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WTS Value Added Tax Newsletter

Editorial

Dear Reader,

It is our pleasure to present the WTS Global VAT News edition for Q1 2019.

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

We continue to report on the taxation of electronic services. In this issue **Malaysia** reports on the new regulations for the taxation of electronic services which could lead to new registration duties of foreign suppliers in Malaysia in B2C cases.

This newsletter also describes the introduction of new obligations for payment service providers within **EU** e-commerce.

In addition to our quarterly WTS Global VAT News we would like to share our first VAT update for the Digital Economy. The reason being the final weeks of 2018 and the first month of 2019 proved to be of significant importance for online service providers, webshops and online marketplaces. From an indirect tax perspective, one could say that 2018 went out with a bang and 2019 is off for an interesting start. Perhaps even more so because the new EU VAT rules on "vouchers" apply as of January 1st, 2019, as do the new VAT rules relating to "Small and Medium Sized Enterprises" (SME's) rendering electronic services on a B2C basis. In addition, the EU VAT Committee published two so called working papers in which it shared their views on three highly important VAT issues that online service providers face, i.e. the "data as currency" discussion, the VAT treatment of online platforms, and the VAT status of customers that do not provide their VAT identification numbers (i.e. B2B or B2C).

We hope you find both publications useful and welcome your feedback and suggestions.

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

Kind regards,

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Contents

Belgium: Belgian authorities take a more flexible stance on VAT penalties 3

Bulgaria: Submission of information on sales through online stores 4

China: New export VAT refunds 5

Czech Republic: Application for a general reverse-charge mechanism 6

European Union: E-commerce: New obligations for payment service providers introduced 7

Germany: Supply of goods via consignment stock as of 2019 – update 8

Hungary: Most important changes to Hungarian VAT law 8

Ireland: Changes brought about by the 2019 finance bill 9

Malaysia: Service Tax on Cross-Border Services – the onus on Malaysian customer or foreign service provider? 10

The Netherlands: Zero VAT rate for seagoing vessels 11

Romania: Extension of reverse-charge mechanism for specific transactions until 30 June 2022 12

Russia: Change of VAT rate in Russia from 18% to 20%: transition period 13

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

Belgium

Belgian authorities take a more flexible stance on VAT penalties

Belgian authorities have adopted a new policy for issuing VAT-related penalties. Traditionally, Belgian authorities have applied a strict policy when it comes to issuing penalties. Each VAT error is subject to a proportional or a non-proportional penalty, even if the taxpayer acted "in good faith". The new policy is intended to make the penalty regime less strict, taking into account the concept of "good faith". However, the conclusion is that Belgian VAT policy generally remains rather strict compared to that of other EU member states.

Firstly, it is important to note that when a taxpayer is issued with a VAT penalty, the taxpayer must still request a waiver from this penalty, as no automatic relief is granted. What is new, however, is that once requested, a full waiver will in principle be granted provided the following conditions are all met:

- The penalty relates to a first offence of that type during a four-year period.
- The taxpayer committed the offence "in good faith" i.e. without fraudulent intent. "Good faith" is presumed and it is for the tax administration to prove "bad faith".
- The penalty is not for an action concerning a VAT amount owed that has not been paid.

Generally speaking, the new policy covers penalties issued for not complying with VAT reporting obligations, such as not issuing a fully correct invoice or the late filing or non-filing of a European sales listing or annual sales listing, etc. The full list of errors can be found in the instruction. Nevertheless, it must be emphasised that the late filing or non-filing of the periodic VAT return is outside the scope of this new policy. As such, the scope of this new policy remains limited in practice.

Another new element is that for transactions for which no VAT needed to be invoiced, the penalty may also be lower than the minimum set out in Royal Decree No. 41. Such transactions include the import of goods under the import deferral scheme (ET 14.000 licence), the purchase goods and services under the reverse charge mechanism and the purchase of IC services and goods. Instead of penalties ranging between 5–20%, the following penalties apply:

- First offence: Waiver
- Second offence: 2%
- Next offence: 5%

A final aspect worth highlighting follows from the Court of Justice of the European Union's case law (the *Barlis* and *Senatex* cases). In principle, input VAT can only be recovered if a VAT-compliant invoice has been provided. If an incorrect invoice is discovered in a VAT audit, then the input VAT recovery cannot be denied solely on this basis. Once the invoice has been corrected, the input VAT recovery should be granted. Before, it was unclear until which point the invoice could be corrected. The new policy now states that this is possible until a legal warrant or court claim has been issued.

