Global Indirect Tax Update

May 2022

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Editorial

Dear reader,

This newsletter aims is to provide you with an easy-to-read overview of the latest tax developments in the digital economy. It includes several updates on the 2022 tax measures in various countries, the EU as well as on a global basis.

If you would like to know more about the matters addressed in this newsletter or have any feedback, feel free to contact Johan Visser (Partner at Atlas Tax Lawyers) and Gert Vranckx (Senior associate at Tiberghien Lawyers)

Best regards,

The Global Indirect Tax Teams of

Atlas | Tiberghien

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TRUST Expands its Global Footprint and is Now Live Internationally

In February of this year, TRUST launched in the United States. Since that launch, TRUST has now gone live in Canada and Singapore, and is actively working to expand to other global jurisdictions, including Europe. As more countries begin to implement Travel Rules, TRUST is focused on providing its top-tier compliance services to virtual asset service providers (VASPs) around the globe, including its critical security safeguards.

For the full announcement by Coinbase, please see *Here*.

EU

Overview Current EU VAT rates

The EU jurisdictions have some lenience towards the VAT rates they apply on various goods and services. For the full background, please see *Here*.

For an up to date overview per EU jurisdiction, please see the official website of the European Commission *Here*.

Recent version EU VAT Directive

For the recent version of the EU VAT Directive, please see *Here*.

Latest version Guidelines resulting from meetings of the VAT Committee

For the latest version of the VAT guidelines resulting from meetings of the VAT Committee, up until 28 April, 2022, please see *Here*.

EU: Taxes in Europe (TEDB) database

The '*Taxes in Europe'* database is the European Commission's on-line information tool covering the main taxes in force in the EU Member States.

The system contains information on around 650 taxes, as provided to the European Commission by the Ministries of Finance of the EU Member States.

Access is free for all users.

For the database, please see *Here*.

EU: EU VAT Directive applicable as of April 6, 2022 after implementation Council Directive on VAT Rates

The EU VAT Directive has been updated with the following adjustments following the implemented rules related to the Reduced VAT rates as set out in Council Directive (EU) 2022/542 of 5 April 2022.

EU: European Commission announces its plan to regulate tax advice in the EU

On 25 April 2022, the subcommittee on tax matters (FISC) of the European Parliament held a hearing on *"how to reinforce the regulation of intermediaries to create an intermediary sector that ensures a fair and user-friendly tax system"*. On this occasion, the European Commission publicly announced that it is working on a legislative proposal to regulate tax advice in the EU and that it will launch a public consultation on 11-12 May running until 20 July 2022 on this initiative.

During the hearing, the Commission explained that it does not want to go after a specific profession and will rather focus on the action of providing tax advice. It also said that it does not intend to regulate the tax advising profession as such but rather to put a threshold of what behavior is acceptable and what is not.

The Commission promised to target the *"rotten apples"* and not to overburden the whole tax profession. In a press release, ETAF assessed the outcomes of the hearing and welcomed the announcement of the Commission as well as the growing attention given to this topic by European decision-makers.

For more information, please see:
European Parliament
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ETAF

EU: Update overview DAC7

As reported in our Global VAT Update, various EU Jurisdictions have started the implementation process of the *Directive on Administration Cooperation* **(DAC 7**)

The following countries have already adopted it:

- Belgium: Implemented
- Czech Republic: Draft law approved
- France: Implemented
- Hungary: Implemented
- Ireland: In process (DAC7 was part of 2021 Finance Bill)
- The Netherlands: Dutch law has been introduced in parliament
- Romania: Implemented
- Slovakia: Local rules expected
- Spain: Council of Ministers approved Bill

For more information on the impact and obligations of the EU DAC7 obligations, please feel free to connect with Gert Vranckx or Johan Visser.

EU: Proposal European Commission on debt-equity bias reduction allowance (DEBRA)

On 11 May 2022, the European Commission issued a proposal for a Directive providing for a debt-equity bias reduction allowance (DEBRA) with the aim to create a more equal treatment of equity and debt, from a tax perspective and to stimulate equity investments.

For the full article of Atlas, please see *Here*.

For further information, please feel free to reach out to Steven Vijverberg, Dennis Kamps, Lieke van Dongen or Ivo Kuipers

EU: Recent Speech of von der Leyen at the closing event of the Conference on the Future of Europe – Further developments on Unanimity Voting re. tax?

In her recent speech Von der Leyen (again) addressed the unanimity voting that is required for some of the EU policy fields. See below the particular passage from her speech.

The point is, there is already a lot we can do without delay. And that also goes for those recommendations which will need us to take new action. So to make sure that we follow up swiftly, I will announce the first new proposals responding to your report in my State of the Union Address in September already. But, my fellow Europeans, even beyond this, there is a need to go further. For example, I have always argued that unanimity voting in some key areas simply no longer makes sense if we want to be able to move faster. Or that Europe should play a greater role – for example, in health or defense, after the experience of the last two years. And we need to improve the way our democracy works on a permanent basis. I want to be clear that I will always be on the side of those who want to reform the European Union to make it work better.

For the full speech, please see *Here*.

EU: ESMA Final report encourages Crowdfunding platforms to accelerate transition to new regime

The European Securities and Markets Authority (**ESMA**), the EU's securities markets regulator, has published its final report on the relevance of extending the transitional period set out in Article 48 of the Crowdfunding Regulation (CR).

The final report has been issued in response to a formal request that the ESMA received from the European Commission to provide, by 27 May 2022, technical advice on the aspects referred to in Article 48(3) of the ECSPR, namely the application of the ECSPR to crowdfunding service providers that provide crowdfunding services only on a national basis, on the impact of the ECSPR on the development of national crowdfunding markets and on access to finance and on the relevance of extending the transitional period.

In relation to the transitional period, Article 48(1) of the ECSPR provides that "Crowdfunding service providers may continue in accordance with the applicable national law to provide crowdfunding services that are included within the scope of this Regulation until 10 November 2022 or until they are granted an authorization referred to in Article 12, whichever is sooner". Most crowdfunding providers which operated prior to the entry into application of the ECSPR (i.e. 10 November 2021) are currently operating in accordance to national law under the transitional period set out in Article 48(1) of the ECSPR.

Key findings in the final report include:

- The ESMA expresses concerns with the potentially detrimental consequence an absence of extension of the transitional period could have on some national crowdfunding markets. At the

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same time, the ESMA mentions investor protection and convergence concerns that may arise from the extension of the transitional period.

- To avoid that any extension unnecessarily delays the transition to the ECSPR, the ESMA suggests to the Commission that it might explore the possibility of applying this extension to crowdfunding service providers currently operating only on a national basis which have duly applied for authorization prior to 1 October 2022.

The final report has been submitted to the Commission.

For the final report, please see *Here*.

EU: ESMA Updated Q&A on the European crowdfunding service providers for business Regulation

For the full Q&A, please see *Here*.

EU: Group on the future of VAT - IOSS VAT identification number - Securing the IOSS process

Upon importation, IOSS consignments are exempt from import VAT when the valid IOSS VAT identification number of the (deemed) supplier is provided to the competent customs office in the Member State of importation at the latest upon lodging of the import declaration.

The European Commission services are conscious that there may be a risk that IOSS VAT identification numbers could potentially be misused and, therefore, understand the associated need to secure IOSS import transactions.

The risk of IOSS abuse manifests itself in cases where the trader is not IOSS registered, yet fraudulently uses the IOSS number of a legitimate IOSS registered trader in order to falsely benefit from the VAT exemption upon importation.

The solutions that are being considered are unique transaction numbers, QR codes and the application of blockchain technology.

For the full document, please see *Here*.

EU: The Commission requests the Group on the Future of VAT to discuss the VAT treatment of returned distance sales of imported goods

In light of the new rules for distance sales of goods, the EU Commission wishes to establish a coherent and uniform VAT treatment of returned goods that fall within the scope of the definition of distance sales of imported goods.

Different options for the reimbursement of (import) VAT on distance sales exist, depending on the nature of the supply and the VAT collection mechanism used (IOSS, "postal operator" scheme or regular VAT registration). A VAT reimbursement could arise in the context of the goods being sent back to the supplier or possibly destroyed and the associated sales contract being annulled.

The Commission specifically wishes to review issues around the invalidation of the customs declarations which is in certain EU Member States a sine quo non requirement to obtain a reimbursement of the import VAT.

VAT collection mechanism used

Where the IOSS is used, VAT is collected on the distance sale of the imported goods at the time of purchase and the subsequent import of those goods is exempt from import VAT. Therefore, an invalidation of the import declaration is not a prerequisite for the correction of VAT via the IOSS VAT return.

Where the postal operator scheme is used, the declaration must show the total VAT that the postal operator, carrier or customs agent collected. If they were unable to collect the VAT from the consignee that VAT does not need to be declared. In such cases, the reimbursement of import VAT should not arise as the import VAT was not collected or declared in the first instance.

Where the IOSS is not used and the VAT was already collected using the postal operator arrangement or the standard import procedure, import VAT became due. In this case a refund of VAT could require that the initially submitted import declaration must be invalidated.

Invalidation of the import declaration

An import declaration that has already been accepted can be cancelled. In principle the invalidation of the declaration is possible under the following conditions:

- The application is made within 90 days of the date of acceptance of the customs declaration, and;
- The goods have been exported with a view to returning to their original supplier.

Information request by the Commission

The Group on the Future of VAT has been asked to clarify the VAT treatment of returned distance sales of imported goods in relation to their own national laws.

The European Commission is reviewing a number of issues in this regard including:

- Which proof is required to make an import VAT correction on returned goods in the IOSS?
- What happens if the seller decides to destroy the goods?
- Is it possible to refund import VAT when the IOSS is not used without invalidating the import declaration?
- What if it is not possible to invalidate the import declaration?
- Is the reimbursement of VAT possible in situations where the goods remain in the EU and are, therefore, not exported but, instead, are subsequently sold by the supplier in the EU?

In first instance, the Commission's purpose is not to make a legislative amendment but to examine the current legal framework in order to assess whether the e-commerce package presents new challenges in this regard. Eventually this should lead to a coherent and uniform VAT treatment of returned goods where import VAT was charged.

For the latest publicly available documents resulting from meetings of the Group on the Future of VAT, please see *Here*.

