

# The drop on e-commerce



February – March 2024

Welcome to the February – March 2024 edition of the drop on ecommerce, where we highlight notable updates that are happening around the world for Indirect Tax.

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

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## United Kingdom & Northern Ireland

### HMRC Releases Guidance on VAT Import One Stop Shop Scheme in Northern Ireland

From 1 March 2024, Northern Ireland businesses who import goods from outside of the EU/Northern Ireland and sell these goods to consumers in the EU/Northern Ireland can register with HMRC to use the Import One Stop Shop (IOSS). The aim of the IOSS is to simplify VAT reporting and payment for such businesses. Although the UK has left the EU, under the Eu Withdrawal Agreement, EU VAT rules in respect to supplies of goods apply in Northern Ireland and Northern Ireland businesses must thereby adhere to reporting requirements regarding the movement of goods.

From 1 March 2024, UK VAT registered businesses in Northern Ireland who sell goods which are imported from outside the EU and Northern Ireland to customers in those territories can register with HMRC to use the Import One Stop Shop (IOSS) system. The aim of the IOSS is to simplify reporting and payment of VAT on 'low value imports' (consignments of £135 or less) into the European Union by allowing importers to account for VAT through a single IOSS registration. Where businesses are already registered under the EU IOSS scheme they may not apply for a new registration and instead should tell HMRC their existing IOSS registration number.

Relevant businesses can choose to register for the VAT IOSS scheme. The IOSS scheme is available to:

- businesses in Northern Ireland; and
- businesses in countries that the EU has concluded and recognises an agreement with, on the mutual assistance for the recovery of VAT — currently only Norway

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## France

### VAT Treatment of Transactions Using Non-Fungible Tokens (NFTs).

On the 14th of February, 2024, the French tax authorities issued guidelines on VAT obligations for non-fungible tokens "NFT's".

NFT's are, unlike cryptocurrencies, not interchangeable, making them inherently unique and indivisible. Due to these differences, the NFT's do not fall under banking or financial exemptions from VAT in France which apply to cryptocurrencies.

These NFT's can nonetheless be transferred and the VAT obligations should be determined. France has therefore published a guidance on the VAT treatment.

They have decided to treat the sale as a supply of electronic services and in doing so they follow amongst others Spain, Belgium, Norway and New Zealand.

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## Belgium

### EU Council Presidency: Priority on Single VAT Registration of ViDA

E-commerce Europe and EuroCommerce have jointly addressed a letter to the Belgian Minister of Finance (given that Belgium holds the presidency of the Council of the EU), advocating for the swift incorporation of the SVR (Single VAT Registration) within the ViDA proposal.

Despite the postponement of the ViDA package, the associations remain committed to its realization.

Furthermore, they highlight the challenges faced by SMEs due to VAT costs associated with expanding activities across Member States, emphasizing the significant impact on those trading through marketplaces.

The SVR aims to tackle this challenge by abolishing the necessity for multiple VAT registrations across the European Union, particularly for transactions that do not fall under the scope of the OSS (One Stop Shop).

In addition, the associations advocate for the incorporation of the IOSS into the planned EU customs reforms. This approach would exclude it from the ViDA proposal as to avoid any further delay.

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## France

### New VAT Place of Taxation Rules for Virtual Events

The French Finance Law transposed EU Directive 2022/542, and provides, from 1 January 2025, new VAT territoriality rules relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities broadcast or made available virtually.

However, the application of the current rules to so-called "virtual" events has become unsuitable because of the new ways in which events are organised following the Covid-19 pandemic.

As a result, EU Directive 2022/542 of April 5, 2022, introduces a single rule for submitting these services to VAT at the place where the customer is established, whether or not he is a VAT taxable person, on the condition that they are provided virtually.

This reform of the VAT territoriality of events organised virtually will bring French law in line with European law and take into account the fact that more and more events can now be attended remotely.

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## Switzerland

### Changes in e-commerce rules

The Swiss Federal Council has confirmed the changes of the e-commerce rules, effective as of 1 January 2025.