Finally, the instruction includes a detailed list of circumstances that could be used in a request for a waiver or reduction of fines. If faced with VAT penalties, taxable persons should check this list to determine the chance of such a request succeeding. The new approach will be applied to all penalties issued from 1 January 2018 onwards and for which a request has been filed after 1 April 2018.

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Bulgaria

Submission of sales information via online stores

On 28 December 2018, new requirements for persons selling online were introduced in Bulgarian tax legislation for the first time. The purpose of these changes was to enable the Bulgarian National Revenue Agency (NRA) to access information about persons selling via online stores, as well as to maintain a public list where anyone is able to verify the owner of a specific online store.

Who do the new requirements apply to?

The new requirements apply to traders resident in Bulgaria as well as to foreign taxable persons registered for VAT purposes in Bulgaria who sell goods or services through an online store, irrespective of whether they use their own domain, a leased domain or another party's domain which provides a platform for selling online.

Under the legal definition, an online store is an Internet website through which sale of goods/services is conducted by concluding a distance contract under Article 45 of the Consumer Protection Act, and which has built-in functionality for selecting, adding and removing goods/services to/from a shopping basket; submitting information about the buyer and the delivery address; and choosing a payment method.

What obligations do persons selling via an online store have?

Persons who sell goods or services via an online store are obliged to submit certain information to the NRA prior to trading through their online store. The information must be submitted electronically with a verified electronic signature using an electronic service in the NRA e-service portal. If a trader offers goods or services through several online stores, information must be submitted separately for each store.

In the event of changes to the declared data or the online store ceasing trading, up-to-date information must be submitted to the NRA within seven days of the change being made or trading via the online store ceasing.

In addition, these persons are obliged to store the information generated by the online store software (the current database and archived copies of the database) until expiry of the ten-year statute of limitations for payment of the respective tax liabilities under the Bulgarian Tax and Social Security Procedure Code.

What information needs to be submitted to the NRA?

The information that must be submitted to the NRA before the online store starts trading includes:

- **Information on the online store** – Name, domain, information about the store's domain owner, where the store's website is hosted, who maintains the store's website, what software is used and where the software database is stored, start and end date of the store's operations;
- **Information on the person selling via the online store** – Name, title, registered address, address where business is conducted, email address and phone number, VAT registration status;

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- **Information on online sales** – Whether sales are made via an online platform or proprietary store, what goods and services are sold.

All required information must be provided in accordance with a template declaration.

What is the deadline for persons already selling online to submit information?

If, as of the date the new requirements for online stores enter into force (28 December 2018), the persons in question are already operating commercially via an online store, they must submit the required information to the NRA no later than 28 March 2019.

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China

New export VAT refunds

Background

The trade conflict between China and the United States escalated in 2018, casting a shadow of doubt over the export business. The Chinese government has implemented a series of measures to encourage foreign trade and mitigate the damage caused by the trade conflict.

In the last quarter of 2018, China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued a notice (Caishui [2018] No. 123) which increased the export VAT refund rates of certain products. Furthermore, the SAT also issued Announcement [2018] No. 48 to improve the classification of businesses and the efficiency of export VAT refunds.

Increase in export VAT refund rate

The product categories and rates affected by Caishui [2018] No. 123 are summarised below:

Products	Export VAT refund rate (before 1 November 2018)	Export VAT refund rate (from 1 November 2018)
Photographic paper and film, plastics, bamboo floor coverings, straw woven fabrics, tempered safety glass, lamps, etc.	13%	16%
Lubricants, aircraft tyres, carbon fibre, certain metal products, etc.	9%	13%
Certain agricultural products, bricks, tiles, glass fibre, etc.	5%	10%
Soybean meal	13%	Export VAT refund has been cancelled.
Other products	15% 9% 5%	16% 10% 6%

The new export VAT refund rates took effect on 1 November 2018.

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Simplified classification procedures and export tax refund process

Announcement [2018] No. 48 contains the following provisions to improve the efficiency of export VAT refunds:

I. Revision of classification procedures for export tax refund applicants
   - Broadens the criteria for categories 1 and 2, allowing more entities to benefit from a fast-track process (i.e. completion of export tax refund formalities within five working days for category 1, ten working days for category 2);
   - Reduces the frequency of category assessment;
   - Reduces assessment timing to 15 working days.

