Baker McKenzie.

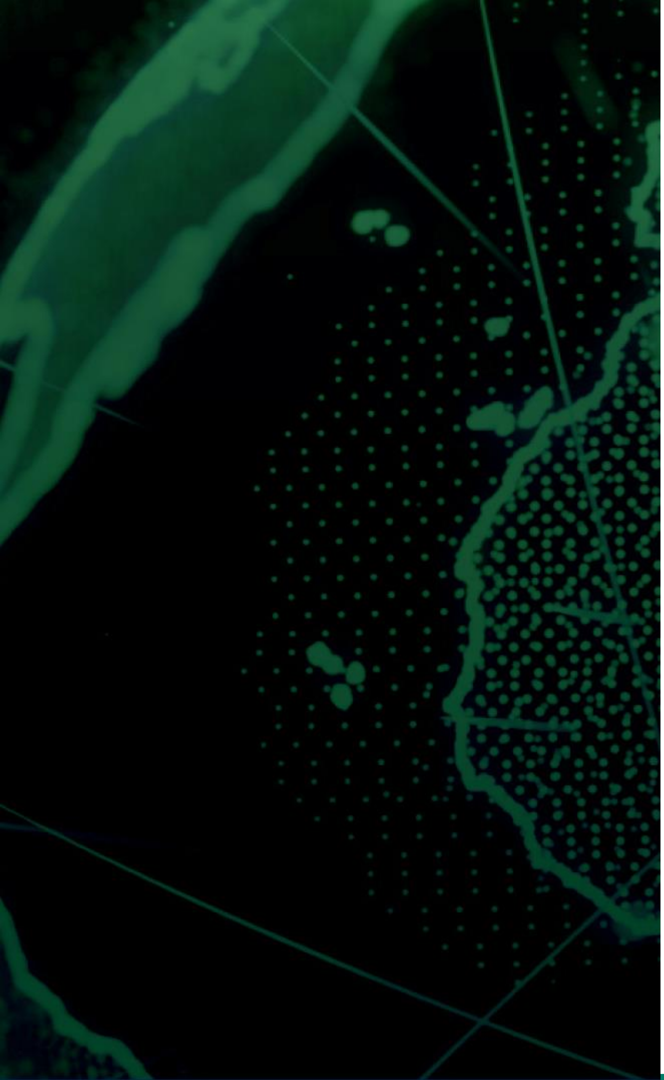
International VAT Conference 2020
Webinar series

VAT around the World 1

18 November 2020

Agenda

1. MIDDLE EAST
2. RUSSIA & CIS
3. SOUTHERN AFRICA, KENYA AND NIGERIA
4. APAC



Speakers

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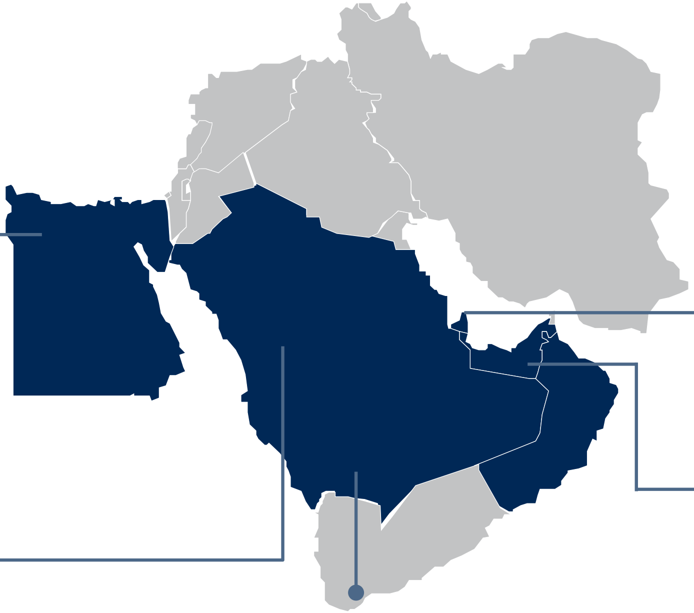
Middle East

