes of determining the applicable VAT rate.

Under applicable Dutch VAT legislation, if the services are consumed separately, the standard rate (currently 21%) would apply on the guided stadium tour, while the reduced rate (currently 6%) would apply to admission to the museum. According to the CJEU proceedings, the visitors could not visit the museum without paying for the stadium tour as well. The Supreme Court of The Netherlands had concluded that the supply of the service was comprised of two concrete and specific elements: the guided tour of the stadium and the visit to the museum. According to the Dutch Supreme Court, the tour of the stadium was the principal component and the visit to the museum was the ancillary component.

The CJEU determined that a single supply comprised of two distinct elements (one principal and one ancillary) must be taxed solely on the VAT rate applicable for the single supply, even if it is possible to identify the price corresponding to each distinct element forming part of the supply. Here the principal element, according to the Dutch Supreme Court, was the stadium tour and it determines the applicable VAT rate. As a result, the standard VAT rate is applicable for the supply of the service as a whole.

### Previous judgement of the Dutch Supreme Court

The CJEU's interpretation is based on the judgement of the Dutch Supreme Court that there was a single supply performed, one that consisted of the stadium tour and the visit of the museum. Previously, the Regional Court of Appeal had concluded that the whole supply should be qualified as giving access to a museum or collection for which the reduced VAT rate is applicable.

Unfortunately, the Dutch Supreme Court rejected the Regional Court of Appeals' reasoning. According to the Dutch Supreme Court, the supply consists of two elements: the principal element being the guided stadium tour, the ancillary being the admission to the museum. The Dutch Supreme Court questioned whether it is possible to apply the standard and reduced VAT rates on the different components within the single supply. This resulted in the specifics being heard by the CJEU.

### Practical implications

Based on the CJEU's judgement, we expect the Dutch Supreme Court will follow the CJEU's reasoning and rule that the standard VAT rate applies to the whole of the supply. In any case, from a practical perspective, the CJEU's judgement will affect football clubs that offer stadium tours in combination with access to a football museum. Also, this judgement could be applied to a wider spectrum of supplies of combined services under similar circumstances.

We note, however, that the CJEU based its decision on the fact that the stadium tour was only offered in combination with access to the football museum. Would the CJEU's decision be different if the stadium tour and access to the museum were offered separately to the consumer, with the option to combine both services for one price? And what if a discount is given to the consumer when both services are purchased as a combination? From both a factual and from a consumer's point of view, those scenarios are different from the situation that was before the CJEU. In such a case, one might argue that not one, but two services are provided to the consumer, resulting in the application of two VAT rates. In our view, for now this question remains unanswered by the CJEU. As a result, there is room to advocate for a different conclusion on the VAT treatment in cases where the circumstances are (slightly?) different.

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# NORWAY

## UPDATE ON VAT RATES AND ON TREATMENT OF TRANSACTION COSTS

### The VAT rate of 10% has increased to 12%

Effective 1 January 2018, the lowest VAT rate of 10% has increased to 12%.

The increased VAT rate applies to the following services:

- Passenger transport (taxi, train, flights, and so on);
- Hotel accommodation;
- Museums;
- Amusement parks;
- Sports event tickets that are VAT liable under the VAT Act (§ 2-1, second paragraph).

Foreign enterprises whose services are liable for VAT at the lowest rate must calculate VAT at a 12% rate for such services delivered after 1 January 2018.

### Reporting sales with both 10% and 12% rate on 2018 VAT statements

The sale of services delivered before 1 January 2018 but invoiced after 1 January 2018 must be held separately in one's books. Such services must be invoiced no later than one month into the new year. The VAT on these sales must be calculated at the 10% rate and must be included in the regular VAT statement. For such sales, the taxpayer must produce an overview that specifies the customer's name, address, the type of service, and the agreed consideration. The overview must be kept in accordance with the provisions in the Bookkeeping Act.

### The VAT exemption for electric vehicles extended through 2020

Sale and leasing of vehicles that run exclusively on electricity are exempted from VAT (0%). The exemption also applies to the sale of batteries for use in such vehicles.

In the 2017 National Budget, the exemption was extended through 2020.

### Update on the deduction of transaction costs

The general rule is that a registered enterprise is entitled to deduct input VAT on goods and services it uses in its registered business.

