

WTS Value Added Tax Newsletter



Editorial

Dear Reader,

Again, in the second half of 2020, global developments in terms of VAT and GST continue, allowing us to share some of those insights with you in our third edition of the 2020 WTS Global VAT Newsletter.

As the economic and social impacts of the **coronavirus disease** (COVID-19) continue to challenge the world, WTS Global continuously updates an overview of the measures taken by various countries to respond to the tax aspects of this crisis:

<https://wts.com/global/insights/covid19>

In the EU, **Greece** has reshaped the VAT treatment of the real estate sector and **Ireland** aims at encouraging consumption with a temporary cut in VAT rates.

Besides that, **other countries** are also modifying their VAT or GST rules, such as **Azerbaijan**, which has recently implemented a VAT action plan.

Chile concentrates on further elaborating its VAT legislation on digital services, whereas **China** takes even more comprehensive actions by working on e-VAT-invoicing, free trade ports and VAT rate cuts.

In **India** a new e-invoicing system for B2B supplies will be implemented from October 2020.

In the Q3 2019 newsletter, we reported on the new **Malaysian Digital Service Tax** ("DST") which took effect on 1 January 2020. Many (foreign) companies have failed to register for this tax in Malaysia and are now facing penalties.

Only after major changes in the VAT laws of **Nigeria** in 2019, amendments have now been made regarding tax filing procedures and VAT exemptions.

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

Yours sincerely,

Jürgen Scholz

Gabriele Heemann

WTS Global VAT Team

Contents

I. EU Member-States

Greece: VAT suspension for newly developed real estate properties 3

Ireland: Reduction VAT standard rate 4

II. Other countries

Azerbaijan: VAT action plan 5

Chile: New VAT Legislation for Digital Services 6

China: VAT refinement continues 7

India: Implementation of e-invoicing system for B2B supplies from October 2020 8

Malaysia: Malaysian Digital Service Tax - Did you miss the boat on 1 January 2020? 9

Nigeria: VAT changes 10

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

Greece



I. EU Member-States

VAT suspension for newly developed real estate properties

According to Article 39 of Law no. 4646/2019, a VAT suspension covering the period from 12 December 2019 to 31 December 2022 has been implemented, applicable to construction companies for sales of newly developed buildings.

The VAT suspension is optional and companies have to submit applications in order to be included in the VAT suspension regime. Tax authorities review the application and issue the final decision for each applicant. If a property is included in this regime, the deductible input VAT related to the construction period can be settled.

Furthermore, instead of VAT, a real estate transfer tax of 3% shall be applicable to the sale of properties (or inheritance) for the companies under this regime. In the case of a new building permit, issued after the application and before the tax authority's decision, a new application is required.

Application process

- Submission of application to the tax authorities
- Submission of an unsold/unallocated properties list
- Submission of a general ledger for construction costs

Deadline for submission

- › 6 months as of 12 December 2019 for previously issued building permits
- › 6 months as of the issue date for new building permits issued after 12 December 2019

Tax office review & decision

Following the submission of documents, the tax office reviews and reconciles the list of unsold/unallocated properties with deductible input VAT based on the information provided by general ledgers of construction costs books. The decision will be issued within 10 days of receipt of the application.

Extraordinary VAT return

Construction companies that are subject to this regime file an extraordinary VAT return before the transfer of properties (as sale, inheritance or gift) in order to remit the adjusted VAT related to this property. The VAT due is paid in a lump sum with the submission of a VAT return. The VAT return will be submitted in hardcopy to tax office and the VAT is settled with no further tax audit.

VAT return

Construction companies that are subject to this suspension regime are obliged to submit future VAT returns to deduct input VAT related to the properties sold with VAT and which are under construction. However, construction companies do not deduct input VAT related to unsold properties and properties sold as a first residence for the buyer. Construction companies which have an additional activity code that is subject to VAT can deduct input VAT related to this activity using the pro-rata methodology.

Ireland



Reduction VAT standard rate

In the July 2020 stimulus package, the Irish Government announced that the standard rate of Irish VAT will be temporarily reduced from 23% to 21% for the period from 1 September 2020 to 28 February 2021.

The standard VAT rate applies to around 50% of activity in Ireland and to a wide range of goods and services, including the sale of motor vehicles, adult clothing, alcohol, non-basic foodstuffs, many e-services, professional services and telecommunications.

