Baker McKenzie.

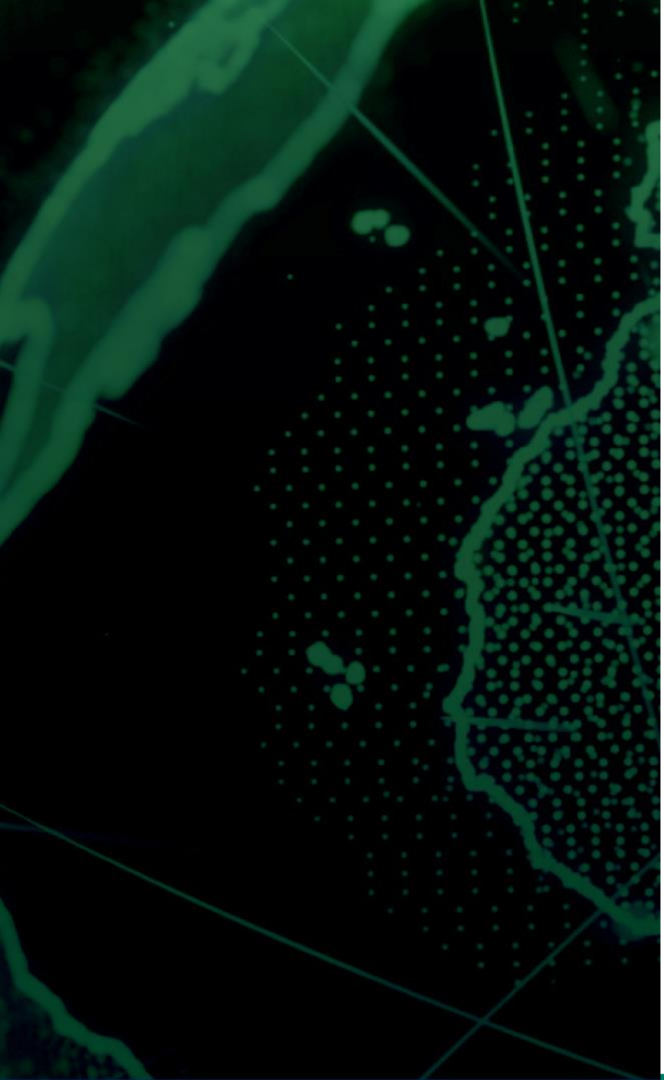
International VAT Conference 2020
Webinar series

VAT Around the World 2

2 December 2020

Agenda

1. WELCOME & INTRODUCTION
2. MALAYSIA
3. JAPAN
4. USA
5. CANADA
6. BRAZIL
7. COSTA RICA
8. MEXICO
9. CLOSING REMARKS



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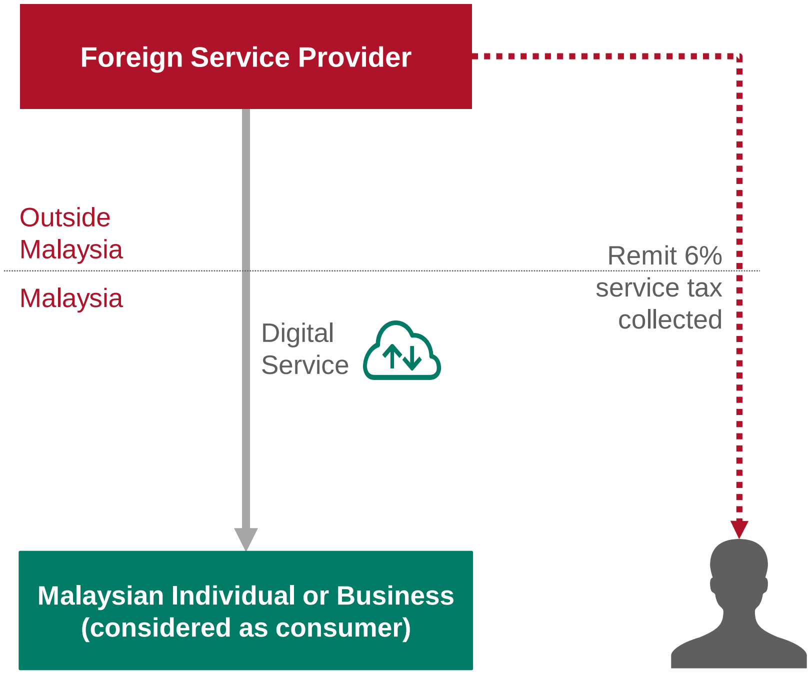
Malaysia