Digital Services subject to VAT in key ME jurisdictions



Egypt

- Amendments to VAT law proposed in respect of digital transactions
- Standard rate 14%

Saudi Arabia (KSA)

- ESS regime
- Standard rate increased to 15% per 1 July 2020

Oman

- VAT @ 5% to be introduced in April 2021

Bahrain

- ESS regime
- Standard rate of 5%

United Arab Emirates (UAE)

- ESS regime
- Standard rate of 5%

Oman

Introduction of VAT in April 2021

- Announced in October 2020 that VAT at a standard rate of 5% will be introduced in 180 days (April 2021).
- Law has been published. Executive Regulations are expected in December.
- Although the VAT law appears to be similar to (mainly) the UAE and Bahrain, there is no harmonization across the GCC.
- Businesses should review how this will impact their business (and direct tax position) in Oman.

Saudi Arabia

Major changes in indirect tax landscape

VAT

Standard rate of VAT increased to15% as per 1 July 2020 (from 5%).

New tax introduced as per 4 October: Real Estate Transaction Tax (RETT)

RETT of 5% applies to any legal disposition alienating the ownership or possession of property (with respect to its ownership or ownership of it usufruct).

Tax amnesty extended to 31 December 2020

Under the tax amnesty initiative taxpayers are exempt from penalties that would have be applicable in case of voluntary disclosures or late registrations. This applies to all taxes, including VAT.

UAE

Major development in respect of the application of late payment penalties

On 14 October 2020 the Supreme Court of the UAE ruled that a

> voluntary disclosure should be considered a branch of the original tax return

In the same ruling the Supreme Court also ruled that not submitting a voluntary disclosure is considered tax evasion.

This means that taxpayers that are submitting a voluntary disclosure can be penalized with late payment penalties of up to 306%! This is in addition to a fixed penalty per return and a 5% penalty of the VAT under accounted for.

Taxpayers should carefully assess whether there is a requirement to submit a voluntary disclosure and have documentation in place to support their filing position.

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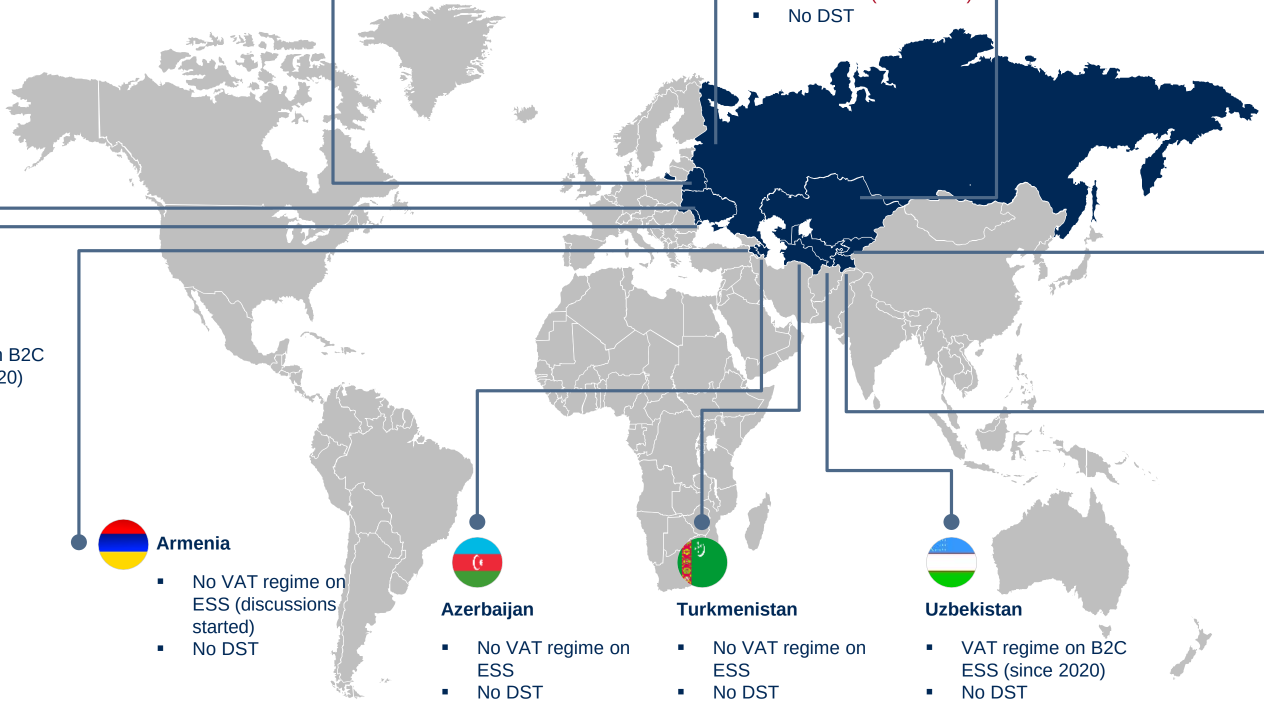
Russia & CIS