The breadth of application of the standard rate means that the majority of traders in Ireland will need to consider the impact on their business and changes to systems in order to implement the rate reduction. Consideration should be given to any actions that need to be taken between now and 1 September to ensure readiness for the change. These actions/ issues include:

Issue	What to consider
Systems	Do you know what steps are required to update your systems for the VAT rate cut? Depending on the specific systems, this may either be a simple task or, in other cases, may involve significant work on tax codes and tax determination logic, potentially across multiple systems. Many businesses may have already had a 21% VAT code on their systems from previous years – however, they will need to check whether this code continues to function correctly in terms of calculating VAT and including that VAT in the relevant ledgers and reports. Can the system changes be easily reversed when the rate increases again?
Pricing	Should you factor the VAT rate cut into your pricing? This is particularly relevant for businesses who set their prices on a VAT-inclusive basis, such as retailers or suppliers to businesses with limited VAT recovery.
Product files	Product files may need to be reviewed and managed, noting that this is a temporary, not a long-term, change.
Contracts	Do your existing contracts state prices on a VAT-exclusive or VAT-inclusive basis and do you need to engage with any of your suppliers or customers with respect to the VAT rate change?
Timing	How do you determine whether the 23% or 21% rate applies to transactions spanning both periods? Working out the tax point of specific supplies can be complex but will take on increasing importance. Relevant factors can include whether the supply is a discrete transaction or a continuous supply, the time that the payment is made and whether you are selling to a consumer or another business.
Partially-exempt businesses	If your business cannot fully recover VAT, can you maximise the benefit of the VAT rate cut?

Credit notes	What if you raised an invoice charging 23% VAT but the customer requests a credit note after the VAT rate has changed? This may involve applying the 23% rate during the period of the VAT rate reduction. Can your system deal with these scenarios?
Direct debit	If your business pays VAT to Revenue on a monthly direct debit basis, can the direct debit payment be reduced in light of the VAT rate decrease?
Advance Payments	How to treat advance payments/payments on account received in advance of the VAT rate change
Import guarantees	If your business has an import VAT deferment account, can the level of bond or guarantee be reduced to take into account lower VAT import payables?
Non-Irish businesses	Businesses established outside of Ireland may still be affected by the change. For example, businesses making supplies to Irish consumers of electronically supplied services, broadcasting and telecom services, as well as remote sales of goods to Irish consumers exceeding EUR 35,000 per annum.

Andrew Gelling
andrew.gelling@
agellingtax.com

II. Other countries

Azerbaijan



VAT action plan

The Cabinet of Ministers of the Republic of Azerbaijan adopted an action plan in accordance with paragraph 10.2 of Order No. 1950 of the President of the Republic of Azerbaijan dated 19 March 2020. The action plan dated 4 April 2020 covers three main spheres:

- I. Economic growth and support for entrepreneurship;
- II. Support for employment and social welfare;
- III. Macroeconomic and financial stability.

In accordance with this action plan, tax incentives and holidays to enterprises operating in areas affected by the pandemic are provided for by the amendments to the Tax Code of the Republic of Azerbaijan. The Law on Amendments was approved by the Order of the President of the Republic of Azerbaijan dated 2 June 2020.

The amendments cover the following areas within the tax legislation framework

- newly added and amended concepts;
- tax incentives for taxpayers working under different tax regimes;
- other incentives for taxpayers operating in areas affected by the coronavirus pandemic;
- tax incentives for micro-entrepreneurs;
- incentives for all entrepreneurs;
- tax exemptions in the field of imports.

As per the Law on Amendments, the sale of goods with export, in accordance with the procedure established as determined by the relevant executive authority, is taxable with zero-rate VAT.

As a result of the spread of the coronavirus pandemic, a temporary exemption from VAT for all entrepreneurs is provided for:

Rahil Mammadov
rmammadov@
gratanet.com

- medical equipment and accessories necessary in the fight against the coronavirus pandemic;
- certain types of food related to meeting the needs of the population for food;
- food for children.

Chile



New VAT Legislation for Digital Services

As of 1 June 2020, foreign companies providing digital services have to apply 19% VAT in Chile. The measure mainly affects foreign digital platforms that provide digital services located in Chile.

This tax obligation only applies to foreign taxpayers, without domicile or residence in Chile, who provide remote services to be used in the national territory by individuals or legal entities who are not VAT taxpayers.

1. The intermediation of services rendered in Chile or sales made in Chile or abroad, provided that the latter results in an import (of goods);
2. The supply of digital entertainment content, such as videos, music, games or other analogous content, by means of downloading, streaming or other technology, including texts, magazines, newspapers and books.
3. The supply of software, storage, computing platforms or infrastructure.
4. Those who carry out advertising, regardless of the medium through which it is delivered, materialised or executed.

