



Indirect Taxes NEWS

Newsletter
No. 10 | Spring 2020

© 2020
GGI | Geneva Group International



An Alternative to Sales Tax Registrations and other updates

Editorial

Dear Reader,

I am writing this editorial on the flight home from the ITPG Global Tax Summit (Frankfurt) and my thanks to GGI and host firm, Benefitax GmbH, for putting on a great event.

In the lead article, Pablo Garciga (Indirect Taxes PG Regional Chair, North America) has crafted an excellent article that in my opinion removes a lot of the mystique surrounding US sales and use taxes. My thanks to Pablo.

As many readers know, the IDT PG runs a workshop immediately prior to the ITPG Global Tax Summit and so it was at the Frankfurt event. The workshop was very well attended, with a lot of the post-workshop feedback saying that this was our best to date. Why do I mention this? Well, the workshop was concentrated on Importing post-

Brexit into the Netherlands, Germany and the UK, e-commerce / platforms and the “three quick VAT fixes”: call off stock, the intermediary trader, and the exemption (or zero-rate) presumption for intracommunity transactions. There was so much interest in the first two subjects that we were asked to extend the session by 45 minutes to fully cover them. Within this Newsletter there are no less than five articles covering one of these subjects in some form, including articles from Russia and South Africa revealing how those jurisdictions are tackling ‘e’ supplies.

Whatever is written in an article can only ever be a summary and as always with VAT (and indirect taxes generally), ‘the devil is always in the detail’. As such, the articles cannot and should not be relied upon as advice, which should be sought by the reader from their own adviser.



I trust that you find this newsletter interesting and commend it to you!

Kind regards,

Steve McCrindle
Global Chairperson of the
GGI Indirect Taxes Practice Group

Disclaimer – The information provided in this newsletter came from reliable sources and was prepared from data assumed to be correct; however, prior to making it the basis of a decision, it must be verified. Ratings and assessments reflect the personal opinion of the respective author only. We neither accept liability for, nor are we able to guarantee, the content. This publication is for GGI internal use only and intended solely and exclusively for GGI members.

An Alternative to Sales Tax Registrations

By Pablo Garciga

Since *Wayfair* was decided by the US Supreme Court in October 2018, **economic nexus** has dominated state and local tax discussions. It is important to remember that **physical** connections to a state will still create nexus even if the economic nexus thresholds are not exceeded. For example, an out-of-state vendor (“vendor”) attends a trade show in a state and makes USD 25,000 in sales. This may not exceed the sales threshold to meet the state’s sales tax economic nexus definition, but the vendor may have created nexus for the sales or use tax.

Once nexus is established the vendor must register with the state and obtain a permit; however, many states have alternate registration procedures of which taxpayers may avail themselves. One such common procedure allows

vendors with no other connections to a state to participate in conventions and trade shows for a limited number of days without requiring the vendor to register and obtain a Sales Tax Permit or a Vendor’s Use Tax Permit.

These determinations hinge on the facts and circumstances and are highly contingent on state-specific definitions. Generally speaking, not having a physical location in a state or not keeping inventory or assets in a state means the vendor does not have sales tax nexus. But what if a representative enters the state for a limited number of days for a specific purpose? Will this create sales tax nexus? The answer depends on the state. Sometimes, instead of deeming sales tax nexus to exist, states will determine that use tax nexus has been created and offer temporary registrations which will reduce the vendor’s cost of compliance.

Use of the term “sales and use” tax can be confusing; oftentimes they are combined as if they were one and the same. They are not. Practically speaking, one may think of a **sales tax** as an indirect tax on sales both originating and terminating (i.e., delivered to the ultimate customer) within the same state – an “intrastate” sale. A **use tax**, on the other hand, is an indirect tax on a sale originating outside the state and terminating within the state – an “interstate” sale. There are other fundamental differences in their nature and their application.

Use tax itself is of two different kinds. The most familiar is the **consumer’s use tax**. When a consumer purchases a taxable item from a vendor which does not have sales or use tax nexus in the consumer’s state, it is incumbent on the consumer to self-assess the use tax on the item purchased without paying sales tax. The second, and less well known, is the **vendor’s use tax**. Under this scenario the vendor may not be deemed to have met the state’s definition of sales tax nexus but nevertheless has connections to the state which require the vendor to collect and remit the state’s use tax on its sales to customers in the state.

