The drop on e-commerce

August – September 2023

Welcome to the August – September 2023 edition of the drop on ecommerce, where we highlight notable updates that are happening around the world for Indirect Tax.

In this issue:

Global

- Crypto Poses Significant Tax Problems - and They Could Get Worse
- VAT on Digital Trade

Africa & Middle East

- Nigeria - Non-resident platforms
- Kenia - Highlights Finance Act 2023
- Egypt - New VAT guidance on digital services

Europe

- EU VAT rules for e-commerce two years on
- EU Foreign Subsidies Regulation
- Jersey - Overseas retailer's GST
- French DST Guidance updated for issues covering ancillary services and, for example, separation from digital content
- Annual Report on Taxation 2023
- Global trends and digitisation

AsiaPac

- Turkey - Inspection Climate for e-commerce entities
- Turkey - Court Decisions on Advertising WHT
- India - Important changes to digital supply rules
- New Zealand - Special report: Marketplace rules for listed services
- New Zealand announces draft legislation for a DST
- Malaysia - Is a tax amnesty for consumption taxes on digital supplies a sign of the future?

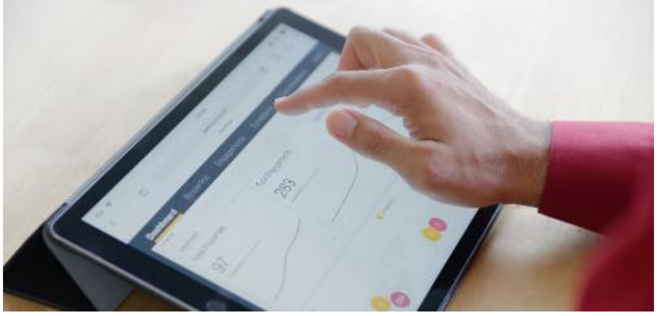
America

- Georgia - Tax on specified digital products
- Minnesota - Retail delivery fee, effective 1 July 2024
- Maryland - Supreme Court dismisses challenge to digital ad tax
- Oklahoma - Marketplace facilitator carveout hotels
- Louisiana - Removal 200 transaction threshold
- Wayfair 5 years – expected or unexpected impact
- Brazil - VAT reform
- West Virginia - Streaming services
- Canada - Digital Services Tax – One step closer to becoming a reality

We hope that you find this newsletter valuable and look forward to your feedback.

www.pwc.be

Crypto Poses Significant Tax Problems – and They Could Get Worse



Tax systems need updating to cope with crypto assets, whose anonymity and decentralized nature poses challenges—not least for the value added tax.

Crypto assets that can be used as instruments of payment have proliferated into more than 10,000 variants since the 2009 debut of Bitcoin, the first and still the largest. The bewildering speed with which they have developed and the pseudonymity they can provide have left tax systems playing catch up.

In a new paper released by the IMF, there is discussion of how governments can address the emerging challenges of taxing certain crypto assets while their use is still limited, such that there is prevention of leakage in tax revenue and the integrity of the tax system is protected.

LINK – IMF blog LINK – IMF working paper

VAT on Digital Trade

OECD reports strong progress to G20 on international tax reform - what is the progress with indirect taxes?

As noted in the OECD's Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors, over 90 countries have now implemented the internationally agreed OECD standards and guidance for addressing the challenges of collecting VAT on digital trade. That represents a significant level of international momentum and success.

Key points from the G20/OECD Roadmap:

1. Ensuring VAT/GST is collected effectively on continuously growing e-commerce activity has become a priority for many developing countries. VAT/GST often represents one-third or more of total tax revenues in developing countries. The rapid growth of e-commerce poses significant challenges for domestic VAT/GST systems, particularly in lower capacity developing countries.

2. While an increasing number of countries have enacted reform to levy VAT/GST on e-commerce based on the internationally agreed OECD VAT/GST standards and guidance, or are in the process of doing so, challenges remain, particularly for lower capacity countries. The implementation of these standards allows developing countries to secure crucial VAT/GST revenues, while also ensuring a level playing field between e-commerce and traditional businesses, without stifling innovation and economic growth.

3. To assist interested developing countries in designing and implementing VAT/GST reform directed at digital trade, the OECD secretariat in partnership with World Bank Group, regional tax organisations and regional development banks has released three regional VAT Digital Toolkits, for Latin America and the Caribbean (with the Inter-American Center of Tax Administrations (CIAT) and the Inter-American Development Bank (IDB); Asia-Pacific (with ADB) and Africa (with ATAF), respectively.

4. The OECD secretariat is now rolling out a programme to offer bespoke technical assistance to interested jurisdictions, which can cover all aspects of VAT reform targeted at digital trade, including the assessment of a jurisdiction's needs for reform and the development of policy options to address these needs, legal drafting, implementation of the necessary administrative and compliance processes, communication, and the implementation of robust audit and enforcement strategies.