Certain digital services as B2B transactions subject to withholding tax or commission charged by a non-Chilean resident platform to foreign service or sales providers are out of the scope of VAT.

The service will be considered to be used in Chile if at least two of the following conditions are met:

1. the IP address of the device used or other geolocation mechanism indicate that the user is in Chile;
2. the payment method used is issued or registered in Chile;
3. the address indicated for billing or issuance of the payment receipt is in Chile;
4. the SIM card of the mobile phone through which the service is received has Chile as its country code.

Regarding the penalties, the non-payment or late payment of VAT can trigger an interest of 1.5% for each month the VAT is **not reported and paid**. Also, fines of between 10% and 60% may fall due.

On the other hand, in order to register and comply with the declaration and payment of this tax, the Internal Revenue Service has enabled a special website: <http://www.sii.cl/vat/index.html>. On the website, companies affected by VAT on digital services, but which are neither domiciled nor residing in Chile, must register.

Regarding this registration, the Internal Revenue Service has indicated that it does not constitute a Permanent Establishment. On said website, taxpayers can choose whether they will report VAT on a monthly or a quarterly basis, as well as the currency (euro, dollar or pesos) in which the tax will be paid.

Loreto Salas
lsalas@
egybabogados.com

China



VAT refinement continues

China has recently launched certain measures to simplify VAT filing procedures, especially on VAT invoicing procedures.

For some time, taxpayers were required to conduct an online assessment for all input VAT invoices on a monthly basis and also within 180 days after the issuance date of VAT invoices. Failure to meet these requirements would lead to the loss of input VAT credits. The process was quite a hassle to taxpayers.

As a new practice, as of 1 March 2020, these requirements have been abolished for any VAT invoices dated after 1 January 2017. Instead, a simple online confirmation by the taxpayers will suffice. Furthermore, even VAT invoices issued before 31 December 2016 are also eligible as input VAT credit without the need for the aforementioned online assessment. This helps to shorten the lead time for VAT filing.

In addition, the new e-VAT invoicing practice has been intensively put on trial since 2019. It is expected that VAT paper invoices will soon be abolished, pending an official announcement. In relation to e-invoicing, the Ministry of Finance has also issued a circular allowing entities meeting certain IT requirements to maintain accounting records in electronic versions in lieu of their paper formats.

Another on-going change to the VAT regime will be the continual cut on VAT rates. VAT rates have been on a downward trend recently, as part of the fiscal stimulus to support the economic growth. On 22 May 2020, China's Premier announced the plan to further cut the VAT rates. Businesses in general, especially small- and medium-sized enterprises, are expected to benefit the most from the next cut, in addition to current VAT reliefs implemented to overcome the difficulties caused by the COVID-19 epidemic.

With the founding of a new and the first-of-its-kind free trade port in Hainan Province, as announced on 1 June 2020 by the State Council, it is reported that the VAT practice will be implemented in Hainan in a rather special manner. For example, VAT filing will be further simplified by merging it with the filing of other transactional taxes and will be levied at the final consumption stage instead of all stages of the supply chain. Details will be announced later by the Hainan government.

Conrad Lin
conrad.lin@wts.cn

India



Implementation of e-invoicing system for B2B supplies from October 2020

The GST Council has decided to implement a system of e-invoicing for Business to Business (B2B) taxable supplies of goods and services in India from 1 October 2020. The new e-invoicing system shall be applicable to specified categories of registered persons whose aggregate turnover in the preceding financial year exceeds INR 5000 million (approximately EUR 56 million). The Indian Government has exempted certain categories of persons from the issuance of e-invoicing and display of QR code, keeping in view the nature of services rendered and the practical difficulties in complying with e-invoicing requirements, viz. (a) Insurance company, (b) Banking company, (c) Financial Institution including NBFCs, (d) a Goods Transport Agency, (e) Supplier of Passenger Transportation Service, (f) Multiplex cinemas or single screen cinemas operator, and (g) a Special Economic Zone unit.

All B2B invoices including debit notes, credit notes, export invoices, invoices issued by an Input Service Distributor and self-invoices raised under the reverse charge mechanism will be electronically uploaded and authenticated by the designated Invoice Registration Portal (IRP). Post successful authentication, a unique Invoice Reference Number (IRN) will be generated for such invoice by the IRP. Along with IRN, each invoice is digitally signed and added with QR code. The Invoice Registration Portal (IRP) is not an invoice generating system but a mere invoice validation / verification system. The invoices will continue to be generated using existing accounting software, and subsequently convert the invoicing data into JSON format using the e-invoicing schema, which can then be smoothly pushed and synced with the IRP. However, a JSON file will be required to be uploaded on the designated portal.