Let’s take California (CA) as an example. If a vendor’s only connection to CA is its participation in a trade show for not more than 15 days during any 12-month period, and during the prior calendar year the vendor did not earn more than USD 100,000 of net income from those activities in CA, the vendor will not be required to register for sales tax. However, the vendor participating in a trade show is a “retailer engaged in business” in CA and must collect the **use tax** with

...next page

GGI member firm
Funaro & Co. PC
Advisory, Auditing & Accounting, Tax
New York (NY), USA
T: +1 212 947 33 33
W: www.funaro.com
J. Pablo Garciga
E: pablo.garciga@funaro.com



J. Pablo Garciga

Funaro & Co. PC provide a wide range of services, including accounting and auditing, tax reporting and compliance, tax advisory, management consulting, and transaction advisory.

J. Pablo Garciga specialises in state and local taxes (SALT), with an emphasis on multi-state corporate income/

franchise taxes and sales and use taxes. He has over 20 years of cumulative SALT experience with Funaro and Big Four Public Accounting firms. He is a CPA, JD with an LLM in Taxation.

funaro & co/pc

respect to any taxable sale occurring at the trade show or pursuant to an order taken at or during the trade show.

If the vendor qualifies for this exception, it must register and obtain a **temporary permit** to sell products at the qualifying trade show and be responsible for the tax due with respect to sales made and orders taken at the trade show. A temporary permit will be granted to

entities with no permanent place of business in CA and covers a selling period of 90 days or less at one location. Holders of temporary sellers' permits are required to file returns by the last day of the month after the temporary sales location closes (e.g. if the vendor participates in a CA trade show between 15 February and 21 February, the return will be due on or before March 31). As an alternative, the vendor may

obtain a "vendor's use tax certificate"; however, this will require the vendor to collect and remit the applicable tax until the use tax certificate is closed.

Several other states have similar alternatives to obtaining Sales Tax Permits. These are worth investigating because they will reduce the time and cost of complying with a state's sales and use tax rules.

Duty to Collect Goods and Services Tax in Canada

By **Greg Gartner**
and **Lindsay Kindrachuk**

Recipients of most supplies **made in Canada** must pay federal tax of 5% of the value of the supply, referred to as goods and services tax (GST) and legislated under Canada's Excise Tax Act (the ETA). The supplier, however, has the duty to

register to collect and remit this tax to the Canada Revenue Agency (CRA), with few exceptions, or risk assessment for the uncollected GST, plus interest and penalties. All but one province, Alberta, also have a provincial sales tax. Some provinces have "harmonised" their sales tax with the GST (e.g. Ontario) resulting in a higher rate (HST) to

be collected and remitted to the CRA where supplies are made in that province, and others administer their own sales tax (e.g. British Columbia) requiring a separate consultation of that province's sale tax legislation

The ETA provides the conditions for supplies to be made either in

GGI member firm
Moodys Gartner Tax Law LLP
Fiduciary and Estate Planning,
Law Firm Services, Tax
Calgary (AB), Edmonton (AB), Canada
T: +1 403 693 5100
W: moodysgartner.com

Greg Gartner

E: ggartner@moodystax.com

Lindsay Kindrachuk

E: lkindrachuk@moodystax.com

Moodys Gartner has one single focus: tax. They provide tax advisory and planning for individuals with personal and business interests on either side of the Canada-US border, no matter where they live in the world.



Greg Gartner

Greg Gartner, CA, MBA, LLB, QC, is Moodys tax's director, Canadian Tax Law. Equipped with nearly 30 years of experience, Greg specialises in purchases and sales of businesses, corporate reorganisations, cross-border Canada/US tax issues, and international taxation.

Lindsay Kindrachuk, CPA, CA, has over 10 years' experience delivering tax compliance, planning, and other tax



Lindsay Kindrachuk

advisory services to individuals, trusts/estates, partnerships, and corporations, both resident and non-resident, and in the context of both income tax and sales tax.

**moodys
gartner** tax law™



or outside Canada, depending on the nature of the supply: tangible personal property (TPP), intangible personal property (IPP), or services. The determination requires detailed review of all contracts, including how and where the goods and services are delivered, and, in the case of IPP, whether it may be used in Canada. In this digital age, the distinction between a supply of IPP or a service is not always clear, nor is the place of supply for certain “remote” services. To help differentiate from a supply of IPP, a service generally involves specific work performed for a specific customer.