The sale of immovable property and company shares are VAT exempted transactions (outside the scope of the VAT Act). As a result, input VAT cannot be deducted on goods and services related to such transactions.

The purchase and sale of immovable property and company shares will normally entail a variety of costs relating to the preparation and execution of the transaction. Examples of typical costs related to such transactions are: legal costs and fees, real estate agent fees, financial and technical due diligence, and so on. Such procurements are generally referred to as 'transaction costs'.

The Norwegian tax authorities' practise relating to the deduction of input VAT for transaction costs has varied a great deal over the years. Based on the tax authorities' recent statements and decisions, it seems they are moving towards a more restrictive interpretation of when input VAT can be deducted related to such costs. The tax authorities have refused the deduction in several cases on the theory that the costs relate to the sale of shares or immovable property that are VAT exempted transactions.

The tax authorities seem to differentiate between the sale and purchase of immovable property and the sale and purchase of company shares. Below is a brief summary of what appears to be the tax authorities' current stance in different situations, as well as some general recommendations for handling the VAT on transaction costs.

### Purchase of company shares

One must distinguish between cases where the purchaser is registered for VAT and conducting VAT liable business activities and cases where the purchaser is not a registered business conducting VAT liable business activities at the time of the purchase but is registered effective from the acquisition as it forms a VAT group with the target company.

- **Where the purchaser is not conducting VAT liable business activities**

  It appears that the tax authorities will not allow an input VAT deduction on transaction costs related to the purchase of subsidiaries where the purchaser is not conducting VAT liable business activities. The basis for this treatment is a 2017 ruling from the Supreme Court that related to a holding company that purchased a real estate company. The target company was conducting VAT registered rental activities. The purchaser, however, was not conducting VAT liable business activities at the time of the acquisition, but it entered a VAT group with the target company immediately after the acquisition. The Supreme Court denied deduction of input VAT on the transaction costs because the court considered the costs to be insufficiently linked to the VAT registered rental activities of the target company.

  Given this decision, we believe that the previous, more lenient, statements from the Tax Directorate[1] and The Norwegian Tax Appeal Board[2] are no longer valid for cases regarding the purchase of shares.

  It should be noted, however, that it is not clear whether the tax authorities might apply the same rationale in all cases involving the purchase of company shares. Because of this, exploring the possibilities of a VAT deduction on transaction costs relating to the purchase of company shares is always recommended.

- **The purchaser is conducting VAT liable business activities**

  The general view used to be that transaction costs relating to the purchase of subsidiaries that were clearly linked to the purchaser's VAT liable business activities were likely to be considered entitled to a VAT deduction. However, a VAT deduction could not be claimed if the acquisition was not relevant to the purchaser's VAT liable business.

  It is uncertain to what extent the Supreme Court ruling from 2017 regarding a holding company impacts cases where the purchaser is conducting VAT liable business activities at the time of the acquisition. We suggest that the taxpayer clarify the treatment with the Tax Office in advance, or that the taxpayer attach a letter to their VAT statement carefully explaining the basis for their treatment.

### Sale of company shares

Generally, an input VAT deduction has been denied on transaction costs that relate to the sale of company shares. This treatment has been applied irrespective of whether the shares relate to a company that was part of a VAT group at the time of the sale.

The transaction costs in these cases have been deemed non-deductible even if the underlying company is conducting VAT liable business activities. The non-deductibility has, in several instances, been justified by the view that the costs relate to the sale of shares, which is an exempted transaction.

The Tax Directorate has stated that there is no right to an input VAT deduction on the sale of shares of a company where the underlying object is an immovable property that has been subject to VAT registered rental activities through a voluntary registration. This treatment applies even if the company was part of a VAT group at the time of the sale. The Tax Directorate has referred to a 2015 Supreme Court case (the Telenor ASA case) and the Ministry of Finance's follow-up letter as the basis for its treatment.

[1] *Skattedirektoratets BFU 18/07.*

[2] *Klagenemndssak nr. 8882.*

### Sale of immovable property

Based on its interpretation of the Telenor ASA case, the Tax Directorate has concluded that input VAT on transaction costs connected to the sale of immovable property is generally considered non-deductible.

The Tax Directorate's stance used to be more lenient: it used to allow a deduction of input VAT on transaction costs relating to the sale of immovable property that had been used in a registered business.