The results of the Commission's consultations could prove interesting for businesses that currently perform (distance) sales of imported goods for which the IOSS is not applied whereby goods are (frequently) returned. However, even while waiting for the results, it could be advisable to review if and how the import VAT is currently recovered and to analyze whether any optimizations could already be achieved.

If you would like to further discuss this topic feel free to contact Lode Van Dessel or Gert Vranckx.

EU: European Parliament approves Council Regulation extending reverse charge mechanism in its fight against VAT fraud

For the full report on the extension of the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the so called Quick Reaction Mechanism against VAT fraud, please see *Here*.

As a reminder, these rules specifically relate to:

Goods

- mobile phones,
- computer chips,
- microprocessors,
- hi-fi equipment,
- new and used vehicles, and
- precious metals.

Services

- carbon credits,
- gas and electricity,
- cloud computing and VoIP, and
- green energy certificates.

For more information on this specific Reverse Charge mechanism, please feel free to reach out to Sophie Kallen.

CJEU: Preliminary Question in C-239/22 (*Promo 54*) – Newly developed Real Property

Recently, an interesting preliminary question was submitted by the Belgian Supreme Court to the European Court of Justice in the context of a renovated / renewed building.

For the lower courts the fundamental question was raised whether the sale of an old building, in combination with a building contract for the renovation / renewal of that building, can be requalified in the sale of a new building for VAT purposes.

The Belgian VAT authorities take the position that the practice whereby (part of) an old building is sold and whereby the buyer immediately enters into a building contract for the renovation / renewal of that building,

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is abusive when the building works lead to the creation of a new building for VAT purposes. By doing so, the buyer only pays 6% VAT over the building works instead of 21% VAT over the selling price of the renewed building. As a result, Belgian VAT authorities requalify such a practice in a sale of a new building that is subject to 21% VAT.

Administrative guidance of the Belgian VAT authorities clarify under which conditions an old building can become new again for VAT purposes and hence can become subject to a VAT taxable supply. However, these principles are not explicitly outlined in the Belgian VAT Code.

In the case at hand, the accused remarks that only the supply of a newly created building is VAT taxable and that the supply of a renewed building cannot be subject to VAT in Belgium since the Belgian VAT Code does not provide for a legal basis. As a result, Belgian VAT authorities cannot requalify the applied practice into the sale of a new building subject to 21% VAT.

Against this background, the Belgian Supreme Court has asked the European Court of Justice a preliminary question: "Should article 12 and 135 of the EU VAT Directive be understood in this way that, when a member state has not laid down the detailed rules for applying the criterion of first occupation in case of renovated / renewed buildings, the supply of such a renewed building will remain exempt from VAT?".
It goes without saying that this case is followed with dismay by the Belgian real estate sector. VAT taxable sales of renewed buildings are after all common practice.

For the preliminary questions, please see *Here*.

Furthermore, if you'd like to further discuss this development, please feel free to connect with Stein de Maeijer or Kurt Schaut.

CJEU: Conclusion AG in C-227/21 (*HA.EN.*)– No denial of input VAT if the seller would not pay output VAT

Existence of an abuse of rights – Refusal of the right to deduct input VAT because the recipient of the supply knew or should have known that the supplier would not be able to pay the VAT incurred to the tax authorities due to his or her financial situation – VAT burden where the price is set off against existing debts)

According to that line of case-law, the tax authorities should be entitled or even obliged to deny a taxable person the right to deduct input tax if he or she knew or should have known that a transaction before or after him or her in a chain of supplies was involved in VAT fraud.

This particular case revolves around the Lithuanian practice whereby the acquisition of goods from an company experiencing financial difficulties is regarded as an abuse of rights and, therefore, the right to deduct input VAT is denied by the Lithuanian tax authorities.

More specific the preliminary question referred to the CJEU regards

The question referred concerns, in essence, the handling of transactions carried out by a supplying taxable person in payment difficulties. In this specific case, that question arises in relation to the situation where the right of a recipient of a supply to deduct input VAT is denied (Article 168 of the VAT Directive).

The AG concludes that:

1. Article 168(a) of the EU VAT Directive, in conjunction with the principle of fiscal neutrality, is to be interpreted as prohibiting a practice of national authorities under which the right of a taxable person to deduct input VAT is denied where that person, when acquiring items of immovable property, knew (or should have known) that the supplier, due to insolvency, would not remit (or would not be able to remit) the output VAT.
2. However, it is for the referring court to decide whether the taxable person (recipient of the supply) in the present case is really charged with VAT collected from it by the supplier. This is not possible if the recipient of the supply has never made the funds available to the tax debtor for the payment of the VAT debt.

For the conclusion of AG Kokott, please see *Here*.

CJEU: Update on C-695/20 (*Fenix International Ltd*) – CJEU Hearing

The CJEU has heard C-695/20 (*Fenix International Ltd*), which relates to the question whether an online *pay-*

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to-view social media platform operated by Fenix should be deemed, on the basis of article 9bis of the VAT Implementation Regulation ("**IR**"), to be acting as principal in delivering videos generated by creators to their fans across the EU.

Article 9bis IR provides for a presumption based on which online platforms are placed in a (fictitious) *buy-sell i.e.* an undisclosed agent. This presumption in theory is rebuttable. However in practice the latter proves to be very difficult.

The referring UK court focused on whether the EU Council had exceeded its powers when introducing a presumption that such platforms are principals for VAT purposes, as the presumption is extremely difficult to rebut.

In short, Fenix takes the position that that the measure laid down in article 9bis IR represents a significant departure from the normal rules on undisclosed agency, and could not have been introduced by an implementing regulation.

The EU Council, the Commission, the UK, and Italy, maintained their position that the regulation was merely a mechanism to ensure a consistent VAT treatment across the EU, which did not supplement or amend the rules on agency.

We note that this regards an important constitutional question on the extent of the Council's powers. In addition, the outcome of this case can have significant VAT (*i.e.* financial) impact for online platforms or for European Member States.

If Fenix is treated as agent, then an obligation to account for VAT in various different EU Member States falls on the creators (a complex administrative burden which could be beyond the capability of many of them). In this regard it could be worthwhile for online platforms which currently apply 9bis IR to file objects against their (future) VAT returns in anticipation of a positive ruling of the CJEU.

On the other hand, treating Fenix as principal however would be administratively more convenient for creators, and greatly reduce the risk of a significant VAT gap for EU tax authorities.

The CJEU must now consider whether these advantages justify treating Fenix as principal even if, contractually, it is operating as an agent; and whether such a measure could be imposed by the EU Council through an implementing regulation.

The Advocate General expects to deliver his Opinion on **15 September**.

CJEU: C-333/20 (Berlin Chemie)

Berlin Chemie AG (**the German company**) is a company that has its registered office in Germany. It has marketed pharmaceutical products in Romania continually since 1996 for the purposes of the regular supply of wholesale distributors of medicinal products there, and for that purpose concluded a storage contract with a company established in Romania (**the Romanian company**).

It also has a tax representative in Romania and is registered for VAT in Romania.
The Romanian company's main business is rendering management and/ or consultancy services in the field of public relations and communication, and it may also engage in secondary activities consisting in the wholesale supply of pharmaceutical products, management consultancy, advertising agency activities, market research and carrying out opinion polls.
Its sole shareholder is Berlin Chemie GmbH (**GMBH**), which has its registered office in Germany and which has a 100% share in the profits and losses of the Romanian company. GMBH is itself 95% owned by the German company. The German company is the sole customer of the Romanian company. The German company and the Romanian company entered into a marketing, regulatory, advertising and representation services contract, under which the Romanian company:

- promoted the products of the German company in Romania through marketing activities, in accordance with the strategies and budgets established and developed by the German company.
- established and maintained a legally qualified advisory service to deal with advertising, informational and promotional issues, in the name of and on behalf of the German company.
- took all the regulatory actions necessary in order to ensure that the German company is authorized to distribute its products in Romania, to provide assistance with clinical trials and other research and development activities, and to ensure an adequate supply of the medical literature and promotional material approved by the German company.

- Furthermore, the Romanian company takes orders for pharmaceutical products from wholesale distributors in Romania and forwards them to the German company. It also deals with the invoices which it sends to the German company's customers.

The Romanian company charged a monthly fee calculated on the basis of the total expenses actually incurred by that company, plus 7.5% per calendar year, whereby the Romanian company applies the general B2B place of supply rules *i.e.* applied the reverse charge mechanism for B2B cross border services.
The Romanian tax authorities however took the view that the services supplied by the Romanian company to the German company were received by the latter in Romania, where the German company had a fixed establishment (**VAT FE**). The Romanian tax authorities took the view that that VAT FE consisted of sufficient technical and human resources to carry out regular supplies of taxable goods or services. That assessment was made principally on account of the technical and human resources which belonged to the Romanian company, but to which the German company had continuous access. In particular, the German company had access to technical resources owned by the Romanian company, such as computers, operating systems and motor vehicles.

Prejudicial Questions

1. If a company that carries out supplies of goods in the territory of a Member State other than that in which it has established its business is to be regarded as having, within the meaning of the second sentence of Article 44 of the VAT Directive and Article 11 of Implementing Regulation, a VAT FE in the State in which it carries out those supplies, is it necessary for the human and technical resources employed by that company in the territory of that Member State to belong to it, or is it sufficient for that company to have immediate and permanent access to such human and technical resources through another affiliated company which it controls since it holds the majority of its shares?
2. If a company that carries out supplies of goods in the territory of a Member State other than that in which it has established its business is to be regarded as having, within the meaning of the second sentence of Article 44 of the VAT Directive and Article 11 of Implementing Regulation, a VAT FE in the State in which it carries out those supplies, is it necessary for the presumed fixed establishment to be directly involved in decisions relating to the supply of the goods, or is it sufficient for that company to have, in the State in which it carries out the supply of goods, technical and human resources that are made available to it through contracts concluded with third party companies for marketing, regulatory, advertising, storage and representation activities which are capable of having a direct influence on the volume of sales?
3. On a proper construction of the second sentence of Article 44 of the VAT Directive and Article 11 of Implementing Regulation, does the possibility for a taxable person to have immediate and permanent access to the technical and human resources of another affiliated taxable person controlled by it preclude that affiliated company from being regarded as a service provider for the VAT FE thus created?