Malaysian service tax on imported digital services

Overview

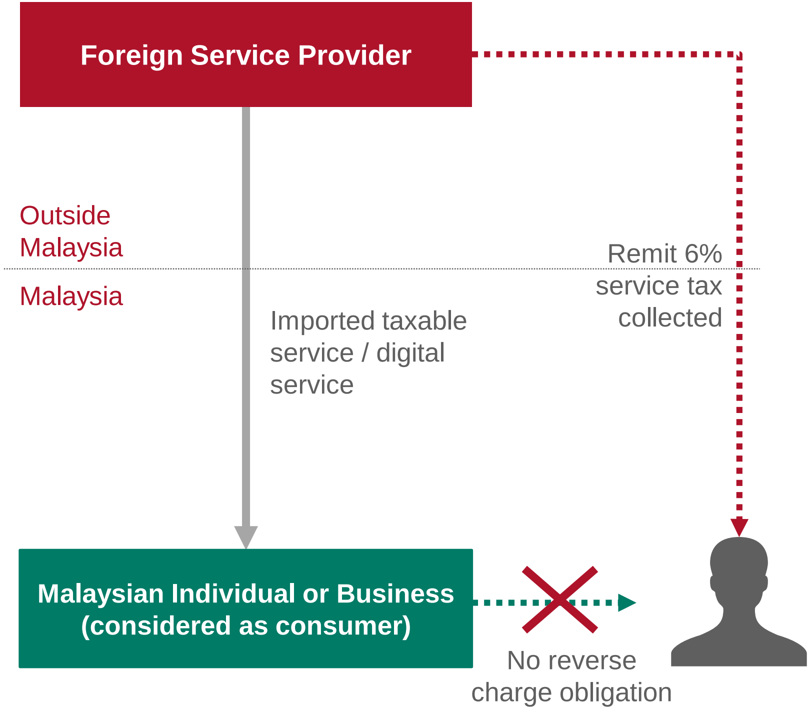
- Service tax is imposed at 6% on digital services provided by foreign service providers ("FSP") to consumers in Malaysia, from 1 January 2020.
  - FSP who exceeds mandatory registration threshold is required to register with Customs.
  - Once registered, FSP is required to charge service tax and comply with service tax obligations (e.g., filing returns).
- The regime applies to digital services provided to both individual and business consumers.



Malaysian service tax on imported digital services

Preventing Double Taxation

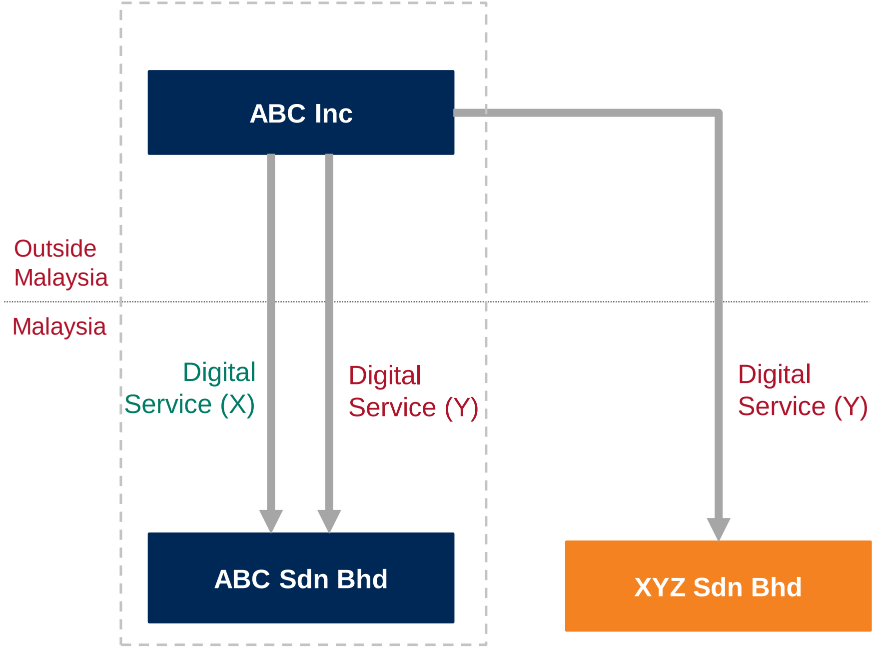
- Service tax is also imposed on imported taxable services under the existing B2B regime by way of reverse charge mechanism.
- Potential double taxation where Malaysian business acquires a service from FSP that falls within "taxable service" and "digital service".
  - FSP required to charge service tax and Malaysian business required to reverse charge service tax, on the same service?
- From 1 January 2020, Malaysian businesses are exempted from reverse charging on an imported taxable service where FSP has charged service tax on the same service



