The drop on e-commerce

December – January 2024

Welcome to the December – January 2024 edition of the drop on ecommerce, where we highlight notable updates that are happening around the world for Indirect Tax.

In this issue:

We hope that you find this newsletter valuable and look forward to your feedback.

DAC 7 - Reporting Obligations

Extension of reporting deadlines - DAC7

DAC7 requires platforms to report information related to their vendors by 31 January 2024.

Nevertheless, the tax authorities of certain Member States have experienced difficulties related with their digital systems, leading to extensions of the initially set deadlines.

Luxembourg

The tax authorities have decided to extend the deadline for platform operators to submit declarations beyond 31 January 2024 as their IT environment had not yet been released. An additional period of one month for the reporting of returns is granted to the operators, starting from 15 January, 2024.

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Poland

The Polish Ministry of Finance announced that online platform operators will have one more year to provide the head of the National Revenue Administration (KAS) information about online sellers. Therefore the reports of 2023 and 2024 are to be submitted by 31 January 2025.

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Cyprus

The Cyprus Tax Department has informed the Reporting Platforms Operators that the reporting deadline for the 2023 DAC 7 reporting is extend to 16 February 2024. Submission after this date is considered overdue and may lead to penalties

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Spain

The Council of Ministers has approved a Royal Decree which postpones the report of 2023 with two months.

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Ireland

The Irish tax authorities have deferred the DAC7 filing deadline for the 2023 reporting period from 31 January 2024 to 7 February 2024.

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Italy

The Italian tax agency announced that the filing deadline for the 2023 reporting period is extended to 15 February 2024.

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Germany

The German Federal Central Tax Office has published transitional regulations on the reporting, notification and recording deadlines for digital platform operators in accordance with the Platform Tax Transparency Act (PStTG).

For the reporting period of calendar year 2023 there is no objection if the reporting platform operators:

- Notify all providers bound by the obligation to report information concerning them before 1 April 2024;
- Submit the relevant reporting information before 1 April 2024;
- Make no amendment, completion or catch up to any report before 1 April 2024;
- Creation of corresponding reports before 1 April 2024.

Information that is provided before 1 April will hence be considered as timely filed.

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Netherlands

Dutch tax authorities - FAQ DAC 7

The Dutch tax authorities have released a document that provides questions and answers related to the reporting obligations of digital platforms. We've highlighted some of the most notable points below:

- The term goods refers to all tangible property in accordance with the VAT Directive for its interpretation. As a result, the sale of intangible assets or goods, such as music, film, software, energy rights or vouchers, does not fall under the definition of goods. But there are exceptions to this.
- The trade in vouchers - in whatever form - does not fall under Relevant Activities. Nevertheless, a seller can receive a voucher as payment for a relevant activity. As a result, the voucher may be part of a DAC7 report at the time of issue or redemption as consideration. The terms Single Purpose Voucher and Multiple Purpose Voucher seem to follow the VAT Directive.

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- Energy itself - contrary to energy rights - is seen as a tangible property, again in accordance with the VAT Directive.
- In case a platform operator is based in the EU, the sellers are EU residents and the real estate they let through the platform is located outside the EU, this constitutes a Relevant Activity that should be reported because the sellers are residents in the EU. The fact that it concerns real estate outside the EU is not relevant for the reporting obligations of the platform operator.
- When it is due to intent or gross negligence of the platform operator that reporting is not, not timely, not complete or not correctly done, a fine may be imposed, with a maximum amount of € 1,030,000.

The reporting obligations deadline of January 31 remained unchanged, and no postponement has been announced. Corrections to reports accepted by the Tax Authorities can be made until June 30.

Denmark

New requirements electronic sales registration system as from January 2024

Next to the introduction of new statutory requirements for electronic sales registration systems, the Danish tax authority has now also introduced penalties in case these new requirements are not met.

- A fine of DKK 10,000 (€1,344) will be issued to companies that do not have a compliant digital registration system during the first inspection.
- The continuation of the infringement will result in a higher fine of DKK 20,000 (€2,688) in the case of a second inspection.
- In the event that the companies in question remain in breach of the legislation, the fine will increase to DKK 30,000 (€4,302) as part of a third inspection.