In essence, the referring Romanian court asks whether Article 44 of the VAT Directive and Article 11(1) of Implementing Regulation must be interpreted as meaning that a company which has its registered office in one Member State has a VT FE in another Member State because that company owns a subsidiary there that provides it with human and technical resources under contracts stipulating that that subsidiary provides, exclusively to that company, marketing, regulatory, advertising and representation services that are capable of having a direct influence on the volume of its sales.

CJEU

The CJEU points out that it follows from C-605/12 *(Welmory)* that the matter of whether there is a VAT FE within the meaning of the second sentence of Article 44 of the EU VAT Directive, must not be determined by reference to the taxable person supplying the services but by reference to the taxable person receiving them. Furthermore it points out that the concept of a VAT FE refers to any establishment, other than the place of establishment of a business referred to in Article 10 of Implementing Regulation, characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

Sufficient degree of permanence and a suitable structure in terms of technical and human resources.

With regards to the sufficient degree of permanence and a suitable structure in terms of technical and human resources, the referring Romanian court wonders whether it is necessary for those human and technical resources to belong to the company receiving the services or whether it is sufficient for that company to have immediate and permanent access to such resources through a related company, which it controls as a result of its majority shareholding.
The CJEU points out that the VAT Directive, nor the Implementation Regulation provides for any details as

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to whether human and technical resources must belong to the company that receives the services and is established in another Member State in its own right.
Article 11(1) of Implementing Regulation requires, in order to establish a VAT FE, only '*a sufficient degree of permanence' and 'a suitable structure in terms of technical and human resources'*.
In that regard, it is clear from settled case-law that the term 'fixed establishment' implies a minimum degree of stability derived from the permanent presence of both the human and technical resources necessary for the provision of given services.
Thus, there cannot be a VAT FE, first, without a discernible structure, which is evidenced by the existence of human or technical resources. Second, that structure cannot exist only occasionally.

Local presence through a Subsidiary

In addition the CJEU stipulates that it follows from the C-547/18 (*Dong Yang*) case that the classification of a VAT FE cannot depend solely on the legal status of the entity concerned. It is possible for a subsidiary to constitutes the VAT FE of its parent company, such a classification depends, however, on the substantive conditions set out in the VAT Implementing Regulation. In particular in Article 11 which must be assessed in light of the economic and commercial reality. Thus the existence, in the territory of a Member State, of a VAT FE of a company established in another Member State may not be deduced merely from the fact that that company has a subsidiary there.
The CJEU subsequently concludes that the existence of a suitable structure in terms of human and material resources which display a sufficient degree of permanence must be established in the light of the economic and commercial reality. Although it is not a requirement for a taxable person itself to own the human or technical resources in order for that taxable person to be regarded as having a sufficiently permanent and appropriate structure – in terms of human and technical resources – in another Member State, it is however necessary for that taxable person to have the right to dispose of those human and technical resources in the same way as if they were its own, on the basis, for example, of employment and leasing contracts which make those resources available to the taxable person and cannot be terminated at short notice.
In this regard, the CJEU reiterates that the logic of the provisions concerning the place of supply it is required that goods and services are taxed as far as possible at the place of consumption.
To make the existence of a VAT FE subject to the condition that the staff of that establishment be bound by an employment contract to the taxable person itself and that the material resources belong to it in its own right would amount, on the one hand, to a very restrictive application of the criterion set out by the wording of Article 11(1) of Implementing Regulation. On the other hand, such a criterion would not contribute to a high level of legal certainty in determining the place where services are deemed to be supplied for tax purposes, if, in order to transfer the taxation of supplies of services from one Member State to another, it were sufficient for a taxable person to cover its staffing and material needs by having recourse to various service providers. The CJEU concludes however that It is for the referring court to assess whether, in the case in the main proceedings, the German company has a structure in Romania, in terms of human and technical resources, which is sufficiently permanent.

Human and Technical resources of a subsidiary

In the present case, it is apparent from the order for reference that the German company did not have its own human and technical resources in Romania, but that those human and technical resources belonged to the Romanian company. However, according to the referring court, the German company had permanent and uninterrupted access to those resources, since the agreement for the provision of marketing, regulatory, advertising and representation services, concluded in 2011, could not be terminated at short notice. On the basis of that contract the Romanian company made technical resources (computers, operating systems, motor vehicles), among other things, available to the German company, but above all human resources of more than 200 employees, including, in particular, more than 150 sales representatives. It is also apparent from the order for reference that the German company is the sole customer of the Romanian company, which provides marketing, regulatory, advertising and representation services exclusively to it.
However, given that a legal person, even if it has only one customer, is assumed to use the technical and human resources at its disposal for its own needs, it is only if it were established that, by reason of the applicable contractual provisions, the German company had the technical and human resources of the Romanian company at its disposal as if they were

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its own that the German company could have a suitable structure with a sufficient degree of permanence in Romania, in terms of human and technical resources, a matter which it is for the referring court to verify.

Structure which is capable, in terms of human and technical resources, of enabling it to receive the services supplied to it and to use them for its own business needs.

The Romanian referring court asked specifically whether the existence of a VAT FE may be deduced from the fact that the Romanian company provides services capable of having a direct impact on the performance of the German company's economic activity, such as marketing services, in so far as those services are closely linked to obtaining orders for the pharmaceutical products sold by the German company, and whether it is also necessary for the alleged fixed establishment to take part directly in the decisions relating to the German company's business.

In the case at hand the Romanian company merely took orders from new wholesale distributors of medicinal products in Romania and forwarded them to the German company, and sent invoices from that German company to its customers in that Member State. The Romanian company was thus not directly involved in the sale and supply of pharmaceutical products by the German company and did not enter into commitments with third parties in the name of that company.

The CJEU clearly states in this regard that a VAT FE is characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs, and not by the decisions which such a structure is authorized to take.

More importantly, the CJEU points out that in the case at hand the human and technical resources which were made available to the German company by the Romanian company and which, according to the Romanian tax authorities, make it possible to establish the existence of a VAT FE of the German company in Romania, are also those through which the Romanian company supplies the services to the German company. Yet, the same means cannot be used both to provide and receive the same services.

The CJEU therefore concludes that the marketing, regulatory, advertising and representation services provided by the Romanian company seem to be received by the German company, which uses its human and technical resources situated in Germany to conclude and perform the contracts of sale with distributors of its pharmaceutical products in Romania.

Atlas / Tiberghien Analysis of Berlin Chemie

The CJEU states that the taxable person not only must '*have the human and technical resources of another company at its disposal as if they were its own'*. To have an VAT FE, the taxable person must also '*use them for its own business needs*'. The CJEU however does not further elaborate under which conditions the latter disposal and use of human and technical resources can be assumed.

Although it cannot be excluded, as the CJEU did not provide for further guidance on this point, one could wonder in the situation in which a HQ instructs (*i.e.* concludes an intercompany agreement with one of) its subsidiary, and remunerates the subsidiary on the basis of these instructions, whether it is in fact the subsidiary that uses the underlying *human and technical resources.* Why else conclude an intercompany agreement or provide for explicit intercompany instructions?

One could read a similar approach by the CJEU in C-260/95 (*DFDS*), where it held that, in light of '*the various contractual obligations imposed on the subsidiary by its parent*', the subsidiary merely acted '*as an auxiliary organ of its parent*'

Or, when approaching this from a different angle, should one raise the question with Berlin Chemie in mind that whether it's the intercompany agreement or instructions that trigger the *disposal of human and technical resources*, as well as *the use for its own (HQ) business needs*?

We assume that at one point the CJEU will provide for further insights on this point.

In addition the CJEU also deemed irrelevant for VAT FE purposes examining the decisions that the subsidiary is authorized to take.

The aforementioned approach meanwhile seems to confirm that the French Supreme Court took a (very) wrong approach in its infamous Valueclick case back in 2020.

The key argument of the ECJ in the underlying case however is that "the same human and technical means cannot be used at the same time to render and receive

services". This contradiction had already been pointed out by Advocate General Kokott in her conclusions in the case C-547/18 (*Dong Yang*).

Key takeaways

This decision is positive going forward but we recommend businesses to remain careful. In view of current developments in EU case law, we recommend assessing whether your cross-border activities could lead to the existence of a VAT fixed establishment:

- Review of your structure and supply chain within the EU
- Assessment of a potential risk of VAT fixed establishment
- Impact of the existence of a VAT fixed establishment and how to secure your position

Country developments

Austria: Reminder - Higher court confirms the granting of interest for overdue VAT credits

Up until the decision of the Austrian Higher Administrative Court (AHAC), an application for interest in the context of VAT only appeared to be possible if the taxpayer applied to the tax authority for a reduction in view of the VAT already paid while filing a complaint (so-called "complaint interest").

In its decision of 30/06/2021 (Ro 2017/15/0035), the AHAC confirmed the core statements of the European Court of Justice C-844/19 (*CS und technoRent International GmbH*) and basically granted the right to appropriate interest for delayed refunds of VAT credits for the taxpayers, although this has not yet been explicitly provided for in Austrian law.

This decision is of great practical relevance, not only for Austrian resident taxpayers, but also for foreign companies registered for VAT purposes in Austria who are submitting Austrian VAT returns: in the case of (significant) delays in the reimbursement of VAT credits, such taxpayers have a fundamental right to demand interest on arrears for the period of liquidity disadvantage. Nevertheless, please note that this decision cannot be applied to VAT refund requests submitted by non-registered taxpayers, as there is a special provision in the directive 2008/9/EC in this regard.

Background

In this current ruling, the AHAC dealt with the following facts: a hotel operator requested a refund for an input VAT amount of approx. EUR 60,000, which he declared in the VAT return for period 08/2007. Nevertheless, the tax authority did not refund the whole amount of the correctly declared input VAT and instead reduced the input VAT amount to EUR 14,600. The taxpayer appealed this reduction. However, the appeal was not granted until 2013. The input VAT amount was refunded shortly thereafter. Due to the resulting disadvantages in terms of interest and liquidity, the taxpayer requested interest for the delayed refund for the period January 2012 until May 2013.

The AHAC based its judgement on the decision of the CJEU C-844/19 (*CS und technoRent International GmbH*) case and granted the taxpayer interest of 2% above the base interest rate for the corresponding period. Nevertheless, the interest period and the beginning of the interest accrual were specified in this case so that the AHAC did not have to commit itself in this regard.

