

# WTS Value Added Tax Newsletter



## Editorial

Dear reader,

Confronted with several changes in the first half of 2022 and already with an eye on the second semester, the agility of tax administrations and lawmakers will remain a reliable source for innovations. The latest insights from the world of VAT and GST can be found in our second edition of the WTS Global VAT Newsletter 2022.

In **The Netherlands**, a supreme court ruling might allow for a broader interpretation of the organisational requirements in connection with VAT grouping.

Even more developments are reported from outside of Europe. **Chile** broadens the scope of VAT as only specific services shall be considered as VAT-exempt in the future. The fear of business contraction was the driver for **China** to cut down registration thresholds and specific VAT rates as well as extend the scope of input VAT deductions. For the **Gulf Cooperation Council countries**, the update discloses that some states may continue to postpone the go-live of VAT, whilst others increase their VAT rates or implement a whistleblowing system against tax fraud. **Nigeria's** VAT system "goes digital" – non-resident suppliers of digital services might face registration obligations for VAT purposes as their services could be subject to local VAT. The closing comments will be provided by **Vietnam**, outlining a reduction of VAT rates for specific supplies; once more illustrating the variety of regional particularities in the world of VAT and GST.

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

Yours sincerely,

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## The Netherlands I. EU Member-States



### Broader interpretation of conditions for forming a VAT group

February saw the Supreme Court of the Netherlands rule in a case concerning the conditions for forming a VAT group in the Netherlands. This ruling could be beneficial, as it includes further clarification/guidance on what has to be present in order to meet the condition of being organisationally intertwined.

#### Background

In the Netherlands, entities form a VAT group by operation of law from the moment the following requirements have been met:

1. Organisationally intertwined
2. Financially intertwined
3. Economically intertwined

In principle, entities are deemed to be organisationally intertwined when the persons concerned within the group are under the joint management and directions of one or more of them. However, the Supreme Court of the Netherlands has now ruled that this condition can also be met if the entities involved jointly decide on the organisational policy together as a group.

In the case at hand, one of the entities concerned carried out cleaning services for one of the other parties in the group. These services were complementary to the main activities of the recipient of the cleaning services. The Supreme Court decided that the parties met the condition of being organisationally intertwined as the party for whom the cleaning services were being carried out had strategic power and control over the cleaning services. It is not required that the involved entities are subject to a relationship of subordination to another entity in the group in order to meet this condition.

#### Comments

Although the Supreme Court decision relates to quite specific facts and circumstances, we are of the opinion that companies which did not meet the set conditions to be a VAT group in the Netherlands before could benefit from the ruling as the condition to be organisationally intertwined has a broader interpretation.

While before this ruling, this condition could only be met when the entities concerned have (effectively) the same management, the condition could now in principle also be met if the entities concerned jointly decide on the policy of the group of entities.

Due to this additional possibility, companies which are in a situation where it could be beneficial to form a VAT group in the Netherlands, could review their current position and examine whether or not they could make use of this Supreme Court decision.

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In our view, it could be mainly beneficial for companies in the Netherlands with (partly) VAT-exempt activities, which incur costs including VAT from other entities in the group. Because transactions between entities within a VAT group in the Netherlands are not visible for VAT purposes, the entities concerned will no longer have to charge and/or incur VAT that is non-recoverable (in full). Depending on the circumstances, this may result in substantial costs savings.

Should you have further questions or would like assistance in this respect, please feel free to contact us.

## II. Further countries

### Chile



#### VAT changes for services

On 4 February 2020, Law 21,420 was published. This law reduces or eliminates tax exemptions to finance the universal guaranteed pension, which establishes that, as of 1 January 2023, all services will start to be taxed with VAT in Chile, except those that are expressly exempt from VAT.

This is a relevant tax reform since several services that were traditionally untaxed in Chile will begin to be taxed with VAT, such as professional services and advice, collection, various non-ambulatory health treatments and translation services, among others.

By virtue of said modification, services such as advice and consultancies from lawyers, accountants and engineers, etc., which until now were not subject to this tax, will be affected by a 19% VAT rate.

Education and transportation services remain expressly exempt, and a new exemption was added regarding "outpatient health services, benefits and procedures" whose scope must be defined by the Chilean IRS through its powers of interpretation.

