wts global

WTS Value Added Tax Newsletter

Editorial

Dear Reader,

We are pleased to present the WTS Global VAT News edition for Q3 2019.

This issue of the WTS Global VAT News reports on recent or expected changes in VAT and GST regulations and compliance duties in **various EU and third countries.**

As announced in our WTS Global VAT News for Q2 2019, **Angola** will implement a new VAT Code and a special consumption tax, although application of the new rules has been suspended until October 2019.

In addition, the newsletter reports on recent developments in **China** allowing a refund of unutilized VAT credits to taxpayers who have a good tax compliance rating.

We report on the **French** plans to make online marketplaces responsible for the payment of VAT due by non-European merchants on some transactions. France wants to transpose a European directive as early as 2020, although the Directive does not have to enter into force until 2021. Another **French** topic is the development of electronic invoicing.

In **Hungary**, the summer tax law amendments lead to changes in the Hungarian VAT law which mainly concern implementation of the so-called "Quick Fixes" but also contain other changes from January 2020.

The newsletter also provides information about recent changes for VAT registrations in **Ireland** which came into force on June 15, 2019.

In **Italy**, since April 2019 multinational enterprises have been able to access the "cooperative and enhanced collaboration procedure" ("CECP") in order to assess – in cooperation with the Italian tax authorities – the risk of existence of a permanent establishment (PE) in Italy and its VAT and other tax consequences.

In **Malaysia**, a Digital Service Tax ("DST") will come into force on January 1, 2020. The Malaysian article explains the details of the new tax.

In **Poland**, the rules on the obligatory split payment will become effective from November 1, 2019. Taking into account the additional obligations and the penalties under this new scheme, companies selling or purchasing goods/services subject to mandatory split payment should be well prepared for this regime when it comes into force.

In **Portugal**, the obligation to use certified invoicing programs was suspended until January 01, 2020. Further new obligations in connection with invoices and other tax-related documents were postponed to the end of October. We hope you find our Newsletter useful and welcome your feedback and suggestions.

If you have any questions regarding any aspects of this Newsletter, please do not hesitate to contact us.

Yours sincerely,

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WTS Global VAT Team

Contents

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

Angola

VAT & Special Consumption Tax enter into force on October 1, 2019

Angola has established the Value Added Tax (VAT) and Special Consumption Tax Codes, the implementation date of which was initially set as July 1, 2019. Following some discussion in the meeting held on June 14, 2019 between Executive Government Members and the Business Technical Group, it was agreed to postpone the date of entry into force of the VAT and Special Consumption Tax Codes.

In line with the above, the Provisional Presidential Decree No. 1/19, dated June 28, was published in the official gazette, suspending the date of entry into force and respective charge of VAT and Special Consumption Tax, pending further approval of the laws that will define the new date for its entry into force and implementation, respectively.

More recently, Law no. 17/19, dated August 13, 2019 has introduced several amendments to the **Valued Added Tax Code**, approved by Law no. 7/19, dated April 24, 2019.

The above-mentioned Law has defined that the date of entry into force of VAT is October 1, 2019.

In addition to the definition of the date of entry into force of VAT, the said Law has introduced other changes, such as:

1. Reduction of the VAT rate up to 3 % for companies in the Transitory VAT Regime (prior VAT rate was 7%);
2. Enlargement of the scope of VAT exemptions to health insurances, education and medical services;
3. Exclusion of taxation, under Captive VAT Regime, of certain services/operations, namely consumption of water and energy and transmission of goods by supermarkets. In addition, it was introduced the right to deduction of the Captive Tax withheld under this regime.

Additionally, VAT forms were already approved and are already available on the Min. Fin. website. The forms approved are the following:

1. **Declaration of beginning of activity** (which should be **submitted electronically within the deadline of 30 days** computed from the publication of Law no. 17/19 dated August 13, 2019), change and termination of business;
2. Periodic VAT return and its annexes;
3. Transitory Regime VAT return;
4. VAT refund form;
5. Suppliers' table;
6. Form to request the settlement of bad debts and non-performing loans.

The **Special Consumption Tax Code** (Law no. 8/19 of April 24, 2019) has also suffered changes introduced by Law no. 18/19 dated August 13, 2019. Its date of entering into force is now set forth to October 1, 2019.