II. E-declaration for export tax refunds
   - Paperless declarations must be made in all areas in categories 1 and 2.

III. Strong support for the development of foreign trade
   - Encourages foreign trade service companies to perform tax refunds on behalf of medium-sized and small enterprises;
   - Provides training to foreign trade service companies on establishing an internal risk control framework.

IV. Provision of export tax refund (exemption) services to enterprises.

WTS observation

→ The export VAT refund rates for many products have been increased. For certain products, businesses can enjoy a full VAT refund of 16%. The increase helps to reduce export costs for Chinese companies and offset certain negative effects of the trade conflict between China and the US.

→ The Chinese government is to curb the exportation of soybean meal by removing the export refund. This is aimed at directing more supply towards the domestic market.

→ Adjustments to the categorisation and implementation of e-declarations may improve the efficiency of refunds. More export companies are expected to benefit from the change, which should mean less auditing and faster refunds.

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Czech Republic

Application for a general reverse-charge mechanism

The Czech Republic has recently submitted a request to the European Commission for the option to use the general reverse-charge mechanism. This scheme would be applicable to all taxable supply of goods and services exceeding €17,500 (CZK 450,000). After approval by the European Council, the corresponding legislative process will be launched in the Czech Republic. The amendment is expected to enter into force on 1 July 2020.

The effort to implement a general reverse-charge mechanism stems from the goal of preventing VAT carousel fraud. The Czech Republic is already using reverse charge in all sectors in which existing EU legislation permits its use. The general reverse-charge mechanism, together with control reporting and electronic sales records ("EET"), would be the main pillars of tax reforms aiming to reduce the gap between expected and collected VAT.

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European Union

E-commerce: New obligations for payment service providers introduced

On 12 December 2018, the European Commission launched a new proposal for a Council Directive introducing certain requirements to be imposed on payment service providers involved in cross-border e-commerce transactions. The requirements laid down in the proposal are meant to facilitate member states' fight against VAT fraud in e-commerce. If approved, member states will have to adopt and apply these measures from 1 January 2022.

Which e-commerce transactions are being considered in the proposal?

The new e-commerce proposal is specifically aimed at the **cross-border** supply of goods and services to end consumers in member states of the European Union. In other words, this covers situations where the VAT is due in the consumer's member state and the supplier is based in another member state or in a third country. As end consumers do not have any VAT or accounting obligations, a risk emerges of fraudulent businesses exploiting this situation to avoid VAT liability in the member state of consumption.

What requirements will be imposed on payment service providers?

Since payment service providers are often involved in executing payments in e-commerce transactions, the European Commission's proposal would require that information on certain cross-border payment transactions now be made available – within the legal framework of administrative cooperation and the exchange of information between member states – to the tax authorities of member states. This would be done via **sufficiently detailed records containing specific information** (such as the payer and payee's identity, amount, transaction date, the member state the payment originated in, etc.). It is expected that payment service providers should be able to determine this information based on the payer and payee's IBAN or BIC numbers in the respective member states.

Note that these requirements will only apply if the payment service provider (i) transfers funds from a payer located in one member state to a recipient in another member state or third country and (ii) executes more than 25 payment transactions to the same payee per calendar quarter. In such cases, the payment service provider will have to keep the required records electronically for a period of at least two years starting from the end of the year in which the payment transaction took place.

Which payment service providers will be affected by the above requirements?

"Payment service providers" refers to all bodies envisaged in Article 1, paragraph 1, points (a) to (f) of the Payment Services Directive 2015/2366, not benefitting from the exemption laid down in Article 32 of the same Directive, and established in the European Union. In practical terms, this includes credit institutions, electronic money institutions, payment institutions, post office giro institutions, but also the ECB and national central banks and other public authorities when they are not acting in their capacity of monetary authority or public authority.

Once introduced, it will be important for payment service providers involved in e-commerce transactions to comply with the proposed records obligations in order to avoid liabilities in the member states concerned. This will require sufficient preparation by all payment service providers should this new directive be approved by the Council.

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Germany

Supply of goods via consignment stock as of 2019 – update

In October 2017, the German Ministry of Finance published the German Federal Tax Court's ruling on how VAT should be handled with respect to goods supplied via consignment stock by foreign suppliers in the German VAT Circular. According to these new rules, the foreign supplier no longer needs to be registered for VAT in Germany in certain situations, e.g. if the customer is already known prior to the goods being dispatched, a direct supply of goods is assumed, or if the goods are temporarily stored in consignment stock. According to the German Ministry of Finance, this applies to cases in which customers have contractually committed to ordering goods or have paid for them before they are dispatched.

