

WTS Value Added Tax Newsletter



Editorial

Dear Reader,

On the one hand, the year-end can be a time to reflect on all the events during the year and also to spend time with our loved ones and friends.

Then again, in professional terms, the year-end is also the time to look ahead and to prepare for the global developments in terms of VAT and GST – some of which we would like to share with you in our fourth edition of the WTS Global VAT Newsletter in 2020.

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>

France is preparing for the go-live of the VAT e-commerce package regulations. After having reduced the VAT rates for a limited period, **Germany** is preparing to go back to “normal” – with a new twist affecting work deliveries.

Beyond Europe, **Chile** is aiming to foster its economy by modifying VAT exemptions on investments in capital assets. Lastly, the **Kingdom of Saudi Arabia** and its tax administration is providing guidance on collaterals for mortgages.

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

Yours sincerely,

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France



I. EU Member-States

VAT reform for e-commerce: major changes where planned initially for 1 January 2021 but finally postponed to 1 July 2021

Since 1 January 2020, the solidarity for VAT payment for online marketplaces could be established following a 3-step procedure:

- STEP 1: If there are suspicions that a person is evading their obligations to declare or pay VAT, the French tax authorities (FTA) may report the person to the operator of the online platform, which must then take "measures to enable the person to regularise their situation". The online marketplace will have to notify the tax authorities of the measures taken.
- STEP 2: If the presumptions persist after one month from the notification of the measures taken by the online marketplace or, if it has not made said notification, the FTA may issue a formal notice to the platform to take additional measures or, if not, to exclude the person concerned from the online platform. The online marketplace will have to notify the FTA of the measures taken.
- STEP 3: If the aforementioned measures or exclusion are not implemented after one month following the notification, or in the absence of said notification by the online marketplace, the tax due by the person will be solitarily due by the online marketplace.

As of 1 July 2021, online platform operators will no longer be concerned by this measure for:

- distance sales of goods imported from third countries or territories, the value of which does not exceed €150, or
- supplies of goods within the EU carried out by taxable persons established in non-EU countries.

For these goods, the online platform operators will be considered as of that date as having received and supplied the goods (i.e. as buyers/resellers). Initially, these new rules were scheduled to come into force on 1 January 2021 but, due to the Covid-19 pandemic, EU Member States agreed to postpone their entry into force by 6 months. **Consequently, as of 1 July 2021, online marketplaces will be subject to VAT for those distance sales.**

In brief, from 1 July 2021, online marketplaces will be:

- Subject to VAT for:
 - › **distance** sales of goods imported from third countries or territories, the value of which does not exceed €150 (no threshold requested for the overall amount of imports – see below for more details); OR
 - › supplies of goods within the EU carried out by taxable persons established in non-EU countries.
- Solidarity for VAT payment, if the French tax authorities started the 3-step procedure, for all others transactions, i.e. for:
 - › **distance** sales of goods imported from third countries or territories, the value of which exceed €150;
 - › all supplies of goods within the EU carried out by taxable persons established in EU countries.

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In addition, please note that the **distance selling regime will change** according to the Directive UE/2017/2455 as of **1 July 2021** (here also, the entry into force was initially planned for 1 January 2021 but, due to the Covid-19 crisis, member states agreed to postpone their entry into force to 1 July 2021). It is important to note here that the threshold for **distance selling**, the exceeding of which leads to the localisation of the **distance sale** for intra-Community supply of goods in the State of arrival of the goods, will be harmonised and reduced to €10,000. This threshold will no longer be determined at the level of each Member State, but for all **distance sales** carried out by an operator in the European Union.

Lastly, a **new category of distance selling will be created** for supplies of goods dispatched from a third country to a non-VAT taxable person: **distance selling of imported goods**. These transactions will be subjected to a specific regime when the value does not exceed €150 (this new regime will not be concerned by the threshold of €10,000).

Germany I



Reduced VAT rates until 31 December 2020

To face economic consequences of the Covid-19 pandemic, Germany introduced different measures with the so-called economic and crisis management package, *inter alia*, implicating a reduction of the standard VAT rate from 19% to 16% and the reduced VAT rate from 7% to 5% for the period 1 July 2020 until 31 December 2020.

Due to various issues with practical implementation, the German Federal Ministry of Finance issued two circulars dated 30 June 2020 and 4 November 2020, providing guidance covering, *inter alia*, the following topics:

1. General background

In general, the application of the different VAT rates depends on when the supplies and services are provided (date of supply) – therefore, it is irrelevant when the respective transaction is contractually agreed, when the invoice is issued or when the invoice is paid.