LINK - OECD

EU VAT rules for e-commerce two years on

Updated revenue figures point again to a successful implementation.

New figures indicate that Member States collected EUR 20 billion in VAT revenues in 2022 via new systems introduced two years ago as part of efforts to ensure a more level playing field for all businesses. The launch of the expanded 'One Stop Shop' (OSS) and newly introduced 'Import One Stop Shop' (Import OSS) allows businesses to declare and transmit VAT in one Member State for all their sales of goods and services in the entire EU, as well as on imports of low-value goods into the EU.

The new figures, using data provided by Member States themselves, again point to a successful implementation of the new rules. This positive trend had already emerged following an ex-post evaluation of the first 6 months of application of the e-commerce package. Furthermore, as part of the customs reform package, the Commission proposed to further extend the use of the import OSS, allowing for VAT on all imported e-commerce goods to be declared, regardless of their value.

LINK- Source European Commission

EU Foreign Subsidies Regulation

An EU regulation ('The Implementing Regulation') setting out notification procedures regarding non-EU subsidies that might distort the internal market was adopted by the European Commission on 10 July. In particular, it establishes the form of notification, the degree of aggregation of information and some exclusions in applying the rules of the Foreign Subsidies Regulation (FSR) which was adopted by the European Parliament and Council in November 2022.

The FSR will apply from 12 July 2023. As of 12 October 2023, companies will have to notify either mergers and acquisitions ('concentrations') or participation in public procurement bids, where they involve foreign financial contributions, meet the relevant notification thresholds and do not fall within the new exceptions. Notifications under the Commission's ex-officio power of investigation in other cases are to be determined in each case.

More details can be found in our Tax Policy Alert.

Jersey

Overseas retailer's GST

Effective 1 July 2023, where retailers trading outside Jersey sell goods to consumers in Jersey (online, through brochures, magazine sales or others) and where the value of such sales by any retailer to consumers in Jersey exceeds £300,000 per annum, such retailers will have to register and account for 5% Jersey GST on all these sales. The new rules will apply to all goods imported unaccompanied by private individuals into Jersey if GST has not been accounted for at the point of sale, and where the value of the imported goods exceeds £60 (reduced from £135 and threshold will eventually be removed completely).

LINK – GST guidance notes

French DST Guidance updated for issues covering ancillary services and, for example, separation from digital content

Following the Amazon case from the French Administrative Supreme Court (CE, March 31st, 2022, No. 461058), the French Tax Authorities ("FTA") amended their guidelines. The French Legislator subsequently amended the French DST provisions set forth in Article 299 of the French Tax Code ("FTC") as part of the Finance Act for 2023.

The three main amendments are the following:

1. Intragroup services exemption

Initially, French DST provisions excluded from the scope of DST taxable services where they are supplied between affiliated companies.

According to the French Tax Authorities guidelines published on 8 April 2021 (BOI-TCA-TSN-10-10-10), as the same service cannot be artificially broken down, services provided by one company to another company of the same group cannot benefit from this exclusion when these services are also provided to third parties.

This paragraph of the French Tax Authorities guidelines was repealed by The French Administrative Supreme Court as part of the Amazon Case. […]

[…] However, the French Legislator subsequently amended French DST provisions with the Finance Act for 2023. It is now specifically included in the text that the exclusion only applies to services exclusively provided to companies of the same group, as from the DST due for FY2022. Should a specific service be provided to both an affiliated company and a third-party, no "intragroup exemption" would therefore apply.

French DST provisions clearly narrowed down the exception for intragroup services.

The FTA guidelines amended on June 21st, 2023 (BOI-TCA-TSN-10-10-10-20230621 n°70) now states that:

"These services will be excluded from the tax where a company belonging to a group uses digital services provided by an company belonging to the same group under its own conditions and which are granted to it only as a member of that group. However, these same services will not be excluded from DST if they are used under the same conditions as any other user outside the group."

2. Intermediation services and ancillary exception

According to initial French DST provisions, providing a digital interface does not constitute a taxable service where the person provide this interface uses the digital interface principally to provide users with digital content, communications services or payment services. In that context, the digital intermediation service is then only ancillary to the service provided.

The FTA first amended their guidelines as a result of the Amazon Case to include reference to Article 257 ter of the FTC. Subsequently, French DST provisions relating to this exclusion were amended by the Finance Act for 2023. From now on, it is provided that the provision of a digital interface is not a taxable service when the interactions between the users of the interface are ancillary, within the meaning of Article 257 ter of the FTC, in relation to the provision of the services it offers.
Reference to Article 257 of the FTC was added on purpose as it is a provision already used for VAT purposes.

It should allow taxpayers to better encompass the ancillary character of a service based on VAT guidelines, French case law as well as the European Court of Justice case law.

