

WTS Value Added Tax Newsletter

Editorial

Dear Reader,

As in the past, for the year 2023 we would like to share with you the recent or expected changes in VAT and GST regulations and compliance obligations across various countries. Thus, the first edition of the WTS Global VAT Newsletter 2023 covers the following topics:

Belgium significantly extends the timeframe for the statute of limitations in specific cases like the late or non-filing of VAT returns. In **Italy**, based on a decision of the Supreme Court, taxpayers should carefully observe as of when they are obliged to register for VAT purposes. **The Netherlands** is building up more clarity regarding the VAT treatment of essentially new constructions. **Poland** legislates regarding e-invoices and their implementation as of the year 2024.

Beyond Europe we can find the **Kingdom of Saudi Arabia** making several adaptations to their VAT landscape, especially concerning the continued roll-out of e-invoicing. **Nigeria** also revisited its VAT law, e.g. by tightening payment due dates and implementing anti-avoidance rules.

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

Yours sincerely,

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Belgium



I. EU Member-States

Amendments to the VAT statute of limitations – VAT compliance impact

The law of 20 November 2022, published in the Belgian Official Gazette on 30 November 2022, has introduced an amendment to the statutes of limitations applicable for Belgian VAT purposes. The following table provides an overview of the currently applicable and new rules:

VAT statute of limitations (calendar years)

VAT chargeable	until 31 December 2022	as of 1 January 2023
General	3 years	3 years
Non/late filing of the VAT return	3 years	4 years
Specific cases	7 years	7 years
Fraud	7 years	10 years

This means that the late or non-submission of a (monthly/quarterly) VAT return can result not only in fines and interest, but will also automatically lead to an extension of the statute of limitations by one year. Whereby the late submission of a VAT return does not automatically bring about a fine being imposed and grace periods are sometimes granted, the extension of the statute of limitations will be automatic and without the need for any prior intervention from the VAT administration.

By law, VAT and Intrastat returns, as well as the European sales listing, if required, must be filed by the 20th of the month following the reporting period. Any VAT due must also be paid by that deadline. In practice, the Belgian VAT authorities grant certain administrative tolerances to these deadlines, but it is yet to be seen whether these will still be applicable and, moreover, without having an impact on the statute of limitations. This is still unclear.

Further changes to the VAT reporting obligations in Belgium are also in the pipeline. At this moment, only draft law is available in this connection. Nevertheless, we wish to stress that VAT compliance is the top priority of the Belgian VAT authorities. Thus, we advise also red flagging it within your organisation.

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Italy



VAT refund in the case of late VAT registration

The VAT refund cannot be denied simply because the non-established VAT-taxable person has obtained an Italian VAT ID no. too late, while – according to Italian VAT rules – it must be attributed **before** performing transactions relevant for VAT purposes in Italy.

In the case recently analysed by the Italian Supreme Court (see judgment no. 2736 dated 30 January 2023):

- › a company established in Portugal (and without an Italian VAT ID no.) imported goods from the US into Italy (and thus paid Italian VAT at the Italian customs office) and immediately after, sold said goods to a taxable person established in the UK, with delivery of the goods from Italy to the UK (without charging Italian VAT, as the transaction had been qualified as an intracommunity supply – transaction took place before "Brexit");
- › said company filed a VAT refund claim via the Portuguese web portal (according to Directive 2008/9/EC, implemented in Italy in Art. 38-bis2, Presidential Decree 633/72);
- › the Italian Tax Authorities rejected said VAT refund claim as, in their view, the company should have obtained an Italian VAT ID no. in advance, namely before performing transactions relevant for VAT purposes.

In light of the above, the Italian Supreme Court provided relevant interpretations, i.e.:

- › **in order to exercise the right of input VAT deductions, the VAT ID no.**, even if mandatory, **has a purely formal relevance**; as formerly concluded by the ECJ in case C-385/09 "Nidera Handelscompagnie", *"the identification [...] is not a measure giving rise to the right of deduction – a right which comes about at the time when the deductible tax becomes payable – but constitutes a formal requirement for the purposes of verification"* (para. 50) and the Tax Authorities – even if the VAT ID no. is missing – should be able to accurately check whether or not the VAT refund is in any case due;
- › the VAT refund claim shall not be in connection with VAT fraud or abuse;
- › the VAT ID no. shall be obtained (considering the peculiarities of the case under analysis) within a reasonable timeframe.