Malaysian service tax on imported digital services

Intra-Group Relief

- Intra-group relief was introduced for the Malaysian service tax on imported digital services regime, effective from 14 May 2020.
- Any digital service provided by FSP to a Malaysian company within the FSP's group of companies shall not be subject to service tax.
    - Provided that the FSP does not provide the same digital services to another person in Malaysia outside the FSP's group of companies.



The intra-group relief will **apply** to Digital Service (X) but **not** to Digital Service (Y)

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Japan

Japan

Recent Developments

National Level	Local Level
JCT 7.8% (6.24%)	JCT 2.2% (1.76%)

Collected by the national tax office

- General JCT rate rises to 10% in total (= 7.8% national JCT and 2.2% local JCT) effective from October 1, 2019.
- 8% rate (= 6.24% national JCT 6.24% + 1.76% local JCT) retained for some items (foods, newspapers), so split rate system.
- Invoicing rules to be introduced from October 1, 2023 - more details are discussed in next slides.
- One month filing extension (i.e., within 2 months to 3 months from the FY end) will be available from the fiscal year ending after March 31, 2021 (it is available in the case where the taxpayer applies the extension for corporate tax purposes).

Japan

New Invoicing Rules - Qualified Invoice Method

Under current JCT system, taxpayers can claim input JCT credit/refund in connection with purchases from vendors who are not registered as JCT taxpayers. Taxpayers who claim input JCT credit/refund are required to maintain prescribed information in their accounting book sand keep relevant evidences such as receipts.

For this purpose, taxpayers will be required to register as statutory invoice issuers in advance (the registration is available from October 2021). Information on qualified invoice issuers will be disclosed in the website of the National tax Agency (NTA).

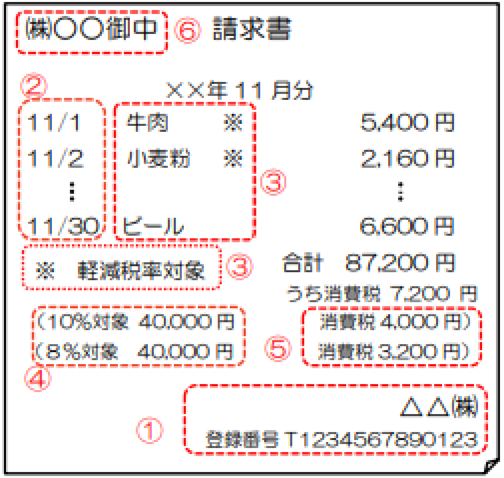
After the commencement of "Qualified invoice method" on October 1, 2023, taxpayers cannot claim input JCT credit/refund, unless they obtain qualified invoices from their vendors (i) who are JCT taxpayers and (ii) who are registered as qualified invoice issuers.

If a foreign company (especially, which provides B2C electronic services) that is not a JCT taxpayer due to a JCT exemption (e.g., exempted because of the limited scale of its JCT taxable sales in previous years) may need to consider giving up JCT exempted status and registered as a statutory invoice issuer in order to allow its customers to claim input JCT credits/refunds.

Japan

New Invoicing Rules - Qualified Invoice Method

What information should be included in the qualified invoices?



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××年11月分

11/1	牛肉 ※		5,400円
11/2	小麦粉 ※	③	2,160円
⋮			⋮
11/30	ビール		6,600円

※ 軽減税率対象 ③ 合計 87,200円

うち消費税 7,200円

(10%対象 40,000円 ⑤ 消費税 4,000円)

(8%対象 40,000円 消費税 3,200円)

④

① △△㈱

登録番号T1234567890123

01 Name of a qualified invoice issuer and its registration number

02 Date of transaction

03 Description of services/goods (if lower rate (8%) applies for certain goods, it is necessary to specify)

04 Amount of consideration (need to specify amounts in connection with standard rate (10%) and lower rate (8%) respectively)

05 JCT amounts

06 Name of a purchaser

Japan

Electronic services

Services provided via electronic and telecommunication networks (e.g., internet) such as the provision of e-books, music, and advertisements are regarded as "provision of electronic service".

