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WTS Value Added Tax Newsletter

Editorial

Dear reader,

In anticipation of the upcoming year's end, it is about the right time to outline some of the New Year resolutions of various tax administrations and lawmakers for the year 2022 – the fourth edition of the WTS Global VAT News 2021 provides respective global insights as well as the latest insights on changes in jurisdiction in terms of VAT and GST.

A high court ruling in **Austria** allows taxpayers to ask for interest on overdue input VAT credits. **France** is striving for a significant reform for e-invoicing and e-reporting, but decided to postpone the go-live by 15 months. Adoption of ECJ rulings is almost inevitable, but for **Germany** the sale of admission tickets might be the root cause for increasing registration obligations. On the other hand, **Germany** is granting another year to taxpayers with regard to the adoption of the change in VAT and insurance tax rules for warranty commitments as announced in our newsletter #3/2021. **Hungary** utilises digitalisation for providing prepopulated VAT returns to its taxpayers. Despite calling it "SLIM VAT 2", **Poland** is in no way putting its tax law on a diet, it is rather establishing new rules on bad debt relief and VAT groups. The utilisation of IT requires reliably structured data, which is why **Romania** defines the requirements for Standard Audit File for Tax (SAF-T).

Beyond Europe, a decision of the supreme court in **Ukraine** should be noted, as it may enable the determination of whether or not motivational fees have to be considered as a remuneration, e.g. for marketing services.

As the economic and social impacts of the **coronavirus disease** (COVID-19) continue to challenge the world, WTS Global is constantly updating the overview of measures taken by various countries to respond to the tax aspects of this crisis:
https://wts.com/global/insights/covid19

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

Yours sincerely,

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WTS Global VAT Team

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

I. EU Member-States

Austria

Higher court confirms the granting of interest for overdue VAT credits

Up until the decision of the Austrian Higher Administrative Court (AHAC), an application for interest in the context of VAT only appeared to be possible if the taxpayer applied to the tax authority for a reduction in view of the VAT already paid while filing a complaint (so-called "complaint interest"). In its decision of 30/06/2021 (Ro 2017/15/0035), the AHAC confirmed the core statements of the European Court of Justice (ECJ C-844/19, *"CS und technoRent International GmbH"*) and basically granted the right to appropriate interest for delayed refunds of VAT credits for the taxpayers, although this has not yet been explicitly provided for in Austrian law. This decision is of great practical relevance, not only for Austrian resident taxpayers, but also for foreign companies registered for VAT purposes in Austria who are submitting Austrian VAT returns: in the case of (significant) delays in the reimbursement of VAT credits, such taxpayers have a fundamental right to demand interest on arrears for the period of liquidity disadvantage. Nevertheless, please note that this decision cannot be applied to VAT refund requests submitted by non-registered taxpayers, as there is a special provision in the directive 2008/9/EC in this regard.

Background

In this current ruling, the AHAC dealt with the following facts: a hotel operator requested a refund for an input VAT amount of approx. EUR 60,000, which he declared in the VAT return for period 08/2007. Nevertheless, the tax authority did not refund the whole amount of the correctly declared input VAT and instead reduced the input VAT amount to EUR 14,600. The taxpayer appealed this reduction. However, the appeal was not granted until 2013. The input VAT amount was refunded shortly thereafter. Due to the resulting disadvantages in terms of interest and liquidity, the taxpayer requested interest for the delayed refund for the period January 2012 until May 2013. The AHAC based its judgement on the decision of the European Court of Justice (ECJ C-844/19, *"CS und technoRent International GmbH"*) and granted the taxpayer interest of 2% above the base interest rate for the corresponding period. Nevertheless, the interest period and the beginning of the interest accrual were specified in this case so that the AHAC did not have to commit itself in this regard.

