Happy New Year from the Atlas Team!

As we enter 2019 we wanted to provide a brief summary of the ESS updates that occurred during 2018, sorted in alphabetical order.

**Argentina**

The Argentinian tax authorities introduced new VAT legislation with effect from 1 February 2018 which brings the supply of digital services by non-resident businesses within the scope of Argentinian VAT. However, it is the responsibility of the local intermediary to pay the VAT due. Where a transaction is performed without using an intermediary, the VAT must be paid by the end consumer.

**Bahamas**

The Bahamian Government increased the standard rate of VAT in the Bahamas from 7.5% to 12% with effect from 1 July 2018.

**Bahrain**

The Bahraini Ministry of Finance released its draft VAT law in November and laid the official regulations in December with the law taking effect from 1 January 2019. The standard rate of VAT will be 5% and a nil VAT registration threshold is in place for non-residents.

Non-residents will be required to account for VAT on e-services supplied to Bahraini consumers (i.e. B2C transactions) and are likely to have a VAT registration obligation. The online portal to register for VAT is now available at https://www.nbt.gov.bh/.

**Barbados**

In June, the Barbadian Prime Minister delivered a proposal to apply VAT to all online transactions for the purchase of goods and services that are used in, or delivered to Barbados, which was due to take effect from 1 October 2018. However, the implementation has subsequently been delayed.

**Canary Islands**

The Canary Islands has published a draft law – now confirmed – mandating a decrease in the standard rate of IGIC from 7% to 6.5% from 1 January 2019.

The Immediate Supply of Information System (‘SII’) - a form of real-time electronic VAT reporting - will also be introduced in the Canary Islands with
effect from 1 January 2019. Non-resident businesses providing e-services will be subject to the SII regulations if the value of B2C sales made to customers in the Canary Islands in the previous FY exceeds €6,010,121.

Chile

On 22 August the Chilean government revealed its Tax Modernization Bill. Among the provisions of the bill was the introduction of a specific 10% tax on digital services supplied by non-resident entities which are used by Chilean individuals, i.e. B2C digital services. This is expected to be approved by congress later in 2019.

Colombia

In October, Colombian Tax Authorities (“DIAN”) issued a final resolution clarifying the VAT obligations of non-resident suppliers of B2C e-services in Colombia. Such services have been subject to Colombian VAT since 1 July 2018. A nil VAT registration threshold applies to non-residents and registration can be completed through the “request/PQRS” section on DIAN’s website. Please note that the appointment of a fiscal representative is optional.

Decree 2179/2018 confirmed that the deadline for filing the three VAT returns and making the associated payment is 15th January 2019.

DIAN also issued a draft resolution which proposes the implementation of a withholding/reverse charge mechanism for VAT on the supplies of e-services by non-residents. However, it is not clear when the draft will be approved and in the meantime, non-resident suppliers of e-services are required to register, file VAT returns and pay VAT.

Costa Rica

On 5 December 2018, the “Public Finance Strengthening Project”, was published in Costa Rica’s official gazette. This Law provides that Value Added Tax (VAT) will replace the General Sales Tax (GST) from 1 July 2019. The implementing regulations are expected to be released during the first quarter of 2019.

The scope of VAT will include the provision of e-services but there is currently uncertainty as to whether non-residents will be required to register for VAT, or if the credit/debit card issuer of the customer will be required to collect the VAT due.

Egypt

The Egyptian Tax Authorities increased the standard rate of VAT in Egypt from 13% to 14% with effect from 1 July 2018.

European Union

In October, the European Council of the European Union agreed to allow Member States to apply reduced VAT rates to electronic publications in order to align the VAT treatment with the physical versions. The following Member states have announced that the reduced rate will apply:

- Denmark
- Finland
- Ireland
- Luxembourg
- Malta
- Norway
- Poland
- Portugal
- Sweden

Iceland

Iceland announced that with effect from 1 July 2018 the sales and subscriptions of electronic magazines are now subject to VAT at the reduced rate of 11% (was 24%).

It also announced that the definition of “electronically supplied services” will change from 1 January 2019 to “services provided on the internet.”
automatically without any significant intervention where information technology is an essential part of the provision of the services”, and a simplified registration process will be available from 1 July 2019.

India

In January, the online GST portal was opened for the registration of non-resident Online Information Database Access and Retrieval (OIDAR) service providers.

Malaysia

The Malaysian Budget was announced on 2 November 2018, and announced a service tax to be charged on imported taxable services in two stages:

1. Business to Business (B2B) transactions: Malaysian recipient customers to account for 6 percent tax via reverse charge from 1 January 2019; and

2. Business to Consumer (B2C) transactions: Foreign providers of digital products and services are required to register and collect 6 percent service tax from 1 January 2020.

‘Imported taxable services’ is defined as any taxable service acquired by any person in Malaysia from any person outside Malaysia.

Québec

In March, the National Assembly of Québec passed into law the measures relating to the new QST registration regime for suppliers (including e-businesses) with no physical or significant presence in Québec, as part of the 2018-2019 budget. The measures were amended at the end of September and now require non-resident suppliers of digital services with B2C sales of greater than 30,000 CAD (approximately 23,000 USD) in Québec to register for QST by 1 January 2019.

Non-resident suppliers are able to register through an online portal provided by Revenue Québec.

Russia

In February, the Russian Tax Authorities established the format for the document known as the "Register of Operations" which non-resident providers of ESS are required to maintain.