Likewise, and as an exemption, the services provided by independent individuals who issue receipts for professional fees, and those provided by "professional companies" were added. Regarding the latter, the question remains as to whether the companies that currently provide these VAT-exempt professional services could be transformed into professional companies, or could be considered an elusive act in accordance with the anti-abuse regulations, so they must maintain their corporate structure.

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### China



#### VAT measures to tackle business contraction

To boost the momentum of work and production, the Chinese government has rolled out further VAT incentives and relief to support business operators who are considered vulnerable to business contraction.

### Larger VAT incentive scope

No.	Description	Before	Now
a.	Business threshold subject to VAT	RMB 100,000	RMB 150,000
b.	Small business taxed for VAT at 3%	Reduced to 1%	VAT-exempt

Note: the above-mentioned applies only to businesses categorised as “small-scale VAT payers”

The details of the VAT incentives are as follows:

- a. Per the tax announcement, Notice ([2021] No.11), the minimum business volume subject to VAT for small-scale VAT payers has increased from RMB 100,000 (approx. EUR 14,375) to RMB 150,000 (approx. EUR 21,566) per month effective from 1 April 2021 to 31 Dec 2022;
- b. As per the tax announcement, Notice ([2022] No.15), all small-scale VAT payers who used to be subject to VAT at 3% are exempt from VAT effective from 1 April 2022 to 31 Dec 2022.

### More VAT bonus

The Chinese tax authority has offered more VAT credit bonuses to servicing sectors by postponing the policy deadline to a later date through to the end of this year.

#### Old regulations:

- Production-supporting servicing sectors are offered 10% extra VAT credit in each filing;
- Consumption-supporting servicing sectors are offered 15% extra input VAT credit in each filing.

#### New regulations:

- According to the tax announcement, Notice ([2022] No.11), the effectiveness of the said two VAT credit incentives have been prolonged until 31 December 2022.

### More VAT refunds

The latest policy has enabled more businesses to benefit from the VAT credit refund, which has seen a continuous increase in its beneficiary scope in the recent three rounds, as shown below:

Description	[2019] No.84	[2021] No.15	[2022] No.14
Scopes	Some advanced manufacturing	Advanced manufacturing	Multiple industries
Means	Incremental refund	Incremental refund	Incremental/accumulating refund
Criteria	Five criteria	Five criteria	Four criteria

- Scope expansion: the scope of beneficiaries has been expanded from advanced manufacturing to a variety of industries, covering manufacturing and others.
- Criteria relaxation: a taxpayer is no longer required to have a positive VAT credit balance when applying for VAT credit refunds.

### Deferral of VAT payments

	Old - [2021] No. 30	New - [2022] No. 2
<b>Filing period</b>	<b>Deferral allowed</b>	
Q4 of 2021	3 months	6 months
Q1 and Q2 of 2022	No deferral	6 months

As a tax relief, VAT payments are allowed by the latest policies to be deferred for as long as six months, covering the VAT filings in the last quarter of 2021, and the first two quarters of this year for small, medium and micro enterprises in manufacturing.

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### Implications

It is expected that China's economy will continue to be impacted by the enduring pandemic. Most of the latest tax incentives or reliefs are believed to be short-lived though relaxed, but are still somehow limited in scope and period. Prompt review and due application is the key to enjoying the maximum benefit, especially in easing short-term cash flow stress.

## Gulf Cooperation Council countries Update on VAT



### Qatar and Kuwait

As per the recent media reports, it has been confirmed that the State of Qatar is committed to the introduction of VAT and that the tax is currently under legislation. The reports also followed the updates from the General Tax Authority (GTA) in Qatar on the recent strengthening of the IT infrastructure required for the implementation of VAT. Furthermore, it has also been reported that the draft implementing regulations are in circulation to limited recipients for review and comments.

Likewise the Qatar, the Kuwaiti Cabinet has also concluded several meetings which over-saw the latest government work programme. The programme, which is aimed at fixing the states' economy in light of the budget deficit, has proposed amendments to the law and regulations in the state. The programme has proposed the introduction of the following laws:

- Value Added Tax
- Excise Tax Law
- Unified Tax Procedures Law

It is anticipated that the State of Qatar will implement VAT in 2023 after the Football World Cup. Moreover, at present there is no clarity on the VAT implementation date for the State of Kuwait.



