

WTS Value Added Tax Newsletter

Editorial

Dear Reader,

Before some of us temporarily turn their gaze away from VAT and GST and go on summer break, let us take a quick look at the latest news on them. The second edition of the WTS Global VAT Newsletter 2023 covers the following topics:

Preparing for ViDA, **Germany** discusses the possibility of introducing mandatory e-invoices also for domestic B2B transactions. In the **Netherlands** we saw an interesting court decision regarding the VAT treatment of so-called Park Sleep Fly arrangements in connection with the application of the correct VAT rate. Moreover, the Dutch Tax Administration shared its internal positions for a better understanding of the application of the Dutch VAT Law. **Poland** celebrates the resolution of the long dispute regarding the VAT treatment of electronic vehicle charging. In **Spain**, starting in 2024 also non-resident taxpayers without a Spanish bank account will be able to settle their tax debts by direct debit.

Beyond Europe, **China** reports on a tighter scrutiny of input VAT refunds requested by taxpayers. **Switzerland** will increase its VAT rates as of 2024 and informs about the aspects to be considered during the transition period.

Our experts will be happy to answer any questions you may have.

Yours sincerely,

Jürgen Scholz

Gabriele Heemann

WTS Global VAT Team

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Germany



I. EU Member-States

Mandatory electronic invoices for domestic B2B transactions – discussion proposal

In a letter dated 17 April 2023, the Federal Ministry of Finance sent a discussion proposal for amending the German VAT Act (UStG) regarding the introduction of a mandatory electronic invoice for domestic B2B transactions. Independently of the European Commission's legislative proposal "VAT in the digital age (ViDA)", which also includes fundamental changes in terms of invoicing, Germany has applied for the introduction of mandatory electronic invoicing in accordance with Art. 395 of the VAT Directive. Irrespective of the ultimately relevant legal basis, the discussion paper presents the envisaged legislative changes, which could be applied from 1 January 2025. The core elements of the planned changes to invoicing according to § 14 UStG are:

- › the definition of the term "e-invoice" based on the ViDA legislative proposal, i.e. an invoice that must comply with the requirements of the CEN 16931 standard (Directive 2014/55/EU of 16 April 2014),
- › the definition of the term "other invoice" as a generic term for paper invoices and electronic invoices that do not meet the requirements for the new e-invoice,
- › the cancellation of the priority of the paper invoice in § 14 para. 1 sentence 7 UStG,
- › the obligatory issuing of an e-invoice for B2B transactions taxable in Germany (except for tax-exempt transactions according to § 4 nos. 1 to 29 UStG), if the service provider is domiciled in Germany,
- › the possibility to use e-invoices or "other invoices" in electronic form also in the B2C sector (but only with the consent of the recipient).

Regarding the expected conversion effort, the Federal Ministry of Finance outlines considerations for temporary relief for small and medium-sized companies. Regulations in this connection could be based on the size of the enterprise or the invoice amount or exclude the obligation to issue e-invoices but not the obligation to accept incoming e-invoices.

In addition to transaction-based reporting for intra-community B2B transactions and the simultaneous abolition of recapitulative statements as of 1 January 2028 based on the ViDA legislative proposals, the Federal Ministry of Finance is also striving for a transaction-based reporting system for national B2B transactions. To keep the burden on businesses to a minimum, a uniform electronic reporting system is to be aimed at for both national and cross-border transactions, which is consequently oriented towards the ViDA requirements. According to this, taxpayers should only transmit certain invoice data (so-called reporting data) to the tax authorities, but this cannot be achieved by transmitting the invoice to the tax authorities.

For the introduction of the reporting system, the Federal Government and the State Governments are therefore considering having the invoice exchange between the invoice issuer and the invoice recipient handled either via a state e-invoice platform or via private e-invoice platforms. The platforms could carry out plausibility checks on the invoices, but at the same time extract the relevant reporting data from the e-invoice and transmit it to the state portal for the transactional reporting procedure. With the exchange of invoices structured in this way, the reporting data could be transmitted to the tax authorities at the same time as the invoice is sent, so that the entrepreneur must only carry out one and not two successive transmissions.

Anton Appel
anton.appel@wts.de

The publication of a discussion paper by the Federal Ministry of Finance shows that the tax authorities also expect a massive need for conversion and adjustments. The intended extension of the electronic invoicing obligation implicates a quite challenging time schedule. Taxable persons should therefore already deal with the planned changes in order to identify adjustments and potential problem areas, e.g. with regard to the IT system (to be) used and processes to be created.