The mandatory application of these new rules has been postponed several times. At the end of 2018, the German Ministry of Finance further extended the transition period to 1 January 2020. At that point in time, the new European simplification rule (pursuant to the "quick fixes" passed in October 2018) will come into force in all EU member states. The new European simplification rule differs in some respects from the current German approach. Under the extended transition period, businesses only need to review their supply of goods via consignment stock or other warehouses once to determine whether they comply with the new (EU) rules or whether changes to agreements and procedures are required.

Until then, supplies via consignment stock in Germany from foreign suppliers will continue to be generally regarded as intra-Community acquisitions or imports by the foreign supplier into Germany, followed by a local supply of goods. This generally means that the foreign supplier is required to register for VAT in Germany.

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Hungary

Most important changes to Hungarian VAT law

VAT exemption for services relating to export of goods

The Hungarian law provision allowing the exemption of VAT for services directly pertaining to goods transported outside the EU was amended in order to be compliant with the European Court of Justice's ruling in ECJ case C-288/16.

Under the Court's judgement, the exemption on services for transactions pertaining to the transport of goods to a third country does not apply to the supply of services in which the services are not provided directly to the consignor or the consignee of those goods.

Pursuant to the above judgement, a new provision was added to the exemption rule in Hungarian VAT law stating that the exemption for services pertaining to goods transported outside the EU is applicable only if the services are rendered directly to the party exporting the goods.

VAT on rental cars

From 1 January 2019, 50 per cent of the VAT on car rentals may be deducted, including for private use. The VAT deduction rate may be changed to the business use rate if proper documentation of the business use is submitted.

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VAT on new residential properties

Under certain circumstances, the application period of 5 per cent VAT on the sale of new residential properties was extended.

Local reverse-charge mechanism

The reverse-charge mechanism on the sale of agricultural and steel products continues to apply after 31 December 2018.

Vouchers

Provisions regarding the sale of vouchers had been introduced to the VAT law. Under the new rules, the sale of single-purpose vouchers qualifies as a sale of goods or services, while the sale of multi-purpose vouchers is taxable only at the time of redemption.

Retroactive VAT deduction

The retroactive deduction of VAT charged before the registration was also possible previously. However, according to the new regulations, such VAT can be considered VAT-deductible during the assessment period (including the date of registration).

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Ireland

Changes brought about by the 2019 finance bill

As in the previous edition of the VAT newsletter, no significant changes have occurred in VAT compliance/legislation which require comment. However, since the Q3 edition, the Department of Finance has released the 2019 budget statement which has had some effect on various business sectors; details are outlined below:

Changes to the 9% VAT rate

Previously, the 9% VAT rate was a special reduced rate applied to the supply of goods and services by certain business sectors, principally the tourism sector (including the hotel and restaurant sector). The 2019 finance bill confirms that affected goods and services (hotels, restaurants) which were previously subject to VAT at 9% will be subject to VAT at 13.5% with effect from 1 January 2019.

An exception has been made for the provision of sporting facilities and the supply of newspapers and certain other periodicals which will retain the 9% rate.

The finance bill also confirms that the VAT rate on certain electronic publications will reduce from 23% to 9% on 1 January 2019.

Use and enjoyment provisions relating to pre-paid telephone cards

As of 1 January 2019, the finance bill removes the entitlement of telephone card suppliers to reduce the VAT already paid on the supply of telephone cards when they are used by Irish private consumers to access a telecommunications service from outside the EU.

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Malaysia

Service Tax on Cross-Border Services – the onus on Malaysian customer or foreign service provider?

Effective 1 September 2018, Malaysia implemented a 6% Service Tax, which is characterized as a narrow-base taxation as it applies to only 8 group of services; including management services, information technology services, accounting services, legal services, consultancy services and so on. These services are known as "taxable services".

In an effort to widen the scope of Service Tax to include services rendered from overseas, the following amendments have been recently announced.

(1) Imported Service Tax on B2B Services effective 1 January 2019

This rule applies to business-to-business (B2B) transactions – more specifically, where a foreign service provider provides any taxable services to a Malaysian business customer.