Please bear in mind that the above conclusions cannot be extended to all transactions where a VAT ID no. is expressly required, as (for instance) in the case of intra-community acquisitions. After the implementation of the so-called "Quick fixes rules", the VAT ID no. of the taxable person who makes an intra-community acquisition of goods is a **substantive condition** for the application of the VAT exemption rather than a formal requirement. So, in conclusion, **the VAT ID no. has a different relevance depending on the kind of transaction actually performed!**

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The Netherlands Dutch Supreme Court clarifies the term "essentially new construction"



In 2019, the Dutch Court of Appeal ruled that a real estate transformation should be considered as a newly built property for VAT purposes if the structure has been modified in such a way that an "essentially new construction" has been created. The case involved a former "Wollenstoffenfabriek" (wool fabric factory) that was converted into a shopping centre. Of note here is that the monumental appearance has not been changed. The fact that monumental aspects have been preserved did not affect this. According to the court, the shopping centre should be regarded as a new construction for VAT purposes. Thus, the supply of the property was VAT taxable and exempt from Dutch real estate transfer tax. The tax inspector disagreed with this ruling and appealed it.

2020 saw the Court of Appeal rule that the wool fabric factory was not a newly manufactured construction because the renovation was aimed at restoring the monumental features of the old factory. As a result, the Court of Appeal ruled that there was no "essentially new construction" because the external features of the factory were preserved. Now, the taxpayer has disagreed and filed for cassation.

In another case, the court decided on a transformation of an office building into a hotel. The Supreme Court ruled (ECLI:NL:HR:2022:1577) that real estate can be considered as an "essentially new construction" if the building's structural design is substantially altered. In addition, the Supreme Court also indicated that this rarely occurs for VAT purposes. Hereby, the Dutch Supreme Court ignores the "Kozuba Premium Selection" ruling (CJEU 16 November 2017, C-308/16) which states the exemption for VAT purposes (Article 135 (1) (j) of the VAT Directive) does not apply if there is an "improvement" of more than 30% of the initial value of the building in question.

Decision of the Dutch Supreme Court

The Supreme Court ruled (ECLI:NL:HR:2022:1609) in the wool fabric factory case in accordance with the "hotel case".

According to the Supreme Court, this case did involve an "essentially new construction" because the roof, floor and foundation were substantially improved. Due to these improvements, the shopping centre's structural design was substantially altered and hence was deemed as an "essentially new construction", despite the fact that the monumental appearance did not change. The purchase was subjected to VAT and exempted from real estate transfer tax (concurrency exemption).

Impact

This decision has given more clarity regarding whether or not a transformation constitutes a new construction for VAT and real estate transfer tax purposes. However, it remains subject to the exact facts and circumstances and the interpretation thereof. At least we finally learned that the financial analysis of the Kozuba case is not decisive in the Dutch perspective.

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Poland



Mandatory e-invoicing as of 2024

A new type of invoicing has been in operation in Poland on a voluntary basis since 1 January 2022, namely electronic invoices issued using the National e-Invoice System (KSeF). E-invoices are generated in "xml"-format by the local financial and accounting software in accordance with the logical structure published by the Ministry of Finance, and then are sent to KSeF where the purchaser may download them after a verification process in which a unique number is assigned to each e-invoice. When implementing voluntary e-invoicing, the authorities announced that, as a second step, e-invoicing will become obligatory in Poland.

1 December 2022 saw the Government Legislation Centre publish a bill to amend the VAT Act and certain other legislation (the "Bill"), according to which, as of the beginning of 2024, e-invoices will be obligatory. As compared to the current legislation, the solution proposed in the bill is wider in terms of entities obliged to use it and the subject matter covered. The main assumption behind implementing mandatory e-invoicing is to provide tax authorities with insight into all issued invoices and thus facilitate the detection of invoice irregularities. The currently used forms of invoice (paper or electronic, e.g. PDF files) will have marginal importance from 2024.

Importantly, in accordance with the bill, electronic invoices will have to be obligatorily used by taxable persons based in Poland or having a fixed establishment (FE) in Poland. The issue of applying the mandatory e-invoicing requirement also to persons having FEs in Poland was raised during public consultations of the bill because this exceeds the range of entities specified in the Council Implementing Decision, which allowed Poland to impose the e-invoicing obligation only on entities based in Poland. According to unofficial information from the Ministry of Finance, the obligatory use of e-invoices by entities with FEs in Poland was confirmed with the European Commission.

Entities not covered by the obligatory electronic invoicing system will be able to use e-invoices optionally or to continue issuing invoices based on the current Polish VAT Act (outside KSeF). These entities will also receive invoices from suppliers as agreed with them (including outside the KSeF system).

The e-invoicing requirement will cover the activities that currently require an invoice in accordance with the VAT Act. Therefore, as a rule, starting from 2024, entities subject to the e-invoicing requirement will only issue invoices via KSeF. Any invoice issued by such entities outside KSeF will not be considered an invoice according to Polish VAT regulations. Only in the case of KSeF malfunction (after the failure is removed, there are 7 days for sending invoices to KSeF) or a crisis (emergency related to geopolitical situation) can invoices be issued outside KSeF. A failure to comply with e-invoicing regulations will trigger severe penalties.