The Netherlands Dutch Court decision on VAT treatment of Park Sleep Fly arrangements



In the Netherlands, a common topic for VAT litigation is parking services which are somehow related to other services. The relevance lies in the fact that the respective other services are taxed at the reduced rate, while parking services are in principle taxed at the standard rate. Taxpayers take the position that the parking services are ancillary to the other services, which would result in one single service taxed at the reduced rate. However, the tax authorities argue that parking services are a service in and of themselves, not ancillary to the other services, and should be taxed at the standard rate. It often comes down to the courts to decide whether or not the relevant parking services merge with the other services. The Court of Appeal recently ruled on such a discussion (ECLI:NL: GHAMS:2023:109), providing more clarity on parking services as part of a Park Sleep Fly arrangement.

The taxpayer operates a hotel business located near an airport. Booking a hotel room includes the right to park a car in the private car park belonging to the hotel during the stay. The taxpayer also offers a Park Sleep Fly arrangement (PSF arrangement) where guests can leave their car in the private car park for 29 days after their stay. A package price is charged for this arrangement, which amounts to EUR 40 on top of the standard hotel rate. The taxpayer has treated the arrangement as one single hotel service taxed at the reduced VAT rate. The tax authorities considered the hotel stay and the parking service as separate services, each of which has its own VAT treatment. As a result, an additional tax assessment was issued for the underpayment of VAT regarding the parking services.

Both the Court and the Court of Appeal ruled in favour of the tax authorities and concluded that the additional tax assessments were rightly imposed. These decisions were based on the consideration that the PSF arrangement is not an indivisible economic performance whose division is artificial. The fact that these services were not charged for separately does not alter this. It is likely that the long-term parking of a car in the vicinity of an airport is an end in itself and not ancillary to the hotel accommodation. The Courts ruled that the parking service neither makes the enjoyment of the hotel stay more attractive, nor does it optimise this stay. Therefore, the parking service is an independent service and should be taxed at the standard rate. According to the Courts, the remuneration that should be considered amounts to EUR 40, as this is the additional price paid for the PSF arrangement compared to merely a hotel stay.

In the discussed situation, over 90% of the guests booked the PSF arrangement, making it clear that long-term parking is an important consideration for booking a stay at the relevant hotel. This could imply that long-term parking optimises the main service or at least makes it attractive. Nevertheless, the Courts would not allow the parking service to be taxed with the reduced rate.

Sanne Fresow
sf@atlas.tax

The Netherlands Internal positions published by the Dutch Tax Administration



30 March 2023 saw the Dutch Tax Authorities start publishing internal positions from 2022 on tax questions relating to various types of taxes, such as VAT, RETT and CIT. The internal positions provide explanations of complex tax rules. In the future, the Dutch Tax Administration will continue publishing internal positions, including positions taken before 2022 (insofar as they are still up to date). Summaries of tax rulings issued to international companies have already been published since 2019. Publishing internal positions is a logical next step in this context.

The publication was prompted by a Dutch Court's ruling that disclosure of internal positions cannot be refused. This was followed by several calls for disclosure in the press and also in the Dutch parliament. By proceeding to publication, the Dutch Tax Administration aims for more transparency in its execution of the Dutch tax law. Previously, stakeholders submitted requests for the disclosure of specific internal positions. Following the publication of internal positions by the Dutch Tax Administration, this is no longer necessary.

The internal positions are prepared by so-called knowledge groups that include experts from the Dutch Tax Authorities. Tax inspectors are bound by the internal positions when interpreting laws and regulations. Therefore, the internal positions also lead to a uniform interpretation of laws and regulations within the Dutch Tax Administration. In 2021, the Dutch Supreme Court ruled that taxpayers can rely on the relevant internal positions, even if it includes a deviation from the law. However, it should be noted that the relevant internal positions often relate to specific cases and therefore these positions are not automatically suitable for generic application. The Dutch state secretary has indicated that internal positions that are suitable for generic application will be published in the form of official policy decisions.

The internal positions are published including the underlying facts, the tax question and the comprehensive analysis of the knowledge group that prepared the internal position. For example, for VAT, internal positions have been published about when the financial interconnectedness is met for forming a VAT Group. Moreover, internal positions are published on certain VAT exemptions and the application of the reduced VAT rates.