It should be noted that the Tax Directorate does not entirely rule out the possibility of a deduction of input VAT for transaction costs relating to an exempted transaction. Based on a 2012 Supreme Court decision, the possibility of deducting input VAT on such a transaction seems to require that the transaction should not have a value in itself, but must relate to securing and maintaining the registered business.

### Purchase of immovable property

Traditionally, the tax authorities have generally allowed the deduction of input VAT on transaction costs related to the purchase of immovable property, provided the immovable property is procured for use by a registered enterprise as its own business premises. However, given the tax authorities recent statements and decisions, it is not clear whether they will continue to allow deductions in such cases.

If the immovable property is procured for use in a rental business, the purchaser will be entitled to deduct input VAT on transaction costs if:

- The purchaser is registered for VAT (a voluntary registration for the rental of business premises[3]) at the time of the purchase, and
- The building is rented out to VAT registered tenants (fully or partly).

It should be noted that if the building is only partly rented out to VAT registered tenants, the purchaser will only be entitled to deduct a proportionate amount of the input VAT.

If the building is not rented out to VAT registered tenants at the time of the purchase, the purchaser will not be entitled to deduct input VAT on the transaction costs. The purchaser may, however, be entitled to a deduction retrospectively, in accordance with the rules regarding retrospective VAT settlement.[4]

### General recommendations regarding transaction costs

For all of the scenarios described above, to increase the chances of being allowed to deduct input VAT, we recommend taxpayers consider taking the following steps:

- Assess each cost/invoice on a timeline to determine where in the sale/purchase process they arise. Costs incurred in the initial phase, before a possible sale, may be attributable to the seller's daily operations. VAT on costs related to a registered business' daily operations is generally deductible. An example could be VAT on costs arising from due diligence that was performed independent of a subsequent sale.
- Assess each cost/invoice to determine which enterprise the procurement should be allocated to. It may be possible to allocate some costs to the target company, for example, the cost of conducting due diligence that had to be performed independent of a subsequent sale.
- If costs arose in the early stages of a purchase or sale process and the transaction ends up being cancelled, the input VAT may be deductible because the costs may be considered to relate to expenses of the registered business instead of being related to a VAT exempt transaction.
- When a business deducts input VAT on transaction costs, it is always a good idea to attach a letter to the VAT statement, carefully setting out the factual circumstances and the legal basis for the deduction. Doing so normally eliminates the risk of incurring a surtax if the tax authorities ultimately disagree.

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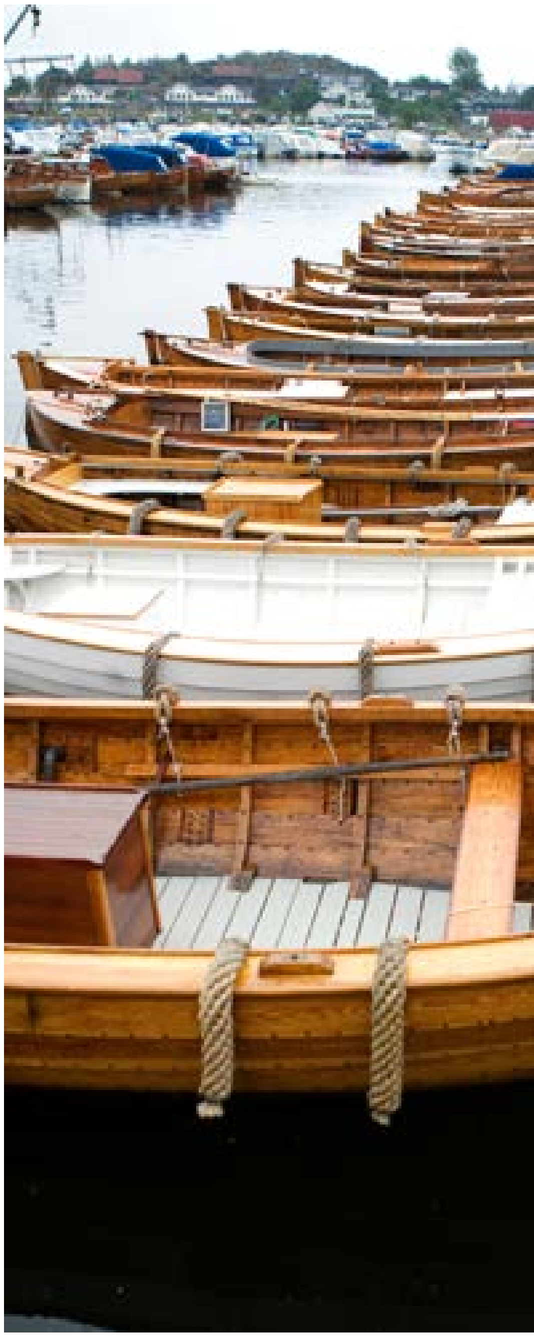