Generally, JCT is imposed on domestic transaction. As to electronic services, if "address of the service recipients" are in Japan, such electronic services are regarded as domestic transactions and subject to JCT.

Situs rule for the JCT in determining the domestic transaction

Ordinary JCT transactions	Electronic service transactions
Where the transferor/lessor/service provider is located	Where the service recipients are located.

Japan

Electronic services

"**B2C4B**" electronic services are covered in this category

	B2B electronic service	B2C electronic service
Definition	Electronic services that normally are limited to businesses, considering (a) the nature of the services, or (b) the terms and conditions relating to the provision of services, e.g., distribution of advertisements on the internet, provision of market-place to sell application software on-line at websites.	Electronic services which do not fall into B2B electronic services, e.g., provision of e-books, music and videos that are generally provided for consumers, services that state on a website that they are intended for business use, but that cannot effectively restrict purchases by consumers and others those who are not in business.
Taxation method	Reverse charge mechanism ▪ Foreign service providers are not required to file JCT return. ▪ Notification requirement exists.	JCT filing and a registration as a "registered foreign business" (to allow consumers to claim input JCT credit/refund), if the foreign service provider is a JCT taxpayer. ▪ Exemption threshold exists (JPY 10 million - for Base Period and Specified Period) ▪ Simplified tax method (JPY 50 million)

Japan

Electronic service - typical issues

- Complications with regard to determination of the nature of business (i.e., whether B2C or B2B). NTA provides samples of businesses which fall into B2C or B2B. It requires (a) holistic review of scheme of business and (b) relevant documents such as terms of business to determine, especially for new businesses, such as a business relevant to "sharing economy".
- Difficulty of identifying business customers in the absence of JCT registrations (as EU tax invoice system). Especially B2C electronic service provider may need to be registered as a "registered foreign business" and give up JCT exemption so as allow customers to claim input JCT credit/refund.
- Financial regulatory issues with various payment type platforms. Such regulation may require presence in Japan (such as a branch) and may give rise to PE issues.
- PE issues - existence of a local marketing subsidiary; local merchant of record for payment issues.

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USA

United States

Recent Developments - Overview (Sales/Use Taxes)

In the US, sales/use taxes are imposed at the subnational level.

Currently, there are over 11,000 US state and local taxing jurisdictions that impose a sales/use tax.

Sales/use taxes are typically imposed on the sale or use of tangible personal property (unless an exemption or exclusion applies) and are not typically imposed on services or intangibles (unless specifically identified as taxable).

In June 2018, the US Supreme Court in *Wayfair v. South Dakota* dramatically altered the US sales/use tax landscape by upholding the imposition of a sales/use tax collection obligation based on an economic nexus standard.

The threshold at issue in that case was $100,000 or more in sales or more than 200 transactions in the state.

Following Wayfair, two trends have emerged in the US:

01 Economic Nexus

02 Marketplace Facilitator Laws

United States

Recent Developments - Economic Nexus

Following Wayfair, states have adopted economic nexus thresholds for state sales/use tax purposes.

To date, all but two states (Florida and Missouri) with a state sales/use tax have adopted economic nexus.

Note: Alaska, Delaware, Montana, New Hampshire, Oregon do not impose a state-level sales/use tax (although local-level taxes may be imposed).

These new economic nexus standards are typically met by making sales to customers within the state that exceed a threshold dollar value (e.g., $100,000) or number of transactions (e.g., 200), although there are nuances among the states.

Localities are also starting to adopt or assert economic nexus based on meeting certain economic nexus thresholds at the state level.

United States

Recent Developments - Marketplace Facilitator Laws

Following Wayfair, states have also adopted marketplace facilitator laws.

To date, all but three states (Florida, Kansas and Missouri) with a state sales/use tax have adopted a marketplace facilitator law.

The laws vary by state, but generally impose a sales/use tax collection and remittance obligation on entities (marketplace facilitators) that operate a forum or marketplace in which third-party sellers offer their products or services for sale to customers.

There are often a list of one or more specific activities (which vary by jurisdiction) that must be conducted for an entity to qualify as a "marketplace facilitator" with a sales/use tax obligation, such as: transmitting the offer/acceptance; owning the marketplace infrastructure; providing a virtual currency; listing products for sale; advertising and promotion of marketplace products; setting prices; taking orders; or providing customer assistance.

Marketplace facilitators usually, but not always, must also collect payment from the customer, either directly or indirectly through agreement with a third-party payment processor.