Open points

The enforcement of the right to receive interest for a delayed refund of a VAT credit cannot be based on the direct application of the EU VAT law nor on the direct application of the Austrian VAT law, but only in accordance with the relevant rulings of the AHAC and ECJ and an analogous application of Sec. 205, 205a and 212a of the Austrian Federal Fiscal Code (BAO).

It remains unclear as to how the taxpayer can successfully request the granting of interest. According to the ruling of the AHAC, the taxpayer can apply for interest in the case of a (significantly) delayed refund of a VAT credit. However, the legal basis for the application has not yet been settled. A possibility would be to make an initiative application with reference to the case law of the ECJ and the ruling of the AHAC, but such a proceeding would most likely be ignored due to the lack of a legal basis. Therefore, a legal title should be available to enable the entering into of legal proceedings. One way to achieve such a legal title could be to urge an official notification based on the standard booking information in conjunction with Sec. 216 of the Austrian Federal Fiscal Code (BAO). However, so far there has been no official statement

from the Austrian fiscal administration regarding this issue.

The reasonable timeframe for the refund of the VAT credit amount is also still an open point. According to the ECJ jurisdiction, the taxpayer is entitled to receive the refund of the VAT credit within a reasonable timeframe (45 days).

Each refund received outside this timeframe should be granted with interest. The Austrian perspective on the length of the reasonable timeframe can be based on Sec. 21 of the Austrian VAT code, which defines the limitation period for the taxpayers.

This 45-day period could also be used as the processing period of the tax authority. However, the AHAC does not explicitly mention this issue in its ruling, nor does it define the Austrian VAT law for this period explicitly, so it remains open to discussion. Therefore, the Austrian legislature is called upon to create sufficiently clear interest regulations for VAT purposes also on the basis of which interest claims for overdue VAT credits can be asserted outside of the formal complaint procedures.

For the full WTS Global article, please see *Here*.

Belarus: Introduction of an Advertisement Tax

The Belarusian Ministry of Taxes and Duties April 27 introduced a new advertising tax regime, effective May 1. The announcement includes measures to:

1. introduce the advertising tax rate of 10 percent or 20 percent, based on the advertising location;
2. clarify the payment of advertising taxes on specified services, including online services, and the taxpayers exempted from the tax;
3. clarify the tax reporting period and deadline; and
4. explain the calculation of the tax, based on the cost of service.

For more information, please see *Here*.

Belgium: VAT registration with a fiscal representative, new rules on guarantees

An amendment to Royal Decree no. 31 has altered the guarantee requirements for a Belgian VAT registration of a foreign taxpayer with the appointment of a fiscal representative. These changes have entered into force as of 1 October 2021.

Under the former rules, the Royal Decree granted the possibility to the VAT authorities to request a guarantee when registering via a fiscal representative. If imposed, the amount of this guarantee was calculated at 25% of the estimated VAT due for a 12-month period, without any legal minimum or maximum amount. In practice, the VAT authorities accepted a limited guarantee of EUR 7,500 for EU-established companies that registered in Belgium with a fiscal representative. Also, the VAT authorities accepted that no guarantee had to be provided when a group company was appointed as the VAT fiscal representative, however, in that case the representative bore an unlimited VAT liability.

As from 1 October 2021, the guarantee amount is initially set at 10% of the estimated VAT due for a 12-month period and must always be provided as a legal requirement. The Royal Decree now also specifies the minimum and maximum amounts that must be requested. These amounts are EUR 7,500 and EUR 1 million, respectively.

Under these new rules, a guarantee should in any case be placed and further reductions of the guarantee will no longer be possible.

Alongside this, more precise rules regarding the revision of the guarantee have been implemented. The guarantee is initially determined for a period ending on 31 December of the second year following the year in which the guarantee was placed. After that period, the representative can request a revision of the placed guarantee if it would be too high and the VAT authorities would recalculate the guarantee if it would be too low. An interesting clarification is that this will be determined based on the VAT amount that has actually been paid by the foreign taxpayer during the period concerned (cf. box 71 of the VAT return).

However, if the difference between the newly calculated and previously placed guarantee is lower than 10%, no revision will be required.
Under the new rules, it appears that the guarantee obligations will therefore become heavier for all

foreign taxpayers that want to register for VAT with a fiscal representative in Belgium. This is of course provided that the taxpayer will perform economic activities, for which VAT will effectively be charged in Belgium.

The VAT authorities imposed the new guarantee requirements already on registered VAT taxable persons who have not yet placed a (sufficient) guarantee. Taxable persons who already have a guarantee in place, calculated at 25% of the estimated VAT amount due for a 12-month period, must examine whether they will request a reduction of the guarantee, which will be equal to 10% of the VAT amount paid (cf. box 71 of the VAT return), with a minimum of EUR 7,500 and a maximum of EUR 1 million.

For more information, please feel free to contact Loulou Geboers or Gert Vranckx.

The full article of WTS Tiberghien can be found *Here*.

Brazil: Brazilian Supreme Court defines tax on media advertising

On March 9 2022, the Brazilian Federal Supreme Court (STF) concluded the judgment of Direct Unconstitutionality Action (ADI) 6034, deciding that the insertion of advertising is a service subject to the municipal service tax (ISS), rather than a communication service, which would be subject to the state VAT (ICMS). In doing so, the Court settled a long-lasting controversy between the municipalities and the states.

For the full background article on the International Tax Review, please see *Here*.

Furthermore, please feel free to reach out to our Brazilian colleagues Stephanie Makin or Gabriel Caldiron Rezende

Chile: VAT changes for services

On 4 February 2020, Law 21,420 was published. This law reduces or eliminates tax exemptions to finance the universal guaranteed pension, which establishes that, as of 1 January 2023, all services will start to be taxed with VAT in Chile, except those that are expressly exempt from VAT. This is a relevant tax reform since several services that were traditionally untaxed in Chile will begin to be taxed with VAT, such as professional services and advice, collection, various non-ambulatory health treatments and translation services, among others. By virtue of said modification, services such as advice and consultancies from lawyers, accountants and engineers, etc., which until now were not subject to this tax, will be affected by a 19% VAT rate.

Education and transportation services remain expressly exempt, and a new exemption was added regarding "outpatient health services, benefits and procedures" whose scope must be defined by the Chilean IRS through its powers of interpretation. Likewise, and as an exemption, the services provided by independent individuals who issue receipts for professional fees, and those provided by "professional companies" were added. Regarding the latter, the question remains as to whether the companies that currently provide these VAT-exempt professional services could be transformed into professional companies, or could be considered an elusive act in accordance with the anti-abuse regulations, so they must maintain their corporate structure

For more information, please contact our Chilean colleague Loreto Salas.

Estonia: Considering to lower the reduced VAT rate on physical and electronical publications to 5%

The Estonian Parliament is considering Bill No. 607 which includes the provision on reducing the VAT rate from 9% to 5% on “press publications”.

The 5% reduced VAT rate applies to both physical and electronic publications. The law should enter into force on August 1.

For more background, please see *Here*.

France: Insurance brokers and intermediaries: The tax authorities update their comments and clarify the criteria to apply the VAT exemption.

After many months of waiting, the tax authorities have just updated their administrative comments on VAT exemptions relating to insurance transactions. These

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changes include administrative clarifications on the concepts of broker and insurance intermediary, on the operations carried out by mutual insurance companies, but also more generally on the concept of insurance operations and that of support and back office services. These amendments, which take up and develop the criteria defined in particular by European case law in the C-40/15 (Aspiro SA) case, will make it possible to secure the practice of the market, in particular that of operators applying the exemption from VAT in respect of the exercise of an activity relating to both the distribution of insurance products and the management of contracts and claims.

Previous situation

The "Aspiro" decision had set criteria for the application of the exemption to insurance intermediaries and brokers, significantly limiting the application of the VAT exemption to insurance and reinsurance operations and services related to these operations performed by insurance brokers and intermediaries. As a reminder, according to this case law, "claims settlement services [...] provided by a third party in the name and on behalf of an insurance company, do not fall under the exemption".

In the previous version of its comments, the tax authorities had allowed insecurity to arise as to the application of the exemption to operators with a "mixed" activity of distributing insurance products and managing claims. Indeed, in our view, the ECJ case law did not expressly exclude from the exemption management activities when insurance intermediaries also carried out operations relating to insurance transactions and in particular the distribution of insurance contracts.

The recent decision of the French Council of State (CE 9-10-2019 n° 416107, MOTHERON c/ MINISTERE DE L'ACTION ET DES COMPTES PUBLICS), included in the BOFIP and refusing the application of the VAT exemption, was thus aimed at an operator who was content to provide "back office" services and did not carry out any operations relating to the insurance business. This decision did not contradict the above analysis but had the effect of casting doubt on the contours of the VAT exemption for operations relating to insurance transactions.

Updated comments FTA

Since April 27, 2022, it is possible to rely on the new comments for the application of the criteria derived from the Aspiro case law. These comments are in line with the practice of the market and will allow to secure the application of the exemption for a certain number of operators.

As regards support or back office services, the administration confirms the restrictive nature of this exception to the application of the exemption. Indeed, this exemption can only apply "when a service provider who is not acting as a broker or intermediary [...] merely settles claims in the name and on behalf of an insurer, provides it with a computer system or delivers accounting and financial expertise".
This clarification seems to us to be welcome, since it will make it possible to secure the application of the exemption in the interest of a certain number of players acting as brokers or intermediaries, while also carrying out management and claims management operations in particular.

More generally, these new comments also settle the fate of the definition of insurance broker and intermediary. Among the clarifications made with respect to the characterization of the relationship between the broker or intermediary, the insurer and the insured, are developments on the activities of wholesale brokers, the case of the sharing of remuneration following the intervention of several brokers, but also the case of a broker managing a brokerage portfolio belonging to a broker meeting the specifications of the insurance broker himself.
As regards the clarifications made concerning the characteristic services of an insurance intermediary, performed by the broker or the insurance intermediary, they are aimed in particular at the definition of insurance prospecting, but also at examples of activities that characterize this notion of prospecting (renegotiation or renewal of a pre-existing insurance contract, underwriting of extensions of coverage of a contract already in the intermediary's portfolio, or in the broader sense underwriting of a new insurance contract by a client already in the intermediary's portfolio).