[3] *Jf. Mval. § 2-3 (1).*

[4] *Jf. Mval. § 8-6.*

# ROMANIA

## CJEU DECISION ON THE RIGHT TO DEDUCT VAT ON ACQUISITIONS MADE FROM INACTIVE TAXPAYERS

Under the Romanian VAT law in force before 2016, beneficiaries that acquired goods or services from taxable persons established in Romania after those taxable persons have been registered with the tax authorities as inactive generally could not deduct the VAT on such purchases. There was an exception for acquisitions made in the context of enforcement proceedings or from a taxable person in the course of an insolvency procedure.

A request was made to the Court of Justice of the European Union (CJEU) following a dispute between SC Paper Consult SRL (Paper Consult) and the Romanian Public Finance Administration. The dispute related to a challenge brought by Paper Consult against an administrative decision that denied it a VAT deduction for VAT related to services it purchased from SC Rom Packaging SRL (Rom Packaging). The Public Finance Administration had denied the deduction on the grounds that Rom Packaging had been declared an inactive taxpayer before the agreement was concluded with Paper Consult.

The CJEU ruled that:

> 'Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national rules, such as those at issue in the main proceedings, under which the right to deduct value added tax is refused to a taxable person on the ground that the trader which supplied a service to that taxable person and issued a corresponding invoice, on which the expenditure and the value added tax are indicated separately, has been declared inactive by the tax authorities of a Member State, that declaration of inactivity being public and accessible on the internet to any taxable person in that State, in the case where that refusal of the right to deduct is systematic and final, making it impossible to adduce evidence that there was no tax evasion or loss of tax revenue.'

In early 2017, having in view progress of the case before the CJEU and the opinion of advocate general, the provisions of Romania's VAT were amended to allow the deduction of VAT on purchases from suppliers declared inactive if the supplier re-registers for VAT purposes.

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# SINGAPORE

## 2018 SINGAPORE BUDGET

### Increase in the general VAT rate

The widely expected GST hike has been confirmed by the Finance Minister during his Budget speech on 19 February 2018. The GST will increase from 7% to 9% sometime between 2021 and 2025. The exact timing for the increase will depend on the state of the economy, growth in public expenditures, and the buoyancy of existing taxes.

### GST on imported services

Currently, GST is not applicable on imported services (for example, consultancy, marketing services, and downloading of apps or music) provided by an overseas supplier that does not have an establishment in Singapore.

To level the playing field between GST-registered local businesses and foreign based businesses, the Finance Minister has announced that GST on imported services will be introduced with effect from 1 January 2020.

Business-to-business (B2B) imported services will be taxed via a reverse charge mechanism where the local GST-registered customer will account for GST to the Inland Revenue Authority of Singapore (IRAS) on the imported services. The local customer may recover the GST accounted as input tax (subject to the GST input tax recovery rules). The reverse charge will only apply to businesses that make exempt supplies or businesses that do not make any taxable supplies.

For business-to-consumer (B2C) transactions, GST will apply to imported digital services by way of an Overseas Vendor Registration (OVR) regime. Overseas suppliers and electronic marketplace operators that have an annual global turnover exceeding SGD 1 million and that sell more than SGD 100,000 worth of digital services (such as video and music streaming services, online subscription fees) to Singapore consumers in a year will be required to register with IRAS and will have to charge and account for GST.

### GST on imported goods below SGD 400

Generally, GST at the prevailing rate of 7% is levied on the import of all goods into Singapore, with the exception of goods valued below SGD 400 that are imported via air or post. The government is reviewing international developments before deciding whether, and how, to apply GST on such imports.

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# SLOVAKIA

## SIGNIFICANT CHANGES TO THE SLOVAK VAT ACT

The amendment of the Slovak VAT Act introduced several changes that came into effect on 1 January 2018. We summarise the most important of them here.