Digital services taxation in Russia & CIS



Ukraine
- No VAT regime on ESS (expected for B2C ESS in 2022)
- No DST

Belarus
- VAT regime on B2C ESS (since 2018)
- No DST

Russia
- VAT regime on B2C ESS (since 2017) and B2B ESS (since 2019)
- No DST

Kazakhstan
- VAT regime on B2C ESS in 2021
- No DST

Moldova
- VAT regime on B2C ESS (since 2020)
- No DST

Kyrgyzstan
- VAT regime on B2C ESS in 2021
- No DST

Tajikistan
- No VAT regime on ESS (discussions started)
- No DST

Armenia
- No VAT regime on ESS (discussions started)
- No DST

Azerbaijan
- No VAT regime on ESS
- No DST

Turkmenistan
- No VAT regime on ESS
- No DST

Uzbekistan
- VAT regime on B2C ESS (since 2020)
- No DST

Russia – VAT regime on B2B ESS

Developments

Current rules

- Non-Russian suppliers are required to tax register, collect, report and pay VAT (as of 2017 in B2C sector and as of 2019 in B2B sector)
- No exceptions and thresholds
- 10% turnover fine for failure to tax register (enforcement and bad publicity aspects)
- "Monetization" criterion – cash collection intermediary to ring-fence Russian operations. Technical payment processors exception
- Force of attraction (non-ESS revenues captured as a result of Russian tax ID)
- No input VAT recovery

Expected developments

- Potential introduction of registration thresholds:
  - intercompany transactions (likely to be carved out in 2021-2022)
  - # of B2B customers
  - average annual revenue
- Tax audits: "fishing expeditions" of the Russian tax authorities
- PE implications – statutory carve-out vs. long-term practical risks
- Impact of existing tax registration and reporting in light of OECD Pillar One discussions

Russia – Cancellation of the VAT exemption on software licenses (as of 2021)

- 2021 – abolishment of the Russian software license VAT exemption
- Exemption remains available for software included into the "national software register" – eligibility issues
- Impact on sales to Russian customers that may not recover "input" VAT (B2C, SMEs, financial sector)
- Impact on Russian B2B ESS VAT compliance risks: VAT liability on foreign vendor

"National software register"

- Software belongs to the Russian Federation, to Russian citizens, to Russian companies with foreign participation below 50%
- Software may be freely used in the whole territory of Russia (no sanctions limitations)
- License and support fees to foreign suppliers – not more than 30% of revenues from software sales / licenses
- No mandatory updates or software management from abroad (no control from abroad)
- Maintenance, modification and support – by a Russian citizen or a Russian company with foreign participation below 50% (localization of support)