The new rules will consider electronic platforms as "deemed supplier" for all supplies of goods they facilitate, unless certain conditions are met. Additionally, all electronic platforms can be requested to provide information on the sellers.

A deemed supplier is defined as an electronic platform that facilitates the supply of goods by putting sellers and buyer in contact unless one of the conditions as defined in the law is not met.

Additionally, electronic platforms will need to provide information upon request by the Swiss Tax Administration.

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## Italy

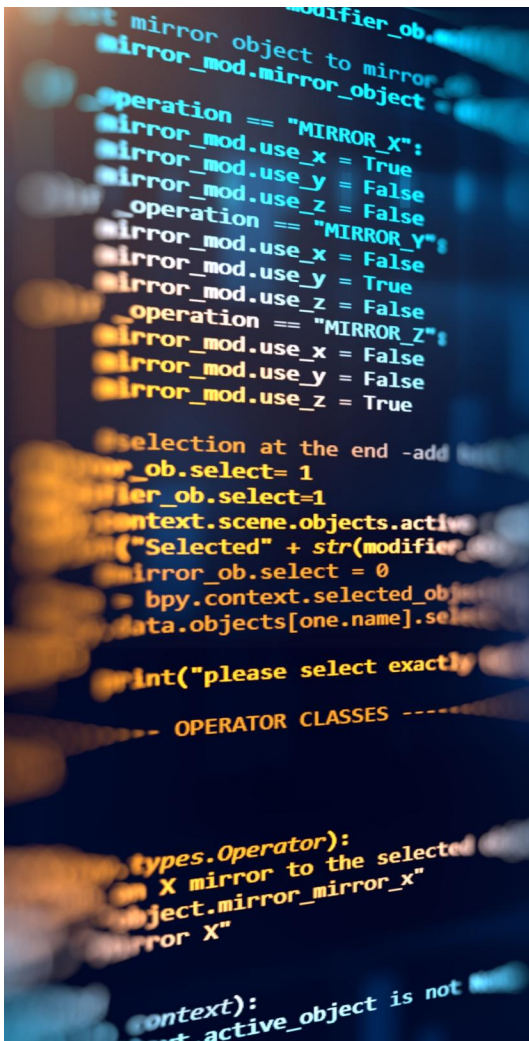
### Italian Tax Authority: Decision Regarding VAT and Virtual Events

Looking ahead to the introduction of Directive 2022/542/EU on 1 January 2025, under which 'virtual events' will be taxable where the customer is established, we highlight an earlier ruling (409/2022) in which the Italian Revenue Agency clarified that the provision of training courses in 'online' mode are VAT-taxable where the customer is established or resident, regardless of whether the customer is a taxable person or a private individual.

In the case in question, the Applicant is a company that provides services in the field of training by means of courses delivered in virtual mode (via "Zoom" or "Adobe Connect" platform) by teachers connected in real time mostly remotely (i.e., from their home or office located in the EU, other than Italy, or outside the EU). It is specified that this modality allows interaction between course participants and lecturers via the same streaming platform, as well as access to the e-learning platform for consulting the course materials, and for sending further specific questions to the course teachers.

Participants can be either taxable persons (B2B) or final consumers (B2C), resident in other EU Member States or outside the EU.

In support of its conclusions, the Revenue Agency cites the changes made by the above-mentioned Directive 2022/542/EU to Article 54 Principal VAT Directive (2006/112/EC) which stipulate that "where the services and ancillary services relate to activities which are streamed or otherwise made virtually available, the place of supply shall, however, be the place where the non-taxable person is established, has his permanent address or usually resides".

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## New Zealand

### GST Rules for sharing economy platforms introduced

As outlined in our previous edition, online platforms facilitating listed service sales are now required to collect and remit GST to the Inland Revenue for services provided in New Zealand

This requirement applies to online hosting platforms such as Airbnb and Expedia, which must remit GST for bookings made through their platforms.

