



# US INDIRECT TAX – Impact of the U.S. Supreme Court decision in *Wayfair*

## Move forward with confidence

On June 21, 2018, the U.S. Supreme Court issued its opinion in *Wayfair, Inc. et al.*, in which it overturned the decades-old physical presence nexus standard required in order for a state or locality to impose a sales or use tax collection responsibility upon a remote seller. In a 5-4 decision, the majority held that the physical presence rule established in its previous decisions in *Quill* and *National Bellas Hess* for purposes of sales and use tax nexus “is unsound and incorrect” as it applied to the 2016 South Dakota law establishing a sales and use tax nexus standard based on the existence annually of more than \$100,000 of in-state sales or 200 or more transactions involving in-state deliveries of goods or services.

### How does *Wayfair* affect your business?

- Retailer and eCommerce – Businesses with large retail or eCommerce sales, but who lack physical presence in many jurisdictions, may now be subject to sales or use tax collection and remittance responsibilities.
- Software as a Service (“SaaS”) and Digital Goods/Services – Businesses selling SaaS, Cloud, and Digital goods/services to end users, which lack a large nexus footprint, may now be subject to additional sales and use tax collection and remittance responsibilities.
- In-Bound Companies - Businesses with no U.S. permanent establishment (PE) that sell into the U.S. may now have U.S. sales or use tax collection and remittance responsibilities.

### Deloitte can help turn *what now?* into a defined course of action:

- Will your company have additional compliance obligations as a result of *Wayfair*?
- Does your company understand the state-specific rules applicable to its industry to properly determine the taxability of products and services and the related reporting obligations or nuances?
- Does your company have effective and efficient technology that allows the company to calculate, invoice, collect, and remit sales and use tax or other indirect taxes required by *Wayfair*?
- Will the longer-term implications of *Wayfair* cause your company to rethink your Indirect Tax function in the face of increased compliance and reporting obligations? Has your company considered analytics, co-sourcing or out-sourcing the return compliance operations?

### Navigate complexity with confidence

If your company is not currently filing sales and use tax returns in all jurisdictions where you have sales, [the outcome of \*Wayfair\* may impact your company!](#)

*Wayfair* potentially increases the complexity of complying with sales and use tax laws and, more than ever, companies need to consider proactive tax planning measures for the changing path ahead. Through a combination of tax advisory services, insight, experience, and technology, Deloitte can help your company understand its current posture, reveal the potential impacts, and make recommendations in order to meet compliance obligations. Deloitte’s indirect tax specialists can assist with the analysis of processes and technology, help plan and execute your next steps, and monitor future state tax law and regulatory changes.

#### 01. Understand your company's current posture

- Conduct a process assessment to understand your company's business, review product/service characterization and taxability, data, and systems
- Evaluate:
  - Collection and remittance footprint
  - Invoice life cycle from order through reporting to support
  - Discuss areas of complexity and concern

#### 02. Reveal the potential impacts of the *Wayfair* decision

- What has changed and what does your company need to consider doing differently, both now and in the future
- Evaluate *Wayfair*'s implications on other state laws/promulgated rules that trigger sales and use tax nexus based on existence of in-state sales/transactions
- Evaluate potential financial reporting considerations
- Evaluate the implications of *Wayfair* on other taxes such as income, gross receipts, franchise, and other miscellaneous indirect taxes imposed at the state or local level

#### 03. Process and Technology Options

- Assess current systems and business models or processes to analyze how the systems may need to change based on the decision in *Wayfair*
- Evaluate whether systems are in place to begin calculating and remitting sales tax or whether a new IT system and/or expansion of current systems may be required
- Assess whether the required customer data is available to properly source sales if a sales tax obligation is imposed
- Evaluate whether existing systems require modifications to meet notification requirements as specified by state and local regulations
- Develop a phased technology solution and timeline to mitigate potential exposure

#### 04. Become compliant

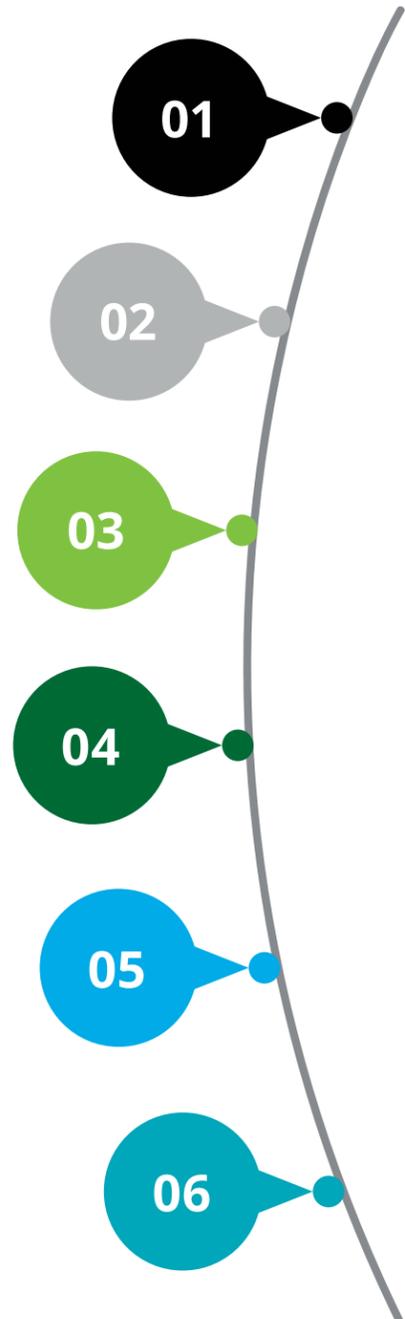
- Understand and quantify exposure for prior periods
- Analyze and calculate the proper characterization and taxability of a company's products and services
- Evaluate exempt sales and exemption certificate management

#### 05. Plan and take action

- Implement the necessary technology solutions
- Consider applying for amnesty and/or voluntary disclosure programs
- Register with the appropriate state and local taxing jurisdictions
- Onboard and test outsource provider(s)
- Inform and communicate across the company's operations team and customer relations

#### 06. Monitor and address change

- New state legislation and effective compliance dates
- Potential Congressional action
- Published guidance issued by states regarding *Wayfair* implications, product characterization (especially technology and Internet-based), and taxability
- Streamlined Sales Tax Agreement announcements



# Your company's path forward

## Deloitte's capabilities in addressing this changing tax landscape:

Depending on life cycle and industry, each company may require a customized, strategic plan to address the changes in the sales and use tax landscape. Deloitte professionals have the experience to assist with strategic analysis and guide your company through this new and evolving landscape.

### ▶ **Process review.**

Conduct a detailed review of your company to better understand your business, characterization, taxability, and filing footprint.



### ▶ **Characterization and taxability analysis.**

Analyze the appropriate character of your company's product or service and whether that product is subject to sales and use tax.



### ▶ **Technology readiness assessment.**

Evaluate, plan, and take action to immediately address process and systems to limit exposure and enhance tax calculation and reporting capabilities.



### ▶ **Cosource or outsource compliance.**

Assist in sales and use tax compliance, from preparation to filing.



### ▶ **Taxing Jurisdiction Audit support.**

Assist in a wide range of services from initial data review to coordinating with the auditor to responding to information requests.



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