Open points

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

It remains unclear as to how the taxpayer can successfully request the granting of interest. According to the ruling of the AHAC, the taxpayer can apply for interest in the case of a (significantly) delayed refund of a VAT credit. However, the legal basis for the application has not yet been settled. A possibility would be to make an initiative application with reference to the case law of the ECJ and the ruling of the AHAC, but such a proceeding would most likely be ignored due to the lack of a legal basis. Therefore, a legal title should be available to enable the entering into of legal proceedings. One way to achieve such a legal title could be to urge an official notification based on the standard booking information in

conjunction with Sec. 216 of the Austrian Federal Fiscal Code (BAO). However, so far there has been no official statement from the Austrian fiscal administration regarding this issue.

The reasonable timeframe for the refund of the VAT credit amount is also still an open point. According to the ECJ jurisdiction, the taxpayer is entitled to receive the refund of the VAT credit within a reasonable timeframe (45 days). Each refund received outside this timeframe should be granted with interest. The Austrian perspective on the length of the reasonable timeframe can be based on Sec. 21 of the Austrian VAT code, which defines the limitation period for the taxpayers. This 45-day period could also be used as the processing period of the tax authority. However, the AHAC does not explicitly mention this issue in its ruling, nor does it define the Austrian VAT law for this period explicitly, so it remains open to discussion. Therefore, the Austrian legislature is called upon to create sufficiently clear interest regulations for VAT purposes also on the basis of which interest claims for overdue VAT credits can be asserted outside of the formal complaint procedures.

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France

First flavour of the planned ambitious e-invoicing and e-reporting reform

France announced an ambitious reform that was to enter into force from 1 January 2023 but a couple of days ago it was postponed until July 2024.

Postponement confirms that the reform obviously represents a huge undertaking concerning various topics. Fidal actively participates with its elaboration and therefore can deliver an up-to-date overview.

There are four official objectives behind the French reform: combatting tax fraud, not limited to VAT but also including other taxes such as CIT, reducing companies' administrative burden related to invoicing, making the automatic pre-filing of VAT returns possible and, finally, providing the French government with real-time information on economic activity so that it can efficiently target its economic actions. Other tax authorities are very interested.

e-invoicing

As in different EU countries, compulsory e-invoicing exists today in France for B2G (Business to Government) transactions only. Under the reform, which only impacts transactions from invoices ruled by French tax invoicing rules, e-invoicing will cover any domestic B2B transactions. This represents around 4 billion invoices, issued by 2 million companies. Invoice transmission will no longer be directly from the supplier to its client. Invoices will have to go through an electronic platform, either public or private, but will recognise strict conditions. Besides that, the government plans to require additional compulsory information on invoices, e.g. the identification number of the client. Finally, the government already announced that issuing PDF invoices will still be accepted at the start but that, at a later stage, issuing invoices under a structured format will become compulsory. In this regard, it must be noted that the French Tax Authorities currently examine the "FacturX" format in depth.

However, e-invoicing alone would not suffice to meet the goals listed above and it will be backed with a consistent e-reporting system.

e-reporting

Such an obligation already exists in different countries and apparently reduced the annual VAT gap by 2 billion euros in Italy. The French e-reporting obligation at first will cover transactions not covered by e-invoicing, such as B2C transactions or transactions made with foreign companies. However, also for the transactions themselves which are covered by e-invoicing, companies will be obliged to e-report information that is not included on the invoice, like, for instance, the date of payment.

This reform obviously will mainly impact companies based in France, including subsidiaries of international groups whose mother company is based abroad. However, foreign entities themselves might be affected. As time speeds by, we clearly recommend that preparatory work is started now and that the obligations that companies will bear in the future are identified, that current IT systems are assessed to include the necessary data to cope with these obligations and to check how the current company's invoicing partners will respond to the reform (will these act as qualified platforms?). This reform also provides the opportunity to pay attention to an already existing tax obligation; the reliable audit trail documentation. Indeed, the government made clear that this specific obligation would remain, despite the reform.

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Beyond that, taking a look at French plans also gives an idea of what is in the pipeline in some other countries and what eventually could become reality at a European level, as the European authorities will logically require a unique regulation.

Germany I

Sale of admission tickets for events, non-objection regulation

In a circular letter issued by the German Federal Ministry of Finance dated 9 June 2021, the tax authorities adopted the ECJ case law ("Srf konsulterna", C - 647/17) for determining the place of supply for sales of admission tickets for events pursuant to Section 3a (3) no. 5 of the German VAT Act (cf. Article 53 VAT Directive).