3. Multiplayer online games

Additionally, to the above, the FTA also amended their guidelines as a result of the Amazon case.

As a reminder, French DST provision excludes from the scope of services subject to DST services providing digital content principally. The FTA guidelines indicated that this exclusion did not concern the provision of a digital interface that allows the provision of software constituting itself digital interfaces allowing users to interact with each other, including online multiplayer games, unless such interaction is minimal or the main object of the game is the progress of a player alone ("solo games").

The French Administrative Supreme Court ruled that the above guidelines added to the letter of the Law (by narrowing down the exception to solo games) and repealed it.

The assessment of the taxable nature of such interface provision is now made in light of Article 257 of the FTC above. Online multiplayer games providers should therefore carefully analyze the services offered to users in order to assess whether interactions between players are ancillary to the game itself (i.e. the digital interface) or not.

This analysis could prove itself to be complex in a number of situations for the online gaming industry, as the essence of such games is the interaction between players.

Annual Report on Taxation 2023

European Commission Publishes Annual Report on Taxation 2023

EC's Annual Report on Taxation 2023 presents an indicator-based analysis of the design and performance of Member States' tax systems. It aims to provide policymakers across the EU with insights that can help them to improve the functioning of their tax systems.

The report indicates the state of play of taxation and tax systems in the EU. The report also examines the challenges inherent in different types of taxes, and how the design of taxes can affect different economic agents and their behaviour. The report aims to describe the most recent reforms in tax systems and the main indicators used by the EC to assess taxation policies in EU Member States and at EU level. The report assesses the recent trends in EU tax systems, and identifies possible ways forward on how tax policy, implementation or compliance could be improved. Building on the current economic outlook, the report highlights that there is still scope for Member States' tax systems to be fairer and more efficient in line with the 2021 Communication on Business Taxation for the 21st Century, setting the discussion on a long-term and short-term vision for supporting Europe's recovery from the COVID-19 pandemic and energy crisis and ensuring adequate public revenues over the future decades.

Global trends and digitisation

Towards the next technological transition: European Commission presents EU strategy to lead on Web 4.0 and virtual worlds

The EC has adopted a new strategy on Web 4.0 and virtual worlds to steer the next technological transition and ensure an open, secure, trustworthy, fair and inclusive digital environment for EU citizens, businesses and public administrations.

The internet is evolving at an extremely fast pace. Beyond the currently developing third generation of the internet, Web 3.0, whose main features are openness, decentralization, and user full empowerment, the next generation, Web 4.0, will allow an integration between digital and real objects and environments, and enhanced interactions between humans and machines.

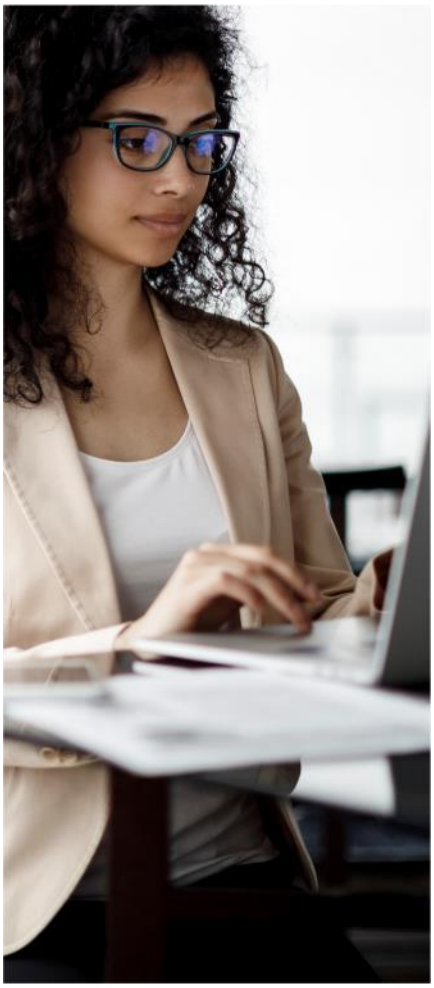
Virtual worlds will impact the way people live together, bringing both opportunities and risks that need to be addressed. The new strategy aims for a Web 4.0 and virtual worlds reflecting EU values and principles, where people's rights fully apply and where European businesses can thrive.

LINK- Source EC

Turkey

Inspection Climate for e-commerce entities

"E-commerce/virtual PE" concept is continuously gaining importance in Turkey and a number of tax inspections relating to PE status have been conducted before companies active in e-commerce. The inspections are realized both before the companies that have service entities in Turkey and the companies that do not have a physical presence in Turkey but carry out their activities through their websites/applications.