A non-resident (NR) supplier may be relieved from its duty to register to collect GST on supplies in Canada if they do not “carry on a business in Canada”. Whether a NR is carrying on a business in Canada depends on the facts and circumstances of each business but there must generally be a “significant presence” in Canada.

In its Policy P-051R2, CRA lists many factors considered for this purpose – none are determinative, and the context of the business will affect the weight of each. In an e-commerce context, for example, weight must be given to

digital infrastructure to attach a geographical presence to operations.

For some, determining the duty to collect GST on supplies made to Canadian customers will be straightforward, for others, it will be more involved. Keep in mind, however, that where a NR is not required to collect GST, it may be advantageous to register to collect and remit GST on a **voluntary** basis to recover GST that the NR must pay, such as GST which may be collected along with any customs duties by the Canada Border Services Agency on the importation of goods to Canada.

Indian GST on Digital Services

By Siffat Kaur

Rapid digitisation is one constant that has changed the world we live in. From buying groceries to booking cabs, almost everything is possible online. As more and more people participate in the digital

economy, there is a need for countries to develop a framework to regulate and to get a “fair” share of taxes from the revenues generated by such businesses.

Development of such a framework is challenging as, typically, taxation rules

have been built around traditional brick and mortar businesses. Unlike traditional businesses, digital businesses have three distinct characteristics. First, they are not physically established. Second,
...next page

they rely heavily on intellectual property assets which can be quite mobile and third, they are typically

located in a low-tax jurisdiction. The OECD, with the aim to deliver a set of consensus-based solutions for

revision of profit allocation to G20 by 2020, has issued a discussion draft. Though India doesn't use the term "**Digital Service Tax**", the tax is very much in place under the GST regime, in the name of Online Information and Database Access and Retrieval Service. The services included are those whose delivery is mediated by information technology over an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention. The provisions for determining the taxability will depend upon the place where the supplier and the recipient are located. Also, all digital sales are subject to tax without any registration threshold. With newer technologies such as blockchain, virtual reality, and artificial intelligence on the rise, the pace of digitalisation is only going to accelerate. A unilateral move may expose India to retaliatory measures from other countries. As the OECD works towards a digital taxation solution, India's interests will be better served if it works through developing a consensus-based, longer-term, multilateral solution to digital taxation.

GGI member firm
Ashwani & Associates,
Chartered Accountants
Advisory, Auditing & Accounting,
Corporate Finance, Tax
Ludhiana, India

T: +91 98554 00428
W: ashwaniassociates.in

Siffat Kaur

E: siffat.kaur@ashwaniassociates.in

Ashwani & Associates, Chartered Accountants is an audit, tax, and consulting firm in India with three offices. Their clients range from emerging entities to large corporations with billions of dollars as revenue. They include privately held businesses, not-for-profit organisations, and

ashwani & associates
chartered accountants



Siffat Kaur

publicly traded companies. Ashwani & Associates support a local, national, and international client base.

Siffat Kaur is a B Com ACA specialising in VAT/GST consulting in cross-border business in India and abroad. She thus has experience and a vast working knowledge of all aspects of service tax, trade law, VAT, and the like. Serving clients from national and international companies and having worked in every existing kind of indirect tax branch, she offers pragmatic solutions on a cost-effective basis.

Austria: VAT Changes with Effect from 01 January 2020

By Edith Huber-Wurzinger

The Austrian tax reform for 2020 necessitated some organisational modifications and implementations within the scope of the IT systems for many entrepreneurs. The new provisions are especially important for the transnational movement of goods in the internal market.

Due to the harmonisation and simplification of taxation within

the EU, these so called "quick fixes" have been applied:

- **New rule for chain transactions:**

The movement of the goods is ascribed to the supply made to the intermediary operator (IO). However, if the IO provides the supplier with a VAT ID of the Member State of departure, the movement of the goods will be ascribed to the supply made by the IO.

- **Simplification rule for call-off stocks:**

The (zero-rated) intra-community supply of goods and the intra-community acquisition of goods take place at the time the acquirer takes ownership of the goods and not at the time the goods are transported to the stock in another member state.