In response to these regulatory changes, Expedia plans to withdraw numerous New Zealand-based hosts from its online platform, in light of the forthcoming changes to GST.

With the forthcoming regulation in mind, accommodation businesses will be given the option to opt out and manage their own GST obligations if they exceed \$500,000 in revenue or provide a minimum of 2000 nights of taxable accommodation within a year.

As a result, Expedia's recent decision is expected to predominantly impact smaller players in the accommodation sector in the short term.

This transition brings about significant challenges for the tourism sector, potentially leading to far-reaching consequences in case other platform operators decide to pursue similar actions.

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## Laos

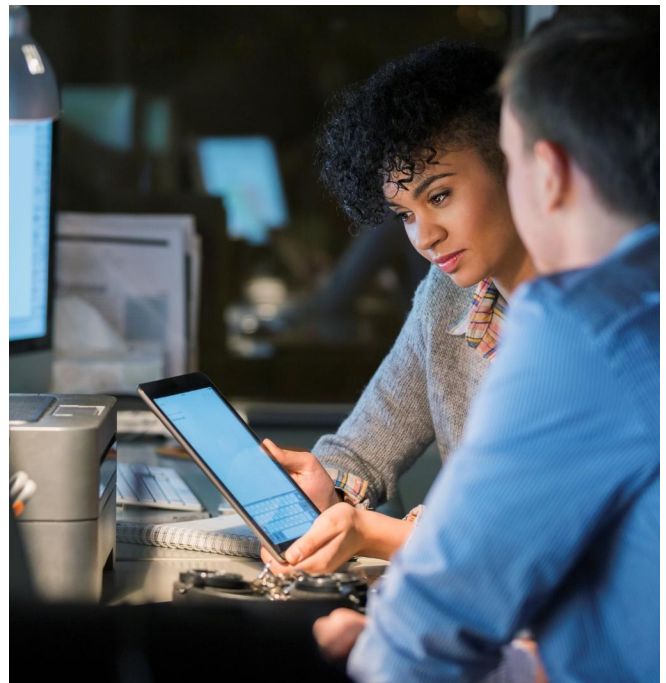
### VAT Regulations for Cross-Border Provision of Digital Services

The Lao Tax Department has issued an instruction which requires nonresidential digital service providers to register for and collect VAT.

Laos introduced VAT on cross-border digital services in 2022 whereby a deemed profit tax (DPT) on income generated from digital services by nonresidents was introduced. This proposal was withdrawn and draft instructions have now been published that exclude the DPT.

The instructions cover services in a B2B and B2C scenario when they are located in Laos.

The operator of the platform will be deemed supplier in case services are provided via a digital platform. They will be responsible for charging and collecting VAT for sales made by third-party residents and nonresident vendors.



## Senegal

### Reverse charge for non-resident digital service providers

Senegalese taxable persons are now responsible for B2B supplies provided by foreign providers. Under the 2023 Finance Act, the Minister of Finance has approved the VAT registration requirement for non resident providers of digital services to consumers starting April 1, 2024.

Non residents must establish whether the consumption of digital services takes place in Senegal, using indicators specified in the legislation such as IP address or bank account address.

Services falling within the scope of VAT involve fees for streaming and downloading media, accessing online journals and news, as well as charges for advertising services, among other examples.

Non residents who provide digital services subject to VAT must also appoint a tax representative for VAT registration, and are fully responsible for the supplier's VAT obligations.



## South Africa

### South Africa proposes new B2C only e-services rules

The Minister of Finance recently announced proposals to be included in the draft Taxation Laws Amendment Bill ('TLAB') later this year. One of the most notable proposals relates to the Electronic Services (ESS) Regulations in South Africa. Currently, the ESS Regulations do not differentiate between B2B and B2C supplies, however it was announced that the Government proposes to revise and update the ESS Regulations to align with changes in the digital economy and ease the administrative burden. In this respect, it is proposed that the scope of the ESS Regulations will be limited to non-resident vendors supplying electronic services to non-vendors or end consumers (i.e., B2C transactions).