### Change of conditions for the first customer in triangulation

Beginning January 2018, the conditions for application of triangulation in Slovakia were simplified. Before 2018, the first customer (from MS 1) could not be registered for VAT in the Member State of the second customer (MS 2). Under the amendment, the first customer cannot be established in MS 2 but may be registered for VAT in MS 2.

### Establishment of tax representative for foreign persons acquiring goods in Slovakia for supply to another Member State

If a foreign person that is not VAT registered in Slovakia acquires goods in Slovakia from someone from another Member State for purposes of further:

- Intra-community supply of the goods;
- Export of goods; or
- Supply of goods through a distance sale scheme with a place of supply in another Member State,

the foreign person is not obliged to register for VAT in Slovakia, so long as they have a tax representative in Slovakia with a power of attorney. The foreign person may be represented only by one tax representative.

To use a tax representative, the foreign person must also meet the following conditions:

- They must supply the goods exclusively by e-commerce;
- They cannot be a Slovak VAT payer;
- They cannot supply goods or services that are subject to the Slovak VAT.

When a foreign person supplies goods or services in Slovakia that are subject to Slovak VAT, the foreign person is obliged to register for VAT in Slovakia under the Article 5 of the VAT Act. If they had a tax representative, they must terminate the power of attorney granted to the representative or they could be fined up to EUR 10,000 by the Slovak Tax Authorities.

### Changes in VAT treatment of tour operators' margin scheme

Based on case law of the Court of Justice of the European Union (CJEU), the VAT rules related to the special tour operators margin scheme has been amended. Before 2018 the special regime applied only where the recipient of the travel services was the final customer. Under the amendment, the scheme is generally extended to the sale of all travel services (for example, accommodation, transport services) regardless of the status of the recipient. In other words, the scheme also applies to sales of travel services to an entrepreneur (taxable person) purchasing travel services for its business needs (for example, a business trip or training for employees, and so on).

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# SOUTH AFRICA

## VAT LIABILITY FOR LEASEHOLD IMPROVEMENTS

The South African National Treasury has finally amended the VAT Act to provide certainty on the VAT treatment for leasehold improvements.

Prior to the amendment of the VAT Act, where a lessee made improvements to immovable property and the improvements became permanently attached to the leasehold property, in most instances, the lessee incurred the expense for the improvements with no recovery from the lessor.

### Amendments to the VAT Act

Effective from 1 April 2018, leasehold improvements effected will be deemed to be a supply by the lessee to the lessor made in the course or furtherance of the lessee's enterprise. This provision is only applicable where the leasehold improvements are:

- Made by the lessee at no cost to the lessor; and
- Used by the lessor in making taxable supplies.

This deemed supply will take place at the time the leasehold improvements are concluded and the supply is deemed to be at a value of nil.

Where the deemed supply provision is applicable and the lessor subsequently uses the improved property for the making of supplies that are not taxable supplies (for example, leasing it for residential accommodation, which is a supply that is exempt from VAT), the lessor will be deemed to have made a taxable supply of goods in the course and furtherance of its enterprise. The value of this deemed supply will be the higher of the amount stipulated in an agreement between the parties, the actual cost of the improvements, or the open market value.

### Effect of the amendments

The amendments will benefit the lessee, as the lessee will have an output tax liability of nil but an input tax deduction of the VAT incurred in making the leasehold improvements.

The VAT burden will now rightly be incurred by the person that benefited by the leasehold improvements: the lessor. The lessor will have an output VAT liability with no input tax deduction. National Treasury's aim is to place the lessor in a position it would have been in had the lessor made the leasehold improvements (that is, had the lessor incurred the expense for the improvements with no input tax deduction because the expense was not for the making of taxable supplies).

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# SPAIN

## CHANGES IN THE VAT REFUND REGIME FOR TRAVELLERS

A new electronic system for VAT refunds for travellers came into effect 1 January 2017. The new system is currently voluntary. It replaces the old procedure that required travellers to present their invoices as proof that the goods left the EU. The new procedure involves the digital stamping of the electronic document (DIVA form for VAT).

After analysing the improvements to this procedure, Royal Decree 1075/2017 of 29 December has established the electronic system of refunds as mandatory from 1 January 2019.