The foreign service provider is not required to register for Service Tax in Malaysia (unless there's fixed establishment in Malaysia). Instead, the Malaysian business customer is required to self-account for 6% Service Tax and remit the same to the Malaysian Customs. This is known as the imported service tax, and is effective 1 January 2019.

The imported service tax applies at the time when the Malaysian business customer receives the invoice (or at the payment date - if the payment is made before the invoices is received).

Given that the Service Tax is not a multi-stage tax system, there would be no input tax credit available in respect to the Service Tax. The same would be an additional cost to the Malaysian customer.

The requirement for the Malaysian business customer to self-account for the 6% Service Tax applies even if such person is not service tax registered.

According to Customs guidelines, the Minister would grant a relief in respect of certain taxable services provided by a foreign service provider within the same group as the Malaysian business customer. This, however, is subject to conditions.

(2) Foreign Businesses that provide online B2C Services are required to register and charge Service Tax effective 1 January 2020

While the Malaysian business customer is expected to self-account for Service Tax on services procured from foreign service providers, it is not practical to expect the same when the service is procured by a Malaysian consumer (i.e. an individual for non-business consumption). As such, it has been announced that foreign businesses that provide services to Malaysian consumers would be required to register for service tax and charge service tax effective 1 January 2020.

The law for the B2C (business-to-consumer) services are yet to be enacted and hence full details are not known at this juncture.

Based on the information available so far, it appears that not all B2C service providers would be required to register for Service Tax. Instead, only those who provide services that fall under the concept/category of "online services" would be subject to this requirement. Some examples given by the Government for "online services" are downloaded software, music, video and digital advertising. Of course, these examples are not exhaustive.

It is presumable that the requirement for foreign service providers to register for Service Tax would apply even if such person does not have any fixed establishment or physical presence in Malaysia.

Foreign businesses that provide services to Malaysian consumers/individuals are advised to assess their potential exposure to this new rule and, if necessary, make the necessary preparations to comply.

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The Netherlands

Zero VAT rate for seagoing vessels

The European Commission had remarked that the application of the zero VAT rate (exemption with credit) in the Netherlands for seagoing vessels was too broad. Therefore, in 2017, the Dutch Government announced that Dutch VAT legislation for the application of the zero VAT rate for (supplies to) seagoing vessels would be amended with effect from 1 January 2018. Under the old legislation, seagoing vessels did not actually have to navigate on high seas, they only needed to be capable of doing so. Under the new legislation, the definition of a seagoing vessel is stricter. After consultation with the maritime sector, the changes were postponed until 1 January 2019. In November 2018, the Deputy Finance Secretary issued an explanatory decree to provide some guidelines.

From 2019, the zero VAT rate can only be applied if the vessel (a) operates at 70% or more on high seas and (b) is 100% used commercially.

Operates at 70% or more on the high seas

The vessel not only needs to be able to operate on high seas (outside the twelve-mile zone) but must actually do so for at least 70% of the distance or time sailed.

If a vessel is registered with the International Maritime Organization (and thus has an IMO number), it is assumed that it is capable of operating on high seas. Vessels that are not mandatorily registered with the IMO must provide other proof, e.g. a certificate of registration for the vessel.

The operator may calculate actual usage based on information from the previous year on (a) distance sailed, (b) number of voyages or (c) operating time. The operator may also use the weighted average of the previous five years for one of the three methods.

100% commercial use

Commercial use is defined as passenger transport (not yachts) or industrial, trading or fishing activities. The zero VAT rate cannot be applied if the vessel is also used for private purposes (for example captain's leisure trips).

Statement

When goods and/or services are provided to the operator of the vessel, it must be determined whether the zero VAT rate can be applied. To this end, a statement must be provided by or on behalf of the operator to the supplier confirming that the vessel meets the 70% and 100% criteria. It is sufficient to provide this statement once a year.

However, this statement does not automatically exonerate the supplier in the event of the zero VAT rate being used incorrectly. The decree provides an example case of the zero VAT rate being applied to a yacht where it is not apparent that the criteria for the zero VAT rate have been met. Use of the zero VAT rate can also be denied in cases of fraud.

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Romania

Extension of reverse-charge mechanism for specific transactions until 30 June 2022

The VAT reverse-charge mechanism (also known as "simplified procedures") is applicable in Romania for specific transactions between two Romanian VAT payers. The main condition is that both the seller and the buyer are registered for VAT purposes in Romania and that the supply takes place within Romania.