Companies that do not comply with the formalities of the digital sales registration system may also be subject to daily sanctions until the company complies. These daily fines start from DKK 1000 (EUR 134).

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United Kingdom

Virtual e-commerce companies targeted by HMRC

HMRC will send a letter from late January to businesses that it believes to be non-established taxable persons (NETPs) for UK VAT purposes.

Following the 2021 e-commerce reforms, foreign e-commerce importers of low-value items are obliged to register for VAT from their first sales to UK consumers. Therefore virtual companies were created.

The UK non-established taxable persons rules, indicate that a UK subsidiary must meet certain criteria to take advantage of the VAT registration threshold. These thresholds are nevertheless not applicable to non-established taxable persons.

Businesses will have 30 days to challenge HMRC's Decision.

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Italy

Tax Authorities' guidelines on crypto-asset VAT Treatment

The Italian tax authority has published comments on the VAT treatment of crypto-assets with circular letter No. 30/E/2023

The tax authorities reacted to the lack of a clear legislative framework at national and European level, as well as the need to refer to international best practices and guidelines at European level in this context.

The circular letter analyzed the VAT impact during the creation, possession and trade of crypto-assets including related activities and services. The categories at hand that have been analyze are cryptocurrencies; security tokens; utility tokens and hybrid tokend; and NFT's.

The Italian tax authorities emphasize how, for the topic under analysis, it remains necessary to adopt a look-through approach also for the determination of the VAT treatment of crypto-assets, as well as a case-by-case analysis.

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Latest discussions in EU VAT Committee

Interaction of the EU OSS scheme with the Non-EU Import OSS scheme

In working paper 1069 the EU VAT Committee reconfirmed that the SME scheme and OSS Union Scheme can be applied at the same time and will remain possible as from 1 January 2025.

The SME scheme and the Non-EU Import OSS scheme are on the other hand mutually exclusive and will remain mutually exclusive also as from 1 January 2025.

Only taxable persons with a seat of economic activity located in a Member State can be eligible to apply the SME scheme. This means that taxable persons with a seat of economic activity located outside the territory of the Community cannot apply the SME scheme.

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Macedonia

VAT requirements for non-resident providers of digital services

From 1 January 2024, the North Macedonian Ministry of Finance imposed VAT on digital and telecommunications services provided by non-resident providers in the country.

Previously foreign businesses providing these types of services to consumers did not charge VAT on their sales.

However, to remove the unfair advantage that this gave non-resident companies over resident providers, VAT at 18% has now been applied to these types of transactions.

Non-resident providers will have to VAT register in the country via a local tax representative from the first sale that they make as there is no VAT registration threshold.

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Norway

B2C low value import consignments no longer exempt and important changes to the VOEC simplified reporting scheme

Similar as to the introduction of the EU e-commerce package, Norway has now removed the NOK 350 exemption threshold for B2C import consignments. From 1 January 2024, Norwegian VAT and customs duties will be payable on all B2C import consignments.

Non-resident businesses will be able to make use of the simplified reporting scheme VOEC to report the import VAT due for their distance sales, if the value of the item is below NOK 3.000, with some exceptions.

Important to note is that from 1 January 2024, businesses sending goods under the VOEC scheme will be obliged to provide a 7-digit VOEC number to the transport company responsible for transporting goods on behalf of the selling company.

The carrier is then obligated to provide the VOEC number to the Norwegian customs authority. Additionally, relevant information about the contents of the shipment must be provided, including its value, description, and quantity of goods.

It is important to provide the VOEC number digitally to avoid delays, fees from the transporter of the goods, and that the customer is charged with value added tax a second time when the goods cross the border.

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Japan

Enforcement of consumption tax remittance obligation for B2C digital service platforms

The ruling parties in Japan released their proposals for tax reforms on December 14.

The proposals include some significant changes in the method to impose Japanese consumption tax on inbound cross-border digital services provided to consumers in Japan through certain platforms. Under the proposed rules, platform operators will be liable to pay consumption tax on behalf of foreign service providers. In addition, the proposal also includes changes in the tax exemption rules.

The government would like to introduce the new rules as soon as possible in order to reduce unreported consumption tax from foreign providers of digital services, to ensure a level playing field with domestic providers of digital services, and to align with global tax trends in this area. The new rules would come into effect on 1 April 2025.