To conclude, these comments finally clarify the position of the French tax authorities with respect to European case law on the subject of the VAT exemption applicable to insurance activities. However,

these developments remain under public consultation until December 31, 2022 and may still be subject to changes.

It should also be noted that the former doctrine, in force for operations carried out until April 26, 2022, remains applicable by way of temperance until December 31, 2022, as the administration has expressly indicated.

For more information please contact our French colleague Anne Benoit.

For the full updated French doctrine, please see *Here*.

Germany: Germany maintains its pro crypto attitude and opposes the EU proposal on revealing and verifying identities for self-hosted wallets

The EU Transfer of Funds Regulation (TFR) proposal would impose invasive checks, extensive collection of personal data and monitoring of *all* transfers of crypto assets involving self-hosted wallets. It would undermine fundamental human right to privacy and expose self-hosted wallet holders to significant risks. Effectively, it would amount to a “de facto” ban on self-hosted wallets by enforcing to connect personal identities with self-hosted wallets.

In an unprecedented move, Germany is opposing this EU proposal and has taken an official and critical stand against it.

For more background on this development, please see *Here* the Medium post of t*he Frankfurt School Blockchain Center* (FSBC)

Germany: Guidance on intra-Community Supply of Goods

Deadlines for the recapitulative statement are not decisive for the VAT exemption of intra-Community supplies - Guidance of the German Ministry of Finance dated 20 May 2022.

In principle, intra-Community supplies are VAT-exempt under the conditions of section 4 no. 1 letter b and section 6a German VAT Code. Within the framework of the so-called "Quick Fixes", the conditions for VAT exemption were adjusted both under EU law and in the German VAT Code as of 1 January 2020. Since then, the VAT registration number of the recipient and the correct declaration in the recapitulative statement have been the substantive requirements for VAT exemption.

In the Guidance of the German Ministry of Finance dated 9 October 2020, the tax authorities amended the VAT Application Decree and explained their view of how these substantive requirements are to be understood in detail. Accordingly, the VAT exemption for intra-Community supplies should depend on whether the relevant recapitulative statement was submitted or corrected in due time.

According to the wording of the Guidance of the German Ministry of Finance dated 9 October 2020, a failure to submit the recapitulative statement in due time would always have led to VAT liability, without any subsequent correction being possible. Furthermore, the tax authorities were of the opinion that a recapitulative statement that was submitted on time but was incorrect or incomplete must be corrected within one month after the taxable person recognized this error. Since there is no basis for this interpretation in the VAT Directive, there were considerable doubts as to whether this strict view was permissible under EU law.

With the Guidance of the German Ministry of Finance dated 20 May 2022, the tax authorities have again amended the VAT Application Decree and clarified that the VAT exemption cannot be denied solely on the basis of a failure to submit or correct the VAT return in due time.

- The requirement of timely submission of the VAT return was deleted and it was clarified that the VAT exemption is to be granted retroactively if a VAT return that was initially not submitted on time is later submitted correctly and completely for the first time (provided that the VAT is not yet time-barred).
- The requirement to correct an incorrect or incomplete VAT return within one month should also no longer apply to the granting of VAT exemption. The one-month period is only to be decisive for the intra-Community control procedure and for a possible fine procedure according to section 26a para. 2 no. 5 German VAT Code.

From the point of view of taxpayers, the tax authorities' departure from their excessively strict interpretation in favor of a practical interpretation that

takes into account the requirements of EU law is very welcome.

For more information, please feel free to reach out to our colleague Anton Appel of WTS Germany.

Germany: Guidance of the German Ministry of Finance dated on the Reverse Charge Procedure on supplies of telecommunications services by landlords and condominium associations

Effective 1 January 2021, the legislature introduced Reverse Charge Procedure in section 13b para. 2 No. 12 and section 13b para 5 sentence 6 German VAT Code on supplies of telecommunication services by German suppliers, if the service recipient itself is a taxable person who mainly provides telecommunication services (so called reseller of telecommunication services, whose own consumption is of secondary importance).

The newly introduced Reverse Charge Procedure for telecommunication services is subordinate to the general Reverse Charge Procedure for other services of foreign taxable persons according to section 13b para. 2 No. 1 German VAT Code and thus also subordinate to the general Reverse Charge Procedure for other services of EU taxable persons according to section 13b para. 1 German VAT Code.

Hence, the newly introduced Reverse Charge Procedure only applies on suppliers located in Germany providing telecommunication services to taxable persons who mainly resell those telecommunication services.

As a result of this law, however, the question has now arisen in practice as to whether landlords in the context of their leases and condominium associations are such resellers if they pass on telecommunication services to their tenants or individual condominium owners.

With the Guidance of the German Ministry of Finance dated 2 May 2022, the tax authorities clarified that landlords and condominium associations are not such resellers if they pass on telecommunication services to their tenants or individual condominium owners. Thus, the Reverse Charge is not applicable to telecommunication services if landlords or condominium associations pass on telecommunications services to their tenants or individual condominium owners. In the case of landlords, the German Ministry of Finance also considers the telecommunication services passed on to the tenant as an ancillary service to the landlord's rental service.

The principles of the guidance are to be applied in all open cases, whereby for services performed before 1 July 2022, it is not objected if the parties involved assume the reverse charge procedure.

For more information, please feel free to reach out to our colleague Anton Appel of WTS Germany.

Greece: Obligations to submit sales and purchases data

The Greek tax administration issued Decision A.1038/30.3.2022 to abolish the obligation to submit annual customers-suppliers lists.

That obligation has been replaced with the requirement to report in the MyData platform no later than 27 May 2022, data related to sales documents, self-billings, and proof of expenditures.

Entities are also required to cross reference their accounting data (purchases) with the counterparties' submissions and report any discrepancies before 31 October 2022.

Failure to comply to these aforementioned obligations for the calendar year 2021 triggers an administrative penalty of €100, irrespective of the volume of transmissions and the content of each transmission.

Hungary: SAF-T data reporting

In recent months we have read and heard more and more about the SAF-T report or SAF-T data reporting, the latest technological development of the Hungarian tax authority. Let us take a closer look at what we are talking about here exactly.

As of 1 July 2018, data reporting on online invoicing was introduced in Hungary by the tax authority. You can remember we were afraid because we knew nothing about it, neither as taxpayers nor as tax specialists. Explicitly or implicitly, we knew that the

NAV would possess even more taxpayer data. In the four years since its introduction, we can say our software reports data on every outbound invoice, and this has all become part of every taxpayer's life, so maybe it is not so terrible after all.

OECD recommendation and the purpose of SAF-T data reporting

The latest idea from the tax authority, based on an OECD recommendation, is the so-called Standard Audit File for Tax, SAF-T for short. The point of SAF-T is that, according to the plans, all company information related to accounting, invoicing and taxation will have to be submitted digitally to the tax authority, in one standard file. In practical terms, SAF-T is a well-formatted XML data file containing data from the entity's various ERP systems and sub-systems. The data content is divided into master data and transactional data, and it refers to a given financial or settlement period. The standard file is created in a standardized format in XML language, respecting only the validation scheme in the available XSD files.

Obviously, the main aim is to enable the tax authority to conduct inspections more effectively based on the information received, or, on a more positive note, to provide support for the work of taxpayers in a more specific way focusing on the individual taxpayer. Furthermore, the purpose of or ways to use SAF-T data reporting include supporting external and internal audits, and making the data transferrable between companies and government bodies.

Foreign examples

It is also heard that the Hungarian tax authority wants to introduce data reporting with a broader primary dataset than that laid out in the international recommendation. There are two versions to the OECD recommendation, and in Hungary the latest SAF-T draft was prepared based on version 2.0. This data structure was primarily developed to support tax authority inspection procedures, and it only supports ad hoc data requests, in its current form it is not (yet) suitable for regular data reporting.

The tax authority's vision in Hungary is not unprecedented, in several countries – such as Portugal, Poland and Norway – the idea has been introduced in one form or another in recent years.

Timing of SAF-T data reporting

So far we have talked about subsequent data reporting, but for lack of a decision from the legislator it is not clear when the standard file will need to be created. One version is that companies will need to generate the SAF-T files following the preparation of the balance sheet, and they must be kept throughout the retention term for the given period. The data reporting contains both mandatory and optional elements. It is possible, though, that the file might only have to be created at the request of the tax authority based on a taxpayer notice for the start of a tax inspection, in which case the number of this notice will be a mandatory element of the data reporting.

For the full article of WTSKlient, please see *Here*.

In addition, for more information, please feel free to contact our Hungarian colleagues Bela Kovacs or Tamas Gyanyi.

India: Discussions on imposing 28% GST Rate on online gaming and Crypto

As set out in the previous VAT Update, the Indian GoM, which was constituted by the GST Council, will be meeting shortly to discuss ambiguities in valuation of gaming services and their taxability. For the full news item, please see *Here*.

In addition, it is our understanding that the GST counsel is also mulling a 28% GST on crypto transactions. The latter follows the recently introduced taxation (30%) of profits made from the transfer of crypto assets and non-fungible tokens (NFTs).

For more information, please see *Here*.

Indonesia: Indonesian tax authority listed a number of companies that have been added to the scope of its digital VAT regime for non-resident suppliers of electronic services

On May 17, 2022, the Indonesian tax authority listed a number of companies that have been added to the scope of its digital VAT regime for non-resident suppliers of electronic services.

The requirements are set out in Finance Ministerial Regulation No. 48/2020. Indonesia has phased in the regime since it was first introduced in August 1, 2020, to expand its coverage to an increasing number of relatively smaller businesses.

The seven businesses are: Canva Pty Ltd, New York Times Digital LLC, Degreed Inc., Home Box Office (Singapore) Pte. Ltd., LNRS Data Service Limited, LexisNexis Risk Solution FL Inc, and Ask.FM Europe Limited. They were added to the regime from April 1, 2022, the tax agency said.

In addition, Netflix International B.V's designation has been replaced with Netflix Pte Ltd, and Activision Blizzard International B.V has been replaced with Blizzard Entertainment Inc.

In addition, the tax agency also amended listed details for four companies: Facebook Ireland Limited to Meta Platform Ireland Limited; Hewlett-Packard Enterprise USA to Hewlett-Packard Enterprise Company; and changes to electronic mail addresses of Amazon.com Service LLC and Audible, Inc.