The information relating to e-invoicing will be transferred on real-time basis to the Goods and Services Tax Network (GSTN) portal for return filing purposes as well as to the e-way bill portal for tracking movement of goods. Hence, it will eliminate the need for manual data entry while filing outward supply returns as well as generation of e-way bills, as the information is passed directly by the IRP to the GSTN portal. In case of any modifications or amendments to the invoice, it needs to be cancelled fully on the IRN portal and corresponding effect has to be manually made on the GSTN portal. Nonetheless, an e-invoice cannot be cancelled after a period of 24 hours.

Supplies made to B2C, import of goods (as bill of entry is generated by customs department and they are not required to obtain IRN), delivery challans and exempt supply invoices (bill of supply) etc., are not covered in the scope of e-invoicing and will be required to be separately included at the time of return filing.

The basic aim behind the adoption of e-invoice system by tax departments is the ability to pre-populate the return and to reduce the reconciliation problems. Once fully operational, the system will considerably reduce reporting in multiple formats and lead to a reduced tax evasion as the portal will have a complete trail of invoices raised by suppliers as well as facility of matching of corresponding input tax credit claimed.

Malaysia



Malaysian Digital Service Tax – Did you miss the boat on 1 January 2020?

In the Q3 2019 WTS Global VAT newsletter, we highlighted the key requirements of the Malaysian Digital Service Tax (“DST”), which took effect on 1 January 2020.

We have now come to realise that a number of sizeable foreign entities missed the boat on 1 January 2020 and are now in the process of taking the corrective steps.

The threshold to register in Malaysia is RM 500,000 (approximately EUR 100,500) of Malaysian sales [including business-to-business (“B2B”) sales] and this has been expressively outlined in the Q3 2019 publication.

For a Foreign Service Provider (“FSP”) who registers now, here are the penalty exposures:

- Penalty for late application for registration (fine up to RM 30,000 (approximately EUR 6,000) or imprisonment up to 2 years, or both);
- Penalty for late submission of DST-02 returns (fine up to RM 50,000 (approximately EUR 10,000) or imprisonment up to 3 years, or both);
- Penalty for late payment of service tax on digital services due (rate of 10% to 40%); and
- Penalty for failure to issue invoice or document as required by the Act (fine up to RM 30,000 (approximately EUR 6,000) or imprisonment up to 2 years, or both).

Based on experience thus far, the penalty for late payment of service tax on digital services is commonly imposed almost immediately upon submission of DST-02 returns. While we have not seen much enforcement of the other penalties, we urge FSPs to comply with the requirements for invoicing religiously, for both commercial and regulatory reasons.

Ironically, the law does not expressly empower the Royal Malaysian Customs Department (“RMCD”) to waive these penalties for FSPs who come forward voluntarily. Nevertheless, we have made administrative appeals to the RMCD and are in the midst of discussions.

Another important and favorable development is that effective 14 May 2020, intra-group provision of digital services by FSPs shall not be subject to service tax. This exemption is not applicable to FSPs who also provide digital services outside the group of companies. Hence, registered FSPs who are solely providing intra-group digital services may now seek cancellation of registration as an FSP.

Thenesh Kannaa
thenesh@tratax.my

Nigeria



VAT Changes

Introduction

The VAT Act was one of the seven principal tax statutes amended by the Finance Act 2019. This Act came into force on 13 January 2020 and some of the significant changes made to the VAT Act include the following:

- VAT payable by consumers was increased from 5% to 7.5% effective as of 1 February 2020;
- penalties payable by a taxable person for non-remittance within the specified period increased from 5% to 10%;
- the penalty for failure to give notice of change of address or permanent cessation of business was increased from NGN 5,000 (approximately EUR 11) to NGN 50,000 (approximately EUR 110) in the first month and NGN 25,000 (approximately EUR 56) in subsequent months;
- the penalty for failure to register has been increased from NGN 10,000 to NGN 50,000 (approximately EUR 22 resp. EUR 110) in the first month and from NGN 5,000 to NGN 25,000 (approximately EUR 11 resp. EUR 56) in the subsequent months. However, the time within which a taxable person is required to register with the Federal Inland Revenue Service (FIRS) is not specified under the new law as it simply refers to the term "upon commencement of business";
- a threshold for VAT compliance was introduced. Thus, companies with a turnover of NGN 25,000,000.00 (approximately EUR 56,000) or more shall render their tax on or before the 21st day of every month;
- a taxable person who ceases to carry on a trade or business in Nigeria shall notify the FIRS of its intention to deregister for tax purposes within 90 days of such cessation of the trade or business.