- **VAT exemption of intra-community supplies of goods:**

The receiver of the goods must indicate the VAT



ID to the supplier. The supplier has to show the supply correctly in the recapitulative statement. If one of these obligations is not fulfilled, the VAT exemption will not apply.

- **The provisions on proof of transportation for intra-community supplies of goods have been harmonised by the EU member states.** However, the Austrian rules laid down in an Austrian directive can still be used.

Furthermore, there have also been the following changes:

- The threshold for the exemption for small businesses has increased to EUR 35.000 per annum.
- The supply of electronic books and newspapers is subject to a reduced rate of 10% the same as for printed works.
- Supplies of goods or services in connection with electronic motorcycles, such as e-bikes and e-scooters, entitle businesses to

deduct input VAT. The decisive factor is carbon dioxide emissions of 0 g/km. The input VAT for e-cars had already been deductible while the input VAT for other passenger cars is not deductible in Austria.

Please note: This article only provides a brief overview of the changes. For detailed information and specific advice for the situation of your company, please contact the author or any other Austrian tax adviser.

GGI member firm
**Gaedke & Angeringer
 Steuerberatung GmbH**
 Advisory, Auditing & Accounting, Tax
 Graz, Austria
 T: +43 316 3279 40 819
 W: www.gaedke.co.at
Edith Huber-Wurzinger
 E: edith.wurzinger@gaedke.co.at



**Edith
Huber-Wurzinger**

Gaedke & Angeringer Steuerberatung GmbH in Graz, Austria, offers professional support on all issues pertaining to taxation, accounting, business management, social security, and labour law and uses state-of-the-art technology and a strong base of knowledge to advise clients of every legal structure and from all economic sectors.

Edith Huber-Wurzinger is an Austrian certified tax consultant. Her

focus is in the field of indirect taxes and international taxation. She is a member of the VAT Working Group of the Expert Committee for Tax Law of the Austrian Chamber of Tax Advisors and Auditors, and a specialist author and lecturer.

gaedke
 & Angeringer Steuerberatung GmbH



Update on VAT on Electronically Supplied Services

By Valeria Khmelevskaya

Starting from 2019, new rules for calculation and paying VAT were introduced for foreign B2B providers of electronically supplied services (ESS), foreseeing obligatory tax registration and direct VAT payment via VAT-office, available under lkireg.nalog.ru/en. The previously applied reverse-charge procedure is not possible based on the current provisions of the Russian Tax Code.

ESS are listed in Article 174.2 of the Russian Tax Code and include a variety of services being rendered via internet, inter alia licensing of software, databases, their

updating and customisation, so that intercompany license agreements, SaaS or even supply agreements (e.g. supply of equipment with the software uploads via the internet) could fall under that regulation. Hence, initially aimed at digital businesses, these rules de facto refer to the larger group of foreign entities.

Complications were caused by clarifications given by authorities stating that foreign entities providing for other (non-ESS) services should pay VAT directly, as well as lack of clarity on applicable VAT rates (16.67% or 20%) and some other issues.

The new rules and the clarifications caused a strong negative reaction among businesses, especially foreign MNEs active in Russia. Nonetheless, the Russian Federal Tax Service made a significant step to support business by issuing the Letter of 24 April 2019, No. SD-4-3/7937@, de facto allowing the application of the previous reverse-charge procedure under the condition of a tax registration of a foreign service-provider in Russia.

In this regard, the leading business associations of foreign investors in Russia recently proposed a series of amendments aimed at improving the existing legislation. In response, the Russian tax authorities confirmed their readiness to uphold the amendments to the legislation. There are many various proposals under discussion, among them exclusion of intercompany ESS from the scope of the new rules.

GGI member firm
KBK Accounting
 Auditing & Accounting, Tax
 Moscow, Russia
 T: +7 495 662 33 30
 W: www.kbk-accounting.de
Valeria Khmelevskaya
 E: valeria.khmelevskaya@kbk-accounting.de



Valeria Khmelevskaya

KBK Accounting is a reputable outsourcing firm and provider of a wide range of services, including tax accounting and bookkeeping, tax advisory, reporting and compliance, HR, and interim management.