Currently the Bill is at an early legislative stage, but there is no doubt that mandatory e-invoicing will be implemented in Poland.

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II. Further countries

Rules and procedures for VAT recovery by licensed real estate developers

On 29 July 2022, ZATCA announced and established the rules and procedures for licensed real estate developers as eligible to recover VAT with slight changes to the draft, which was previously published on the Public Consultation Platform dated 11 May 2022.

These rules and procedures are an integral part of and complementary to the provisions mentioned in Article 70 para. 14 of the Executive Regulations of the VAT law, and should they conflict with the provisions of Article 70 of the regulations, these provisions shall take precedence.

Applying a zero rate on locally manufactured military goods supplied to the Armed Forces and the Internal Security Forces

ZATCA proposed a new article (Article 36 chapter 6), of the VAT Implementing Regulations.

This article provides for the application of a zero VAT rate to domestic provisions of eligible military goods supplied to the armed forces and the internal security forces of the government.

VAT Guide on Electronic Contracts

ZATCA has published the first edition of the Guide on Electronic Contracts in September 2022.

The guide provides and clarifies some definitions and terms which are not included in the VAT law and its implementing regulations.

Adding a new paragraph to Article 33 of the executive regulations of the VAT law

Applying the zero rate to the supply of services to a non-resident customer in a member state in the event that it facilitates the supply of taxable services by that non-resident customer to a person in the Kingdom.

Amending Article 34 of the implementing regulations of the VAT Law

Amending paragraph 2 of Article 34 to be subject to a zero rate if any of the following applies:

- › The transportation shall be carried out by any of the eligible means of transportation.
- › The transportation shall be carried out by scheduled passenger flights or by sea trips that take place according to an announced schedule.

Amending paragraph 8 of Article 34 to change the requirements for tax treatment applicable to private international aviation.

ZATCA set the criteria for selecting the target establishments in the second group to apply the "connection and integration phase" of electronic invoicing

ZATCA explained that the second group included all establishments whose revenues subject to VAT exceed SAR 50,000,000 (approx. EUR 12,580,000) during the year 2021.

ZATCA stated that it will notify all the targeted establishments in the second group, in preparation for linking and integrating the electronic billing systems of these establishments, with the (Fatoora) platform, starting from 1 July 2023.

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It is worth noting that the application of the linkage and integration phase for the first group was on 1 January 2023, for the establishments whose selection criteria were announced last June, after those establishments completed the necessary requirements to complete this phase.

Nigeria



Expected changes to VAT law in 2023

Since 2019, the Federal Government of Nigeria has enacted a Finance Act each year for the purposes of reviewing and updating the relevant tax laws in Nigeria to align with global best practices. With the signing of the current Finance Bill 2022 ("the Bill") into law by the President, the Act will become operational, and its provisions will become law. Some of the notable changes to be made by the Bill with respect to VAT laws in Nigeria include the following:

Introduction of general anti-avoidance rules

To align the provisions of the VAT Act with other tax laws on aggressive Transfer Pricing, Base Erosion, Profit Shifting and Tax Evasion, the Bill introduces a general anti-avoidance rule to the effect that the Federal Inland Revenue Service (FIRS) may disregard any disposition or transaction which reduces a taxpayer's liability, if it deems such disposition or transaction to be artificial or fictitious. The FIRS may also direct that necessary adjustments are made to counteract the reduction of tax liability. The Bill, however, provides that an affected taxpayer has the right to appeal such a decision of the FIRS.

Proof of appointment as FIRS agent as condition for the clearing of imported goods

The Bill amends Section 16 of the VAT Act on collection of tax. It provides that an importer who purchased goods online from a non-resident supplier who has been appointed by the FIRS to charge and collect VAT is to provide, at the point of clearing of such goods with the Nigerian Customs Service, proof of registration or appointment as well as evidence of the charge of tax on the sales invoice of the goods. This ensures that such goods shall not be subject to further VAT.

Change of remittance date

Persons appointed to deduct VAT at source on invoices received from their vendors are now to remit such VAT to the FIRS on or before the 14th day of the following month, by contrast with the current position of the 21st day of the following month.

Redefinition of building for VAT purposes

Pursuant to a proposed amendment of Section 14(3) of the VAT Act, buildings, for the purpose of VAT, are defined to mean any structure permanently affixed to land for all or most of the useful life of that structure. This shall include, without limiting the generality of the foregoing: houses, garages, dwelling apartments, hospitals and institutional buildings, factories, warehouses, theatres, cinemas, stores, mill buildings and any similarly fixed structures affording protection and shelter. The Bill, however, excludes any fixtures or structures that can easily be removed from land and as such are not eligible for the VAT exemption on buildings. These assets may be radio and television masts, transmission lines, cell towers, mobile homes, etc.

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About WTS Global

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