The publication clarifies in advance how the Dutch Tax Authorities will deal with certain tax questions in the presence of specific facts and circumstances. However, for tax assessments that have already been finalised, the publications can no longer infer a reduction for previous years.

Nevertheless, for legal certainty, the publication of internal positions is an important step forward. Should you want to receive more detailed information or assistance about the interpretations of the publications of the Dutch Tax Authorities, please do contact one of our colleagues.

Ingmar Mul
im@atlas.tax

Poland



The dispute resolved: charging of electric vehicles classified as supply of goods

For several years, a dispute had persisted in Poland regarding the classification of charging electric cars for VAT purposes. Specifically, whether it should be considered a supply of goods or a service provision. Individual rulings from tax authorities asserted that the charging of electric cars should be treated as a supply of goods. However, this stance contradicted previous judgements by Polish Provincial Administrative Courts and the Act on Electromobility and Alternative Fuels, which deemed that the charging of electricity is a service rather than a supply of goods. As a result, the lack of consistency created uncertainty within Poland's electromobility industry.

In light of the divergent positions taken by tax authorities and administrative courts, February 2022 saw the Polish Supreme Administrative Court seek a preliminary ruling from the Court of Justice of the European Union (CJEU). Approximately one year later, the dispute was finally resolved, as the CJEU determined that the charging of electric vehicles should indeed be considered a supply of goods.

CJEU ruling

The case revolved around a Polish taxpayer planning to establish and operate electric vehicle recharging stations. These stations would be equipped with "multi-standard" chargers, featuring both quick-charge and slow-charge connectors, and would be accessible to the public. The pricing structure primarily depended on the duration of the recharging session. During the session, the supply would include access to recharging devices, integration of the charger with the vehicle operating system, the provision of electricity within appropriate parameters to the vehicle's batteries and necessary technical support.

According to the CJEU, the transfer of electricity constitutes the central and predominant element of this single complex supply. This supply encompasses:

- › access to recharging devices for electric vehicles (including integration with the vehicle operating system)
- › the provision of electricity, within adjusted parameters, to the vehicle's batteries
- › necessary technical support for users
- › the provision of IT applications allowing users to reserve a connector, view transaction history and purchase credits accumulated in an e-wallet for recharging sessions.

As a result, this complex supply is categorised as a 'supply of goods' in accordance with Article 14(1) of Directive 2006/112. CJEU's position aligns with the VAT Committee guidelines concerning the classification of charging electric cars as a supply of goods (electricity).

Implications for taxpayers

Primarily, operators of charging stations must review their settlements. Those who previously treated the charging of electric cars as a service provision may need to make adjustments in their financial arrangements. The ruling could also have an impact on other entities within the chain, including intermediaries, leasing companies and electric vehicle users.

Furthermore, considering the charging of electric vehicles as a supply of energy may lead to excise and regulatory ramifications, such as the requirement to obtain a licence related to the sale of electricity.

*Olga Palczewska-
Wielńska*
olga.palczewska@wtssaja.pl

Monika Junyszek
monika.junyszek@wtssaja.pl

Spain



Direct debit of tax debts in Spain

In accordance with current legislation, it is possible to pay tax debts in Spain by direct debit by means of accounts opened with credit entities that collaborate with the state collection system. However, in April 2023, "Order HFP/387/2023, which amends Order EHA/1658/2009, establishing the procedure and conditions for the direct debit of payment of certain debts through accounts opened in credit entities that provide the service of collaboration in the collection management of the State Tax Administration Agency" was approved, which promotes the direct debit of tax debts in those cases in which the taxpayer does not have an account in Spain or, if they do have one, that is not with a collaborating credit entity.

As per the provisions of the aforementioned Order, the taxpayer, regardless of their nationality or tax residence, may direct debit the payment of self-assessments or deferred and instalment payments of Spanish taxes through an account opened in a non-collaborating credit entity, provided that it is located within the Single Euro Payments Area (SEPA Area), formed by the Member States of the European Union, the United Kingdom, Switzerland, Monaco, Andorra, Norway, Liechtenstein, Iceland, San Marino and Vatican City.

To do so, the self-assessment or application for deferment and instalments must be submitted electronically, through the Electronic Office of the State Tax Administration Agency, designating the bank account held by the taxpayer, choosing the collaborating entity responsible for managing the direct debit and electronically signing a debit mandate.

The collaborating credit entity will collect the amount of the debt paid by direct debit plus the commissions and other bank charges imposed by the latter.

