



EUROPE/NORTH
AMERICA SEMINAR:
CASE STUDIES ON
CROSS-BORDER
TRANSACTIONS

23 MARCH 2021

TODAY WE WILL COVER...



- ❖ An overview of the North American and European Indirect Tax Models
 - Country overview (laws, regulations, compliance...)
 - Key similarities and differences
 - Rate comparison
 - Legislative updates

- ❖ Cross Border Case Studies
 - Business to Business (B2B)
 - Business to Consumer (B2C)

- ❖ Q&A

OVERVIEW: RECENT CHANGES



EUROPE

- ❖ New rules as of 1 July 2021 for B2C “E-commerce”



MEXICO

- ❖ Repeal of the possibility to offset input VAT against other federal taxes
- ❖ Taxation of services provided by digital platforms (whether domestic or foreign)



CANADA

- ❖ Non-Resident Registration for suppliers of:
 - Digital products/services
 - Goods supplied through fulfilment warehouses
 - Platform based Short Term Accommodation



USA

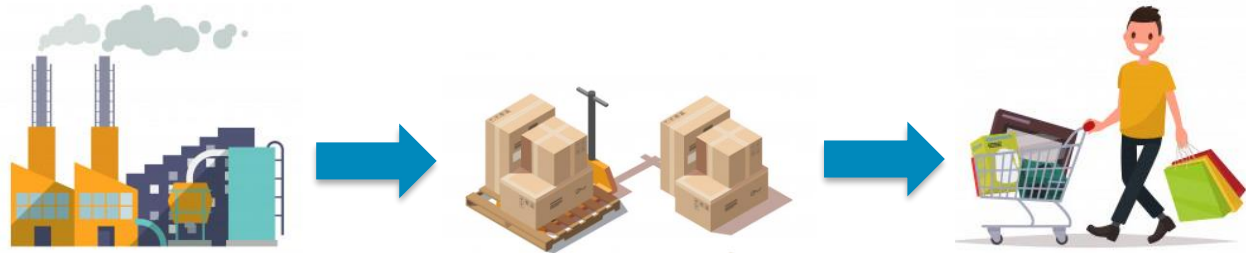
- ❖ Wayfair case: **Sellers without “Physical Presence” can now be required to collect and report U.S. sales tax**

**EUROPEAN VS
NORTH AMERICAN
INDIRECT TAX
SYSTEMS : AN
OVERVIEW**

STARTING WITH THE EU VALUE ADDED TAX



- ❖ EUROPE has a harmonised common VAT System (VAT Directive); general tax on consumption.
- ❖ The 27 Member States must implement the VAT Directive into local VAT law, differences do occur.
- ❖ VAT is due on each taxable transaction in the chain from production, distribution to retail trade stage (B2B, B2C).



	MANUFACTURER	RETAILER	CONSUMER
EUROPE	<p>Manufacturer invoices and charges output VAT due to customer.</p> <p>VAT due is paid by manufacturer to tax authorities.</p>	<p>Retailer pays VAT due to manufacturer and has right to input VAT deduction.</p> <p>Retailer invoices and charges output VAT due to end consumer</p> <p>Retailer may deduct input VAT from output VAT and is liable to pay or refund difference to/from tax authorities</p>	<p>End consumer pays VAT due to retailer</p> <p>End consumer bears VAT as he has no right to input Vat deduction.</p>

HOW DOES THIS COMPARE TO MEXICO?

MEXICO HAS A TAX SIMILAR TO THE EU VAT SYSTEM



- ❖ Mexico has a “federal” Value Added Tax (“VAT”)
- ❖ Indirect tax on the sale of goods, provision of independent services, granting the temporary use of goods and the importation of goods of services
- ❖ Triggered on a cash flow basis and reported monthly



	MANUFACTURER	RETAILER	CONSUMER
MEXICO	Pays VAT to suppliers of raw materials. May credit such VAT against payable VAT or request a refund.	Manufacturer charges VAT to seller. Seller may credit VAT charged by manufacturer and offset against its own payable VAT	Product seller charges VAT to end consumer.