Accordingly, sales of admission tickets (as defined in Art. 32 and 33 of the VAT Directive) for cultural, artistic, scientific and similar events in the B2B sector are to be regarded as taxable at the respective venue – instead of applying the general place of supply rules for B2B services. In contrast to the previous view of the tax authorities, it is no longer decisive whether or not the event is generally accessible to the public. However, the regulation also requires the physical presence of the service recipient at the event location; the regulation therefore does not apply in cases of online participation by the service recipient.

The initially planned implementation of the regulations with immediate effect proved to be impossible in practice. Therefore, the tax authorities published a non-objection regulation in an additional circular letter dated 19 August 2021: For such services being supplied before 1 January 2022 which relate to events that are not generally accessible to the public,

the (previous) place of supply principles valid until 8 June 2021 can be applied. However, this requires that the parties involved make use of this by mutual agreement. On the other hand, the criterion of the physical presence of the service recipient shall nevertheless be decisive also for the period of the non-objection regulation in all open cases.

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In practical terms, the "venue principle" may lead to increased registration obligations in Germany.

Germany II

Postponed: warranty commitments granted for remuneration as insurance transaction

As reported in #3/2021, in two letters dated 11 May 2021 and 18 June 2021 the German tax authorities have adopted the latest decision of the Federal Fiscal Court regarding warranty commitments granted for remuneration originating from practices in the motor vehicle trade. The new principles will apply **across all sectors** and thus also beyond the motor vehicle trade, with far-reaching consequences for VAT and insurance tax. According to the letter dated 18 October 2021, the new rules will only be mandatory for all warranty commitments **issued after 31 December 2022.**

The postponement of the new rules gives time for the discussion and determination of the actual scope of application and the factual requirements of these new principles, e.g. establishment of the consideration. Nevertheless, it is conceivable that numerous affected industries and companies will be facing insurance tax compliance requirements for the first time as well as changes in the general conditions under VAT law.

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Hungary

eVAT– What does the new draft eVAT return mean for taxpayers?

Based on the bill submitted in October 2020 and approved in November, Hungarian taxpayers should have been able to use the system for draft VAT returns (eVAT returns) offered by the tax authority as of July 2021. Pursuant to a Government Decree, the roll-out of draft VAT returns has been switched to the tax assessment period starting on 1 October 2021.

What should you keep in mind when you open your draft VAT return?

eVAT returns become available for taxpayers online on the 12th day from the end of the reporting period. Therefore, in practice you will have eight days to review the draft and reconcile it with the return generated by your accounting program (deadline of a monthly VAT return is the 20th of the month following the reporting period). The tax authorities will prepare the eVAT returns and the adherent statement (i.e. the recapitulative statement also known as M sheet) about domestic input invoices, based on the data of online cash registers and online invoice data reports.

Active participation is needed regarding the draft VAT return as deductible tax should be evaluated **per invoice**. In terms of the draft, we note further that by filing the VAT return the taxpayer assesses its right for input VAT deduction and VAT reclaim. So it is particularly important to amend / supplement or thoroughly review it before submission.

A **possible problem** can also emerge as eVAT returns will include import VAT only from January 2023. Thus, these data will be missing in the draft return of previous periods. Of course, invoices which were not reported due to some reason by the partner, or by the taxpayer itself in case of self-billing, will not be involved in a draft VAT return either. Thus, the draft must be supplemented with such non-reported invoices. Risk can also occur if the draft VAT return includes invoices that were **incorrectly issued** to a company. The above should be checked and reconciled by taxpayers for each tax period.

What to do if the draft is incorrect?

The taxpayer is responsible for the correctness of the VAT returns. So it is worthwhile to check the draft VAT return alongside the adherent M-sheets with an expert, taking into consideration that in the event of an **ineligible VAT refund**, i.e. the right for VAT deduction was applied based on an incorrect invoice, the tax shortfalls will be assessed on the taxpayer's side.