### When travellers entitled to a refund

To qualify for a refund, the traveller must meet the following criteria:

- They must have a habitual residence outside the European Union (or in the Canary Islands, Ceuta, or Melilla).
- The goods acquired must not constitute commercial shipments and they must leave the EU within three months following their purchase; and
- The total value of the goods purchased must be more than EUR 90.15 (including taxes) for each invoice.

### How travellers obtain a refund

To obtain a refund, the traveller must do the following:

1. Get a DIVA form from the shops where they make purchases.
2. When they arrive at a port or airport, they must go to the customs stamping area with their passport, the DIVA form, the goods for which they are requesting the refund, and their boarding card or flight ticket that indicates their travel route. There are automated machines with instructions for the process they must follow.
3. Once they have completed the process at the automated machine, they may request their refund from either:
   - The Duty Free company in the boarding area at the airport (subject to a commission); or
   - Directly from the shop where they made their purchases. This option requires them to send the identification number of the DIVA form to the shop.

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## VAT EXEMPTION ON MANAGEMENT SERVICES PROVIDED TO COLLECTIVE INVESTMENT FUNDS

Spain's Economic Administrative Court recently ruled on the interpretation of the exemption provided in the Spanish VAT Act for management services rendered to Collective Investment Funds (CIFs).

The case involved the application of the Spanish VAT exemption to specific back-office services performed by a third-party company appointed by a CIF's management company.

The third party's services involved the sale, disposal, intermediation, subscription, subsequent reimbursement or transfer, and exchange or conversion of shares, as well as, when required, payment of dividends from the collective investments.

The court's decision incorporated the criterion of the Court of Justice of the European Union (CJEU) that extends the application of the VAT exemption to services provided by a third-party company (not only services provided by the CIF's management company) when the services form a distinct whole and fulfil, in effect, specific and essential functions of the management company. Therefore, mere provision of material or technical supplies, such as making a system of information technology available, would not be covered by the exemption.

The court also stated that an exemption, either under the Spanish VAT Act or under the VAT Directive, should be granted based on the nature of the services, not based on the person supplying or receiving the services. The wording of the exemption in the VAT Directive supports this conclusion because the wording does not preclude management services provided to CIFs from being broken down into a number of separate services that may also benefit from the exemption, even if the services are provided by a third party.

In conclusion, management services outsourced to a third party may fall within the Spanish VAT exemption if such services are linked to the specific, essential functions of the management of CIFs.

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# SWITZERLAND

## RADIO AND TELEVISION (RTV) FEE

In Switzerland the RTV Fee for businesses will soon be connected with VAT. From 1 January 2019 the new device-independent fee will be collected from households and businesses. It is based on the federal act of radio and television and replaces the current device-dependent fee, which will be terminated at the end of 2018.

In Switzerland, businesses that are subject to VAT and have a global turnover of CHF 500,000 or more, are automatically subject to the RTV fee. Global turnover includes a company's worldwide turnover, independent of the definition applicable under VAT rules. This also includes turnover from services that are exempt or excluded from VAT. These companies will automatically receive an annual bill from the Federal Tax Administration (FTA).

Tariff categories:

| Global turnover (CHF) | | Tariff/year (CHF) |
|---|---|---|
| Up to | 499,999 | 0 |
| 500,000 – | 999,999 | 365 |
| 1,000,000 – | 4,999,999 | 910 |
| 5,000,000 – | 19,999,999 | 2,280 |
| 20,000,000 – | 99,999,999 | 5,750 |
| 100,000,000 – | 999,999,999 | 14,240 |
| 1,000,000,000 | or more | 35,590 |

The new RTV fee also affects foreign businesses, which are registered for VAT in Switzerland.

### Reminder of requirement for foreign businesses operating in Switzerland to register for VAT

Further to our report in **ITN Issue 3/2017**, the partial revision of the VAT Act entered into force on 1 January 2018, meaning that foreign companies will increasingly be subject to VAT.

The VAT registration liability of foreign companies, which provide services such as those listed below, will no longer be calculated based on the turnover generated in Switzerland, but rather on the turnover generated worldwide:

- Services under a contract for work and services in Switzerland;
- Work on items in Switzerland (for example, repairs or assembly/fitting work);
- Physical software implementation in Switzerland;
- Other physical work in Switzerland;
- Services in connection with real estate in Switzerland like agency activities, management, valuation, architecture, engineering and surveillance; and
- Telecommunication and electronic services to end users (business-to-consumer).