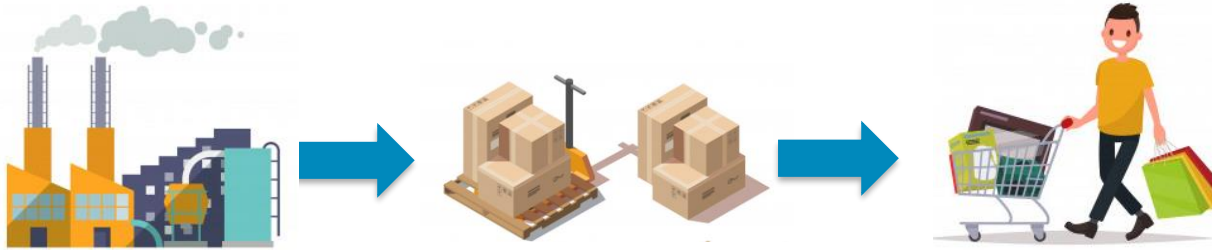
- ❖ Of the North American approaches, it is the Mexican system, VAT, which mirrors most closely the European system of indirect taxation, VAT...

...BUT IN ADDITION

CANADA HAS ALSO AN INDIRECT TAX NOT UNLIKE MEXICO



- ❖ Canada has a “federal” goods and services tax/harmonized sales tax (“GST”)

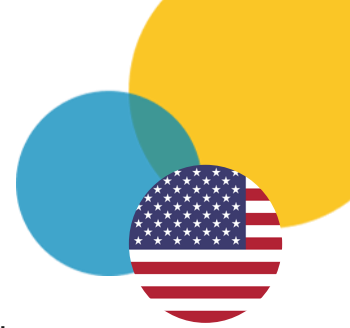


- ❖ Provincial sales tax (“PST”) is paid on indirect costs at each stage of supply chain
- ❖ Becomes part of the cost to the consumer

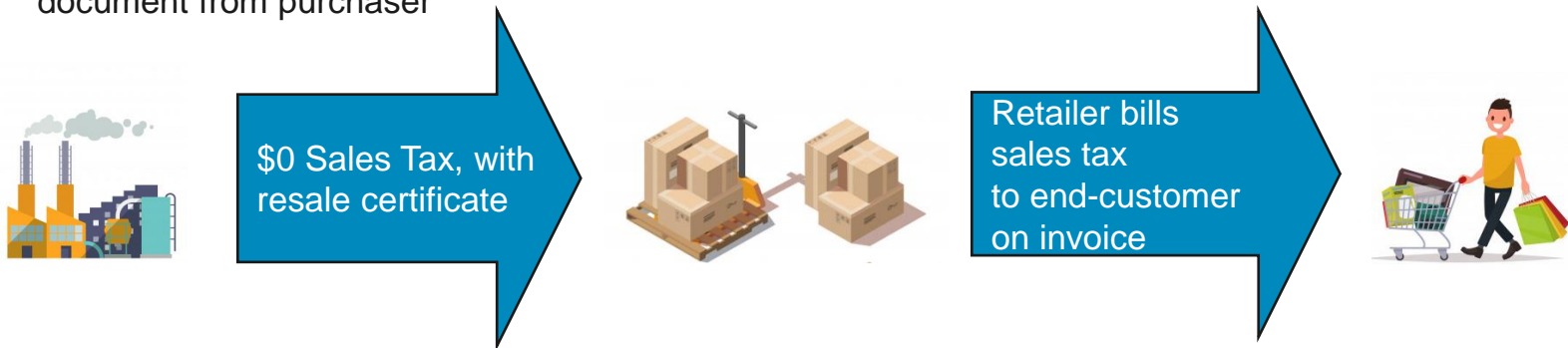
	MANUFACTURER	RETAILER	CONSUMER
CANADA GST	GST registered Manufacturer collects GST and claims ITC	Registered Retailer collects GST and claims ITC	Retailer charges GST to end consumer
CANADA PST	Pays PST on indirect costs which it embeds into the cost of its manufactured goods.	Does not pay PST on goods for resale; pays PST on indirect costs	Retailer collects PST from Consumer.