Is the administrative burden really decreasing?

The declared purpose of the draft VAT return, which is not obligatory for taxpayers, is to reduce the administrative burden, although this may differ in practice. Indeed, for multinational companies it means an extra administrative burden to check/modify etc. and approve the draft VAT return and adherent M-sheets.

Conclusion

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For multinational companies with complex transactions, it may still be worthwhile to meet their VAT return obligations as usual until the system has been fine-tuned. So only small and medium-sized enterprises will perceive a substantial change.

Poland

Further changes in the Polish VAT Act

SLIM VAT 2

SLIM VAT 2 is another set of changes that are supposed to simplify the VAT settlements in Poland. The first one was implemented as of 1 January 2021. New regulations include, among others:

- The extension of time in which the bad debt relief can be claimed from two to three years and deletion of certain conditions which shall be met to claim this relief in accordance with ECJ's judgement in case C-335/19.
- There will be more refining changes to the triangular transaction scheme. The purpose is to introduce rules which, in cases of exports or intra-community supplies, will clearly specify which supply is the one to which the dispatch or transport should be ascribed where the transport is arranged not by a customer who also supplies the goods or an intermediary operator, but by the first supplier (first operator in the chain) or the last customer (last operator in the chain).
- Having been challenged by ECJ in case C-895/19, the regulations on the use of the so-called "spaced array" (szyk rozstawny) for deduction of VAT on intra-community acquisitions and imports (input VAT recognised separately from output tax) are going to be repealed.

SLIM VAT 2 entered into force on 1 October 2021; the "spaced array" regulations already became effective one day after publication (7 September 2021).

More details on the VAT groups in Poland

A bill passed by the Minister of Finance, Funds and Regional Policy concerning amendments to the tax legislation introducing the "Polish Deal" (Polski Ład) was published on 26 July 2021. The key change regarding VAT is the possibility to form so-called VAT groups for tax purposes as of 1 January 2022.

The main aim of a VAT group is that all members handle their tax compliance duties for VAT purposes together, while intra-group transactions are not subject to VAT. The participation in VAT groups is to be optional.

VAT groups can be set up by taxpayers being related financially, economically and organisationally to each other as defined by the amendments to the VAT Act, if:

- being established in the territory of Poland or
- not being established in Poland – to the extent they conduct business through a branch located in Poland.

Therefore, the possibility to establish a VAT group will not be connected with participation in a "tax capital group" (PGK) governed by the CIT Act.

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To create a VAT group, a written agreement must be concluded in which the entity chosen to represent the VAT group will be indicated. The VAT group cannot be created for a period of less than 3 years. Moreover, during the existence of the VAT group, members of the group cannot be changed. This means that the structure of the VAT group shall remain the same.

Romania

Implementation of the Standard Audit File for Tax (SAF-T)

The Romanian tax authorities published the draft requirements regarding the introduction of SAF-T in Romania, and we mention below the main information published in the second draft, dated 16 September 2021.

The aim of the tax authorities is to perform some electronic verifications, without having to carry out fiscal controls or inspections at the taxpayer's headquarters.

The implementation of this standard presupposes the obligation of the taxpayer to submit a declaration containing information from the fiscal and accounting records, respectively the informative declaration D406, an XML-based electronic file.

Among other things, SAF-T will contain the following:

- Master files – this section contains subsections for more information, such as:
  - Accounting accounts/journal register;
  - Customers (identification data, analytical account, initial and final balance debtor/creditor);
  - Suppliers (identification data, analytical account, initial and final balance debtor/creditor);
  - Tax table (specific tax information);
  - Table of units of measurement;
  - Table of types of analysis (information on the structure of the taxpayer's cost centres);
  - Table of types of movements;
  - Products;
  - Stocks;
  - Owners (details regarding stock owners);
  - Assets.

- Accounting records – journal register – information on accounting records, at transaction level, including analytical accounting accounts.

- Source documents – information about source documents such as:
  - Sales invoices;
  - Purchase invoices;
  - Payments;
  - Movement of goods;
  - Asset transactions.