Potential relaxation of eligibility criteria as of 2021: enrollment available to Russian subsidiaries of foreign companies if such subsidiaries own software / hold it in perpetual worldwide license

Russia – Potential VAT developments in 2021-2022

Change of the "place of supply rules"

- Current default rule – at supplier location (except for specified services)
- Double VAT taxation or non-taxation of certain cross-border transactions
- Business associations suggested to harmonize domestic VAT laws with the EU rules (place of supply in B2B sector to be determined on consumption basis, i.e. at the customer location)
- Potential for voluntary VAT registration via the online VAT office for non-ESS suppliers

E-commerce taxation – tangible goods

- Abolishment of VAT-free and duty-free importation thresholds on low-value personal consignments
- Discussions on introducing Russian VAT obligations for online marketplaces and logistics operators – by analogy with the EU
- Limited "test" operation of new reporting / collection approaches by the Federal Customs Service of Russia

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Southern Africa, Kenya and Nigeria

VAT on Digital Services

Developments in Southern Africa

Accelerated growth of the digital economy has had adverse effects on VAT collections pre- and more so post COVID-19

A number of African countries* have implemented / indicated they would implement either direct or indirect digital services taxes

***Including:**

- Kenya
- Nigeria
- South Africa
- Egypt
- Tanzania
- Mauritius
- Uganda
- Cameroon
- Ghana
- Zimbabwe

VAT on Digital Services

Developments in Southern Africa

- South Africa was one of the first African countries to implement VAT on digital services
- Zambia and Zimbabwe most recent Southern African countries to implement

VAT on Digital Services

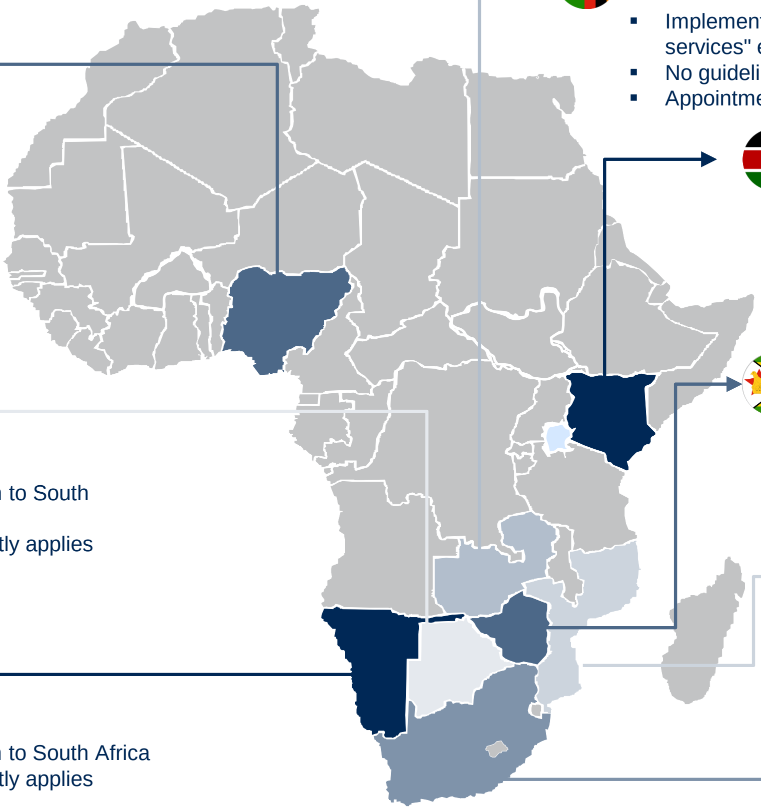
Developments in Africa

ATAF Cross Border Taxation Technical Committee issued proposed drafting for legislation