US MODEL

THE US IMPOSES SALES TAX AT A STATE AND LOCAL LEVEL



- ❖ State and Local Sales Tax is applicable to each separate sales transaction of goods, digital products, and sometimes, services
- ❖ A sale at wholesale is usually exempt from sales tax **IF** the seller obtains the appropriate resale document from purchaser










	MANUFACTURER	RETAILER	CONSUMER
USA	<p>\$0 Sales Tax, with resale certificate from Retailer.</p> <p>If retailer cannot provide the resale certificate, the manufacturer must bill tax</p>	<p>Issues a resale certificate to Manufacturer in order to make an exempt purchase of the good, digital product, or taxable service.</p>	<p>Retailer bills sales tax to end-customer on invoice. Retailer collects sales tax from Consumer.</p>

- ❖ Not all states tax digital products
- ❖ Not all states allow a service to be purchased under a resale exemption

WHAT ARE THE TAX RATES?

AND CAN THE PURCHASER CLAIM AN INPUT TAX CREDIT?

	RATE OF TAX	CREDIT SYSTEM
 AUSTRIA	20% (13%, 10% or 0% on certain transaction)	Input Credit Available
 BELGIUM	21% (12%, 6% or 0% on certain transaction)	Input Credit Available
 GERMANY	19% (7% or 0% on certain transaction)	Input Credit Available
 MEXICO	16% (0% on certain transaction)	Input Credit Available
 CANADA	GST: 5% -15% PST: 6% - 7%	GST: ITC Available PST: NO CREDIT
 USA	4%-10% (vary by state/locality)	NO CREDIT (final tax on consumer)



**CASE STUDY 1 –
CROSS BORDER
TRANSACTIONS B2B**

CROSS BORDER TRANSACTIONS (“B2B”)

- ❖ In this section we consider supplies of goods and know how between North American and European businesses (ie transactions between companies not individual consumers) (“B2B”)

North-America / non-EU
country



US Co.

BORDER

License to use knowhow – with or without sale of goods



EU Country



EU Co.

CROSS BORDER TRANSACTIONS (“B2B”)

EUROPE : INBOUND SUPPLY OF GOODS AND KNOW HOW (SERVICES)

EXAMPLE GERMANY (EU CO EST. GERMANY GENERALLY COMPARABLE TO OTHER EU COUNTRIES WITH POSSIBLE SPECIFICS)



GOODS

KNOW HOW (SERVICES)

A.) US Co. responsible for customs declaration / importation

- ❖ importation assumed in EU/Germany
- ❖ US Co. has to register for VAT in EU/Germany
- ❖ Custom duties and import VAT have to be paid by US Co.
- ❖ US Co. has right to import VAT deduction
- ❖ Supply of goods from US Co. to EU Co. subject to EU/German VAT
- ❖ Customs Value: License fees can be part of the customs value if not included in price; this might also apply in case EU Co. provides license to US Co. without consideration (ECJ, decision of 10.9.2020, C-509/19, *BMW Bayerische Motorenwerke AG*)

- ❖ Place of service in EU/Germany (Place of recipient principle)
- ❖ Reverse Charge, EU Co. liable for VAT
- ❖ EU Co. can deduct input VAT
- ❖ No VAT consequences of US Inc. in EU/Germany

B.) EU Co. responsible for customs declaration / importation

- ❖ No registration duty of US Co. in EU/Germany
- ❖ Supply by US Co. to EU Co. is not in scope of EU/German VAT
- ❖ Custom duties and import VAT have to be paid by EU Co
- ❖ License fees can be part of the customs value if not included in price (see above)
- ❖ EU Co. can deduct import VAT

CROSS BORDER TRANSACTIONS (“B2B”)

EUROPE : OUTBOUND SUPPLY OF GOODS AND KNOW HOW (SERVICES)
EXAMPLE GERMANY (EU CO EST. GERMANY GENERALLY COMPARABLE TO OTHER EU COUNTRIES WITH POSSIBLE SPECIFICS)



SUPPLY OF GOODS BY EU Co.