Tax inspections that were conducted within the course of previous years can be briefly summarized as follows:

1. First wave: Permanent Representative
2. Second wave: Dependent Agent
3. Third wave: Virtual PE
4. Fourth wave: Virtual PE & Permanent Representative

The first inspection wave dates back to 2009 and following the first wave's inspections; it was claimed that activities of service companies in Turkey of e-commerce group is creating a PE and all of the income of the abroad located Company (HQ) shall be taxed in Turkey. Subsequently; CIT over all income, profit distribution WHT and VAT assessments issued with penalty.

Following the second wave, it is claimed that a 3rd party agency resident in Turkey is a dependent agent of an e-commerce company located abroad. In the end it was claimed that the abroad located entity has a dependent agent in Turkey and apart from the commission fee of the Turkish agent, the revenue of the abroad located entity should be taxed in Turkey. CIT and profit distribution WHT assessments issued with penalty.

The third wave is the inspection wave that we faced with virtual PE claims. It is claimed that there is no provision under Turkish tax legislation or under related DTT stating that "websites/applications cannot be accepted as a workplace". The workplace article of Tax Procedural Code numbered 156 states that; *"Workplaces are the premises assigned to the practice of a commercial, industrial, agricultural or professional activity or used for these activities such as/likewise shops, offices, consulting rooms, workshops, branches, stores, hotels, coffeehouses, places of entertainment, playgrounds, fields, vineyards, farms, breeding stations, fishing places, mines, quarries, and building yards."*

Following the inspections realized it is raised that the "such as/likewise" preposition stated under Article 156 titled "workplaces" of the Tax Procedural Code covers virtual PE (websites/applications) as well.

From the CIT point of view; beside the local legislation; explanations on DTTs were provided as well. Under this section Article 7 regulating commercial income and Article 5 regulating the workplace were referenced and was claimed that DTTs are inadequate to tax digital economy as they are old dated and as websites are not clearly addressed in the DTTs and claimed that accepting websites/applications as a workplace is also in line with DTTs. In the inspection reports it was also referenced to BEPS and Wien Conventions and it was underlined that Wien Convention is used for the interpretation of the DTTs and current application of the DTT provisions are resulting with "improper use" of the DTTs and "abuse" of them.

From the VAT point of view; it was stated that the taxpayers are not distinguished as legally obligated or limited taxpayers and deemed that carrying out the processes in Turkey, providing services in Turkey or benefiting from the service in Turkey is sufficient to be taxed.

Per above, it is concluded that websites/applications constitute workplaces and the revenue derived from those places needs to be taxed in Turkey. Subsequently, CIT over all income, profit distribution WHT and VAT assessments were issued with penalty. VAT amounts paid through reverse-charge VAT mechanisms are offset.

The fourth and the last wave has started back at 2019 and in a nutshell the inspections realized before the companies that have service entities in Turkey ended with permanent establishment claim; whereas the inspections realized before the companies that do not have a physical presence but carry out its activities through their websites/applications were ended up with virtual PE claim. CIT over all income, profit distribution WHT and VAT assessments issued with penalty. VAT amounts paid through reverse-charge VAT mechanism and VAT amounts paid through VAT-3 declarations are offset.

Turkey

Court Decisions on Advertising WHT

In addition to the voluminous virtual PE inspections; there has been an important development at the court level related to the advertising WHT cases.

In brief, with the Presidential Decree No.476 published per Article 11 of Tax Procedural Code, advertising WHT started to apply effective from January 01, 2019 on the payments made;

- to service providers and
- to those who act as an intermediary concerning the provision of advertising services through the internet.

The applied rates are as below: (i) 15% on the payments made to real persons resident in Turkey or abroad, (ii)15% on the payments made to corporate entities not resident in Turkey, (iii) 0% on the payments made to corporate taxpayers resident in Turkey.

These decisions bear importance with its potential effect on virtual PE and potential inspections that might be initiated around virtual PE. Even if these decisions are not finalized yet and still under review of the different court levels; their influential importance raises a flag for the activities and revenues derived by the abroad located entities through e-means. Accordingly, brief details of the cases will be provided below.

Under these case files the matter disputed is basically related to the refund claims of the advertising WHT amounts that were paid by a Turkish taxpayer with reservation in terms of the advertising services received from abroad and provided through a website.

The on-going progress of the related cases are in favour of the taxpayers and that the first and the Regional Administrative Court ("second instance tax court") were rendering favourable decisions on the grounds in brief that;

- per the related DTTs, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on,
- when the definition of "workplace" under Article 156 of the Tax Procedural Code is evaluated, it has been seen that a workplace is defined as a permanent place, as a physical place, such as store, bureau, executive office, factory, branch, storage; and
- n this case, as it has been seen that the extension of the term workplace that is defined under domestic law and international agreement as much to cover "workplace in the electronic environment" by interpretation and analogy is primarily contrary to the Constitution and to other domestic legislation.