2. Supplies of services

Supplies of services are provided at the date of completion.

Example: A service is completed in December 2020, but the invoice will only be issued in January 2021 = the reduced VAT rate is applicable, given that the date of supply of the service is before 1 January 2021.

Thus, for services provided/completed in the period 1 July 2020 until 31 December 2020, the reduced VAT rates (16% and 5%) are applicable. For services provided/completed before 1 July 2020 and after 31 December 2020, the general VAT rates (19% and 7%) are applicable.

3. Supply of goods

For the supply of goods, the date of supply depends on the right of disposal. In cases of supplies of goods including transport, the starting date of the transport is deemed to be the date of supply.

Example: Regarding a supply of goods, the transport starts in December 2020, but the invoice will be issued in January 2021 = the reduced VAT rate is applicable, given that the date of supply is before 1 January 2021.

Therefore, supplies of goods for which the transport starts in the period 1 July 2020 until 31 December 2020 need to be invoiced with the reduced VAT rates (16% and 5%). Supplies of goods for which the transportation starts before 1 July 2020 and after 31 December 2020 have to be invoiced with the general VAT rates (19% and 7%).

4. Supplies of goods including installation

Supplies of goods including installation are deemed to have been made at the time when the acceptance takes place (after completion of the installation).

Thus, all supplies of goods including installation for which the acceptance takes place in the period 1 July 2020 until 31 December 2020 have to be invoiced with the reduced VAT rates (16% and 5%). All supplies of goods including installation for which the acceptance takes place before 1 July 2020 and after 31 December 2020 have to be invoiced with the general VAT rates (19% and 7%).

5. Advance and down payments

For advance and down payment invoices received after 30 June 2020 and before 1 January 2021 and for which the remuneration has been made during this period, VAT must be calculated using the VAT rate of 16% or 5%. If the supply is performed after 31 December 2020, a correction to 19% or 7% at the time the supply is performed must be made. Insofar as it is certain the respective service will only be provided after 31 December 2020, the applicable tax rate of 19% or 7% can already be applied regarding said advance or down payment. The recipient of a respective invoice can claim the stated VAT amount as input VAT under the general conditions.

6. Partial supplies

For partial supplies provided in the period 1 July 2020 to 31 December 2020, the reduced VAT rates (16% and 5%) are applicable. For partial supplies provided before 1 July 2020 and after 31 December 2020, the general VAT rates (19% and 7%) are applicable.

7. Permanent and recurrent services

Regarding permanent and recurrent services, e.g. rental, leasing or specific maintenance contracts, for which partial supplies of services are common practice, the contracts are often the invoice document. As the invoice needs to show the VAT rate applicable, an amendment needs to be issued to assure the input VAT deduction.

8. Other guidance topics

The circulars provide guidance to several further topics, inter alia:

- Annual bonuses
- Telecommunications services
- Membership fees, subscriptions, etc.

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- Taxation of electricity/gas/heat supplies
- Taxation of passenger transport
- Taxation of commercial agents
- Taxation of commercial brokers
- Taxation of hotels and restaurants
- Exchange of goods

Germany II



Revised definition of work deliveries

On 1 October 2020, the Federal Ministry of Finance issued a circular which finally reflects the jurisdiction of the Federal Fiscal Court regarding the definition of work deliveries as of 2013.

According to the ruling of the Federal Fiscal Court, a work delivery is a uniform supply of a product consisting of delivery elements and service elements in combination with the processing of components not belonging to the supplier, e.g. owned, procured or provided by the customer. The preconditions of a work delivery may also be met if the product would be permanently connected with real estate, as the process of creating the connection to the real estate would represent the processing of items not belonging to the supplier.

Until then, in the opinion of the German Tax Authorities, a work delivery was determined by the obligation of the supplier to produce the item (movable property) requested by the customer from materials procured or produced by it. Unlike the understanding of the Court, it was not required to process external objects, i.e. items not belonging to the supplier.

Thus, in the past, it could be observed that, e.g. the sale of a machine being assembled on the premises of the customer was considered as work delivery, although neither the processing of "foreign" components took place nor any permanent connection with real estate had been established. According to the new interpretation and due to a lack of processing items not belonging to the supplier, no work delivery must be assumed. Instead, the sale of the machine shall be considered as a so-called supply with assembly and/or installation, as per Article 36 of the VAT Directive.