- ❖ Place of supply in EU/Germany (where transport begins)
- ❖ Exempt from EU/German VAT as export of goods
- ❖ Proofs are necessary (esp. “Ausgangsvermerk” from customs)

SUPPLY OF KNOW HOW (SERVICES) BY EU Co.

- ❖ Place of service is outside of EU/Germany (place of recipient principle = general rule),
- ❖ Exceptions are possible
- ❖ No EU/German VAT

CROSS BORDER TRANSACTIONS (“B2B”)

MEXICO



INBOUND

OUTBOUND

GOODS

- ❖ Importation of goods subject generally to 16% rate
- ❖ VAT certification for *maquiladoras* which allows to apply a credit against such payable VAT
- ❖ VAT may be charged on the sale of the goods if delivery takes place within Mexican territory in which case the purchaser will be obligated to withhold

- ❖ Exportation of goods on a final basis subject to the 0% rate

INTANGIBLES

- ❖ Considered as an importation of goods into Mexican territory, subject to the 16% rate
- ❖ VAT paid through reverse charge mechanism
- ❖ Possible to offset such VAT in the same tax return in which the tax must be paid, thus having no effect on the company's cashflow
- ❖ However, consider the performance of activities subject to VAT to be able to claim the VAT credit

- ❖ Generally subject to the 0% rate as an exportation of goods

CROSS BORDER TRANSACTIONS (“B2B”)

CANADA: OUTBOUND SUPPLY OF GOODS AND LICENSE

- ❖ SINGLE SUPPLY : Tax applied based on rules for “predominant element”
- ❖ SEPARATE SUPPLY : Tax applied based on rules for each supply



IN CANADA

OUTSIDE CANADA

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- ❖ Registrant (CAN co.) charges GST if goods delivered or made available in Canada unless conditions for zero-rating are met

- ❖ Registrant (CAN co.) does not collect GST where goods delivered or made available outside Canada



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Intellectual property taxable where property

- ❖ Can be used in Canada; or
- ❖ Relates to:
 - ❖ Tangible or real property located in Canada; or
 - ❖ Services to be performed in Canada

Intellectual property-not taxable where property

- ❖ Cannot be used in Canada; or
- ❖ Relates to:
 - ❖ Tangible or real property located outside Canada; or
 - ❖ Services to be performed wholly outside Canada
- ❖ Purchaser is Non Resident/non-registrant
- ❖ .

CROSS BORDER TRANSACTIONS (“B2B”)

CANADA: INBOUND SUPPLY OF GOODS AND LICENSE



CURRENT RULES

PROPOSED RULES

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- ❖ **Wholesaler (EU co.)**
 - ❖ NRNR imports goods into Canada and pays GST to CBSA
 - ❖ Does not charge GST to Retailer
- ❖ **Retailer (CAN co.):**
 - ❖ Charges GST to consumer
 - ❖ Retailer may claim ITC for GST paid to CBSA by Wholesaler if conditions met

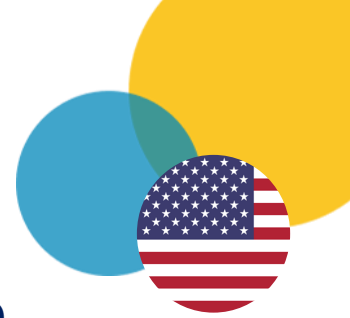
- ❖ **Wholesaler (EU co.)**
 - ❖ **NRNR registers under “regular” system**
 - ❖ Distribution platform
 - ❖ Fulfillment warehouse
 - ❖ Shipping from inside Canada
 - ❖ Charges GST to Retailer
 - ❖ Claims ITCs
- ❖ **Retailer (CAN co.):**
 - ❖ Charges GST to consumer
 - ❖ Claims ITC for GST paid to Wholesaler

- ❖ **Licensor (EU co.)**
 - ❖ NRNR licensor not required to collect GST from Licensee
- ❖ **Licensee (CAN co.)**
 - ❖ Exempt Licensee self assesses GST