The above Law has also introduced several changes, such as:

1. The increase of tax rates applicable which now may vary (between 2% and 25% – before the highest tax rate was 19%) depending on the type of product and are listed in tables (ANEXO I & ANEXO II) attached to the Special Consumption Tax Code.
2. Taxation of Motor Vehicles.
3. Taxpayers should submit, by electronic data transmission, until the last working day of each month, a declaration, in duplicate, accordingly to the official form, containing the information related to the volume of operations developed on the month prior to the tax payment.

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China

Refund of unutilized VAT credits

Background

Further to the recent announcement allowing a refund of unutilized VAT credits, the State Administration of Taxation (SAT) issued another announcement on its detailed implementation (Announcement [2019] No. 20).

Criteria for the refund

A taxpayer should meet ALL of the following criteria to qualify for the refund:

- Its incremental uncredited VAT has been above zero since April 2019 for six consecutive months (or two consecutive quarters if VAT is filed quarterly rather than monthly), and the amount for the sixth month is no less than RMB 500k;
- Its tax credit rating is Grade A or Grade B;
- It has not committed any fraud in obtaining the refund for uncredited or export VAT or falsified any special VAT invoices in the past 36 months before the application;
- It has not been penalized two or more times by the tax authorities for tax evasion in the past 36 months before the application; and
- It has not enjoyed any VAT refund, either under the policy of “immediate refund after collection” or “refund-upon-collection” since April 1, 2019.

Timing for the application

- Once it meets all the above criteria, starting from the next month, the taxpayer can submit an online application on the tax authority’s website, after completing the VAT filing for the period.

“VAT exemption, credit or refund” and “uncredited VAT refund”

- The two applications for a VAT refund can be submitted for the same filing period.
- The tax authority is required to process first the application for “VAT exemption, credit or refund” as a priority, and then the application for “uncredited VAT refund” if the taxpayer can still meet the criteria.

Application timeline

- The tax authority should complete the examination within 10 working days after receiving the application from the taxpayers.
- If the VAT refund amount cannot yet be finalized due to some pending issues when the application is submitted, the "10 working days" should be counted from the day when the amount is confirmed.

Circumstances that may suspend the refund procedure

The following circumstances will cause the refund procedure to be suspended by the tax authority:

- The taxpayer has VAT-related risks;
- The taxpayer is under a tax audit and the audit is not yet wrapped up;
- An abnormal issue found during the VAT authentication process is not resolved;
- An abnormal VAT deduction voucher is received but not resolved; or
- Other circumstances specified by SAT.

WTS Observation

- It is emphasized again that the taxpayers are required to have a good tax compliance rating. To qualify for the refund of unutilized VAT credits, the taxpayers should endeavor to maintain a sound tax compliance rating at all times.
- The policy can minimize the financial pressure of those enterprises with unutilized VAT credits accumulating overtime. They are usually engaged in large investment and long production and sales cycles.
- The application procedure is made online and is simple, in line with the principle of administrative simplicity advocated by the Chinese government in recent years.

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France I

VAT liability for online marketplaces and other measures to fight VAT fraud

European Commission estimates that VAT fraud is costing France EUR 20 billion.

To combat VAT fraud, Minister of Public Accounts, Mr. Gérald Darmanin, accordingly suggests new actions.

First of all, the French Minister proposes to make online marketplaces responsible for the payment of VAT due by non-European merchants on some transactions. France wants to transpose a European directive as early as 2020, even though the Directive does not have to enter into force until 2021.

The proposal includes a VAT split payment requirement. This would oblige marketplaces facilitating payments for non-EU third party merchants to separate any VAT due and remit it directly to the French tax authorities. The online marketplaces will become liable to VAT.

The purpose of this measure is to adapt tax rules to the huge development of e-commerce, which causes a loss of revenue for public finances and unfairness between economic actors. Indeed, some platforms can sell their products at a lower price because they do not apply French VAT, while other companies sell at the same price but keep the VAT for themselves.

Second measure: French Government plans to delete the VAT exemption for shipments under EUR 22.

Indeed, up until now, an exemption allowed imported goods to be exempt from VAT if their value did not exceed EUR 22. However, fraudsters can wrongfully exempt high-value goods, such as tablets or smartphones, by pretending they are low-value items and thus avoid VAT.