The date on which the debit is made shall generally be regarded as the date of payment for the purposes of discharging the tax debt for the taxpayer.

Finally, this procedure will apply to direct debits of the deferral and payment in instalments of tax debts with the Spanish Tax Authority that are applied for from 1 July 2023; and to direct debits for State tax returns and self-assessments that are filed from 1 February 2024.

However, in the latter, self-assessments filed between 1 July 2023 and 31 January 2024 may be paid by direct debit through an account opened with an entity in the SEPA Zone, if at the same time deferral and payment by instalment of the tax debt is applied for.

Marc Pujol
marcpujol@
arcoabogados.es

II. Further countries

China



Input VAT refunds being scrutinised

In light of an increasing number of fraudulent VAT refund claims, the State Taxation Administration (STA) is announcing a more stringent screening of input VAT credit refund applications.

According to the input VAT credit refund regime, which became effective on 1 April 2019, taxpayers can claim a refund of non-utilised input VAT if they meet all of the following criteria at the time of an application:

- › being a small and low-profit entity (in all sectors) or a medium- to large-sized enterprise in designated manufacturing, wholesale or retail sectors;
- › scoring a grade of A or B in the tax credit rating system;
- › never committed any VAT fraud in tax refunds or false invoicing in the past thirty-six months;
- › never been charged twice for tax evasion in the past thirty-six months; and
- › never made use of VAT refunds by means of the "refund-upon-payment" or the "refund-after-payment" methods since 1 April 2019.

Local tax authorities, while tasked with a quicker tax refund, are facing an increasing number of false claims. STA is appealing for rigorous scrutiny nationwide into cases involving duty dereliction and noncompliance on the part of tax officers.

STA has recently disclosed numerous fraudulent VAT claims (with two examples summarised below), drawing the public's attention to the risks of non-compliant practises and their consequences.

Case 1

A trading company is detected by big data analysis for committing VAT fraud by concealing revenue, collecting sales proceeds via a personal bank account, understating VAT liability and making false declarations to deceive a VAT refund of CNY 1.4 million. The company is charged with returning the illicit funds and faces a heavy penalty.

Case 2

A tax officer is found guilty of neglecting the discrepancy between the reported income and the data shown in the tax system, resulting in an excessive refund to a taxpayer. The local tax authority has managed to reclaim the tax refund but has held the tax officer personally accountable for the dereliction of duty.

In addition, STA has further reinforced the cross-department collaboration mechanism involving six government agencies to intensify scrutiny over the tax refund administration, risk control and accountability. As highlighted in the disclosed cases, technical tools such as tax big data are also commonly used to track the VAT deduction chain.

Ened Du
ened.du@wts.cn

Patrick Ding
patrick.ding@wts.cn

Companies are advised to maintain an effective internal review system, especially regarding VAT refund applications, as they could easily invite tax audits.

Switzerland



Increase of Swiss VAT rates as of 2024

From 1 January 2024, the following new rates of Swiss VAT will apply in Switzerland (including the municipality of Liechtenstein):

	until 31/12/2023	from 01/01/2024
Standard rate	7.7%	8.1%
Reduced tax rate	2.5%	2.6%
Special rate for accommodation services	3.7%	3.8%

The Federal Tax Administration (FTA) recently published its practice, which contains the relevant guidelines and transitional rules for increasing the tax rate. The key points in this regard are as follows:

1. General remark

In principle, the applicable tax rate is determined by the date of provision of the supply of goods/supply of service or the period of provision of such supply (cross-period supplies). Thus, supplies made up to 31 December 2023 are subject to the previous tax rates, while the new tax rates apply to supplies made after 1 January 2024. If supplies that are subject to both the previous and the new tax rates due to the period during which they were provided are listed on the same invoice, the date or period of provision of the supply and the corresponding amount must be shown separately. Otherwise, the taxpayer must account for all supplies at the new tax rates (see below: cross-period supplies).