- ❖ **Non-resident non-registrant Licensee to register under “simplified” system**
 - ❖ GST registered exempt Licensee doesn't pay tax to Licensor; self assesses GST
 - ❖ Non-registered Licensee pays tax to Licensor

CROSS BORDER TRANSACTIONS (“B2B”)

USA



INBOUND

OUTBOUND

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- ❖ Goods are subject to tax in the State of delivery unless purchaser claims a valid exemption
- ❖ The Seller must collect and report tax if the purchaser does not claim an exemption
- ❖ Sales tax must be separately stated on the customer’s invoice
- ❖ Purchasers can be held responsible if seller has not collected tax.

- ❖ Goods are not subject to sales tax when committed to the export process: When title to goods passes at the docks and shipment occurs via common carrier; or, sent to freight forwarder for export.

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- ❖ Many states tax digital products and/or certain services
- ❖ When taxable, digital products or services are typically taxed according to the location of the digital product user, or place where “benefit of the service” is received.
- ❖ A license to practice know-how is usually not taxable unless a good, digital product, or taxable service is included in the sale.

- ❖ Sales Tax should not apply to taxable Services or Digital Products when the service recipient or digital product user is located outside the U.S.
- ❖ An Intangible license to use know-how, not involving goods or digital products, is usually not taxable.



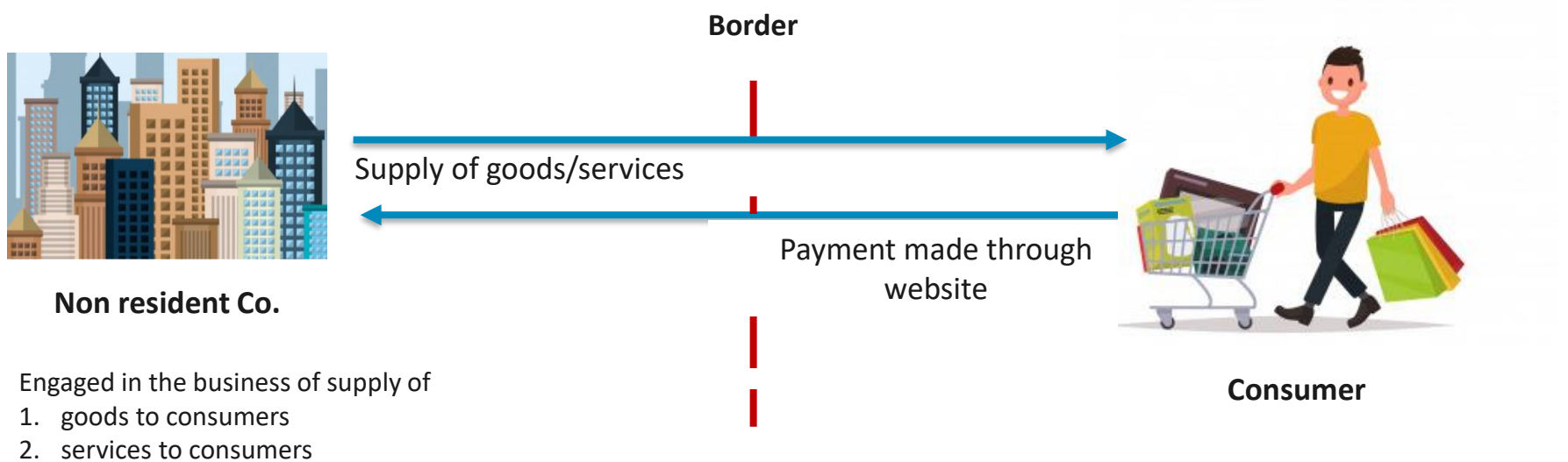


**CASE STUDY 2 –
E-COMMERCE B2C
SUPPLY OF
GOODS/SERVICES**

E-COMMERCE B2C SUPPLY OF GOODS/SERVICES



❖ In this section we consider cross border business to consumer (“B2C”)



E-COMMERCE B2C SUPPLY

EUROPE : INBOUND and INTRA-EU CROSS-BORDER E-SERVICES



- ❖ Place of taxation: Country where customer resides (particular rule, exception to the main rule for B2C services)
- ❖ Liability to pay: Supplier, unless a platform 'takes part' to the supply (in which case the platform acts as 'deemed supplier', liable to collect and pay the VAT)

Registration and Payment?