Finally, various other measures are planned. Indeed, France wants to introduce an obligation for warehouses to track their logistics flows or even to extend electronic invoices in order to enable the tax authorities to suspend the VAT numbers of fraudulent companies more quickly.

Currently, the measures proposed by the Minister of Public Accounts are only proposals. These proposals will be included in the Finance Bill for 2020 and unveiled at the end of September 2019 so that they can be debated in the fall before the French Parliament. It will be necessary to wait until mid-December 2019 for the final adoption of the text.

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France II

Evolution of electronic invoicing in France

In order to reduce mistakes and fraud in the VAT system, France wants to increase the use of electronic invoicing.

Electronic invoicing has a promising future and is changing quickly. Indeed, it is now possible to digitize paper invoices and to issue electronic invoices, and it is now even mandatory for some kinds of transactions to use electronic invoicing as described below.

Digitization of paper invoices

Up to January 1, 2017, incoming "paper" invoices had to be kept and stored only in their original format (i.e. paper) in order to support the input VAT deduction right.

A Finance Bill for 2016, supplemented by a Decree dated March 22, 2017, set out conditions and processes that must be followed for digitization of invoices originally issued in paper form. If the process fulfills the requirements set out in the Decree, the taxpayer may rely solely on the digital invoices for VAT purposes.

Electronically issued invoices

Taxpayers have the option of sending their invoices in paper form or, subject to acceptance by the recipient, in any electronic form.

The origin's authenticity, the content's integrity and the invoice's legibility must be ensured from the moment it is issued until the end of its storage period.

Mandatory mentions are the same for paper or electronic invoicing.

In order to be considered as original invoices, invoices transmitted electronically must meet technical conditions. Indeed, taxpayers may use one of the following processes:

- the advanced electronic signature procedure;
- or the structured data exchange system;
- or any other technical device. In this case, a reliable audit trail should be established between the invoice issued or received and the transaction on which it is based.

Mandatory electronic invoicing between the government and its suppliers

In order to increase the development of electronic invoices, France introduced an obligation to issue electronic invoices between the government and its suppliers.

The obligation to transmit electronic invoices applies to contracts that are in the course of being applied or are subsequently concluded with public sector suppliers. The date of enforcement of this mandatory obligation for suppliers varies according to the size of the company:

- As of January 1, 2017, for large companies (more than 5,000 employees and/or an annual turnover greater than EUR 1.5 billion or total balance sheet greater than EUR 2 billion) and public entities;
- As of January 1, 2018, for medium-sized companies (250 to 5,000 employees and up to EUR 1.5 billion in annual sales or EUR 2 billion in balance sheet total);
- As of January 1, 2019, for small and medium-sized companies (10 to 250 employees and up to EUR 50 million in annual sales or EUR 43 million in balance sheet total);
- As of January 1, 2020, for micro-enterprises (fewer than 10 employees and annual or total turnover of less than or equal to EUR 2 million).

Due to mandatory legislation concerning e-invoicing for relations between the government and its suppliers, a national unique invoicing portal called "Chorus Pro" has been developed.

With the exception of a few contracting authorities (such as SNCF, SNCF Réseau, SNCF Mobilités, and Caisse des dépôts et consignations), Chorus Pro supports all suppliers of the public sector in submitting their invoices, checking on their current status of the invoice and payments.

Today, there is a true desire by the French government to encourage taxpayers to use electronic invoicing. For now, there is no obligation on private companies to exchange invoices electronically but it is very likely that this obligation will extend to the private sector in the coming years.

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Hungary

Summer VAT law amendments

We would like to summarize the VAT law changes in the bill passed on July 12 by the Hungarian parliament.

VAT – quick fixes

The bill contains legal harmonization steps in line with Council Directive 2018/1910 regarding VAT, which are primarily aimed at simplifying certain transactions affecting intra-Community goods, supplies and standardizing practices among Member States. These new rules, effective from January 1, 2020, are the following:

Call-off stock

The simplification is subject to strict conditions; for example, when transporting goods, the potential customer and their tax number in the Member State where the goods are delivered has to be known. The fact that the goods are transported has to be indicated in the IC summary report, while both the entity transporting the goods and the potential buyer must have detailed records on the goods. The twelve-month rule is also introduced, i.e. the goods have to be withdrawn from the stock within a twelve-month time period.