## Kingdom of Bahrain

### Change in effective VAT rate as of 1 January 2022

The Law No. (33) for the year 2021 was approved by the Bahrain Parliamentary upper house known as the Shura Council to amend the Decree-Law No. (48) for the year 2018 regarding Value Added Tax (VAT Law) to increase the standard VAT rate from 5% to 10% effective as of 1 January 2022. Law No. (33) amends certain provisions of the VAT Law and provides for a transition period of 1 year ending on 31 December 2022.

As of 1 January 2022, VAT-registered suppliers will be required to charge 10% VAT on the standard rated supplies. However, the suppliers will be required to charge merely 5% VAT on standard rated supplies made during the transition period subject to certain conditions. The transitional rules are mandatory where the conditions are met and not optional (similar to when the Kingdom of Saudi Arabia increased the VAT rate in 2020). The Bahrain National Bureau for Revenue ('NBR') has released the VAT Rate Change Transitional Provisions Guide and VAT FAQs regarding the transitional rules. The tax treatment during the transition period would be as below:

Type of supply	Supply to be made on	Effective VAT rate <sup>1</sup>
<b>One-off supplies</b>		
Contract entered on or before 23 December 2021	1 January 2022 to 31 December 2022	5% <sup>2</sup>
Contract entered on or after 24 December 2021	On or after 1 January 2022	10%
<b>Continuous supplies</b>		
Contract entered on or before 23 December 2021	Supplies made up until 31 December 2022	5% <sup>3</sup>
Contract entered on or after 24 December 2021	On or after 1 January 2022	10%

#### Notes:

- 1 The NBR has clarified that the registered persons would have an option to issue a single tax invoice having both 5% and 10% VAT rates.
- 2 5% VAT rate would only be applicable provided there is no change to the contract.
- 3 5% VAT would be applicable provided the contracts are not amended or renewed. If the contracts are amended, 5% VAT would be applicable up until the date of amendment of contract and thereafter revised VAT rate of 10% VAT would apply prospectively to the balance period of the contract.

The transitional guidelines further define the scenarios which will be regarded as a change to the contract in terms of the VAT rate change law. A change will include, although not be limited to, the following aspects:

1. Extending the duration of the contract to cover additional goods or services
2. Including additional supplies of goods and/or services within the same contract
3. Increasing the consideration payable under the contract which would otherwise be subject to 10% VAT and compensating the customer in another manner (e.g. providing discounts, cash rebates, etc. for another supply)

The transitional guidelines also clarify that the intention of the parties for making changes to the contract would be disregarded by the NBR and such contracts would be subject to 10% VAT. The transitional guidelines further clarify that any other changes which do not impact the original timing, consideration or quantum of supplies to be made under the contract, will generally not be considered as a change or amendment for the purposes of transitional guidelines.



## United Arab Emirates

### Introduction of Raqeeb – whistleblower programme for tax violations & evasions

The Federal Tax Authority (FTA) has launched a new initiative called 'Raqeeb' which is a 'whistleblower' programme for reporting tax violations and evasions by the VAT registered persons. The programme is aimed at raising awareness among the general public and increasing compliance rates. The programme also aims at having control over the prices of goods and services in the local market.

The FTA has released a guide to help informants understand the 'whistleblower programme' and report any violation of any tax provisions by VAT-registered businesses. The guide also provides the details required in the whistleblowing form and the conditions that need to be met for an informant to be eligible for the monetary reward in return for such information or leads.

The information or leads covered under the 'Raqeeb' programme include suspicion of tax evasion for both VAT and excise tax and non-compliances with tax procedures. The information provided by the informants would be classified by the FTA as following:

- **Suspected tax evasion;** such as a registrant listing false information in their tax returns or a taxable person evading registering for tax; or
- **Suspected non-compliance with tax laws and procedures;** such as non-issuance of tax invoices, tax invoices not containing the correct amounts, non-collection of tax, or offering to charge a lower price (exclusive of VAT) if the recipient is willing to pay cash without receiving a tax invoice.

The whistleblowing form cannot be submitted anonymously on the FTA portal, to ensure validation of the authenticity of the information received. However, it has been mentioned that the identity of the informant will remain confidential and protected by the FTA. Furthermore, at the time of submission of the lead, the informants would be required to also file a non-disclosure agreement (NDA) to ensure the protection of any confidential or sensitive information, including information regarding monetary rewards, if any.