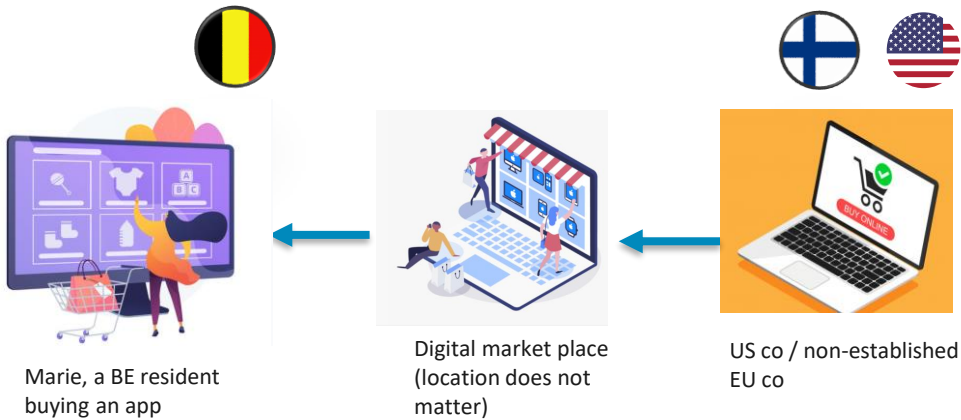
- ❖ Optional (Non-)Union MOSS : single registration in Member State of identification and single periodical VAT declarations including all B2C supplies of TBE services (telco/broadco/e-services) to EU consumers – breakdown per country.
 - Alternative: Local registrations (in each country where has customers). Advantage: input VAT deduction in same declaration (if using MOSS: separate refund request is needed).
- ❖ Platforms/marketplaces acting as 'deemed suppliers' have same registration options than suppliers.
- ❖ Extensive guidelines on the MOSS and the deeming provision applicable to platforms/marketplaces available on the European Commission website

E-COMMERCE B2C SUPPLY

EUROPE : INBOUND and INTRA-EU CROSS-BORDER E-SERVICES

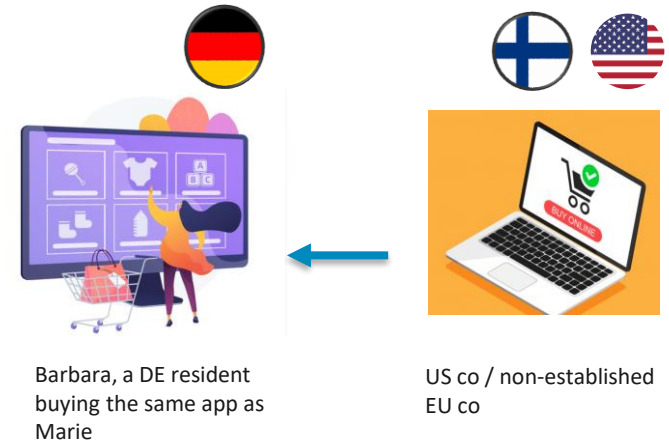


Example 1



- ❖ 21% VAT due in BE on the purchased app
- ❖ Marketplace liable to collect and pay VAT to BE Treasury.
 - MOSS registration
 - Local registration
- ❖ US co/non-established co not liable for the VAT (no need to register locally/MOSS)

Example 2



- ❖ 19% VAT due in DE on the purchased app
- ❖ US co/non-established co liable to collect and pay VAT to the DE Treasury
 - MOSS registration
 - Local registration

E-COMMERCE B2C SUPPLY

EUROPE : INBOUND and INTRA-EU CROSS-BORDER E-SERVICES



Any app



Downloadable music



- ❖ Electronic services = fully automated supply, minimum human intervention.
- ❖ Specific place of taxation and collection rules discussed in previous slides.