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Azerbaijan

VAT Obligations for non-resident E-commerce suppliers: recent changes

On December 5, 2023, the President of Azerbaijan approved a new legislation which determines that Non-resident individuals who earn income from the provision of goods and services in e-commerce to residents through the use of an internet information resource will now be classified as VAT taxable persons (with the exception of those established permanently).

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New Zealand

GST Rules for sharing economy platforms introduced

From 1 April 2024, online marketplace operators (also known as digital platform operators) will need to collect GST on all listed services provided through their online marketplace.

Registered operators facilitating the sale of the below listed services must collect and return 15% GST when the service is performed, provided, or received in New Zealand:

- Ride-sharing and ride-hailing
- Food and beverage delivery
- Short-say and visitor accommodation

GST will also apply to closely connected services if they're facilitated through the online marketplace. For example, holiday rental cleaning fees charged on top of the accommodation costs.

If you are not registered for GST, you will need to register if you have earned, or will earn more than $60,000 from all your taxable activities in any 12-month period. This includes sales provided directly to customers (for example through your own website) or made through an online marketplace).

You can find more detailed information and what you need to do in the flyer published by the Inland Revenue.

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Middle East

Addressing the VAT and customs implications amidst the Middle East shopping evolution

Consumption habits are changing in the Middle East. Following the Global Consumer Insight 2023 survey of PwC (Pulse 6), a new category of buyers emerged: a generation of buyers using technology in their purchasing decision. An increasing number of individuals are now going through e-commerce, which obviously has large impacts from an indirect tax angle (VAT and customs).

Consumers and retailers are therefore invited to immerse themselves in the legislative arsenal around VAT and customs (VAT processing and adjustment, compliance with regulations related to import or export, ...). This knowledge can help consumers make more conscientious consumer choices against retailer-imposed prices, and will result in a more positive consumer experience. This will also help retailers stay competitive in the market (taking into account free trade agreements; by ensuring that companies obtain reimbursement in the event of re-exportation of stocks; by being sure to correctly establish the place of supply of goods for the correct supply of VAT), while remaining compliant with legislation.

LINK - SOURCE

Egypt

Non-resident vendor registration: important reminder from the tax authority

Provision of digital or remote services to Egyptian consumers (B2C) now requires the registration and establishment of a local VAT of 14% through the simplified registration regime for sellers, as long as their revenue from these services reaches the threshold of 500,000 EGP within a 12-month period. Nevertheless, for professional or advisory services benefiting from the reduced rate of 10% VAT, a zero registration threshold is applicable. These new rules will apply as of June 22, 2023.

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Nigeria

Non-resident businesses - E-commerce

The Federal Inland Revenue Service (FIRS) has postponed its intended commencement of the automated collection of Value Added tax (VAT) on imported goods purchased through digital platforms.

You may recall that the 2020 Finance Act amended the Value Added Tax (VAT) Act to require non-residents that make taxable supplies of goods and services to Nigerian customers to register and account for VAT on supplies to Nigeria. Following this amendment, the FIRS issued "Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers" on 11 October 2021, with an effective date of **1 January 2022** with respect to supply of **services** and **intangibles,** and **1 January 2024** for **goods**.

The FIRS had initially planned to roll out the regime with respect to supply of goods by non-resident suppliers, by 1 January 2024. However, the FIRS has decided to postpone it, to afford more time to develop a seamless process and collaborate more effectively with key stakeholders - for example the Nigeria Customs Service. Pending any next steps, the FIRS has stated that the existing guidelines for services and intangibles provided by non-resident suppliers, continue to remain in effect.