Indonesia: VAT Update on Digital Goods and Services – expected VAT Hike

Law No. 7 of 2021 (UU 7/2021) on harmonization of tax regulations stipulated that the previous 10% VAT rate would be increased to 11% starting from 1 April 2022 and to 12% by 1 January 2025 at the latest.

This provision has come into force and affected entrepreneurs performing taxable deliveries, including transactions performed through digital platform.

Further, Minister of Finance (MoF) Regulation No. 60/PMK.03/2022 (PMK-60) addresses the mechanism of VAT collector appointment, collection, settlement, and reporting of VAT on digital goods and services. PMK-60 also stipulates that the applicable VAT rate for digital goods and services is 11% starting 1 April 2022 and to be increased to 12% through further implementing regulation (with reference to UU 7/2021, 12% VAT rate will be applicable on 1 January 2025 at the latest). PMK-60 revoked MoF Regulation No. 48/PMK.03/2020 (PMK-48) of the same concern.

Final (uncreditable) VAT

Under Article 9A of UU 7/2021, certain types of taxable deliveries are subject to final VAT, which means that the input VAT in connection to the acquisition of such goods and/or services cannot be credited. The imposition mechanism is done by multiplying the prevailing 11% rate by the specified rate for certain type of deliveries.

Following UU 7/2021, the 11% VAT rate will be increased to 12% on 1 January 2025 at the latest. There are 14 new implementing regulations (MoF Regulations) for this provision which are effective from 1 April 2022.

Unless otherwise stated, the applicable tax base for the type of delivery in the new regulations is the selling price, whilst in the previous regulation the imposition base is mostly based on "other value". The new regulations put into effect the effective tax rate for the imposition of VAT, where the 11% VAT rate is multiplied by "specified rate" for each goods and/or service. The rate mentioned below is the effective tax rate for each type of taxable delivery:

1. Self-construction activity is imposed by 2.2% tax rate (PMK 61/PMK.03/2022). There is an extension on the definition of self-construction activity where it includes both new construction and expansion of old buildings. Self-construction activity also covers building construction activity carried out by other parties for individuals or entities.
2. Tax base for delivery of non-subsidized *Liquefied Petroleum Gas* depends on the point of delivery using specified formula of 1.1/101.1 (PMK 62/PMK.03/2022).
3. Delivery of tobacco products is imposed by 9.9% tax rate (PMK 63/PMK.03/2022)
4. Delivery of certain agricultural products is imposed by 1.1% tax rate (PMK 64/PMK.03/2022)
5. Delivery of used motor vehicles is imposed by 1.1% tax rate (PMK 65/PMK.03/2022).
6. Delivery of subsidized fertilizer for agricultural sector is subject to specified formula with either subsidy payment or retail price (PMK 66/PMK.03/2022)
7. Delivery of insurance agent services and insurance/reinsurance brokerage services are imposed by 1.1% and 2.2% tax rate, respectively (PMK 67/PMK.03/2022).

The final VAT rate also applies to certain taxable services as stipulated in PMK 71/PMK.03/2022. Packaged delivery services, travel agency/provision service, and freight forwarding service are all subject to 1.1% effective tax rate. Service for religious travel including travel to non-religious places is subject to

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1.1% effective tax rate if the portion of religious travel can be separated, while if the portion cannot be separated then it is subject to 0.55% effective tax rate. Provision of marketing service using vouchers, transaction payment service related to vouchers distribution, and consumer loyalty/reward program are all subject to 1.1% effective tax rate.

For more information, please feel free to contact our Indonesian colleagues Tomy Harsono or Landung Anandito

Ireland: Extension reduced VAT rate on restaurant, cafe, catering and tourism sector

Ireland's government has announced on 10 May 2022 a second extension of the reduced VAT rate on restaurant, cafe, catering and tourism services past the planned deadline of 31 August 2022. The new deadline is 28th February 2023.

Ireland: Update rules on postponed accounting of VAT

Ireland has updated its rules on postponed accounting. Postponed Accounting arrangements may be applied to all imports from all third countries including Great Britain (UK not including NI).

For the full brief, please see *Here*.

Ireland: Updates VAT Treatment of eGaming Services

The Tax and Duty Manual on the VAT Treatment of eGaming Services has been updated to provide clarity with regard to the taxable amount for Irish VAT purposes.

For the updated manual, please see *Here*.

Italy: E-invoicing via SDI extension

After the expiration of the former authorization on 31 December 2021, Italy has been authorized until 31 December 2024 to accept e-invoices via SDI only if they are issued by taxable persons established in Italy (Council implementing Decision (EU) 2021/2251 of 13 December 2021).

As already known, since 2019 Italy has implemented a peculiar procedure according to which taxpayers resident or established in Italy are required to issue electronic invoices in a specific XML format to be transmitted via SDI (i.e. the exchange data system managed by the Italian Tax Authorities).

Following the recent extension, this special measure, on the one hand, covers a broader time frame (until the end of 2024) and, on the other hand, includes a wider scope since (as a matter of fact) it allows the possible implementation of the mandatory e-invoicing procedure via SDI also with regard to taxable persons who benefit from the exemption for small enterprises (under Article 282 of the VAT Directive). However, in connection with the latter aspect, possible rules still have to be adopted.

Based on the recent EU Decision, taxpayers who are not resident or not established in Italy, but have a mere VAT registration in Italy (having obtained a direct VAT registration or having appointed a fiscal representative in Italy) will not be obliged to implement the e-invoicing procedure via SDI.

In addition, it must be noted that the implementation of the e-invoicing via SDI with regard to cross-border transactions, so-called 'new Esterometro' – which, as a matter of fact, implies an extension of the e-invoicing operative procedure to cross-border incoming and outgoing transactions, has been postponed from 1 January 2022 to 1 July 2022.

Starting from that new deadline, the communication of the data of cross-border transactions shall be conducted via SDI and using the XML e-invoicing format (of course, using the proper document type, etc.).

Therefore, for the first half of 2022, the communication of the data for cross-border transactions will continue to be carried out according to the current operating methods and terms (i.e. on a quarterly, cumulative basis).

Nevertheless, it remains possible (already provided by previous provisions) to issue an electronic invoice and to transmit it via SDI also with regard to cross-border transactions, within the respective and different terms.

For the full WTS article, please see *Here*.

Moldova Clarifies Depreciation of Assets Returned for Repair or Replacement

Moldova's State Tax (Fiscal) Service recently issued SFS Order no. 212, providing clarification on the application of VAT on services provided by non-residents, including consulting, engineering, legal, accounting, marketing, and other services. It is clarified that where such services are provided by a non-resident company, the services will be subject to VAT if the place of supply is in Moldova. The place of supply of services is considered in Moldova if the recipient of the services is located in Moldova. In this case, the services are considered an import of services and subject to VAT on a general basis at the rate of 20% on the amount paid or payable for the services, excluding VAT, on the date of the import of the service.

Please find SFS Order 212 *Here*.

Montenegro: Government publishes Online Consolidated text of VAT Law which enters into force on May 6

For the full text, please see *Here*.

Norway: abolition of the VAT exemption for electric cars

The Norwegian government proposed to abolish the VAT exemption for electric cars from 1 January 2023, and replace this exemption with a subsidy scheme.

The subsidy scheme aims at a level of support that corresponds to a VAT exemption up to a purchase price of NOK 500,000 resulting in only the most expensive electric cars will increase in price. The government will return to the final design of the scheme in the state budget for 2023.

If adopted, this change to a subsidy scheme is scheduled to take effect from 1 January 2023.

For more background, please see *Here*.

Netherlands: Updated DAC6 Guidance

The Dutch Tax Authority has published updated user instructions for the use of the Mandatory Disclosure/DAC6 data portal for reporting potentially aggressive cross-border tax arrangements. The updated instructions are provided on the data portal login page, which includes further links to the DigiD or eHerkenning login pages for DAC6 reporting.

See *Here* for the updated user instructions

For more information on the Dutch DAC6 rules, feel free to contact our colleague Ivo Kuipers.

Netherlands: Court rules on B2B transactions. In- or exclusive of VAT? Court uses Whatsapp communication for its ruling.

The Dutch lower Court Noord-Nederland, recently ruled in a case whereby two VAT taxable persons argued on the sales price of a machine supplied by one to the other.

Based on the facts of the case at hand the Seller communicated in various WhatsApp's that the price was set at EUR 220.000. Both the seller and the buyer did not discuss the VAT amount. The seller claims that buyer still has to pay the VAT amount of EUR 46.200.

The court however considers when interpreting an agreement, it is important that there is no rule (whether or not unwritten) that B2B parties always discuss prices exclusive of VAT among themselves.

If the parties did not discuss VAT when concluding the purchase agreement, the conclusion cannot be automatically drawn that the parties have therefore agreed on a purchase price excluding VAT.

Therefore the Court takes into account the content of the WhatsApp messages between seller and buyer.

After the purchase agreement was concluded, buyer asked seller via WhatsApp whether it should transfer *'that €220,000'* to the bank account number mentioned by seller.

If the parties pay an amount of € 220,000.00 excluding VAT, whereby payment preceded delivery, it would have been obvious that seller had indicated at that time that buyer should not pay an amount of € 220,000, but an amount of € 266,200, 00. Seller

however has not done that; seller only answered in the affirmative to the question.

In addition, seller has not substantiated sufficiently that buyer was aware of seller's general Terms & Conditions, which stipulate that the amounts stated in an offer, are always exclusive of VAT.

Subsequently the Court rules that taking all circumstances in consideration, it has become sufficiently clear from the exchanged Whatsapp messages in particular, and which must have been clear to seller, that buyer was under the assumption that the amount discussed EUR 220,000 would be inclusive of VAT, even if (as seller states) there was no explicit discussion of VAT in the first instance.

For the full ruling, please see *Here*.

Netherlands: VAT treatment supply of mobile device and a customer credit in order to purchase the device

When taking out a telephone subscription, the customer can buy a mobile telephone. If he buys a mobile phone, the customer can choose to take out a loan ("device credit") for this purpose.

The Dutch lower court has ruled that the supply of an appliance and the provision of a device credit for VAT purposes constitutes two independent services.