Car rental



Hotel



Train

Bus



- ❖ Services rendered 'via email' (e.g. consultants, lawyers) or booking and paying (either directly or through a platform) for a service online \neq an e-service.
 - No liability for the platform (if any).
 - Subject to other (specific) place of taxation rules. MOSS will be available as of July to simplify collection if supplier not established in State where the tax is due.



E-COMMERCE B2C SUPPLY

EUROPE : INBOUND B2C GOODS (IMPORTS)



INBOUND B2C SUPPLY OF GOODS UNTIL 30 JUNE 2021

- ❖ Place of taxation: Country where the customer resides
- ❖ Liability: The importer for VAT purposes is the recipient of the goods, in general the consumer in e-commerce sales (no registration). If seller identified as recipient, will be liable and needs to register + appoint tax representative if not established in the EU.
- ❖ Payment: Customs collect if consumer liable (possibly outsource to postal company). Import VAT due upon importation or via periodical declaration if supplier liable (postponed accounting where available).
- ❖ VAT exemption for goods < EUR 10-22 (Low Value Goods).

INBOUND B2C SUPPLY OF GOODS FROM 1 JULY 2021

- ❖ Exemption for Low Value Goods is rescinded.
- ❖ Liability and payment:
 - Goods > EUR 150: no change.
 - Goods < EUR 150:
 - If supplier **registers to I-OSS** the supply is taxed (VAT included price are charged to the customer) and the import (physical entry into the EU) is exempt.
 - If the supplier **does not register to I-OSS**, the person presenting the goods to customs (transporter) will collect the import VAT (non VAT-included prices to be charged to the customer, VAT collected separately).
- ❖ If supply is facilitated by a platform, the platform becomes 'deemed supplier' if the goods are < EUR 150 (fictitious chain transaction for VAT purposes: Vendor → platform and platform → customer). Very wide scope of application. Platforms have same registration options than suppliers.

E-COMMERCE B2C SUPPLY

EUROPE : INBOUND B2C GOODS (IMPORTS)



Hannes, an AT resident
buying a camera



Camera shipped from
any non-EU country
Value: 140 EUR



US co / EU co

- ❖ 20% VAT due in AT on the purchased camera
- ❖ Registration & payment?
- ❖ * If vendor registers to I-OSS (and appoints tax rep. if non established in the EU/NO/UK): charges VAT included price to Hannes. VAT declared and paid via periodical I-OSS return.
- ❖ * If vendor does not register to I-OSS: charges non VAT included price to Hannes. VAT will be collected by transporter directly from Hannes and paid to the Treasury. No obligation for vendor to register (but less customer friendly experience).
- ❖ If supply made via a marketplace? Marketplace becomes 'deemed supplier'. Same options than above for the payment of the VAT.

E-COMMERCE B2C SUPPLY

EUROPE: **OUTBOUND**



OUTBOUND B2C SUPPLY OF GOODS	OUTBOUND B2C SUPPLY OF SERVICES
<p>Exportation is exempt, subject to:</p> <ul style="list-style-type: none">❖ Export declaration (only EU based companies may be exporter of record).❖ Proof that the goods have left the EU.	<ul style="list-style-type: none">❖ Not subject to EU VAT (Supply taxable where customer resides)

No VAT in the EU...
but consumption taxes may be due in the country of the customer...