The Russian Tax Authorities also announced that there will be an increase in the standard rate of VAT in Russia from 18% to 20% with effect from 1 January 2019. For B2C and B2B e-services, the VAT rate will increase from 15.25% to 16.67% of the VAT inclusive value.

Finally, non-residents will need to charge Russian VAT on B2B supplies of e-services as the reverse charge mechanism will not apply from 1 January 2019.

Singapore

Singapore’s Parliament approved a legal amendment to tax the provision of electronically supplied services ('e-services') by non-resident businesses from 1 January 2020.

Non-resident businesses will be required to register for and charge GST in Singapore if:

- Their calendar year global turnover exceeds (or is expected to exceed) SGD 1 million (c.USD 726,000); and
- Their calendar year value of B2C e-services provided to Singaporean customers exceeds (or is expected to exceed) SGD 100,000 (c.USD 72,600).

South Africa

The standard rate of VAT in South Africa increased from 14% to 15% on 1 April 2018.
The South African Tax Authorities (“SARS”) also announced that the following changes would take effect from 1 April 2019:

1. The VAT registration threshold will increase from ZAR 50,000 to ZAR 1 million in a 12 month period to align with the domestic VAT registration threshold.

2. The definition of electronically supplied services will change to “all services supplied by means of an electronic agent, electronic communication or the internet for consideration”.

3. The introduction of marketplace rules whereby third party operators of online marketplaces/platforms will be deemed to be the supplier for VAT purposes and therefore be required to account for and remit VAT.

4. Certain supplies within a group of companies are excluded from the regulation, although this is limited to very specific circumstances.

5. The VAT registration process will be simplified such that pure non-resident electronic services suppliers are not required to open a local bank account or to appoint a local representative.

6. Invoicing, credit and debit notes requirements.

South Korea

In July the South Korean Ministry of Strategy and Finance proposed to extend the definition of e-services to include cloud computing services from 1 July 2019. Later, in November, it released a further amendment to:

- Extend the definition of e-services to include internet advertisements and ‘shared economy’ services; and
- Extend the scope of the law to capture B2B supplies of e-services supplied by non-residents.

Both changes to the legislation are expected to take effect from 1 July 2019.

Switzerland

From 1 January 2018 Switzerland changed the VAT registration threshold test for non-residents to global annual turnover of CHF 100,000.

Taiwan

On 16 July, Taiwan’s Ministry of Finance announced that it will not levy penalties against non-resident ESS vendors for failing to issue electronic Government Uniform Invoices (“eGUIs”) in respect of B2C supplies of e-services until 1 January 2020. This represented a 12 month extension from the original date of 31 December 2018.

Thailand

The Thai tax authorities have released an updated draft of the proposed e-commerce law which aims to bring electronically supplied services (“ESS”) supplied by a non-resident business to private customers in Thailand within the scope of Thai VAT. The Thai cabinet subsequently approved a draft Act in July that amends the rules for the collection of VAT from non-residents that supply e-services to Thai residents, i.e. B2C e-services. However, many of the details have not yet been released.

Turkey

Turkey implemented legislation requiring non-resident e-services providers to register for Turkish VAT with effect from 1 January 2018. The registration portal can be accessed here.

In December the Turkish Tax Authorities published a communiqué related to the VAT rate applicable to electronic publications. From 1 January 2019 e-publications will be subject to VAT at the standard rate of 18%.
Uganda

Uganda implemented a social media tax which took effect from 1 July 2018, and changed the definition of “electronic services” in order to broaden the application of VAT to e-services provided or delivered remotely.

UK

The UK Tax Authorities published draft statutory instruments for technical consultation in respect of B2C sales of e-services across the EU. The following two changes were proposed:

Businesses with annual B2C sales of €10,000 (sterling equivalent) will only be subject to the VAT rules of their home country, as opposed to being required to adhere to the VAT rules in each Member State where B2C sales are made. As an alternative to this, businesses can continue to use the current rules.

Non-EU businesses that are registered for VAT in another EU Member State for purposes other than B2C e-services are now eligible to use the Mini One Stop Shop (MOSS) scheme to account for VAT on sales of B2C e-services in that EU Member State.

The UK Tax Authorities also published guidance for businesses in a no-deal Brexit scenario which explained that businesses established in the UK that are currently registered to the UK VAT MOSS Union scheme and want to continue to use the MOSS system will need to register for the VAT MOSS non-Union scheme in an EU Member State. Further information can be found here.

Uruguay

The Uruguay Tax Authorities issued Implementation Decrees in May and July 2018 which introduced the requirement for non-residents to collect VAT on B2C supplies of digital services from 1 January 2018. Digital services are defined as “the production, distribution or intermediation of movies, as well as those arising from streaming or any audio-visual downloads through the internet or other technological platforms including apps or any other similar means”

It issued a further resolution on 11 October 2018 regarding the application of VAT and IRNR (a tax levied on the income of non-residents) on non-resident suppliers of B2B and B2C digital services.

This stated that there is a simpler registration process for non-residents that does not require the non-resident to provide a legal address in Uruguay nor appoint a local agent/tax representative. It also provided the deadlines for payment of the VAT and IRNR.

US

On 21 June, the U.S. Supreme Court issued its opinion in Wayfair et. al. In a 5-4 decision, the majority held that the physical presence rule established in its previous decisions in Quill (1992) and National Bellas Hess (1967) for the purposes of sales/use tax nexus “is unsound and incorrect.”

As a result, the U.S. Supreme Court reversed the lower court decisions and upheld the constitutionality of the 2016 South Dakota law establishing a sales/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.

Other States have started to introduce similar nexus rules.

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