Other aspects of these laws vary by state (transactions covered, taxes/fees covered, etc.)

United States

Other Trends

Many state and local governments are facing budget shortfalls due to the COVID-19 pandemic.
State and local governments may attempt to raise revenue by continuing recent trends, such as:

- Broadening the sales/use tax base.
  - Recent proposals include: Nebraska (digital ads) and District of Columbia (personal information and advertising services).
- Adopting targeted taxes.
  - Recent proposals include: Maryland (digital ad tax), New York (digital ad tax and data tax), West Virginia (data mining tax).
- Increased local-level taxes.

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Canada

Canada

November 30 Fiscal Update Proposals

01 DST (January 1, 2022?)

02 GST/HST (Proposed effective date July 1, 2021; Department of Finance accepting input until February 1, 2021):

a) Digital Property/Services supplied by non-residents
b) Goods supplied through fulfillment warehouses (or other locations in Canada)
c) Short-term accommodations

Canada

Fiscal Update Proposals - DST

- Canada "remains committed to a multilateral solution, but is concerned about the delay in arriving at consensus"
- Proposal "to implement a tax on corporations providing digital services, with effect from January 1, 2022, which would apply until such time as an acceptable common approach comes into effect."
- Further details to be released in 2021 budget (~March 2021)
- No details or draft legislation (unlike GST/HST measures)

Canada

Fiscal Update Proposals - GST/HST - Digital Property/Services

Non-resident suppliers:

Proposals would require non-residents who do not carry on business in Canada to register for and collect GST/HST on their B2C supplies of services and intangible property under a simplified registration system

Distribution Platforms:

Operators of digital platforms that facilitate digital property/services supplied by third-party vendors would also be required to register for and collect GST/HST on such supplies made through the platform

Basic features:

CAD 30,000 (rolling 12 months) threshold; two residency indicators (also relevant for determining applicable provincial rate); input tax credits unavailable

Canada

Fiscal Update Proposals - GST/HST - Goods/Fulfillment Warehouses

Distribution Platforms (deemed supply):

required to register under the normal GST/HST rules and collect GST/HST on goods sold by non-registered vendors through the platform that are located in fulfillment warehouses in Canada (or shipped from a place in Canada to a purchaser in Canada). Input tax credits available for GST/HST paid on import by the unregistered, non-resident vendor.

Non-resident vendors:

required to register under the normal GST/HST rules and collect GST/HST on goods they sell that are located in fulfillment warehouses in Canada (or shipped from a place in Canada to a purchaser in Canada), when not made through a Distribution Platform.

Information Disclosure:

Distribution Platform operators and fulfillment businesses required to notify CRA re: third party-vendors using platform/fulfillment services

Canada

Fiscal Update Proposals - GST/HST - Short Term Accommodations

GST/HST-registered owners

required to collect GST/HST on short term accommodations (even when made through online platform)

Online accommodation platforms:

- Deemed supplier, required to collect GST/HST on short term accommodations supplied through platform where property owner not GST/HST-registered
- Non-resident platforms not carrying on business in Canada register under simplified system (GST/HST collection on unregistered guest fees only)
- Information disclosure through prescribed information returns (details TBD)

Canada

Provincial Landscape - British Columbia PST

- Provincial Sales Tax (PST): sales and use tax applicable to retail sales of tangible personal property, software and certain taxable services (levied in BC, Saskatchewan and Manitoba)
- Effective April 1, 2021, sellers without presence in BC will be required to register to collect 7% PST on of software and telecommunication services for use in BC (including video and music streaming)
- Similar changes for tangible personal property but only applicable for sellers located in Canada
- Registration threshold is CAD 10,000 which includes the nonresident's gross revenue in the preceding 12 months (or reasonable estimate for the 12 proceeding months) from all sales of software and telecommunication services "in respect of British Columbia"

Canada

Provincial Landscape - Saskatchewan PST

- 2017-2018: incremental amendments purporting to require non-resident vendors to register for and collect PST
- July 2020: further changes to require marketplace facilitators and online accommodation platforms register for and collect PST and makes electronic distribution services taxable services
- Changes retroactive to January 1, 2020 but seemingly administrative tolerance
- No registration threshold