- Draws from various DST legislation enacted in other jurisdictions but adapted to meet specific challenges of African countries
- Works with OECD, but unlikely that consensus would be reached by 2020

Kenya, Uganda, Tanzania, Rwanda, South Sudan, Burundi and the Zanzibar region of Tanzania – announced that they have agreed to develop a joint strategy to more appropriately tax digital firms

Digital Services Subject to VAT - Africa



Zambia

- Implemented VAT on "electronic services" effective 1 January 2020
- No guidelines published to date
- Appointment of tax agent compulsory

Nigeria

- Reverse charge mechanism currently applies
- Non-resident with significant economic presence would be required to charge and account for VAT on digital services

Kenya

- Regulations released in October 2020 now imposes VAT on digital services supplied B2C
- Reverse charge mechanism to apply to B2B transactions
- Appointment of tax agent is optional

Botswana

- No ESS VAT but being considered
- Would likely follow similar approach to South Africa
- Reverse charge mechanism currently applies

Zimbabwe

- Implemented VAT on "electronic services" effective 1 January 2020
- No guidelines published to date
- Appointment of tax agent compulsory

Mozambique

- No ESS VAT

Namibia

- No ESS VAT but being considered
- Would likely follow similar approach to South Africa
- Reverse charge mechanism currently applies

South Africa

- Scope of electronic services widened in 2019 Regulations
- Grouping Rules apply

South Africa

Digital Services subject to VAT

Originally introduced effective 1 June 2014, at a rate of 14%

New Regulation effective 1 April 2019, at a rate of 15%

Key updates:

- New definition for "electronic services" – scope widened
- Definition included for "group of companies"
- Definition included for "telecommunication services"

Zambia

Digital Services subject to VAT

- Introduced effective 1 January 2020, at a rate of 16%
- VAT levied on "electronic services" performed, undertaken or utilized in Zambia or for the benefit of a recipient in Zambia
- An "electronic service" is defined as a service capable of delivery across multiple electronic commerce platforms, i.e., services delivered via the internet, mobile telecommunication networks and any other electronic commerce infrastructure
- No distinction is made between B2B and B2C supplies

Zambia

When and how to register

Non-resident supplier with no physical presence is required to appointment of a tax agent who is resident in Zambia

Zambia has a VAT registration threshold of K800,000 (approx. USD 40,000) in any 12 consecutive months, or K200,000 (approx. USD 10,000) in any 3 consecutive months

Zimbabwe

Digital Services subject to VAT

- Introduced effective 1 January 2020, at a rate of 14,5%
- Supply of radio and television services from outside Zimbabwe to an address in Zimbabwe
- Supply of electronic services by an electronic commerce operator domiciled outside Zimbabwe to a person resident in Zimbabwe shall be deemed to be a supply made in Zimbabwe
- Affected supplies include the online sales of e-books, games, software, videos, online advertising etc.
- No distinction between B2B and B2C

Zimbabwe

When and how to register

Non-resident supplier with no physical presence is required to appointment of a tax agent who is resident in Zambia

Zimbabwe has a VAT registration threshold of ZW$ 1 million (approx. USD 3,000) in any 12 consecutive months

Note that Zimbabwe has also implemented a Digital Services tax at 5% of total income from the supply of digital services

Kenya

Digital Services subject to VAT

- Regulations (published in October) have expanded the scope of digital services, and now include that supplies made through a digital marketplace are subject to VAT of 14%.
- Digital marketplace: "a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means".
- Registration for VAT is required where the services are provided in a B2C transaction and where the recipient of the services is in Kenya, makes payment for the services through a bank registered in Kenya, or the payment for the services is authorized in Kenya
- For B2B situations; services deemed to be imported by the Kenyan B2B customer – reverse charge regime applies.
- No possibility to claim Kenyan input VAT.

Kenya

When and how to register

Simplified VAT registration framework is adopted – nonresident service providers can register online via tax platform.