However, the Council of State rendered an unfavourable decision in November 2022 which was followed by an unfavourable second instance tax court decision in January 2023.

With the decisions, evaluation of the case was made in terms of which Law needs to be applied and concluded that relevant DTT provisions shall apply. It is concluded that; the presence of a workplace needs to be accepted where the commercial activity is carried out electronically, and in this case, the workplace will be the computer and internet environment that enables communication.

In short, it is concluded that the websites are workplaces since they are "assigned to the provision of the activities" or the place that "the activities are carried out"; thus the core and important part or all of the commercial activities of the companies resident abroad are mainly carried out through websites, and the activities carried out through websites constitutes the main functions of the commercial activities.

Accordingly, beside the ongoing comprehensive discussions at the OECD level e-commerce entities are considerably gathering the attention of Turkish Tax Authority and the revenue they derive from Turkey through websites/applications are criticized with an aggressive approach resulting with a virtual PE criticism (that the websites/ applications constitutes a workplace).

India

Important changes to digital supply rules

The Indian Government in its Finance Budget has proposed to widen the scope of OIDAR / digital services, which will go into effect as from 1 October 2023. Furthermore, the GST Council (which lays down the GST policy in India) held its 51st meeting and discussed some critical proposals with respect to taxation of online gaming in India.

Digital services – scope widened

The ambit of OIDAR services has been widened to include all ‘unregistered customers’ by removing reference to ‘any Government, local authority, government authority, an individual or any other person not registered’ as was previously mentioned.

Given this, the liability to pay tax on OIDAR services provided to unregistered customers irrespective of whether the services are used for personal or business use would now be on the overseas service providers.

Therefore, considering that the liability to pay tax would depend on the registration status of its customers, digital service providers would now need to set up a process to identify and verify the registration status of its Indian customers.

Moreover, the condition of OIDAR service being 'essentially automated and involving minimal human intervention' has been omitted.

Given this, it would be imperative for digital service providers to reassess the tax positions in case a no-tax position was earlier adopted on the ground that the services involved more than minimal human intervention.

Online gaming – key points

- GST at the rate of 28% to be levied on casinos, horse racing and online gaming.
- Online gaming companies located outside India providing online money gaming to customers in India to be made liable to register and pay GST in India.
- Overseas online gaming companies failing to comply with the aforementioned provision would be banned/ blocked for public use in India which could lead to business disruptions; therefore, imperative for them to take cognizance of these proposed amendments so that the necessary compliances such as GST registration and discharge of tax liability are complied with.
- Value on which GST needs to be levied would be the amount paid or payable to or deposited with the supplier, by or on behalf of the player (excluding the amount entered into games/ bets out of winnings of previous games/ bets) and not on the total value of each bet placed.
- The wordings of the press release with respect to the valuation seem to provide a relief with respect to the amount reinvested out of winnings of previous games.
- The intention of the law therefore seems to be to tax the platform fee and the amount invested by the players other than out of the winnings of previous games. However, clarity would emerge on this aspect once the amended valuation rules are issued by the Government.
- Amendments to be made in the CGST Act and the Rules to provide for specific valuation provisions and supply of actionable claims in casinos.

These amendments are proposed to be made effective from 1 October, 2023. Decisions to be reviewed by the GST Council after (6) months from the date of implementation; however, review may not necessitate amendment in the GST laws.

LINK – Press Release Ministry of Finance

New Zealand

Special report: Marketplace rules for listed services

The inland revenue has released a special report on New Zealand's platform rules, imposing full GST liability on platform from 1 April 2024 on various services.

This special report provides early information that explains the GST rules for marketplace operators that are involved in the supply of ride-sharing and ride-hailing, delivery services for food and beverages, and accommodation services.

LINK – Special Report

New Zealand announces draft legislation for a DST

New Zealand has announced the imminent publication of draft legislation for a digital services tax (DST) so that it is ready were it to be necessary from 1 January 2025. The Government says it has been actively participating in negotiations at the OECD for a multilateral agreement to address these issues but that progress is slow progress. While they have agreed not to bring in a unilateral measure such as DST until 1 January 2025, they have prepared legislation that is ready to go if the OECD process does not succeed.

Key elements will be:

- The scope will be large multinational businesses that earn income from New Zealand users of social media platforms, internet search engines, and online marketplaces.
- The proposed DST would be payable by multinational businesses that make over €750 million a year from global digital services and over NZD$3.5 million a year from digital services provided to New Zealand users.
- The tax would be applied at three percent on gross taxable New Zealand digital services revenue
- It is expected to generate $222 million over the four-year forecast period.

The Digital Services Tax Bill will be introduced to the House on Thursday 31 August. The Government consulted on the content of this legislation in 2019.

Malaysia

Is a tax amnesty for consumption taxes on digital supplies a sign of the future?