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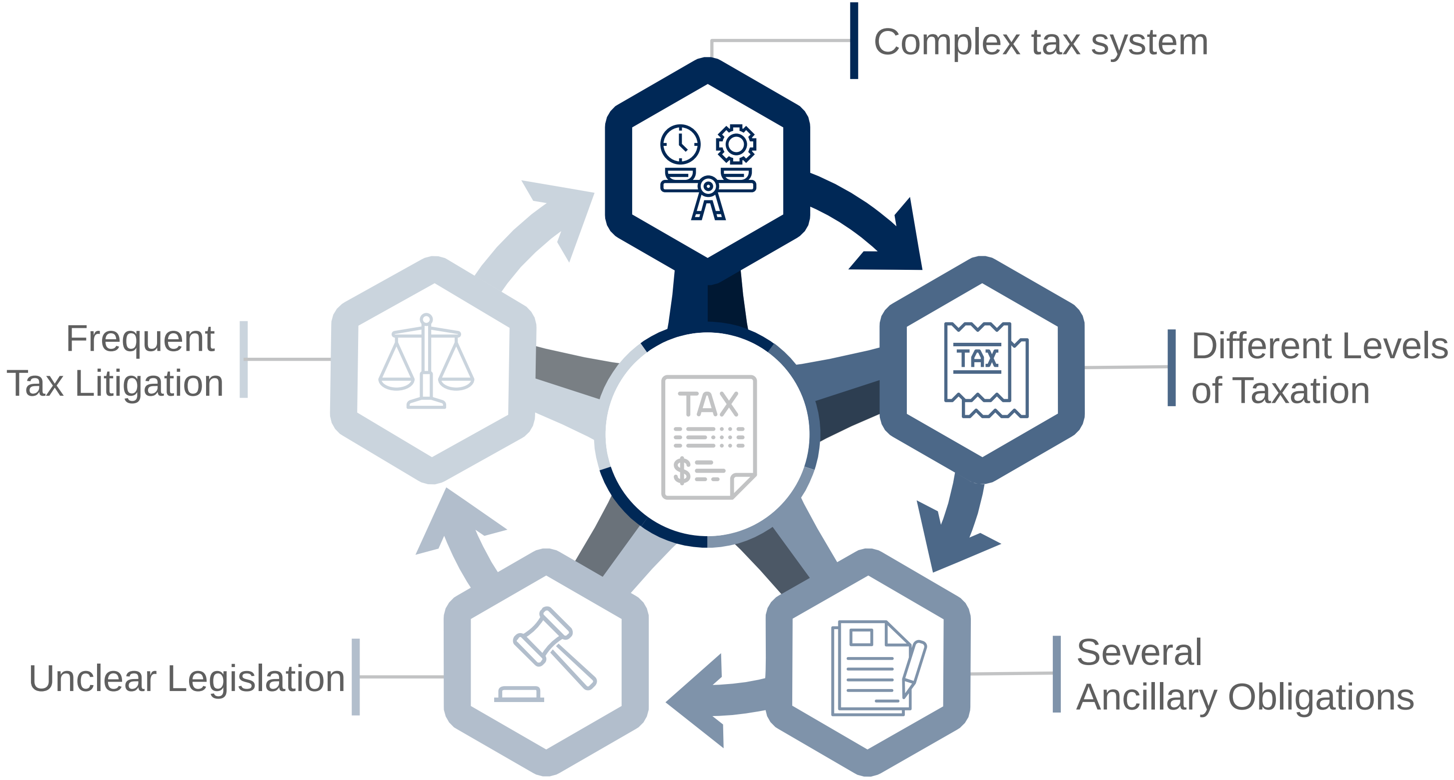
Brazil

Brazil current tax environment



Indirect taxes

IPI

- Excise tax on manufactured products
- Federal tax - rate according to tariff code

ICMS

- State tax on circulation of goods and services
- Paid to the State of origin of the transaction

PIS/COFINS

- Taxes on revenues (also on importation)
- Federal tax - different methods/rules

ISS

- Municipal service tax
- Paid to the city of the service provider

Tax reform - federal government

Bill of Law - Federal Government

BL No 3887/2020

1st phase (submitted on July)
- Extinction of PIS and COFINS
- Creation of Social Contribution on Operations with Goods and Services (CBS) with a tax rate of 12%

2nd phase (not yet submitted)
- Extinction of IPI, IOF, CIDE-Fuel and - Salary-Education contribution
- Creation of a selective tax on cigarettes, beverages and vehicles

3rd phase (not yet submitted)
- Reduction of tax rates and deductions of Individual 's Income Tax (IRPF)
- Reduction of tax rates of Corporate Income Tax (CIT)
- Taxation of dividends (currently exempted)

4th phase (not yet submitted)
- Reduction of payroll tax burden
- Creation of a tax on digital transactions