Based on the foregoing, the FIRS issued an Information Circular dated 29 April 2020, providing clarifications and guidance on the procedure for the implementation of the VAT provisions of the Finance Act.

Registration of non-resident companies

As regards non-resident companies, the Circular clarifies the provisions of the VAT Act. Worth mentioning is the provision that covers non-resident supplies: a non-resident person making taxable supplies to a person in Nigeria or to a Nigerian resident is required to register for VAT with the FIRS, using the address of the person to whom it is making the supply as its Nigerian address for the purposes of correspondence relating to the tax.

The non-resident entity is required to include VAT on its invoice for the supply of goods or services and the entity receiving the supply in Nigeria is required to withhold and remit the VAT due on the invoice to the FIRS in the currency of the transaction. According to the Circular, a non-resident company which has a fixed base or Permanent Establishment ("PE") in Nigeria is required to comply with registration, charging, filing, payment and other requirements as if it were a Nigerian company. Thus, said company must register using the address of its place of business in Nigeria (fixed base or PE), issue a VAT invoice, file returns, remit the tax and undergo tax assessments in accordance with the provisions of the VAT Act.

Value Added Tax (Modification Order), 2020

On 3 February 2020, the Value Added Tax (Modification Order), 2020 ("VAT Modification Order") was issued.

Under the VAT Modification Order, the provisions of the VAT Act were expanded by extending the list of goods and services designated as exempted from VAT. The VAT Modification Order is the response to the current economic situation expanding the number of VAT exempt items to include products used by a vast number of Nigerians across all sectors, e.g.: basic food items (agro- and aqua-based staple foods), medical and pharmaceutical products, petroleum products as well as renewable energy equipment (solar- or wind-powered generators).

Conclusion

From the sweeping changes introduced by the Finance Act 2019 on the provisions of the VAT Act and further clarifications of these provisions by the FIRS, to the VAT Modification Order issued by the Minister of Finance, it is correct to say that, at present, VAT-related legislation is being made that has the capacity to boost the economy by stimulating the growth of small- and medium-sized enterprises in Nigeria whilst, at the same time, generating revenue for the government.

Kelechi Ugbeva
kelechi@
blackwoodstone.com

Contact

Azerbaijan

Rahil Mammadov
rmammadov@gratanet.com
T +994 50 580 45 00
GRATA International
GRATA International Office in Azerbaijan
43 Samad Vurghun
World Business Center, 17th floor
AZ 1014, Baku
www.gratanet.com

Chile

Loreto Salas
lsalas@egybabogados.com
T +56 225 92 13 00
EGYB Abogados
Avenida Vitacura 2939, oficina 2202
Las Condes
7550011 Santiago
www.egybabogados.com

China

Conrad Lin
conrad.lin@wts.cn
T +86 21 50 47 86 65-223
WTS China Co., Ltd.
Unit 031, 29F, Hang Seng Bank Tower
No. 1000 Lujiazui Ring Road
Pudong New Area
200120 Shanghai
www.wts.cn

Greece

Tasos Panatsias
panatsias@prooptikisa.gr
T +30 21 03 31 88 55
Prooptiki SA
Mitropoleos 58
10563 Athens
www.prooptikisa.gr

India

Ritesh Kanodia
ritesh.kanodia@dhruvaadvisors.com
T +99208 44072
Dhruva Advisors LLP.
One World Center, 11th floor, Tower 2B
841, Senapati Bapat Marg
Elphinstone Road (West)
400013
https://dhruvaadvisors.com

Ireland

Andrew Gelling
andrew.gelling@agellingtax.com
T +353 1 676 06 75
Andrew Gelling Tax Consultants
Charter House
5 Pembroke Row
Dublin 2
wts.com

Malaysia

Thenesh Kannaa
thenesh@tratax.my
T +60378656696
TraTax
Unit 13-11, Level 13, Tower A
The Vertical Avenue 3, Bangsar South City
No. 8, Jalan Kerinchi
59200 Kuala Lumpur
www.tratax.my

Nigeria

Kelechi Ugbeva
kelechi@blackwoodstone.com
T +234 90 33 50 16 13
Blackwood and Stone LP
22A Rasheed Alaba Williams Street
105102, Lekki Phase 1, Lagos
www.blackwoodstone.com

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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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