The Royal Malaysian Customs Department (RMCD) today held a webinar on the Voluntary Disclosure Program 2.0 (VDP) in relation to indirect taxes. The main Malaysian tax to consider in relation to digital supplies is the 6% service tax that applies to foreign providers of (many) online services. The VDP allows taxpayers to voluntarily disclose any mistakes or omissions related to indirect tax that are previously unknown or undiscovered by RMCD. The PwC Malaysia publication covers the wider picture.

Key points addressed during the webinar:

- the period of the amnesty is 6/6/23 - 31/5/24 (12 months)
- the amnesty will NOT apply if the tax has been or is being assessed (or reassessed), the period is under audit, a court case on a tax controversy is pending, or there is fraud
- the main situations to consider are failure to submit a tax return, underpaid tax (even if collected from customers) as well as overpaid tax
- the main incentives for making the voluntary disclosure are 100% penalty remission, the periods disclosed will not be audited and no compound will apply
- a simple registration and declaration procedure is available (and it can be done easily online).

Nigeria

Non-resident platforms

The TAT has ruled that the FIRS can appoint Non-Resident digital platform providers to fulfil VAT obligations on behalf of their customers.

The decision of the Tribunal takes away the administrative burden on the FIRS of collecting VAT on services provided by multiple Nigerian suppliers, however it failed to address a number of points and did not contemplate the challenges associated with the Tribunal's interpretations.

More on this and the key takeaways can be found in our PwC Tax Alert.

Kenia

Highlights Finance Act 2023

The Finance Act was assented to by the President on 26 June 2023 and contains amendments to a.o. the Income Tax Act, Value Added Tax, Excise Duty, Employment Act, etc. The effective date for these changes is 1 July 2023 (unless otherwise specified).

The amendments in terms of VAT widen the scope of the deeming provision under section 8(2) by requiring all non-resident suppliers without a place of business in Kenya to register for VAT without taking into consideration the VAT registration status of their customers.

The amendment expands the reach of the KRA to bring non-residents suppliers of services under the Kenyan VAT law upon trade with Kenyan customers. This is contrary to internationally accepted VAT place of supply principles.

Further, there is potential for double taxation as recipients of the services are obliged to self-account for VAT on the imported services – the law currently only exempts recipients of digital market supplies from reverse VAT.

For more on this, please check-out our Tax Alert.

Egypt

New VAT guidance on digital services

The Egyptian Tax Authority (ETA) has recently published Value-Added Tax (VAT) Guidelines for digital services and other remote services provided by non-residents (see the Guidelines at this Link).

The Guidelines outline the VAT obligations for non-resident vendors who render digital and remote services to customers in Egypt through various platforms, including websites, social media stores, and applications. The guidelines became effective on 22 June 2023.

As specified in the guidelines, any non-resident vendor who provides digital and remote services to customers in Egypt must pay VAT in Egypt on those services. Remote services are defined as any services where there is no necessary connection between the physical location of the recipient and the place of physical performance. This includes services such as supplies of digital content, online supplies of games, applications, software, website design, and publishing services, as well as legal, accounting, or consultancy services.

However, the VAT obligations for non-resident vendors differ depending on whether the remote services are rendered to a registered taxpayer (B2B supplies) or a non-registered consumer (B2C supplies).

- In the case of B2B supplies, the resident taxpayer is required to account for and remit VAT using the reverse charge scheme, with no obligation for the non-resident to charge or remit VAT.
- In the case of B2C supplies, the VAT obligations depend on whether the remote services are rendered via the non-resident vendor's own portal or application, or through an Electronic Distribution Platform (EDP).

To register under the simplified registration regime, non-resident vendors must create an account on the ETA and meet certain conditions, such as a turnover of EGP 500,000 in any 12 months. If the service is a professional and consultancy service subject to the reduced VAT rate, registration is required regardless of turnover. Once registered, non-resident vendors and EDPs are able to file simplified returns and pay the VAT due and may also apply for deregistration in case they cease to carry out taxable activities in Egypt.

Non-resident vendors who provide remote services to customers in Egypt should review the guidelines carefully and take the necessary steps to comply.

Georgia

Tax on specified digital products

Georgia enacted legislation on May 2, effective January 1, 2024, providing that sales and use tax will apply to:

- Sales of specified digital products transferred electronically to an end user. These include digital audio-visual works, digital audio works, and digital books
- Sales of "other digital goods," which include certain listed items transferred electronically to an end user, such as "video games or electronic entertainment" and "digital applications"
- Sales of digital codes.

The tax applies only if "such end user receives or will receive the right of permanent use of such products, goods, or codes and the transaction is not conditioned upon continued payment by the end user."

Further, a sale of any specified digital product, other digital good, or digital code is considered a sale for resale if the specified digital product, other digital good, or digital code is subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in part, as an integral, inseparable component part of a service or another such product, good, or code by the purchaser of the specified digital product, other digital good, or digital code to an ultimate consumer.