Call-off stock rules were in force in Hungary before, and so transitional rules should be investigated carefully with respect to goods already transported to call-off stock.

Chain transactions

Similarly to call-off stock, chain transaction rules also existed in Hungary previously. The rules to be applied before the quick fixes enter into force are relatively similar to the new rules to be implemented, i.e. only minor changes will be added to the currently existing regulations.

Based on the current rules, in the event that the intermediary party orders the transport of the goods, it should be deemed as the buyer of the goods. The intermediary party, however, could decide that it takes part in the chain of transactions as the seller and this decision should be supported by proper evidence. Based on the new rules, however, this fact could be verified by providing its tax number in the Member State of dispatch.

Tax-exempt intra-Community supply of goods

Having the buyer's EU VAT number in the case of a VAT-exempt IC sale will be a substantive condition rather than a formal requirement. This means that it would not be possible to issue a VAT-exempt IC sale invoice without the buyer's EU VAT number. Furthermore, the IC summary report would have to be submitted with the correct date in order to apply for the exemption.

Other VAT law changes

- It will be possible to reduce the tax base with irrecoverable debts if certain conditions are met (effective from January 1, 2020).
- For services related to exports, the VAT law states that from January 1, 2019 an exemption is subject to such services being provided directly to the person carrying out the tax-exempt transaction related to the export. This provision was missing for imports and will now be introduced (effective from the 31st day from publication of the law).

- The proposal makes it possible to verify tax-exempt exports of goods by the customs office of export, not only by the customs office of exit (effective from the day of publication of the law).
- It will be possible to request a special VAT reclaim from the Hungarian tax authority if the taxpayer verifies the entitlement to the refund based on tax neutrality principles. This may happen if, for example, the taxpayer pays VAT to the seller by mistake (e.g. based on an invoice issued incorrectly with VAT) but the seller cannot transfer back the VAT due to e.g. insolvency (effective from January 1, 2020).

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Ireland

Registering for VAT

Revenue updated the guidelines for registering for VAT on June 15, 2019.

In most scenarios, an application for VAT registration should be submitted online. There are a number of applicant categories which currently cannot use eRegistration; those within these categories must submit a paper application form.

Applicants who have a business established in the State should complete the following forms online:

- TR1 registration form for individuals, sole traders, trusts and partnerships
- TR2 registration form for limited companies.

Applicants in the following categories cannot access the eRegistration service and should continue to submit paper applications:

- Individuals currently not eligible to register for myAccount
- Non-assessable spouses
- Companies that have no Irish-resident directors (foreign companies)
- Unincorporated bodies and non-profit organizations, e.g. schools, boards of management, charities, which are not represented by an agent
- Executors
- Collection agents.

From June 15, 2019, companies applying for VAT registration will be asked to specify whether they wish to apply for 'domestic-only' or 'intra-EU' status. Companies not undertaking any intra-EU trade should apply for 'domestic-only' status. Companies intending to trade with businesses elsewhere in the EU should apply for 'intra-EU' status, which will enable them to make zero-rated or non-taxable intra-Community sales. Having 'intra-EU' status will also cause the company to be registered automatically for VIES reporting obligations. Companies applying for 'intra-EU' status will be required to provide additional details on their application forms, including information related to transport arrangements, the nature of supplies and acquisitions, and due diligence measures undertaken to establish the bona fides of customers and suppliers. Companies with 'domestic-only' status may apply at any time for 'intra-EU' status, at which point they will be asked to provide these same details.

A business that has not yet commenced to supply taxable goods or services may register for VAT subject to the provision of satisfactory evidence that the applicant will become an accountable person. Such evidence of 'intention to trade' may include:

- Leases
- Contracts
- Tools of the trade.

If the applicant is registering for VAT in advance of proposed property transactions, a contract that provides for future entitlement to the land may be taken as an indicator of 'intention to trade'. There are minimum conditions that must be met before the VAT in respect of a property transaction is allowable.