Accordingly, if a company generates less than CHF 100,000 from services of this kind in Switzerland, and at least CHF 100,000 in turnover around the world, from 1 January 2018, it will be liable for VAT in Switzerland from the first CHF of turnover.

Also, from 1 January 2019, those abroad who send small consignments exempt from import tax (that is, the import tax is no more than CHF 5) to Switzerland will also be liable to VAT if the consignments are worth at least CHF 100,000 p.a.

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# UNITED STATES

## REMOTE SELLER NEXUS AND COMPLIANCE UPDATE

In the United States, a state may only impose a sales tax compliance requirement on a vendor where the state has been authorised under state law to do so and the US Constitution, as interpreted by the US Supreme Court, does not otherwise prohibit it. In 1992, the US Supreme Court held in *Quill Corp. v. North Dakota* that a state may not impose a sales tax collection and remittance responsibility on a vendor unless the vendor has a physical presence in the state (physical presence nexus). A physical presence may be established via an in-state physical presence through employees, property, affiliates, or independent contractors acting on a vendor's behalf, or an internet link of a US resident website (click-thru nexus). In addition, in 2016, the US Court of Appeals for the Tenth Circuit held in *Direct Mktg. Ass'n v. Brohl* that Colorado may impose a consumer use tax 'notification and disclosure requirement' on a vendor that lacked an in-state physical presence but a certain level of economic activity derived from a state (economic nexus).

Certain developments have recently occurred that have changed US sales tax compliance and may further change it – and drastically. These developments centre on consumer use tax notification laws, economic nexus laws, and creative physical presence nexus standards. These changes are directed at remote vendors, including non-US vendors, which have historically not had to report or collect for US sales tax purposes.

### Consumer Use Tax Notification and/or Reporting Laws

In light of Colorado's success in the *Direct Mktg. Ass'n v. Brohl* matter, in 2017, several states followed the example set by other states in earlier years and enacted consumer use tax notification and/or reporting laws. Very generally, these laws typically require a vendor that does not have an obligation to collect and remit sales tax and that meets a certain economic activity threshold to notify purchasers of their obligation to self-report use tax. Some states also require that the vendor provide an annual report of purchases to each consumer and provide the state with a report of consumers, which the state may use to assess consumers that have not self-reported use tax.

Some of these states impose a penalty for non-compliance where the penalty has the appearance of a *de minimis* amount (for example, USD 10). But, depending on the volume of transactions/activity, such penalties can be significant, because the penalty is typically imposed on a per transaction basis. Pennsylvania imposes a penalty that can be as much as USD 20,000 for a single instance of non-compliance, and the minimum penalty that Washington imposes may start at USD 20,000 in some cases of non-compliance.

The following chart summarises which states currently have these laws, the effective date, compliance requirements, and the potential for penalties:

| State | Effective Date | In-State Sales Reporting Threshold | Consumer Notification (Per Purchase) | Consumer Notification (Annual) | Annual State Filing Requirement | Penalties |
|---|---|---|---|---|---|---|
| Alabama[5] | 1 July 2017 | None | No | No | No | No |
| Colorado | 1 July 2017 | USD 100,000 | Yes | Yes | Yes | Yes |
| Kentucky | 1 July 2013 | USD 100,000 | Yes | No | No | No |
| Louisiana | 1 July 2017 | USD 50,000 | Yes | Yes | Yes | No |
| Oklahoma | 1 October 2010 | USD 100,000 | Yes | Yes | No | No |
| Pennsylvania | 1 March 2018 | USD 10,000 | Yes | Yes | Yes | Yes |
| Rhode Island | 17 August 2017 | 200 transactions; or USD 100,000 | Yes | Yes | Yes | No |
| South Dakota | 1 July 2011 | USD 100,000 | Yes | No | No | No |
| Vermont | 1 July 2017 | USD 100,000 (applicable to annual state filing only) | Yes | Yes | Yes | Yes |
| Washington | 1 January 2018 | USD 10,000 | Yes | Yes | Yes | Yes |

[5] *The Alabama law merely authorises the state to require use tax notification and reporting and to impose penalties for non-compliance, but the state has not yet set the parameters of any such requirements or penalties.*