LINK – S.B.56, enacted 5/5/23

Maryland

Supreme Court dismisses challenge to digital ad tax

The Maryland Supreme Court held on May 9 that the Circuit Court for Anne Arundel County lacked jurisdiction to issue a declaratory judgment invalidating the Maryland digital advertising gross revenue tax. The Supreme Court found that the appellees failed to exhaust their administrative remedies, and therefore it vacated the Circuit Court's declaratory judgment and remanded the case to that court for dismissal.

An appeal is pending in federal court, although the district court in that case found that the majority of claims were barred under the Tax Injunction Act.

Be aware that the first annual returns for tax were due 15 April 2023.

LINK – Maryland Supreme Court

Minnesota

Retail delivery fee, effective 1 July 2024

Enacted transportation legislation in Minnesota includes a 50-cent retail delivery fee, new metro area sales and use taxes, and increased fuel taxes. The retail delivery fee is effective July 1, 2024. [H.F. 2887, enacted 5/24/23]

Minnesota becomes the second state to enact a fee for deliveries to in-state customers. The Minnesota legislation follows Colorado's recent enactment of a similar election to self accrue the tax and a small-seller exception to the fee.

The Minnesota retail delivery fee will entail similar complexities as well, such as determining when exemptions apply, seeking to achieve compliance for marketplace sales, and invoicing for the fee (if so elected). At 50 cents, the Minnesota fee is nearly double the Colorado fee, although less than the 75-cent fee that had been proposed by the Minnesota House

For more information, see PwC's Insight.

Oklahoma

Marketplace facilitator carveout hotels

Oklahoma enacted House Bill 2335 on May 19, which amends application of the marketplace facilitator law, effective November 1. Oklahoma statute provides that "marketplace facilitator" means "a person that facilitates the sale at retail of a marketplace seller's product." H.B. 2335 modifies the "product" definition to exclude hotels and motels with more than 12 rooms for occupancy in the regular course of business.

This carveout removes the requirement for hotels and motels that qualify from filing an election with the Oklahoma Tax Commission to collect and remit sales and use tax or to comply with notice and reporting requirements.

LINK – H.B.2335, enacted 5/19/23

Louisiana

Removal 200 transaction threshold

Louisiana enacted legislation on May 30 that removes the 200-transaction requirement from the economic nexus threshold for dealers and marketplace facilitators. Effective August 1, 2023, House Bill 171 provides that:

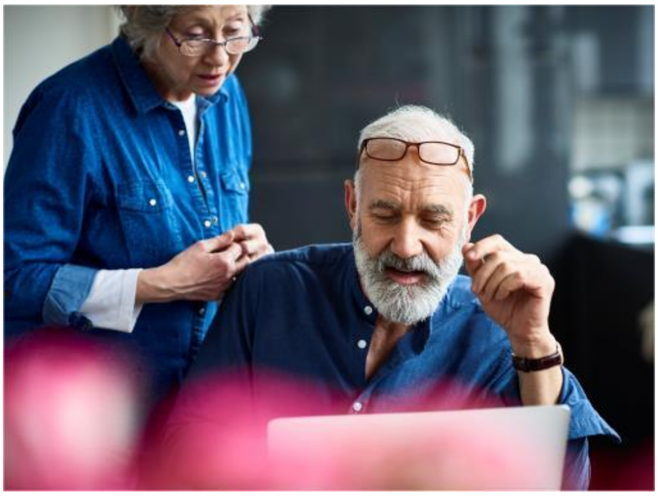
- "Dealer" includes any person who sells for delivery into Louisiana tangible personal property, products transferred electronically, or services, and who does not have a physical presence in Louisiana, if during the previous or current calendar year the person's gross revenue for sales delivered into Louisiana has exceeded $100,000 from sales of tangible personal property, products transferred electronically, or services
- The threshold for marketplace facilitators is imposed when gross revenue for "retail sales" delivered into Louisiana exceed $100,000 from sales of tangible personal property, products transferred electronically, or services (prior to enactment, the threshold applies to "sales").

LINK – H.B.171, enacted 5/30/23

Wayfair 5 years – expected or unexpected impact

This interesting read provides an overview of the expected and unexpected tax impacts of the Wayfair ruling, as well as the operational implications for taxpayers. From states applying Wayfair to other types of taxes, to potential sales tax overpayments as a result of vendors operating in new jurisdictions, this column walks through what taxpayers are experiencing five years later and how the changing landscape may impact businesses going forward.

LINK – PwC US



Brazil

VAT reform

On July 7, 2023, the House of Deputies approved Proposed Constitutional Amendment (PEC) No. 45 of 2019, with a major overhaul of the Brazilian tax system.