VAT registration is effective from a date agreed to by the local tax district and the applicant, after the completed application has been received by Revenue. If electing to register, the effective date will not be earlier than the beginning of the taxable period during which the application was made.

If any of the information supplied changes, the relevant Revenue office must be notified within 30 days.

Once successfully registered for VAT, tax returns and payments must be submitted electronically.

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Italy

Cooperation and enhanced collaboration procedure ("CECP")

Multinational enterprises (MNEs) may access the *"cooperative and enhanced collaboration procedure"* ("CECP"), providing for the opportunity of an open discussion between the Italian Tax Authorities (ITA) and large multinational groups doing business in Italy, in order to assess the risk of existence of a permanent establishment (PE) in Italy and its attributable CIT and VAT taxable base (Art. 1-bis of the Law Decree No. 50/2017).

In particular, foreign companies belonging to multinational groups with consolidated revenues exceeding EUR 1 billion per year may access the procedure at hand if the goods/services sold/provided in Italy exceed the threshold of EUR 50 million per year and are supported by resident companies or domestic PEs.

MNEs already under tax audit or inspection in relation to the existence of a PE in Italy will not be allowed to access the procedure.

On April 16, 2019, the ITA implemented the CECP by releasing operational instructions along with the form to be filed for the relative application (Provvedimento Agenzia Entrate n. 95765/2019 and n. 660041/2019).

As a consequence, large MNEs are now actually enabled to trigger the procedure hereof in order to avoid any tax risk of doing business in Italy, should their activity imply a potential PE in said country.

In the event that – after (i) submission of the application request by the foreign company (followed by the filing of the relevant information/documentation), and (ii) a thorough discussion with the ITA – a PE is deemed to exist or to have existed in the still assessable past fiscal years, the ITA delivers to the requesting company a tax settlement call in order to define the CIT and VAT taxable base attributable to such PE.

If agreement on the taxable base is reached, the taxpayer benefits from a 50% reduction of the applicable tax penalties and full relief from criminal penalties applicable for missed tax returns. For instance, in the case of assessment of an undisclosed PE, ordinary tax penalties for missed tax returns range from 120% to 240% of the additional tax due, plus interest for late payment: the tax settlement procedure therefore implies (in addition to the criminal law relief referred to) the payment of (the agreed additional tax due, plus interest plus) a penalty of 20% of the agreed additional tax due (i.e. 50% of the reduced penalties to be applied in the case of the standard tax settlement procedure, which are equal to 1/3 of the minimum penalty provided by law, i.e. 120% – see above).

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Malaysia

Digital Service Tax

In 2018, Malaysia abolished the multi-staged Goods and Services Tax (GST) and introduced the conventional single stage consumption taxes of Sales Tax and Service Tax. That, however, does not stop Malaysia from following the international trend on indirect taxation of electronic commerce businesses.

The parliament has passed the Bill to amend the Service Tax Act 2018 in order to incorporate Digital Service Tax ("DST"). Effective January 1, 2020, DST is to be charged and levied at the rate of 6% on any digital service provided by a foreign registered person to any consumer.

Digital service is defined as any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where delivery of the service is essentially automated.

"Consumer" is defined as any person who meets at least 2 of the following requirements:

1. makes payment for digital services using a credit or debit facility provided by any financial institution or company in Malaysia.
2. acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia.
3. resides in Malaysia.

Ironically, the law does not confine the interpretation of 'consumer' to natural persons, and hence it is dubious at this juncture whether DST would also apply to business-to-business (B2B) transactions.

"Foreign Service Provider" is defined as:

- any person who is outside Malaysia providing any digital service to a consumer;
- operators of online platforms for buying and selling goods or providing services; and
- any person who makes transactions for provision of digital services on behalf of any person.

Foreign providers are to register with the Royal Malaysian Customs Department ("RMCD") from October 1, 2019 if the annual value of digital service exceeds MYR 500,000 (about EUR 106,000). However, no tax is to be charged until January 1, 2020.

DST operates on a 'cash' or 'receipt' basis, i.e. registered persons are required to remit the tax only on receipt of payment from customers. While service tax in general operates on bi-monthly taxable periods, DST operates on quarterly taxable periods and hence simplifies compliance for the foreign operators. The law also permits electronic lodgment and payment of DST.