Valeria Khmelevskaya is a Partner, Lawyer and Tax Consultant admitted to practice in Russia. She has over 17 years experience of consulting in matters

of Russian and international tax law. Ms Khmelevskaya is also the Deputy Chair of the Committee for Taxes, Reporting and Controlling of the German-Russian Chamber of Commerce (AHK) and recommended attorney of the Austrian Foreign Trade Centre Moscow (Österreichische Außenhandelsstelle Moskau).

KBK Accounting





Proof of Transport on the Basis of the New EU VAT Law

By Pasquale Della Corte

Regulation (EU) 2018/1912 has introduced a presumption of proof of transport of goods from one member state to another member state in intra-community transactions effective from 01 January 2020.

The presumption distinguishes the case in which the transport is carried out by the vendor, or by a third party on the vendor's behalf, or by the acquirer, or by a third party on the acquirer's behalf.

In both cases, the vendor, alternatively, must be in possession of specific non-contradictory documents issued by independent parties (compared to the vendor and the acquirer) and different

...next page

GGI member firm

COMMA 10

Chartered Accountants & Lawyers

Advisory, Auditing & Accounting,
Corporate Finance, Tax
Milan, Italy

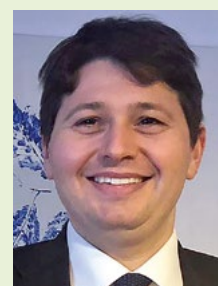
T: +39 02 481 9258

W: www.comma10.it

Pasquale Della Corte

E: pasquale.dellacorte@comma10.it

COMMA 10's cornerstone is the professional collaboration between chartered accountants and lawyers and offers its clients complete and interdisciplinary services related to accounting, corporate, and tax services, in the legal and business areas, corporate restructuring, and bankruptcy. **COMMA 10** is based in Milan and



**Pasquale
Della Corte**

provides integrated services to individuals and private and public companies, as well as non-profit organisations.

Pasquale Della Corte is a chartered accountant and legal auditor and has years of experience in VAT and international tax, advising foreign companies with subsidiaries and branches in Italy.

COMMA 10
CHARTERED ACCOUNTANTS & LAWYERS

parties (e.g. carrier and freight forwarder). In particular:

1. At least two of the following: a signed CMR document, bill of lading, airfreight invoice, invoice issued by the freight forwarder; or
2. At least one of the documents referred to above, in combination with one of the following: an insurance policy relating to the transport of the goods or bank documents proving payment for the transport; official documents issued by a public authority which confirm the arrival of the

goods in the member state of destination; a receipt issued by a warehouse keeper in the member state of destination that confirms the storage of the goods in that member state.

Additionally, where the acquirer is responsible for the transport, the vendor must also receive a statement from the acquirer, by the tenth day of the month following the supply, stating that the goods were transported by the acquirer or by a third party on the acquirer's behalf, and that identifies the member state of destination of the goods.

In addition, the statement must indicate the date of issue, the name and address of the acquirer, the quantity and nature of the goods, the date and place of arrival of the goods, the identification number of the possible means of transport supplied, and the identification of the person accepting the goods on behalf of the acquirer.

The tax authority may rebut the presumption in the case in which the tax authority demonstrates that the goods were not transported from one member state to another member state.

VAT Changes to E-Commerce Platforms from 2021

GGI member firm
EJP Accountants & Adviseurs
 Auditing & Accounting,
 Corporate Finance, Tax
 s-Hertogenbosch, The Netherlands
 T: +31 73 850 72 80
 W: www.ejp.nl
Toon Hasselman
 E: toonhasselman@ejp.nl



Toon Hasselman

EJP Accountants & Adviseurs are auditors, advisers, and challengers. Their 40 auditors and international tax lawyers have a wide range of expertise. Their main fields of expertise are Dutch corporate and personal income tax, international taxation, Dutch royalty, interest and dividend withholding tax, estate planning, and wage tax. They have an AFM license to perform audits for the larger mid-sized companies.

Toon Hasselman is an experienced (30 years) high level VAT and Customs Specialist to both national and international companies. He provides

simple and practical solutions, quick 'outside-the-box' alternatives if necessary, and promotes a no-nonsense approach with a conclusive solution at fair cost. Toon is also the Global Vice-Chairperson of the GGI Indirect Taxes Practice Group.