With the approval of PEC 45 by the House, now is the time to analyze and plan for the new environment. The impact of the new Brazilian tax system on each business will vary by business segment and by the location of each link in the value chain of each company, thus requiring accurate business modelling, with tax intelligence that takes into consideration elements such as the loss of tax incentives against efficiency gains in logistics, changes in sales prices or supply costs, working capital currently applied in multi-located inventories, reduction of costs, and cargo transport flows within Brazil, among others.

For more on this read the full article on GVO.

West Virginia

Streaming services

Enacted transportation legislation in Minnesota The West Virginia Tax Division issued a publication in May affirming that streaming services are subject to tax. The guidance clarifies that (1) a consumer purchasing streaming services generally has purchased access to curated entertainment content in the streaming service's catalog and (2) the consumer has not purchased a right to any one specific digital product.

The publication provides that:

- All sales of streaming services in West Virginia are subject to sales and use tax
- Since there is no sales tax exemption for the provision of streaming services, such services also are subject to the consumer sales and service tax and use tax
- An additional municipal sales or use tax not greater than 1% also may apply if the sale is sourced to a municipality that imposes a municipal sales and use tax.

LINK – TSD 445

Canada

Digital Services Tax – One step closer to becoming a reality

On August 4, 2023, Canada's Department of Finance released a revised draft of the Digital Services Tax Act (DST Act), along with revised (and complete) explanatory notes, which made a number of substantive and administrative revisions to the DST Act - this includes a new election to determine a taxpayer's Digital Services Tax (DST) liability for the initial years of application, based on Canadian digital services revenue for the year in which the DST Act comes into force. However, the revised notes did not change the timing aspects of the DST Act (i.e. that the DST would retroactively apply to Canadian digital services revenues earned since January 1, 2022).

This new election to determine a taxpayer's DST liability for the initial years, generally means that a taxpayer could elect to base its 2022 and 2023 DST liability on its 2024 ratio of Canadian digital services revenue to total revenue and eliminate the need to develop detailed reporting systems to capture Canadian digital services revenues for 2022 and 2023.

The August 2023 release of the draft DST Act comes after Canada's refusal to agree to the July 11, 2023 Outcome Statement by the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework in the context of ongoing work on a multilateral convention (MLC) to implement Pillar One. Specifically, Deputy Prime Minister and Minister of Finance Chrystia Freeland issued a statement that although Canada fully supports the MLC, it does not support a one year extension of a moratorium on imposing new digital services taxes.

Canada has consistently indicated that it prefers a multilateral solution to the taxation of the digital economy and that it would impose the proposed DST only if an MLC implementing Pillar One has not come into force by December 31, 2023. However, as the timelines to negotiate and implement a MLC continue to be extended, it appears more likely that Canada's DST Act will become a reality.

The proposed DST is a 3% tax in respect of Canadian-source digital services revenue earned by large domestic and foreign taxpayers, and would apply on a calendar year basis, i.e. it is not based on the fiscal year of the taxpayer. The DST is proposed to be effective the later of:

- the 2024 calendar year, and
- the calendar year that includes the day the DST Act comes into force,

and would apply retroactively in respect of in-scope revenues earned since January 1, 2022. The first payment of the DST liability would include the DST in respect of in-scope revenues earned since January 1, 2022, and the earliest that it would be due is June 30, 2025.

In-scope revenue would generally comprise of Canadian-source digital services revenue arising from:

- online marketplace services,
- online targeted advertising services,
- social media services,
- the sale or licensing of user data obtained from an online marketplace, a social media platform or an online search engine.

The DST would apply for a particular calendar year to businesses that meet both of the following revenue thresholds (to be calculated on a consolidated group basis):

- global revenue from all sources of €750 million or more in a fiscal year of the group that ends in the previous calendar year;
- Canadian digital services revenue of more than CAD$20 million in the particular calendar year.

The 3% tax would be levied on the amount by which Canadian digital services revenue for the particular calendar year exceeds CAD$20 million (which is pro-rated among group members).

For a more in-depth look into the proposed legislation and the key takeaways for businesses we refer you to PwC's Tax Insights.

Contacts

Nicole Stumm
Partner, ITX R&C Lead
Berlin, Germany

T: +491702290696
E: nicole.stumm@pwc.com

Claire De Lepeleire
Managing Director, ITX R&C Lead
Brussels, Belgium

T: +32 475 910868
E: claire.de.lepeleire@pwc.com

Annelies Van de Velde
Senior Manager, EMEA Ecommerce
Brussels, Belgium

T: +32 494 22 33 00
E: annelies.van.de.velde@pwc.com

Although PwC continuously monitors the evolving regulatory landscape it cannot be excluded that all relevant information is reflected in this bi-monthly newsletter. Hence, you should not act upon the information contained in the weekly e-commerce updates without obtaining specific professional advice from your PwC contact.