E-COMMERCE B2C SUPPLY OF GOODS & SERVICES

MEXICO : INBOUND GOODS AND SERVICES



INBOUND SUPPLY OF GOODS AND SERVICES

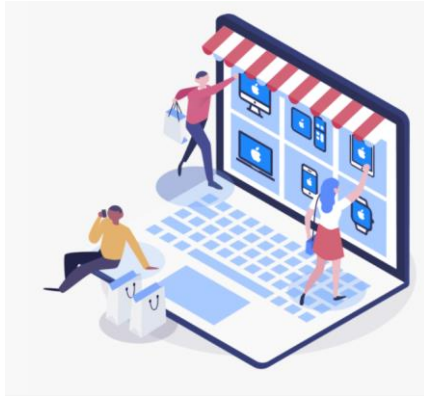
- ❖ Importation of goods will be subject to VAT
- ❖ Services may be subject to VAT at the 16% rate depending on the services provided, which include:
 - Download or access to images, movies, text, data, video, audio, music, games and other multimedia content, multiplayer environments, mobile tones, online news, traffic information, weather forecasts and statistics
 - Intermediation between third parties that offer goods or services and the consumers
 - Online clubs and dating
 - Distance teaching
- ❖ Obligations include registration in Mexico, charging VAT to the consumer, issuing invoices and filing of monthly tax returns among other requirements
- ❖ No PE for income tax purposes
- ❖ Failure to comply may result in the inability to provide services in Mexico

OUTBOUND SUPPLY OF GOODS AND SERVICES

- ❖ Goods
 - Exportation of goods on a final basis subject to the 0% rate
- ❖ Services
 - May be considered as an exportation of services if exploited abroad which would be subject to a 0% rate

E-COMMERCE B2C SUPPLY OF GOODS

CANADA : INBOUND ECOMMERCE : GST



CURRENT: Non-Resident Retailer imports goods into Canada and stores goods in Canada

CURRENT: Retailer does not charge GST to Customer
Pays non-recoverable GST to CBSA

PROPOSED: Nonresident Retailer required to register;
can claim ITC for GST paid to CBSA

PROPOSED: Retailer charges GST to Customer
Recovers GST paid as an ITC

E-COMMERCE B2C SUPPLY OF SERVICES INTANGIBLES

CANADA : INBOUND ECOMMERCE : GST



INTANGIBLES / SERVICES



CURRENT: NRNR supplier of intangibles/services not required to collect GST

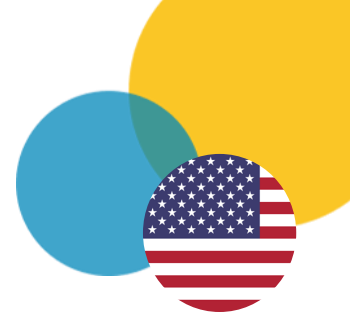
PROPOSED: “Simplified” registration requirement for Non-resident supplier now required to collect GST

CURRENT: Consumer/exempt user required to self-assess GST

Proposed: Consumer pays tax and does not self-assess
GST registered business doesn't pay tax/self-assesses if required

E-COMMERCE B2C SUPPLY OF GOODS & SERVICES

USA: INBOUND/OUTBOUND eCOMMERCE SALES TO CONSUMERS



INBOUND

- ❖ Sales to consumers are generally subject to sales tax according to the sales tax rules in the state where the consumer is located.
- ❖ Certain product-level exemptions or exclusions may apply for which the seller is not required to obtain an exemption certificate from the consumer.
- ❖ Example:

A Software as a Service (SaaS) license is not subject to California sales tax and does not require the seller to obtain an exemption certificate, provided no tangible personal property is included in the sale.



OUTBOUND

- ❖ Goods shipped from within the US to a consumer outside the U.S. are generally not subject to sales tax when shipped by common carrier, or shipped to a freight forwarder for export outside the U.S.
- ❖ Taxable Services/Digital Products; Tax should not apply when the service recipient or user is located outside the U.S.

KEY TAKEAWAYS...

BE AWARE AND TAKE CARE!



- ❖ Determine the jurisdictions in which your business is required to comply with sales tax/indirect taxes!
- ❖ Determine the characterisation of your supplies: What your jurisdiction deems to be a 'service' may be deemed to be an 'intangible' or a 'digital product' by another jurisdiction with different tax consequences!
- ❖ Determine if your billing systems are ready to comply with sales tax / indirect taxes in all the jurisdictions required!
- ❖ Be aware of new rules for E-commerce implemented in Canada, Europe and Mexico! Non-compliance might result in VAT liabilities and fines!
- ❖ Determine whether your business may have exposure from past non-compliance!

THANK YOU FOR JOINING US...



ARE THERE ANY
QUESTIONS?

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