The reverse-charge mechanism is mandatory for applicable transactions as Romania has one of the highest VAT gaps as regards uncollected VAT. In this respect, the seller issues the invoice without VAT and the buyer records the VAT both as input and output VAT, offsetting one another.

Provided that both the seller and the buyer are Romanian VAT payers, the main local goods and services subject to this reverse charge mechanism are as follows:

- Sale of ferrous and non-ferrous wastes
- Sale of wood
- Sale of cereals
- Sale of electrical energy
- Sale of construction, partial construction, land (subject to the VAT regime by option or by law)
- Sale of mobile phones
- Sale of devices with integrated circuits
- Sale of PC tablets or laptops

As most of the above transactions could have been invoiced without VAT until 31 December 2018, Romania requested the extension of this mechanism to combat VAT fraud in these specific areas.

In this respect, EU Directive 2018/1695 was published in the Official Journal of the European Union as of 12 November 2018, allowing member states to regard the buyer as the person liable for VAT for specific local transactions until 30 June 2022. 30 June 2022 represents the date on which the new EU VAT Directive is envisaged to enter into force.

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Having considered the above EU Directive and the current approach of the Romanian Ministry of Finance, the Romanian authorities will most probably modify the Romanian Fiscal Code so that the reverse-charge mechanism may continue to operate after 1 January 2019.

Russia

Change of VAT rate in Russia from 18% to 20%: transition period

On 1 January 2019, the standard Russian VAT rate increased from 18% to 20% under the Federal Law of 3 August 2018 No. 303-FZ. The reduced VAT rate of 10%, applied to certain socially significant goods, remains unchanged.

The change in the VAT rate affects Russian companies and foreign companies doing business in Russia. This article clarifies some issues related to the transition period arising for foreign companies without a Russian tax ID.

Foreign companies with a Russian tax ID are liable for calculating and paying VAT in the same way as Russian companies. If a foreign company without a Russian tax ID provides goods, works or services (hereinafter "GWS") to its Russian customers, the VAT amount should be withheld by Russian customers acting as tax agents.

Russian customers should be liable to withhold VAT if the place of supply of the GWS is treated as being in Russia. Goods are treated as sold on Russian territory if the goods originated in Russia. Works/services are treated as sold on Russian territory if such works/ services concern property located in Russia. Furthermore, Russian tax law contains a list of services treated as sold on Russian territory if the buyer is registered in Russia (e.g. transfer of licences, software development, consulting, accounting services, etc.).

Tax agents use the whole price of the GWS provided by foreign companies to calculate VAT. In this case, the VAT amount is settled at a calculative rate: 20/120, equivalent to 16.67% (until 2019: 18/118, equivalent to 15.25%). Generally, the VAT amount should be withheld from every payment for purchased GWS (advance and final payments). Therefore, some issues may arise if a contract with a Russian customer covers 2018 and 2019. Clarifications for such cases were issued and outlined by the Russian Federal Tax Service in Letter No. SD-4-3/20667@ of 23 September 2018.

In practice, some controversial issues have arisen relating to the calculation of VAT. Possible solutions to such issues are presented below:

1) Foreign company that has received an advance payment from a Russian customer in 2018 for GWS to be provided in 2019; final payment to be made in 2019 after delivery of GWS;

   The Russian customer was liable to withhold VAT from the advance payment amount at the tax rate of 15.25% as a tax agent. When the final payment is made, the Russian customer will be liable to withhold VAT at the rate of 16.67%.

2) Foreign company that has provided GWS to a Russian customer in 2018. The Russian customer will pay the total amount in 2019 after delivery;

   The Russian company will be liable to withhold VAT at the rate of 15.25% as delivery of the GWS was made before the VAT rate increase.

3) Foreign company that provides GWS to a Russian company in 2019. Settlements will be made in 2019.

   The Russian company should calculate and withhold VAT at the tax rate of 16.67% for any payments made to foreign contractors.

Russian tax law does not contain an obligation to amend contracts. However, provisions of contracts regarding connected settlement procedures and the value of GWS may be amended on a voluntary basis.

If a foreign company provides electronic services to Russian customers (individuals/legal entities), the company is liable for being registered as a VAT taxpayer in Russia and must itself pay VAT at the rate of 16.67%. For a more detailed description of Russian VAT rules with respect to the provision of e-services, please refer to our previous article in WTS Global VAT Newsletter Q4 2018.

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