## Economic Nexus Standards

In an effort to push the US Supreme Court to possibly overturn the *Quill Corp.* physical presence standard, several states have enacted laws that subject a vendor to a sales and use tax collection and remittance responsibility if the vendor's economic activity derived from customers in the given state exceeds a threshold amount (for example, USD 100,000 of sales into the state or 200 separate transactions with customers in the state). Alabama, South Dakota, Tennessee, and Vermont adopted economic nexus provisions in 2016. Indiana, Maine, North Dakota, Ohio, and Wyoming followed the example set by these states in 2017. Connecticut adopted an economic nexus provision in 2011.

The North Dakota legislature made their law, similar to Vermont, effective on the date the US Supreme Court issues an opinion overturning the *Quill Corp.* physical presence nexus standard. And, like the economic nexus law in South Dakota, each of the economic nexus laws in Indiana, Maine, and Wyoming have a provision that stays enforcement of the law in the event the state initiates a court action to enforce it.

In January 2018 the US Supreme Court decided to hear *Wayfair, Inc. v. South Dakota*, a matter involving the constitutionality of South Dakota's economic nexus law. If the Court decides in favour of the state and overturns the presently controlling *Quill Corp.* physical presence nexus standard, then the economic nexus laws in South Dakota and other states could be confirmed, making them a roadmap for other states to follow.

## Creative Physical Presence Nexus Standards

In 2017 some states added thin layers of what may be considered physical presence under a *Quill Corp.* physical presence nexus analysis or certain third-party relationships to pure economic nexus thresholds under which a state may catch unaware remote vendors. For example, Massachusetts adopted a regulation that, effective 22 September 2017, imposes a sales tax collection and remittance responsibility on a remote seller that makes Massachusetts sales over the Internet that exceed USD 500,000 in 100 or more transactions and has:

(i) Software or 'cookies' stored on a customer's in-state computer or other device that enables the customer's use of such computer or device (cookie nexus);

(ii) A contract with a person resulting in the use of in-state servers (or other equipment) or related services (content distribution network nexus); or

(iii) A relationship with a person that provides advertising services (or other services) and facilitates the seller's sales through an electronic marketplace or delivers property or services sold by the seller (marketplace facilitator nexus).

As other examples, Minnesota enacted a law in 2017 that, effective the earlier of 1 July 2019 or the date the US Supreme Court modifies its decision in *Quill Corp.*, establishes nexus for a remote seller with USD 10,000 or more in Minnesota sales that uses an in-state marketplace provider (that is, advertises taxable goods and collects/transmits payments from customer) to facilitate sales. A sales tax collection requirement with respect to facilitated sales applies to a marketplace provider, unless the marketplace provider complies with certain disclosure requirements pertaining to the retailer. Ohio enacted a law that, effective 1 January 2018, establishes nexus for a remote seller that has more than USD 500,000 of Ohio sales; and:

(i) Uses in-state software to sell or lease tangible personal property or services; or

(ii) Enters into an agreement with a person to provide a content distribution network in order to enhance the delivery of its website to consumers.

The Connecticut Department of Revenue Services noted that it will issue 'cookie nexus' guidance similar to Massachusetts' model in sometime this year.

## Insights

The developments related to nexus and compliance requirements and the ever-evolving legislative and regulatory environment in the United States require vendors to pay careful attention to what activities may create nexus and the corresponding state obligations that may arise as a result when such activities create nexus and a tax compliance requirement. International vendors making sales into the United States should be aware of these aggressive US nexus and tax compliance trends. Such vendors should contemplate conducting a state-by-state analysis and revisit it periodically to confirm its tax compliance is consistent with changes in US and state laws, and business operations.

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## CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 5 March 2018.

| Currency unit | Value in euros (EUR) | Value in US dollars (USD) |
|---|---|---|
| Australian Dollar (AUD) | 0.62973 | 0.77587 |
| Saudi Riyal (SAR) | 0.21611 | 0.26630 |
| Euro (EUR) | 1.00000 | 1.23167 |
| Singapore Dollar (SGD) | 0.61446 | 0.75717 |
| Swiss Franc (CHF) | 0.86508 | 1.06566 |
| US Dollar (USD) | 0.81153 | 1.00000 |

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