In the underlying case the Court is of the opinion that the payments made to the supplier by the customer, relate to the loan payments, and are not to be regarded as the payment of the device itself (*i.e.* hire purchase).
Consequently, the Court ruled that failure to fulfill the repayment terms by the customer cannot be equated with (partial) non-payment of the purchase price of the device and thus Article 29 of the Dutch VAT Act does not apply (VAT refund in case of (partial) non-payment.

For the full ruling, please see *Here*. For more information, please contact Johan Visser.

Netherlands: Real Estate Transfer Tax (RETT) hike from 9% to 10.1%

The Dutch government announced that the general rate of Real Estate Transfer Tax (RETT) is increased from 9 percent to 10.1 percent.

The general rate does not apply to the acquisition of housing by people who've owned them for a long time to inhabit.

This rate increase applies in particular to acquisitions of non-residential properties and to acquisitions of homes by legal entities and natural persons who do not themselves (other than temporarily) use the homes as use main residence.

This measure is in addition to the increase the coalition agreement from 8 percent to 9 percent and delivers 325 million euros on.

For the full overview (de Voorjaarsnota 2022), please see *Here*.

Netherlands: Policy on reduced VAT rates in the Netherlands

In a letter on the tax policy and plans for the near future sent to the Dutch House of Representatives on June 3rd, the State Secretary of Finance explains how the Dutch government intends to deal with the new policy space offered by the new VAT rates directive. Key remarks are:

- The Dutch government argued its case for the introduction of the 0% rate for solar panels and a reduced rate for charity shops. The latter option turned out to be politically unrealistic.
- The Dutch government does not intend to add extra VAT rates to the current structure of three VAT rates (currently, the general 21% and the reduced 9% and 0% rates). An increase in the number of rates would make the system more complex for both businesses and the tax authorities.
- The introduction of an additional VAT rate would only be possible from 2026 onwards, which would require a new ICT system. As a result, implementing an extra (super) reduced VAT rate to be able to use derogations from other EU Member States is neither desirable nor a possibility in the coming years. The government therefore does not intend to make use of this policy space.
- The Netherlands already applies the reduced VAT rate on 21 points from Annex III of the VAT Directive. Given the maximum of 24 points to which a reduced rate may be applied, the additional policy scope is therefore limited.
- The efficiency and effectiveness of the current application of the reduced VAT rate will be widely evaluated by the end of 2022, taking into account academic observations in more detail. The results of that evaluation are expected to be sent to the House of Representatives and the Senate in early 2023. The evaluation will also include the reduced VAT rate for e-publications and floriculture.

For the full (Dutch) letter, please see *Here*.

Netherlands: Supply of apartment complex qualifies as a TOGC.

17 May 2022, the Dutch Court of Appeal of Arnhem-Leeuwarden issued two interesting decisions on the application of the Transfer of Going Concern (TOGC) rule to the transfer of newly constructed apartments by a real estate developer.

The Court of Appeal set aside the ruling of the Dutch lower courts. In this alert, we highlight the relevant elements of these decisions for the Dutch real estate market.

General background

Both of the court cases pertain to real estate that is developed / transformed into residential apartments. In both cases, the real estate developers (Real Estate Developer) initiated the realization and lease of the apartments a few years before the sale of the leased apartments to an investor. The lease agreements include several service agreements. After the sale, the lease agreements are to be continued by the purchaser. No VAT was paid in respect of the sale.

The Dutch Tax Authorities (the DTA) and the lower courts were of the opinion that VAT was due on the sale of the leased building, considering it a supply of goods for VAT purposes. The Real Estate Developer believed that the sale of the leased building constituted the transfer of a totality of assets, which would mean that due to the TOGC rule no VAT was due on that transfer. The application of TOGC could be very beneficial. It will prevent that any irrecoverable VAT will be due upon the transfer of the apartments.

TOGC

For Dutch VAT purposes, in the case of a transfer of all or part of a totality of assets, whether or not for consideration or in the form of a contribution into a company, no supplies of goods or services are deemed to be made, with the body to which the goods are transferred taking the place of the transferring body, unless stipulated otherwise.

In short, if the transfer of a totality of assets is not deemed to be a supply of goods or services, no VAT would be due on that transfer.

Court decision

The Court is of the opinion that the supplies of the leased apartment buildings should be considered a TOGC. With the leased buildings, an independent economic activity can be exercised, namely the exploitation (lease) of apartments with additional service activities. For that reason, the sale of the building with tenants and ongoing rents and additional service activities cannot be regarded as the simple transfer of assets, such as the sale of a stock of products.

The Real Estate Developer actually exercised this economic activity and thus used the building and the associated contracts in its business.

The Court of Appeal found it relevant that the rental agreements included various (service) obligations for the landlord (first the Real Estate Developer and then the purchaser). In view of a judgment of the Court of Justice of the European Union in the C-497/01 (*Zita Modes Sàrl*) case, the Court of Appeal ignored what the DTA had said about the intentions of the Real Estate Developer at the time of the sale. Such a criterion cannot be found in the explanation of transfer of a totality of goods.

Thus, no VAT is due over the sale of the leased buildings, as the sale is not considered to be a supply of goods for VAT purposes, but rather a transfer of a totality of assets.

Impact on the real estate market and concluding remarks

In the real estate tax practice, it was generally assumed that the sale of newly constructed properties by real estate developers does not qualify as a TOGC, due to the intention of the developers to sell the building on short notice, and not to exploit it themselves. However, the intention does not seem to play a role in the question of whether a sale constitutes as a TOGC. Therefore, it may now be possible for the sale of newly constructed apartments to take place without charging VAT.

Note that the DTA can still appeal these decisions in

cassation at the Dutch Supreme Court. Meanwhile, these decisions will most likely prove to be beneficial to the real estate market.

For the two Court rulings, please see *Here* and *Here*.

Philippines: 200 more medicines added to VAT exemption list

The Philippine Bureau of Internal Revenue (BIR) has released the generic names of additional 200 medicines that are exempted from value-added tax (VAT).

For the full story, via the Manila Bulletin, see *Here*.

Poland: Expected delay VAT-group regime

The introduction of value-added tax groups in Poland is expected to be delayed.

The new regime was proposed to be in place by July 1, 2022, but the relevant legislation is expected to not be enacted in time. According to various local reports, amendments were proposed by the upper house of parliament and the legislation has therefore been returned to the lower house, the Sejm.

Multinationals typically form VAT groups to simplify administration of VAT within a group and to benefit from transactions between individual members being outside the scope of VAT. Another benefit is that forming a VAT group speeds VAT recovery, as input tax credits can immediately be set off against the output tax liability of another group member, rather than having to apply and wait for a VAT refund.

The regime is expected to be offered to large businesses starting from January 1st, 2023.

Saudi Arabia: Finance minister Saudi Arabia will consider cutting VAT rate?

Saudi Arabia will "ultimately" consider cutting the rate of value-added tax (VAT), which was increased to 15 percent in 2020, Minister of Finance Mohammed al-Jadaan said on Tuesday.

For the full interview, please see *Here*.

Singapore: Withholding Tax Treatment of Technical Service Fees Payable by Customers in Singapore

The Inland Revenue Authority of Singapore has published Advance Ruling Summary No. 10/2022, concerning the withholding tax treatment of technical service fees payable by customers in Singapore.

For the Ruling, please see *Here*.

For more information on Singapore WHT, please feel free to reach out to Eugene Lim.

Spain: VAT Treatment NFT's

The Spanish *Agencia Estatal de Administración Tributaria*, (**AEAT**), has provided a ruling on the VAT treatment of a Non-fungible token (**NFT**).

The ruling was provided in a case involving an illustration on an online auction site where the right to the underlying digital assets was granted – but not the right of ownership of the digital asset. The AEAT stated:

(…) *NFTs are "digital certificates of authenticity" that, through blockchain technology, are linked to a unique digital file* (…)

In other words NFTs are digital assets that cannot be mutually interchangeable.

The AEAT has recognized two different digital assets:

- Underlying digital assets, which is the digital image or video etc
- Non-fungible token, digital ownership of certain rights over the underlying digital assets

AEAT considers the NFT as a "digital certificate of authenticity", so not a digital currency or physical good. Subsequently, an NFT is to be regarded as the supply of an electronic service and subject to the standard rate of 21%.

For the full ruling, please see *Here*.

Sri Lanka: Increase Standard VAT Rate to 12% and Increase Telecommunications Levy to 15%

The Sri Lanka Inland Revenue Department has issued

a Notice to VAT Registered Persons on changes in the VAT rates as per the Extraordinary Gazette Notification No. 2282/26, published in the Official Gazette on 31 May 2022. The notification was issued as part of government tax reform plans to increase revenue and provides the following VAT rates with effect from 1 June 2022:

- 0% on the import of goods (fabrics) set out in the H.S. Code and description specified in Columns I and II of Schedule of the Extraordinary Gazette Notification No. 2095/20 of 1 November 2018; and
- 12% on the import and/or supply of goods or supply of services, other than the import of goods (fabrics) referred to above (up from 8%).

The notice also clarifies that the 12% VAT rate applies on the supply of services by a hotel, guest house, restaurant, or other similar businesses providing similar services, registered with the Sri Lanka Tourism Development Authority, for which a 0% VAT rate was previously provided from 1 December 2019. Lastly, it is clarified that the increased VAT rate of 18% on the supply of financial services from 1 January 2022 continues to apply.

Telecommunications levy

Another tax reform measure to apply with effect from 1 June 2022 is an increase in the telecommunications levy from 11.25% to 15%, which is to be implemented via a letter from the Telecommunications Regulatory Commission. Further measures are planned to be implemented from 1 October 2022 and 1 April 2023, including an increase in the standard corporate income tax rate to 30% along with an increase in the concessionary rate to 15%, a reduction in the VAT registration threshold to LKR 120 million, the removal of certain tax holidays, and several other measures. These are to be implemented through amendments to the relevant Acts. Details on the implementation of these other measures will be published once available.

Suriname: Introduction of Value Added Tax VAT as per July 2022

Based on recent announcements we understand that the Surinamese government intends to introduce a Value Added Tax ('VAT') as per July 1, 2022. In this note we inform you of the possible consequences of this introduction.