All Romanian legal entities and units without the Romanian legal personality of foreign legal entities, which have the obligation to prepare double-entry accounting, are obliged to submit SAF-T.

Other entities are also required to submit SAF-T, such as Romanian permanent establishments of foreign legal entities, associations and non-resident companies registered for VAT purposes in Romania.

SAF-T will be submitted monthly or quarterly, depending on the VAT fiscal period, and, for entities without a VAT code, the reporting will be conducted quarterly.

The following proposals have been mentioned as the implementation date for SAF-T:

- large taxpayers (as of 31 December 2021) are obliged to submit declaration D406 from 1 January 2022 onwards,
- medium taxpayers (as of 31 December 2021) are obliged to submit return D406 from 1 January 2023,
- small taxpayers (as of 31 December 2021) must submit return D406 from 1 January 2025 onwards.

Although it is not clearly specified, it seems that non-resident companies registered for VAT purposes in Romania would be required to submit SAF-T starting from 1 January 2025.

It is proposed that the reportable information within SAF-T for non-Romanian taxpayers registered for VAT purposes in Romania, with no obligation to prepare Romanian accounting, is the following:

- Header

- Master files with specific subsections:
  - Tax table
  - UOM table (unit of measure table)
  - Products

- Source documents with the following subsections:
  - Sales invoices
  - Purchase invoices

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Ukraine

Taxation of motivational fees

The payment of motivational fees (premiums, bonuses, other incentives) is a method of promoting the supplier's goods (works, services) on the market, which is actively used in Ukraine and around the world. Motivational fees are usually paid by suppliers to distributors for achieving specific indicators, such as fulfilment of purchase or sales plans, keeping specified stock levels or making early payments etc.

At the same time, Ukrainian legislation does not clearly define payment of motivational fees as subject to VAT taxation. In this regard, there have been for some time 2 opposing approaches regarding the VAT treatment of motivational fees in Ukraine.

Approach 1 – Payment of motivational fees is subject to VAT taxation

Under the general rule, the supply of goods/services in the territory of Ukraine shall be subject to VAT. And the tax code of Ukraine provides for quite a broad definition of what shall be recognised as the "supply of services", i.e. any transaction that is different to the "supply of goods".

Such a broad definition allows considering almost any payment between 2 parties as remuneration for a supply of services (with some exceptions). Since the principal purpose of motivational fees is to stimulate the sales of goods on the market, local tax authorities have often considered motivational fees as remuneration paid by suppliers for marketing services, consequently being subject to VAT taxation.

Approach 2 – Payment of motivational fees is not subject to VAT taxation

Even taking into account such a broad definition of the term "supply of services" in the tax code of Ukraine, a supply of services is a two-way transaction. If suppliers during the transaction on payment of motivational fees do not receive at least something from the distributor, a transaction cannot be recognised as a "supply of services".

Therefore, additional bonus remunerations or premiums paid by suppliers to distributors in accordance with the terms of distribution agreements (or separate agreements between the parties) shall not be regarded as a separate service in the field of marketing.

Given the above and depending on the wording of the distribution agreement, motivational fees received by distributors in connection with achieving specific indicators could have been treated by local tax authorities as not subject to VAT taxation.

Position of the Supreme Court

After lengthy court disputes with tax authorities and inconsistent court practices, the question of whether motivational fees can be considered as remuneration for marketing services triggering VAT taxation was referred to the Judicial Chamber for Taxes, Fees and Other Mandatory Payments of the Supreme Court. In June 2021, the Supreme Court took the final position on this issue.

The Judicial Chamber of the Supreme Court expressed a legal opinion that motivational fees received under a distribution agreement for achievement of specific indicators by distributors shall be considered as remuneration for marketing services (i.e. promotion of goods on the market) that is subject to VAT taxation under the tax code of Ukraine.

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Legal opinions of the Supreme Court are obligatory for all the governmental authorities when applying relevant provisions of law. Thus, the ambiguous tax treatment of transactions on payment of motivation fees which has caused a lot of trouble for taxpayers has finally been settled by the Supreme Court.

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About WTS Global

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