Alternative is to appoint a tax representative.

Kenya has a VAT registration threshold of KES 5 mio (approx. USD 46,000) – not clarified in the Regulations if this threshold applies for nonresidents providing digital services; Presumption that this is the case.

Nigeria

Digital Services subject to VAT

- Following the enactment of the Finance Act 2019, digital/electronic services will be subject to VAT effective 1 February 2020, at a rate of 7,5%
- Digital/electronic services are not specifically defined; the definition of services in the Finance Act includes "digital services" – thus all services supplied by electronic means
- The obligation to remit VAT on services supplied by a non-resident is on the recipient, thus through a reverse charge / withholding mechanism
- A non-resident person with "significant economic presence" may have an obligation to register

Nigeria

Digital Services subject to VAT

A person would have "significant economic presence" where:

- Gross turnover or income from digital services provided to Nigerian consumers exceeds NGN 25,000,000 (approx. USD 65,000); or
- the non-resident company uses a Nigerian domain name or registers a website address in Nigeria

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APAC

Singapore

GST (7%) payable on digital services supplied to on a B2C basis

Digital Services

- Automated services supplied over the Internet with minimal or no human interaction and impossible without the use of information technology (e.g., downloadable content, streaming, cloud services)

Scope & Reporting

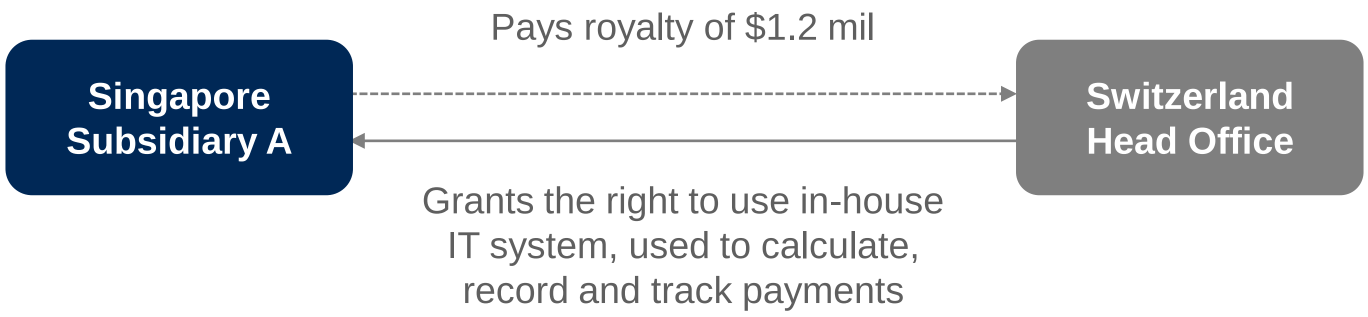
- Imposes GST on B2C supplies by way of an Overseas Vendor Registration regime
- Simplified registration

Marketplace rule

- Operator required to account for the GST.
- Definition = a medium that: (i) allows the suppliers to make supplies available to customers; and (ii) is operated by electronic means.

Singapore

Introduction of reverse charge for B2B supplies from 1 January 2020



Philippines

Amending legislation in 2020 imposing VAT (12%) on digital services

- Non-resident "digital service provider" liable to register
- Withholding regime
- Input tax credits cannot be claimed by non-residents

What is within scope?

Sale, exchange, barter, or lease of goods or properties that are digital or electronic in nature and the sale of services rendered through digital or electronic means

Vietnam

Two major developments in 2020

01 Cross border VAT on e-commerce: VAT (and CIT) with respect to e-commerce business of foreign suppliers to be collected through different mechanisms (withholding or direct registration). Circular of the Ministry of Finance yet to provide further guidelines.

02 Withholding VAT: Banks and intermediary payment service providers are required to withhold taxes (including VAT and CIT) on payments by individual customers to foreign suppliers.

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