However, the significant difference between a work delivery and a supply with assembly/ installation derives from the subsequent VAT consequences, i.e. the applicability of reverse-charge procedure in Germany, which only applies to work deliveries, but not to supplies with assembly and/or installation.

This revised opinion may have relevance for international machine and plant construction operations: a work delivery can be assumed if the supplier firmly connects the machine to the real estate on the premises of its customer. However, if the machine is not permanently connected to the real estate, a supply with assembly and/or installation would be given. As a consequence, a non-resident supplier would have to register for VAT purposes in Germany and would also be liable to collect and remit VAT on this supply to the German Tax Authorities.

The decree of the Federal Ministry of Finance provides a grace period to adapt to these new requirements. For any transaction for which VAT will fall due before 1 January 2021, the initial VAT treatment may be applied.

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Industry associations have already termed the consequences of this revised approach as a "registration trap" for non-resident suppliers and requested modifications. Nevertheless, non-resident suppliers should take advantage of the grace period in order to revisit their transactions, evaluate whether they might be affected by potential VAT obligations and prepare the appropriate actions.

II. Further countries

Chile



VAT exemption on import of capital goods

In February 2020, Law 21,210 modified several matters substantially. One of these modifications that is relevant and necessary for the development of Chile is the VAT exemption for the importation of capital goods.

Before this reform, only investors could benefit from the VAT exemption and, in order to apply for the project, they could not generate income for twelve months. Therefore, the scope of the standard was lower. Thanks to the modification of Law 21,210, individuals and legal entities resident in Chile or foreign investors, as well as companies receiving foreign investment, may be eligible for the benefit.

The main requirement for the application of the exemption is to use capital goods for investment projects. Therefore, the person who carries out the import does not have to be the same person who develops the project, so that it can be developed either by the importer itself or by a third party.

The project must involve an investment of USD 5 million as at the filing date of the application. It must not generate income before two months of entering the country or acquisition in Chile of the first capital goods, the exemption of which from Value Added Tax is required, or from the Environmental Qualification Resolution, or the concession of onerous use of land, as the case may be. The project previously required not generating income within twelve months and fewer projects met the requirement. This is a meaningful modification.

Said request must be presented before the Chilean Ministry of Finance, via its website <https://hacienda.cerofilas.gob.cl/>. The password of the applicant or its representative in the case of legal entities is needed to access the website. All the founding documents of both the capital assets and the investment project must be uploaded.

The Ministry of Finance will verify compliance with the requirements. Within 60 calendar days, the Ministry will issue a resolution granting or not granting the exemption and sending it to the SII ("Servicio de Impuestos Internos" – Internal Revenue Service). Within this period, if there are no comments on the matter, the request is considered to be accepted. The SII could also request a background review within 15 business days.

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Saudi Arabia



Application of VAT to provision of collateral (liens and mortgages)

The General Authority of Zakat and Tax (GAZT) continues issuing the guidance and publications to clarify the tax treatment in so many areas of the tax regime. GAZT always mentions that the "Circular is issued for information purposes only and it should not be construed to constitute an amendment to the tax laws in force in the Kingdom". It is worth stating that GAZT has enriched its customers' experience by improving more than 155 procedures and launching more than 60 electronic services through a transformation journey full of achievement between 2018 and 2020.

In the latest VAT publication, GAZT refers collectively to mortgages and liens and other forms of security interests as collateral. It discusses the application of VAT to these transactions and provides its interpretation on the VAT and its implementing regulations.

The publication provides different cases for payments/arrangements on some treatments that may be considered for VAT purposes, such as in case the lender arranges for the sale of the property to a third party without holding the property as its own asset.

The publication states that "the grant of collateral in the borrower's (moveable or immovable) property does not constitute a supply of goods and is not subject to VAT. In many cases, the security rights transferred to the lender would not give the lender possession or the right to dispose of property (unless the borrower defaulted on its obligations under the loan agreement).

Therefore, the grant of security interests as collateral would not constitute a supply of goods as defined under the basic principles of the GCC VAT system. For completeness, the provisions of the VAT Implementing Regulations confirm that any temporary transfer of property under these circumstances is not considered a supply of goods in Saudi Arabia.

It also emphasises that "This interpretation also applies in cases where the formal notarised title in the property is transferred to the lender; provided the loan agreement intends this to be temporary and does not give the right of ownership or disposal to the lender".

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