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## Zambia

### VAT Implications for Cross-Border Digital Services

The Zambian tax authorities published new VAT regulations which require non-resident digital service providers to register, collect and remit VAT. They can use a simplified registration system for these obligations.

Due to lack of clarity regarding the appointment of a local tax agent to comply with VAT obligations, they have amended the rules. It is expected that additional guidance will be published.

The amendment provides clarity regarding the definition of digital services, covering services provided or delivered via the internet, electronic, or digital networks. For instance, such services include streaming options like films, television shows, music, games, sporting events, political events, cultural events, artistic events, scientific events, entertainment events, video on demand, and podcasts.

Furthermore, the legislation explicitly excludes services such as broadcasting and telecommunication from the scope of digital services.

Non resident digital service providers are required to include VAT in both B2B and B2C transactions. The non residents would still need to register if their annual sales exceed 800,000 ZMW or 200,000 ZMW per quarter for transactions originating from Zambia.

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## Congo

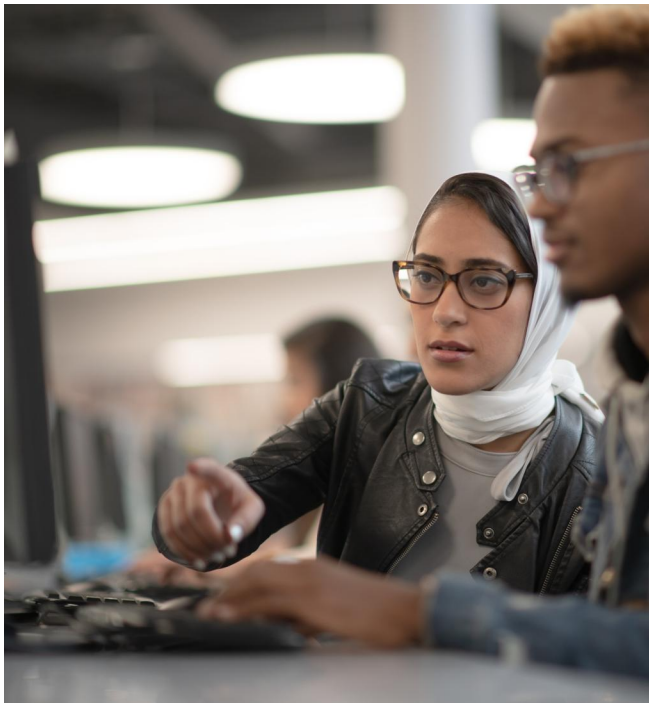
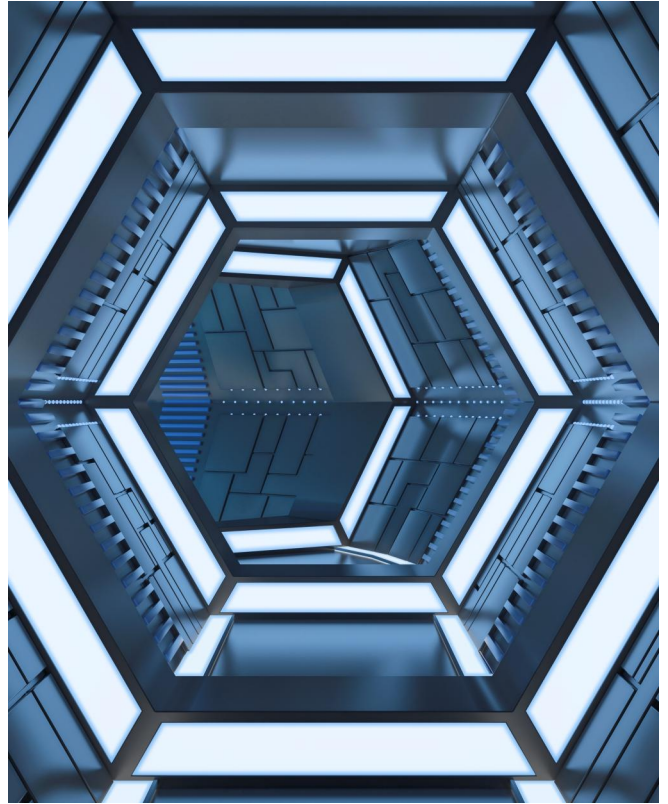
### VAT Requirements for Non Resident Digital Services Providers

The Republic of the Congo has introduced provisions which require non resident digital service providers to register and collect VAT.