By Toon Hasselmann

Platforms, such as Amazon, connect suppliers to consumers through their online marketplace. They are responsible for a major part of e-business in the world. The EU has decided to make platforms responsible for paying VAT on B2C sales conducted via their platform as from 2021. Goods sold via a platform will be deemed to be supplied to and by that platform. The VAT due on the supply to the platform will be reverse-charged.

With respect to distance selling (DS), thresholds will be abolished. This means that goods will be taxed in the member state of arrival from their first distance sale onwards. However, businesses will be able to opt to file VAT returns (so-called OSS returns) in their own member state for VAT due on all such EU sales, instead of registering and paying VAT in each member state of arrival. Also, the

scope of DS will be extended. Besides those goods in which the supplier has a direct involvement in the transport of the goods to the consumer, it will also encompass sales whereby the seller “intervenes” in the transport.

For goods coming from outside the EU, the regulations will change drastically. The low-value import “exemption” for import VAT on small

consignments will be abolished; thus, VAT is due on every import. DS applies on every consignment in cases where the goods are imported in another member state different from the member state of destination (it doesn’t matter if the goods are imported by the supplier or the consumer). A supplier can opt for OSS if certain conditions are met, in which case the import may be “exempted”.

Non-EU suppliers should prepare themselves soon!

Please note: This article only provides a brief overview of the changes. For detailed information and specific advice for your business’s situation, please contact the author.

The Importance of Getting Back to Basics

By Steve McCrindle

“Civil” tax fraud investigations by HM Revenue & Customs (HMRC) are categorised as Code of Practice 8, for which the punishment is a financial penalty (or penalties).

HMRC levied substantial “failure to notify” penalties against a “client” who had been storing and selling road fuel gas off-record. According to HMRCs determination, the client was subject to penalties under Schedule 41, Finance Act 2008, which introduced a penalty for a failure to notify and specifically an “Obligation to make entry of premises intended to be used for production of oil under section 21 of the Hydrocarbon Oil Duties Act 1979...”

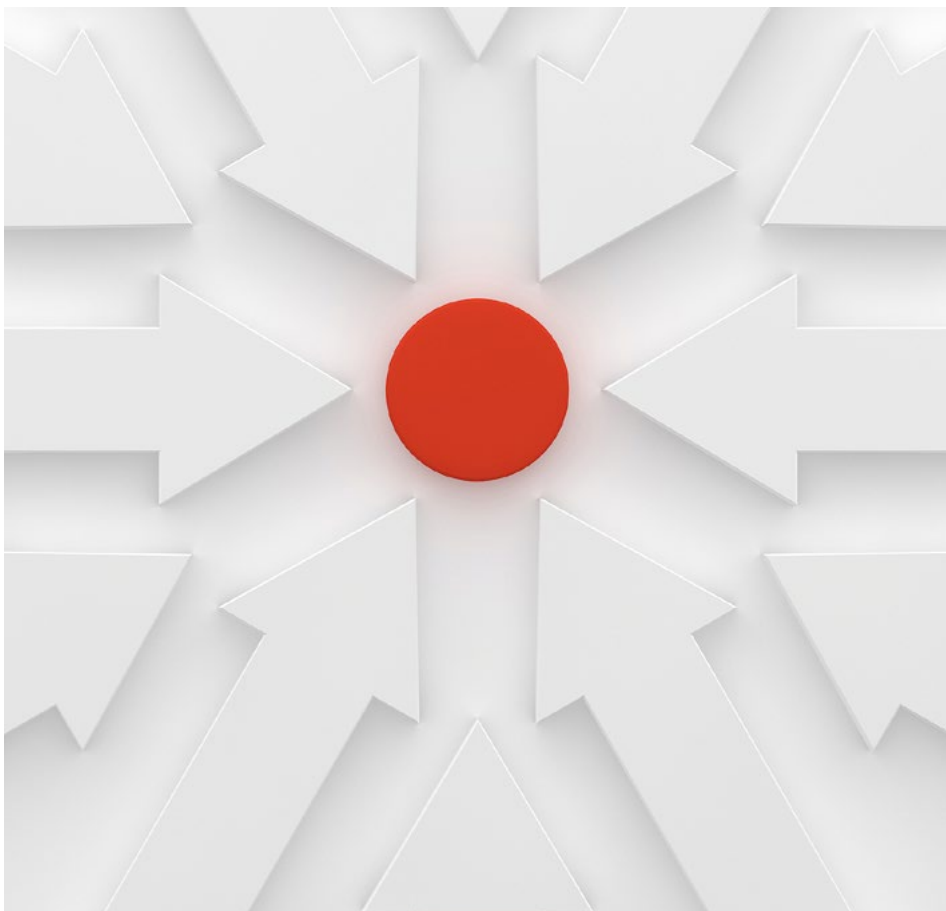
In addition, they stated:

S21(1) of HODA 1979 relates to the regulations for Road Fuel Gas and refers to Sch 3, part 3 of HODA 1979, which states: prohibiting the production of gas, and dealing in gas on which the excise duty has not been paid...

and

Excise Notice 76, section 5.1 outlines the prohibitions and penalties. I’d like to direct you to the second and third prohibitions

which state the following: If you fail to notify HMRC that you intend to send out, set aside or
...next page



supply gas: A Failure to Notify penalty under Sch 41, FA 2008.

We argued that:

1. Sch. 41, FA 2008 is unambiguous and that a penalty applies solely to a failure to notify an obligation to make entry of premises intended to be used for “production” of oil, nothing else. As the client does not produce oil such penalties are not relevant.
2. Pt 3, Sch. 3, HODA 1979, merely refers to the “prohibition” of the production of and dealing in gas, and we cannot see how this is in any way relevant. The client has not been prohibited from doing anything.
3. Sec. 5.1 of Excise Notice 76 does not state the law, whether Primary, Secondary or Tertiary Law and, therefore, must merely state HMRCs “policy”. We, therefore, believe that this Notice misrepresents the law relating to the penalties in point; items 1 and 2 above refer.

HMRC agreed with us on all three arguments, even stating that Sec. 5.1 of Excise Notice 76 would require amendment.

Client committed excise duty fraud but through our work was not

subjected to any penalties, which were withdrawn (nor was interest levied).

Getting back to basics, in this case interpreting specific legislation, was very important.

GGI member firm

Haines Watts

Advisory, Auditing & Accounting, Corporate Finance, Fiduciary & Estate Planning, Tax
More than 60 offices throughout the UK

T: +44 207 025 4656

W: www.hwca.com

Steve McCrindle

E: smccrindle@hwca.com



Steve McCrindle

With over 60 offices around the UK, **Haines Watts** is a UK Top 15 firm of chartered accountants specialising in the owner-managed business sector.



Assisting over 35,000 business owners around the UK, Haines Watts supports business owners' aspirations and helps them to achieve their goals.

Steve McCrindle is a VAT partner at Haines Watts, a leading provider of business advice and accounting services to owner managers operating in the UK and abroad. He is also Global Chairperson of the GGI Indirect Taxes Practice Group.

A Breach of EU Law Concerning the German Legislation on Online Marketplace Liability?

By Brigitte Jakoby

The European Commission has initiated formal infringement proceedings against Germany

regarding the new German legislation on the liability for operators of online marketplaces on 10 October 2019. The new rules came into force on 01 January 2019.

Under sec. 25e para. 1 of the German VAT Act, an operator of an online marketplace is liable for VAT if an online merchant carries out taxable supplies of goods on his online



marketplace without paying VAT in Germany. The liability can be prevented according to sec. 22f para. 1 German VAT Act if the operator can prove that the online merchant in question is registered for VAT purposes in Germany. On request of the online

merchant, a VAT registration certificate is issued by the German tax authorities which the operator needs at the time of the delivery of goods. At the moment, the certificate is only available in printed form, an application in electronic form is not yet implemented.

In the opinion of the EU Commission, the two above-mentioned rules infringe EU law. This arises from the obligation of the online marketplace operator to be able to submit the registration certificate of the online merchant.

The Commission considers the connected duties as disproportionate and inefficient. In the judgement of the EU Commission this obligation hinders the free access of European online merchants to the German market.

In addition, the EU member states have already agreed on more effective methods to prevent VAT fraud, which will come into force 01 January 2021. According to the new sec. 14a para. 2 of the VAT Directive, a supply chain similar to a commission trading scheme will be assumed when an intra-community supply of goods takes place.

In conclusion, the German obligations for the online marketplace operator go far beyond what the EU rules require and hinder the free circulation of goods.