Tax reform - chamber and senate

Federal Legislative Branch

Chamber of Deputies

PEC(1) 45/2019

- Extinction of IPI, PIS, COFINS, ICMS and ISS
- Creation of Tax on Goods and Services (IBS)
- Creation of a Federal Tax on cigarettes and beverages

Senate

PEC(1) 110/2019

- Extinction of IPI, PIS, COFINS, ICMS, ISS, IOF, CSLL, CIDE-Fuel and Salary-Education Contribution
- Creation of Tax on Goods and Services (IBS)
- Creation of a selective tax on specific goods and services (IS)

(1) PEC = Project of Amendment to the Federal Constitution

(2) PEC 128/2019, authored by deputy Luis Miranda (DEM-DF), is also pending in the National Congress. In general terms, PEC 128/2019 creates a Federal Tax on Good and Services (IBS) and a Municipal/State IBS. The federal IBS would replace PIS/COFINS and IOF and the Municipal/State IBS would replace ICMS and ISS ("IVA dual"). The IPI (Excise Tax) will not be replaced, but will become essentially selective. PEC 128/2019 regulates the dividends taxation as well the reduction of CIT rates. Upon your request, we may further elaborate on this matter.

(3) There are several Bills of Law in progress on the initiative of the National Congress that provide for the taxation of dividends paid by companies in Brazil to their shareholders, such as No 1289/2020, 2640/2020, 2712/2020, 6037/2019, 4242/2019, 163/2019, 3129/2019, 3061/2019, 1952/2019, 2015/2019 and 215/2018. They are all pending approval in the first legislative house. Some of these Bills of Law provide for the reduction of CIT rates as well.

(4) Potential changes to Transfer Pricing Rules - Open survey from OECD Secretariat and the Brazilian IRS .

Digital economy

Taxation of software - ISS vs ICMS

Municipalities

- Software shall be treated as a service
- There is no circulation of goods
- Payment of ISS to the city of the provider

States

- Software shall be treated as goods
- Lack of physical support is not relevant
- Payment of ICMS to the State of the purchaser

Supreme Court - ISS prevailing

VAT (ICMS) - criminal issue

The Supreme Court recently decided that the taxpayer that repeatedly declare and does not pay the ICMS falls under the crime against the tax system.

Penalty: 6 months to 2 years detention plus fine (Law 8.137/1990).

6

Costa Rica

Costa Rica

Digital Services subject to VAT

- Introduced effective October 1, 2020, at a rate of 13%.
- Costa Rica published a list of nonresident service providers and intermediaries who are required to register to VAT purposes. The list is updated regularly.
- Digital services suppliers and intermediaries can voluntarily register before the Tax Authority to collect VAT from their customers and remit the VAT to the Tax Authorities.
- Default method is that VAT is collected by financial intermediaries, including credit and debit card issuers. If a nonresident service provider or intermediary registers in Costa Rica, financial intermediaries are not required to withhold the VAT.

Costa Rica

Registration

No registration threshold.

A simplified registration system is available. Registration does not create a PE.

VAT returns must be filed on a monthly basis and VAT payments must be received by the tax authorities within 15 days of the month following the tax period.

7

Mexico

Mexico

Digital Services subject to VAT

- Introduced effective June 1, 2020, at a rate of 16%.
- Services performed through applications or in digital format rendered by a non-resident without a PE in Mexico, are deemed to be provided in Mexico when the recipient is located in Mexico.
- "Minimal human intervention" is not a key consideration for determining if a service is a digital service. If a service is fundamentally automated, it does not matter if the service involves human intervention or not.

Mexico

Digital Services subject to VAT

If any one of the following conditions are met, the recipient of a digital service is deemed to be located in Mexico:

- the recipient has provided to the service provider a physical address located in Mexico;
- the recipient pays the service provider through an intermediary located in Mexico ;
- the IP address used by the recipient's electronic devices corresponds to the range of addresses assigned to Mexico;
- the country code of the telephone number provided by the recipient corresponds to Mexico.

Mexico

Registration

Nonresident suppliers need to register for VAT purposes - No registration threshold.

Local tax representative is required.

VAT returns need to be filed on a monthly basis and VAT must be remitted to the Tax Authorities by the 17th of the following month.