Under this regime, 18% VAT is imposed on a large non exhaustive list of transactions including online advertising, digital content dissemination, educational services, software downloads, streaming platforms, among others.

The requirements apply in a B2B and B2C scenario without specifying a minimum threshold for the registration obligation.

Although the legislation does not require non resident digital service providers to appoint local fiscal representatives, it does stipulate that non residents with a VAT registration portal due to other requirements of the VAT law must appoint a local fiscal representative, otherwise the local customer will be held liable.

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## Angola

### E-commerce and Taxation updates

Angola has enacted a new law stating that every sale of goods in Angola is taxable when either the buyer has its headquarters, residence or permanent establishment in Angola or either when the payment occurs in Angola due to the facilitation by a locally established financial institution, regardless of where the goods are shipped from.

When a non residents fulfills these conditions in a B2B or B2C scenario, they would need to comply with Angola VAT taxation obligations.

There are no specific obligations for electronic platforms facilitating those sales.

It is expected that additional implementing rules and a simplified registration mechanism will be communicated.

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## U.S. Indirect Tax updates

### Illinois amends regulation addressing taxability of SaaS and computer licenses

Illinois amended a retailers occupation tax (ROT) regulation that clarifies whether tax is imposed on computer software licenses and software as a service (SaaS), based on its previous letter rulings stating that (1) computer software licenses are not subject to tax if there is a signed license agreement, which can be electronic if verifiable (clicking "I agree" does not meet the requirement), (2) computer software provided through a cloudbased delivery system is not taxable, and (3) if the provider gives the subscriber an API, applet, desktop agent, or remote access agent to access the provider's network and services, the subscriber is receiving computer software.

### New Mexico adopts digital advertising tax rules addressing sourcing

The New Mexico Taxation and Revenue Department on December 19, 2023 adopted amendments to its gross receipts tax rules governing digital advertising. The rules provide that the gross receipts tax applies to the "receipts of a provider of a digital platform that displays digital advertising services, whose digital platform may be accessed or viewed within New Mexico, from the sale of advertising services to advertisers within and without New Mexico." A "user" is any person who accesses or views a digital platform with a device.

The rules provide an example in which digital advertising services are deemed to be delivered to the locations of all persons in New Mexico viewing or accessing the advertising. However, because the seller has insufficient information for sourcing

purposes, the example states that "the reporting location of the gross receipts and related deductions from this service is...the location from which the product of the digital advertising service was transmitted to the purchaser."



### South Carolina Appeals Court affirms sales tax applies on facilitated sales prior to enacted marketplace provider statute

The South Carolina Court of Appeals on January 24, 2024 affirmed an Administrative Law Court decision that an online marketplace provider was liable for collecting and remitting sales tax on products sold by third-party sellers on the marketplace during the first quarter of 2016. The marketplace facilitator contended that (1) it was not a seller or in the business of selling under the sales and use tax statute in effect at that time, (2) the PwC 4 statute was ambiguous, and (3) the Department of Revenue's assessment violated its constitutional rights of fair notice and equal protection.

The Court determined that (1) the sales and use tax statute was not ambiguous, (2) the marketplace provider met the definitions of seller, business, and sale per statute, based on its control over the transactions, its receipt of fees and payments, and its role in transferring goods to customers, (3) the Department applied the existing law to a new business model, not retroactively or selectively, (4) the subsequent amendment of the sales and use tax statute in 2019 to expressly include marketplace facilitators did not change the law that was in place in 2016, and (5) the marketplace provider did not show that any such similarly situated persons received disparate treatment.

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