GGI member firm

**Jakoby Dr Baumhof - Wirtschaftsprüfer
Steuerberater Rechtsanwälte**

Advisory, Auditing & Accounting,
Corporate Finance, Law Firm Services, Tax
Rothenburg o.d.T., Ebersberg, Germany

T: +49 9861 9405 0

W: www.jakoby-baumhof.de

Brigitte Jakoby

E: brigitte.jakoby@jakoby-baumhof.de



Brigitte Jakoby

man certified tax advisor. Since 1996, and still today, she is one of the senior partners at Jakoby Dr Baumhof.

**JAKOBY
DR. BAUMHOF**
Wirtschaftsprüfer
Steuerberater
Rechtsanwälte

**Jakoby Dr Baumhof - Wirtschaftsprüfer
Steuerberater Rechtsanwälte** is a medium-sized interdisciplinary company located in the south of Germany, with offices in Rothenburg o.d. Tauber, located in Northern Bavaria, and Ebersberg, near Munich.

In 1987, **Brigitte Jakoby** started collaborating with her husband Eugen Jakoby, also a German chartered accountant and Ger-

South Africa Implements VAT on Foreign Electronic Service Providers

By Graeme Saggars

On 01 June 2014, South Africa implemented regulations that required certain foreign providers of electronic services to register for VAT. These regulations have gone through an amendment and new regulations were published on 18 March 2019 with an effective date of 01 April 2019. The original regulations limited the scope of services that qualified as electronic services and which must be charged with VAT at the standard rate. The intention of the updated regulations is to substantially widen the scope of services that qualify as electronic services, so that all services



supplied for a consideration (subject to a few exceptions), which are provided by means of an electronic agent, electronic communication, or the internet, are electronic services and must be charged with VAT at the standard rate of (currently) 15%.

Unfortunately, this did not give much time for implementation of these widened regulations. It is important to bear in mind that the South African VAT system does not fully subscribe to Business-to-Business (B2B) and Business-to-Consumer (B2C) concepts and thus any electronic service provider supplying to South Africa will need to consider whether they are required to register for VAT. Examples of electronic services include, amongst others, games, auction services, on-line advertising, on-line shopping, web-based broadcasting, access to e-books and other publications, software-as-a-service (SAAS) applications, and software applications downloaded onto mobile phones. The registration process is a simple online process and does not require the vendor to maintain a South African bank account. VAT returns are (unless certain thresholds are met) required to be filed every two months. The implementation of these regulations is as a direct result of the BEPS Action Plan 1 initiative. South Africa has not, however, indicated that they will be introducing any form of digital services tax.

GGI member firm

Nolands

Advisory, Auditing and Accounting,
Fiduciary and Estate Planning, Tax
More than 10 offices throughout Africa

T: +27 21 658 6600

W: www.nolands.co.za

Graeme Saggars

E: graemes@nolandstax.co.za



Graeme Saggars

Nolands is an international auditing firm located in eleven offices in all major centres in Africa. Nolands employs almost 200 people and focuses on providing the best possible solutions for its clients. The company prides itself on being "not ordinary" and on its ability to integrate services and respond rapidly to clients' needs.

Graeme Saggars is the Tax Director for Nolands. He holds a BCom (Hons)

degree from Rhodes University and an MCom (Tax) degree from the University of Cape Town. Graeme qualified as a chartered accountant in 2009 after completing his articles at KPMG. He joined Nolands in 2011 as an audit manager and was appointed as a tax partner at Nolands in September 2014.

Nolands
NOT YOUR ORDINARY AUDITORS



Indirect Taxes NEWS

Contacts

GGI | Geneva Group International AG

Schaffhauserstrasse 550
8052 Zurich, Switzerland

T: +41 44 256 18 18

E: info@ggi.com

E: www.ggi.com

W: www.ggiform.com

Let us know what you think about FYI – Indirect Tax News, we welcome your feedback. If you wish to be removed from the mailing list, please email info@ggi.com.

Responsible Editor in charge of Indirect Taxes content:

Steve McCrindle

Global Chairperson of the

GGI Indirect Taxes Practice Group

E: smccrindle@hwca.com

GGI member firm

Haines Watts

Advisory, Auditing & Accounting,
Corporate Finance, Fiduciary
& Estate Planning, Tax

11 A Park House, Milton Park

Abingdon OX14 4RS

UK

T: +44 207 025 4656

W: www.hwca.com



Indirect
Taxes
NEWS