Mexico

New proposed changes 2021

Amendments have been approved by Congress and are waiting official publication. Changes include amongst others:

- Digital intermediation services related to sale of goods also in scope and subject to VAT.
- Nonresidents rendering intermediation services can publish the price at which the supplier or service provider, for which they operate as intermediary, offers goods/services without separately stating the VAT amount.
  - The price must then be shown together with the wording "VAT inclusive".

Information Gathering Requirements EU

Recap and timeline

2020

Introduction OECD framework for data reporting by platforms.

2021

Entry into force EU rules on e-commerce on 1 July 2021.

2023

Introduction of DAC7 to ensure the exchange of information by platforms.

2024

Effective date VAT PSP Directive for the transmission and exchange of payment data by PSPs.

OECD initiative

Global tax reporting framework

- In June 2020, the OECD released a new global tax reporting framework for data reporting by platform operators in the sharing economy ("Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy").
- The framework seeks to avoid a proliferation of different and unilateral reporting regimes and supports a more uniform approach to the adoption of reporting obligations for platforms between jurisdictions.
- The Model Rules focus on three dimensions:
  - targeted scope of transactions to be reported; accommodation, transport and other personal services;
  - a broad scope of platform operators and sellers, to ensure that as many relevant transactions as possible are being reported; and
  - due diligence and reporting rules that ensure that accurate information gets reported without imposing overly burdensome procedures on platform operators.

OECD initiative

Global tax reporting framework

- Following the Model Rules, the platform operator should report the following information of sellers:
  - Identifying information, including name, address and any tax identification number (TIN) and its jurisdiction of issuance;
  - Any other TIN, including the jurisdiction of issuance, available to the Reporting Platform Operator;
  - Specified Financial Account Identifier(s);
  - Where different from the seller, the name of the holder of the financial account to which the consideration is paid;
  - Each jurisdiction of tax residence;
  - The total consideration paid or credited during each quarter of the reportable period and the number of relevant services;
  - Any fees, commissions or taxes withheld or charged by the platform during each quarter;
  - With respect to accommodation rental services, specific information regarding the rental of accommodation, such as the address, and where available, the land registration number, of each property listing, the number of days each property listing was rented during the reportable period and the type of each property listing should also be reported.
- The publication of the new global tax reporting framework is expected to have significant implications for platforms as the rules will make it easier for jurisdictions to put a similar reporting regime in place.

DAC 7

Exchange of information framework

- The European Commission has presented a proposal as regards measures to strengthen the exchange of information framework in the field of taxation ("DAC7").
- The implementation of DAC7 should ensure that tax relevant information flows from digital platforms to tax authorities.
- The information exchanged under the amended Directive can also be used for indirect tax purposes.

- Who are targeted by the rules?
  - Platforms operating within the EU engaging in:
    - the rental of immovable property;
    - a time- or tasked based service involving work performed by one or more individuals, acting either independently or on behalf of an entity, carried out at the request of a user, either online or offline facilitated via a platform;
    - the sale of goods;
    - the rental of any mode of transport; and
    - crowdfunding services.

Pan-EU audits and 3P Information Requests

Pan-EU VAT audits

Legal framework

- Combined MOSS Audit via MOI.
  - Audit led by MOI reporting back to other MS.
  - VAT Only
- Multi Lateral Control / International Coordinated Audit.
  - Bundled national audits / local laws apply.
  - Generally goes beyond VAT such as Transfer Pricing and Third-Party information requests.

Pan-EU VAT audits

MOSS - Practical experience

- MOSS Audit
- ESS characterization tested
- Agent versus Principal models
- COR Determination
- B2B vs B2C Determination / Definition of B2B
- Third-Party info request excluded

Pan-EU VAT audits

MLC - Practical experience

- MLC Audit:
- ESS characterization tested / alignment MS
- agent versus principal models / alignment MS
- COR Determination (imperfections systems)
- B2B vs B2C Determination / Definition of B2B
- Third-party information request included
- EDP Audit testing automated systems in bulk (extrapolation)

Considerations:

- Is there a legal basis for the audit?
- Dealing with X number of tax inspectors at the same time or agree to protocol?
- Focus of MLC to Key Points (versus 30+ pages of queries)?
- Audit Meeting in Person with all Tax Representatives?

Pan-EU audits and third party information requests

Third-party information Request - Legal set-up and Practical experience

- Third-party information request
- Commercially sensitive?
- Interaction with GDPR (Privacy Laws) and Proportionality
- Legal Basis per country?
- Fishing expeditions (e.g. 100 or 500 top users or having to name them or needing suspicion?)
- Direct requests possible?
- Agree to Modus Operandi with MS?

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