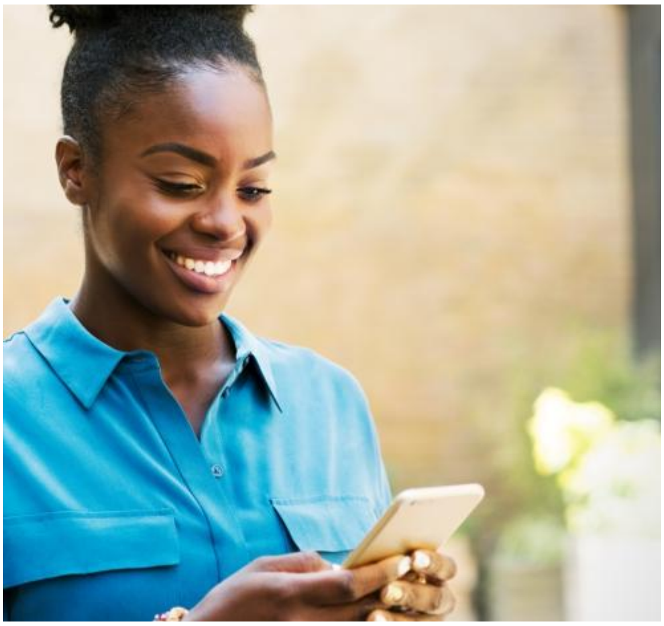
LINK - SOURCES

South Africa

SARS is contacting non-resident ESS suppliers

On 19 April 2019, the South African Revenue Service (SARS) updated its ESS Regulation which broadened the scope. This resulted in many non-resident businesses being required to register for VAT in respect of ESS supplied to SA customers. The ESS Regulations always included both B2B and B2C supplies.

SARS since established a dedicated division pursuing foreign ESS suppliers that are still not compliant with the regulations and we have recently observed a very significant increase in the activity by SARS in this area. The division is actively pursuing foreign electronic services suppliers that failed to register for VAT in South Africa by approaching the South African Reserve Bank (SARB) and local businesses for information relating to foreign payments made from South Africa in order to identify suppliers.



SARS is currently issuing letters to non-resident suppliers of ESS requesting reasons/information regarding:

- The nature of its supplies to SA customers;
- Reasons why its services do not constitute ESS; and
- If ESS, reasons why the person has not registered as a VAT vendor and requesting the person to register as a VAT vendor.

At the time this letter is issued, SARS is aware of the extent of the non-resident's activities in SA and is requesting the non-resident ESS supplier to register for VAT and issues assessments for the calculated VAT liability, resulting in the imposition of interest at the prevailing interest rates and late payment penalties of 10%. Depending on the reasons provided, SARS may also impose understatement penalties up to 200% of the VAT liability. By the time a letter has been issued by SARS, it is no longer possible for the non-resident ESS supplier to apply for voluntary disclosure relief to mitigate the impact of understatement and late payment penalties.

Business who've not yet been contacted can still proactively comply with the registration requirements by disclosing its error in terms of the Voluntary Disclosure Programme ("VDP"). Under the VDP, if successful, the person may qualify for a remission of:

- Administrative non-compliance penalties (10%);
- Understatement penalties (ranging between 5% - 200% depending on SARS decision); and
- Criminal prosecution.

It must be noted that in the event that SARS initiates an enquiry before a person comes forward voluntarily, a VDP cannot be applied for as it disqualifies the person from the VDP process.

Canada

Digital services tax act presented in the House of Commons

On November 30, 2023, the federal government tabled Bill C-59,1 which includes legislation to implement a variety of tax measures. These include implementation of the Digital Services Tax Act, which introduces a 3% tax in respect of Canadian-source digital services revenue earned by large domestic and foreign taxpayers, although it should be noted that the coming into force of the DST Act will require the additional step of an order of the Governor in Council.

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Brazil

VAT Reform

On 20 December 2023, the Brazilian Congress adopted reforms related to VAT and excise duty.

The approval of the reforms by the Chamber of Deputies made it possible to set up a transition period of 7 years from the year 2026 during which the old and the new tax system will operate simultaneously, with full implementation of the new system in 2023.

The main objectives of the VAT reform are:

- To create a VAT common to all levels of government (federal, municipal, state). Only a distinction between federal VAT and subnational VAT (or dual VAT) will be maintained.
- To ensure transparency regarding the tax burden visible to consumers and taxpayers.
- To create a non-cumulative system, with the objective of eliminating tax leakages which are harmful to the Brazilian market;
- To make progress on the issue of tax relief on exports, through a refund system for accumulated credits
- To support the reduction of tax disputes and costs related to reporting obligations;
- To operate on a fund in order to enable companies benefiting from tax advantages linked to the ICMS to obtain compensation.

LINK - SOURCE

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