With the introduction of the VAT, the current Sales Tax Act (*i.e.* Turnover Tax) will no longer be in effect. It is therefore no longer necessary to comply with the obligations of the Sales Tax Act.

These obligations are, as it were, replaced by those of VAT. Under the new VAT, a tax will be levied on the consumption of goods and services at a general rate of 15%.

The taxable area for the VAT Act regards:

Suriname, including the part of the seabed and its subsoil located outside the territorial sea under the Atlantic Ocean, insofar as Suriname on the basis of international law may exercise sovereign rights for the exploration and exploitation of the natural resources, as well as installations and other facilities present in, on or above that area for the purpose of exploration and exploitation of natural resources of that area.

This is different from the current Sales Tax, which is only applicable to the territorial waters.

Amendments compared to the Sales Tax

Compared to the soon-to-be-expired Sales Tax Act, a few things will change for the taxable person:

- A taxable person remains the same, *i.e.* an entrepreneur who supplies goods or provides services. In contrast to the Sales Tax, there is an extension of the taxed services. In principle, all services are taxed, unless an exemption applies based on the Law;
- Services and Goods that were exempt for the Sales Tax, do not necessarily have to be exempt for VAT.
- The tax is no longer due from the moment of receiving the compensation, but from the moment of issuance of the invoice;

The VAT is (in principle) deductible for taxable persons.

Administrative obligations

With regard to administrative obligations, the new VAT Act specifies more than the Sales Tax Act. To be specific, additional attention is required regarding the new deduction possibility. It is now even more important to properly register the services and goods supplied to you and the associated deduction of withholding tax. This is required for the deduction of the paid VAT and therefore requires extra attention after the introduction of the VAT. The other regular

obligations (issuing invoices, monitoring purchases and sales and imports and exports), will remain the same. In short, adequate tax compliance is – certainly with the introduction of VAT – of great importance.

For more information, please see *Here*.

Switzerland: Federal Council Approves Automatic Exchange of Financial Account Information with 12 Partner States

The Swiss Federal Council has announced its adoption of the dispatch for the approval of the introduction of the automatic exchange of financial account information (AEOI) with 12 partner states, including Ecuador, Georgia, Jamaica, Jordan, Kenya, Moldova, Montenegro, Morocco, New Caledonia, Thailand, Uganda, and Ukraine. Entry into force of AEOI with these states is planned for 2023, with the first exchange of data taking place in 2024.

For the announcement, please see *Here*.

Switzerland: Swiss voters approve 'Lex Netflix' TV streaming funding law

Swiss voters on 15 May agreed to introduce a 4% levy on providers of digital streaming services, as a result of which global TV streaming services such as Netflix Inc, Amazon and Disney will "invest" some of their revenues generated in Switzerland into domestic film-making.

Non-resident streamers would have the option to instead invest the equivalent amount in Swiss-TV production. This requirement has been in place – investing 4% of their turnover – since 2007 for local television producers.

Just over 58% of voters backed the proposal, according to the final result, in one of three national votes held under the Swiss system of direct democracy.

With the outcome of this vote, Switzerland will become the latest European country to introduce such measures to support local TV and film production and boost locally-produced content.

So far, we have seen:

- France and Italy require up to 20% of turnover to be invested locally
- Poland introduced a 1.5% levy.
- Denmark is reviewing a 5% levy
- Portugal has imposed a 1% charge
- Romania is proposing a levy to subsidise local film making

For the Reuters coverage on the Swiss vote, please see *Here*.

For more information, please feel free to reach out to our Swiss colleague, Clara Bodemann

Switzerland: Revisions of the VAT Act approved by the National Council

The Swiss National Council approved revisions of the Swiss VAT act. Once the revisions are administratively approved, a public referendum may take place. Therefore, the earliest the revision of the VAT law might be effective is 1 January 2024.

Based on the revision, the following changes are expected:

Platforms / online marketplaces

Similar to the European VAT rules for e-Commerce, the proposed Swiss rules aim to treat electronic platforms (online marketplaces) as supplier which will thus likely meet the conditions for an obligation to register for Swiss VAT. Consequently, the online marketplaces would be treated as selling the products to the final customers (supply of goods). As a result, the online marketplaces would collect VAT from customers.

It is expected that based on the new rules, sales by private individuals and non-taxable businesses could now be subject to VAT if carried by using an online marketplaces. Based on the current understanding of the draft, any person who acts as intermediary by connecting sellers and buyers on the platform are deemed to be an online marketplaces.

These new rules shall however not be applicable to the supply of electronic services through the online marketplaces.

Trading in emission and similar rights

Switzerland intends to introduce a reverse-charge mechanism for trading in the emission and similar rights implementing the Federal Supreme Court

decision from 2019 under which emissions trading are subject to Swiss VAT. According to this court decision, the transfer of emission rights, certificates and attestations for emission reductions, guarantees of origin for electricity and similar rights would become subject to acquisition VAT in Switzerland (i.e. reverse charge) regardless of whether the supply is made by a domestic or a foreign company.

Import VAT deferral

Following multiple European jurisdictions, a new import VAT deferment regime will be introduced under the new VAT rules. Based on such a regime, the VAT due on the import of goods may be declared within the periodic VAT return filed with the FTA instead of paying it (*i.e.* pre-financing the import VAT).

This revision would be applicable for the importer who is VAT registered in Switzerland only.

You can find the link to the description of the possible revisions in Swiss VAT law *Here* and the link to the approval in the National Council *Here*.

For more information, please feel free to reach out to our Swiss colleague, Clara Bodemann

Thailand: Introduction Incentives electric vehicles

The Thai Ministry of Finance and Excises announced measures to implement the electric vehicle tax and customs incentives for 2022-2025.

The aim of these electric vehicle incentives is to stimulate demand for electric vehicles and equalize the price of these vehicles against that of internal combustion engine vehicles.

The electric vehicle incentives package covers three types of vehicles: passenger cars, motorcycles, and pick-up trucks.

The incentives generally consist of customs duty reductions, excise tax reductions, and excise tax subsidies. The incentives available are based on the battery size and the suggested retail price of the vehicles.

- The customs duty incentives range from a reduced import duty rate of 40% (from 80%) to a full exemption from import duty.
- The excise tax incentives include a reduction to 2% (from 8%) for passenger cars and 0% for pick-up trucks.
- An excise subsidy package is available for certain electric motorcycles, pick-up trucks, and passenger cars and is applicable to both imported and domestically produced electric vehicles (for pick-up trucks, the subsidy is only available with regard to domestically produced vehicles).

Thailand: Crypto trading excluded from VAT until the end of 2023

The Thai Official Gazette May 24 published Royal Decree No. 744, exempting VAT on the transfer of digital currencies, effective April 1, 2022, through Dec. 31, 2023. The decree enters into force May 25. [*Thailand, Official Gazette, 05/24/22]*

Investors who use Thai exchanges to trade cryptocurrencies and digital tokens will not have to pay 7% VAT on their trades. According to Royal Decree No. 744, which was published in the Royal Gazette on Tuesday, the tax relief is to be enacted retrospectively from 1 April 2022.

The exemption was revealed in a new royal order made under the Revenue Code for the Exemption of VAT and took effect on May 26.

Until 31 December 2023, all exchanges of cryptocurrencies and digital assets on authorized digital asset exchanges are exempt from VAT under the new royal order. The finance minister is in charge of the decree's process and implementation.

Thailand's cryptocurrency investment and commerce have increased in recent years. In late March, the country's financial authorities took steps to prohibit the use of cryptocurrencies for payment, citing the need to address various financial and economic concerns, with the Securities and Exchange Commission (SEC) issuing guidelines to discourage digital asset operators from providing such services.

Thailand's Finance Minister, Arkom Termpittayapaisit, is certain that the reduced tax laws would make cryptocurrency trade more dependable and stable in the country. He was also cited as saying that this will push Thailand to build an infrastructure and payment system fit for the future digital economy.

Please see *Here* for the Thai Ministry of Finance. For the Bloomberg background article, please see *Here*.

UK: HMRC's updated guidance on VAT and overseas goods sold to customers in the UK using online marketplaces

HMRC recently updated its guidance re. the VAT consequences on the supply of overseas goods sold through the use of an online marketplace, to UK (based) customers.

For the updated guidance, please see *Here*.

UK: HMRC Guidance on application to import multiple low value parcels on one declaration

HMRC recently updated its guidance for situations in which the bulk import reduced data set is used to declare two or more low value parcels in a single import declaration when you import goods to Great Britain.

For the updated Guidance, please see *Here*.

UK: HMRC Brief 9 (2022): VAT domestic reverse charge for mobile phones and computer chips

For the updated Brief, please see *Here*.

UK: New reporting rules for digital platforms per 2024

Following the consultation on the implementation of the OECD's Model 'Reporting rules for digital platforms', the government has decided that the new rules will start from 1 January 2024.

This will give platforms and their advisors time to prepare for the implementation of the new rules, with collection of information starting from January 2024 and submission of the first reports due by the end of January 2025.

HMRC is considering the many comments and issues that have been raised by consultation respondents. It is aiming to publish the government's response to the consultation, draft regulations giving details of the new rules, and an update on interactions with EU rules, at the next legislation day in the summer.

HMRC will also be engaging with platforms and their advisors before the new rules come into effect to make sure they are implemented proportionately and effectively.

For more information, please see *Here*.

UK: Reminder! Online Sales Tax consultation

As reported in previous VAT Updates, the UK is currently considering to introduce a so called Online Sales Tax (**OST**).

In that regards, HMRC opened a Public Consultation a while ago. This is an open consultation, exploring the proposal for an OST as a means to rebalance the taxation of the retail sector between online and in-store retail.

For more background on the public consultation, please see *Here*.

For recent coverage on the OST plans, please see the latest Financial Times articles *Here*.

Vietnam: VAT rate reductions

The regular VAT rate of 10% is reduced to 8% from 1 February 2022 until the end of 2022.

The rate for the following services has not been reduced:

- Telecommunications, financial activities, banking activities, securities, insurance, trading of real estate, metal and precast metal products, mining products (excluding coal mining), coke mining, refined oil, chemical products.
- Goods and services subject to excise tax.
- Information technology as prescribed in the law on information technology

For more information on Vietnamese VAT, please feel free to contact our Vietnamese colleague Wolfram Gruenkorn.

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