2. Particular topics

a) Partial payments and partial invoices

Partial payments for supplies made up to 31 December 2023 must be invoiced and reported to the FTA at the previous tax rates. In contrast, partial payments for supplies made after 1 January 2024 must be invoiced and reported to the FTA at the new tax rates. It is recommended that orders that have not yet been completed are properly delineated in partial invoices and budgets by the end of 2023 (e.g. in the construction industry). The supplies commenced shall be listed in detail in terms of type, subject matter, scope and time (or period).

b) Advance payments and advance payment invoices

If it is known at the time of the advance payment or advance payment invoice that the supply of goods or of service will take place in whole or in part after 31 December 2023, the part of the supply attributable to the period from 1 January 2024 may already be listed at the new tax rate in both the invoice to the customer and the VAT return.

c) Cross-period supplies

Cross-period supplies are supplies that are provided over an annual term and cross-period. These can be maintenance and service contracts, telecommunication contracts, subscriptions or similar. Most of these contracts are invoiced in advance. If a corresponding annual contract is concluded, for example, from 1 June 2023, the invoice must split the remuneration between the performance period before and after 1 January 2024 and show the applicable VAT rates accordingly. Otherwise, the taxable person must invoice the entire supply at the higher VAT rate.

If the supplier does not know at the time of sale until 31 December 2023 whether it will provide the supply by 31 December 2023 or only after this date because the recipient determines the time of provision of the supply and because the validity date does not explicitly begin after 31 December 2023, then exceptionally the time of sale will determine the VAT rate. However, if the supplier is aware that performance will have to be made for at least a certain period after 31 December 2023, this minimum period must exceptionally be used for allocation of the fee pro rata temporis.

For other cross-period supplies (without an annual period) such as (opted) rents, leasing contracts, construction services, services of electricity or gas plants, etc., an accrual-based apportionment requirement must arise in 2023. If it is not clear from the invoice when and to what extent services were rendered and what share of the remuneration is attributable to the respective services, the total remuneration is subject to the higher VAT rate.

d) Price reductions, sales bonuses, returns and rescission of the service
Reductions in considerations (discounts, notices of defects or losses) for the supply of goods or of service rendered prior to 1 January 2024 must be corrected at the previous tax rate. The same shall apply for sales bonuses as well as returns and cancellation of the performance.

3. Settlement with the FTA/corrections/default interest

According to the FTA's practise, revenue at the new tax rate can only be declared as of the Swiss VAT return for the 3rd quarter of 2023. If supplies are already subject to the new tax rate previously, those supplies have to be reported in the corresponding quarterly VAT return at the previous tax rate (i.e. current VAT rate) and corrected at a later stage, if required – at the latest during the finalisation period for the tax period 2023 (i.e. until 30 August 2024). If the adjustment is already made in a VAT return for the second half of 2023 and the tax amount is paid on time, no default interest is due. If, on the other hand, the adjustment is only made at the time of finalisation with the adjustment statement for tax period 2023, default interest is due. If the interest amount does not reach the amount of CHF 100, late payment interest is usually not charged in such case.

Clara Bodemann
c.bodemann@
wengerviel.ch

Contact

Germany

Anton Appel

anton.appel@wts.de
T +49 211 20050-831

WTS Germany

Klaus-Bungert-Straße 7
40468 Düsseldorf
wts.com/de

The Netherlands I

Sanne Fresow

sf@atlas.tax
T +31 644278156

Atlas Tax Lawyers

Weteringschans 24
1017 SG Amsterdam
<https://atlas.tax>

The Netherlands II

Ingmar Mul

im@atlas.tax
T +31 6 81 45 36 25

Atlas Tax Lawyers

Weteringschans 24
1017 SG Amsterdam
<https://atlas.tax>

Poland

Olga Palczewska-Wielińska

olga.palczewska@wtssaja.pl

Monika Junyszek

monika.junyszek@wtssaja.pl
T +48 61 643 45 50

Doradztwo Podatkowe

WTS&SAJA Sp. z o.o.

Budynek Bałtyk, XIII p
ul. Roosevelta 22
60-829 Poznań
<https://wtssaja.pl>

Spain

Marc Pujol

marcpujol@arcoabogados.es
T +34 934 871 020

ARCO Abogados y Asesores Tributarios-

Beethoven 15, 5
08021 Barcelona
www.arcoabogados.es

China

Ened Du

ened.du@wts.cn

Patrick Ding

patrick.ding@wts.cn
T +86 21 5047 8665

WTS China

Unit 06-07, 9th Floor, Tower A,
Financial Street Hailun Center
No.440 Hailun Road
Shanghai, China 200080
www.wts.cn

Switzerland

Clara Bodemann

c.bodemann@wengervieli.ch
T +41 58 958 53 16

Wenger Vieli AG

Dufourstrasse 56
8008 Zürich
www.wengervieli.ch

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For more information please visit wts.com

Imprint

WTS Global
P.O. Box 19201 | 3001 BE Rotterdam
Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com | info@wts.de

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