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Poland

Mandatory split payment regime in Poland to be introduced from November 2019

In May 2019 the Polish legislator published a draft of amendments to the VAT Act aimed at introducing a mandatory split payment mechanism for selected goods and services. This was a follow-up to the derogation decision of the EU Council authorizing Poland to introduce a mandatory split payment system for certain goods and services.

The mandatory split payment system is designed to replace the current reverse charge mechanism in relation to selected goods and services. According to the draft law, the scope of goods subject to mandatory split payment will include:

- goods and services covered by the current attachment nos. 11, 13 and 14 of the VAT Act (including copper wire, glass waste, paper and paperboard waste, secondary raw material of plastic, vast range of construction works)
- some additional goods, such as parts and equipment for cars

which will collectively be covered by a new attachment no. 15. This mechanism is, however, planned to apply only to transactions whose value exceeds PLN 15,000 (ca. EUR 3,500).

Introducing a mandatory split payment will also have an impact on practical aspects of complying with the tax obligations. First of all, the layout of the invoice issued by a taxable person who provides goods/services subject to split payment will change since the phrase "mechanizm podzielonej pałatności/split payment mechanism" will have to be added. It is very important to discharge this obligation as failure to include this phrase on the invoice may result in imposition of a fine in the amount of 100% of the VAT resulting from such invoice.

Moreover, penalties might be imposed on purchasers who despite the obligation of paying using split payment will pay using another method. In such a case the penalty will also amount to 100% of the VAT indicated on the invoice. Moreover:

- such cost will not be classified as a tax-deductible cost for PIT/CIT purposes.
- penalties resulting from the Criminal Tax Code might be imposed (up to 720 daily rates).

Bearing in mind the risk of the imposition of significant penalties, it will be crucial to identify the transactions subject to the mandatory split payment mechanism and comply with the obligations properly.

The good news is that the proposed law introduces the option of using the funds collected on the VAT account to also pay liabilities other than VAT tax (e.g. CIT, PIT). Taxable persons will also be able to make collective payments as it will be possible to cover multiple invoices with a single split payment operation.

After being postponed earlier this year from July to September, the Polish Parliament (Sejm) has voted in favor and passed the measure. The rules on the obligatory split payment will become effective from November 1, 2019. Some provisions (for example PIT/CIT penalties) will take effect from January 1, 2020.

Taking into account the additional obligations and the penalties, every taxable person who sells or purchases goods/services subject to mandatory split payment should be well prepared for this regime when it comes into force.

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Portugal

Invoices and other tax-related documents: new rules postponed

As reported in our newsletter for Q2 2019, due to Decree-Law No. 28/2019 of February 15, 2019 **("DL 28/2019")**, in Portugal taxable persons will generally be obligated to use certified invoicing programs and to fulfil other new requirements in connection with the issuance of invoices and other tax-related documents. Initially this obligation was due to be fulfilled from July 1, 2019.

The entry into force of the **obligation to use certified invoicing programs** has now been postponed until January 1, 2020 by Ministerial Order 254/2019-XXI of June 27, 2019. This extension of time is expected to allow, firstly, for taxpayers to switch to using pre-certified invoicing programs (which may be consulted on the Portuguese Tax Authority's website) or to request certification for their own programs, and secondly, for the Portuguese Tax Authority (PTA) to finish developing its own free billing application (invoicing software).

The **obligation to notify information to the PTA,** e.g. regarding the identification and location of the establishments where invoices and other tax-related documents are issued, was initially meant to be electronically notified through the PTA portal until June 30, 2019 or within 30 days after the beginning of the activity of the taxable person for taxable persons who initiate activity after May 31, 2019, but has now been postponed until October 31, 2019 or within 30 days after the beginning of the activity of the taxable person for taxable persons who initiate activity after September 30, 2019. For more details please refer to our newsletter for Q2 2019.

As of January 1, 2020, invoices and other tax-related documents have to include a **two-dimensional barcode (QR code) and a single document code,** to be defined by Government ordinance. This deadline remains unaltered by the Ministerial Order.

The Ministerial Order also establishes that the **PTA shall issue further guidance** aimed at clearing up any doubts raised by taxpayers on the application of the DL 28/2019 until October 1, 2019.

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