The FTA has also notified the conditions associated with the monetary rewards for the informants, which are summarised as under:

- The information provided is credible and not obtained by the FTA previously;
- The whistleblowing form is completed accurately and in full;
- The tax amounts collected from the reported business exceed AED 50,000 (approx. EUR 12,936);
- The reported person has exhausted all forms of objections and appeals.

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It is pertinent to note that FTA employees and their relatives up to the fourth degree of consanguinity will not be eligible for monetary rewards. However, they will still be able to report non-compliances under this programme.

## Nigeria



### VAT obligations of non-resident digital service providers

11 October 2021 saw the Federal Inland Revenue Service (FIRS) issue guidelines for VAT compliance for non-resident suppliers who render digital services taxable in Nigeria. These guidelines were made pursuant to Section 10 of the Value Added Tax (VAT) Act Cap V1, LFN 2004 (as amended) and came into effect from 1 January 2022 with respect to supply of services as well as intangibles and 1 January 2024 for supplies of goods.

Section 10 (1) of the VAT Act requires non-resident suppliers (NRS) of services to Nigeria to register and obtain a Taxpayer Identification Number (TIN). Section 10 (3) enables the FIRS to appoint any person to collect VAT on its behalf, and the remittance to the FIRS.

#### Key takeaways

- The rate of VAT is 7.5% for services rendered by non-resident digital service providers.
- An NRS is required to register as prescribed in the guideline if, within 12 consecutive months immediately before the coming into effect of these guidelines or any 12 consecutive months thereafter, it has made or expects to carry out a single or series of supplies to Nigeria which (in aggregate value) amounts to USD 25,000 (approx. EUR 23,975).
- The NRS is required to remit the amount due, using its name and TIN, to the FIRS through any of the collecting banks in Nigeria in the case of local currency (Naira, NGN) and through electronic payment methods using bank transfer for foreign currency transactions.
- An NRS registered for VAT purposes will be required to file monthly VAT returns even for months where no taxable supply has been made to Nigeria. The returns should be rendered no later than 21 days after the end of the month in which the supplies were made. If the filing deadline cannot be met, the NRS may obtain an approval for an extension from the FIRS which shall not be more than one month.
- The NRS shall remit the whole tax collected without deducting input tax. This is because exports, under the destination principle, are generally zero-rated. As such, the NRS may claim input tax in the jurisdiction of origin of the supply where the domestic VAT rules of that jurisdiction provide for input VAT deduction on exported goods and services.
- All NRS making supplies to Nigeria are required to keep reliable and verifiable records indicating the full and accurate representation of supplies made to Nigeria and these should be submitted to the Service upon request.

#### Failure in VAT obligations by NRS

An NRS will be regarded as having failed to collect VAT on its services where:

- a. It does not include the transaction in its return;
- b. From the facts of the transaction, it shows that the NRS has not charged VAT or collected the tax on the transaction.

Where the NRS fails to account for or to remit VAT or to generally comply with these guidelines, the FIRS may take all necessary steps to enforce the tax laws and collect the taxes due.

Technically, the appointment of NRSs as VAT collectors is not currently supported by the VAT Act. This is because Nigerian customers are required to self-charge or deduct VAT at source and remit to the FIRS. The VAT registration threshold for NRSs included in the circular being USD 25,000 (approx. EUR 23,975), is lower than the NGN 25,000,000 (approx. EUR 57,702) threshold stated in the VAT Act, while the new mode of registration according to the guidelines may create an additional administrative requirement for registered NRSs.

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While it is evident that the FIRS intends to adopt a clear and practical approach as can be seen in the guideline, it is pertinent that they align with the provisions of the law.

## Vietnam



### VAT rate reductions

The regular VAT rate of 10% is reduced to 8% from 1 February 2022 until the end of 2022. The rate for the following services has not been reduced:

- Telecommunications, financial activities, banking activities, securities, insurance, trading of real estate, metal and precast metal products, mining products (excluding coal mining), coke mining, refined oil, chemical products.
- Goods and services subject to excise tax.
- Information technology as prescribed in the law on information technology.

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### About WTS Global

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