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Tax Lawyers



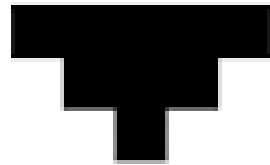
Panel 2: Significant digital presence Inspiration from VAT place of supply rules

prof. dr. Jeroen Norden

28 June 2018

Taxing the digital economy

FUNDAMENTAL



- Jacques Sasseville (OECD) +/- 20 years ago
 - Income tax issues are fundamental, but not urgent
 - Consumption tax issues are urgent, but not fundamental

Taxing the digital economy

Jurisdiction to tax

Substantive jurisdiction

- Legitimacy to tax, i.e. a connection between what is being taxed and the country imposing the tax that is sufficiently strong to legitimize that tax



Enforcement jurisdiction

- Ability to tax, i.e. whether the country has effective legal and implementing means of collecting the tax

Taxing the digital economy

- Substantive jurisdiction
 - Income taxes: fundamental & urgent
 - Consumption taxes: location of consumption → proxy: location of customer
- Enforcement jurisdiction
 - Income taxes: less fundamental, yet urgent
 - Consumption taxes: continuous development



Taxing the digital key consumption challenges



Taxing the digital economy & legislative landscape consumer

Destination principle

- Fits best with aim to tax consumption

OECD VAT/GST Guidelines

- Soft law
- Over 100 countries signed up

OECD BEPS Action Plan 1 Digital Economy

- Only Action Plan addressing consumption taxes explicitly
- Distance between supply and demand: challenges for charging, collecting and remitting VAT in country of demand
- Low Value Consignment Relief (LVCR)

EU VAT Directive

- New rules taking on digital economy challenges, incl.
 - abolishment of LVCR
 - simplification of VAT collection



Taxing the digital EU VAT online sales

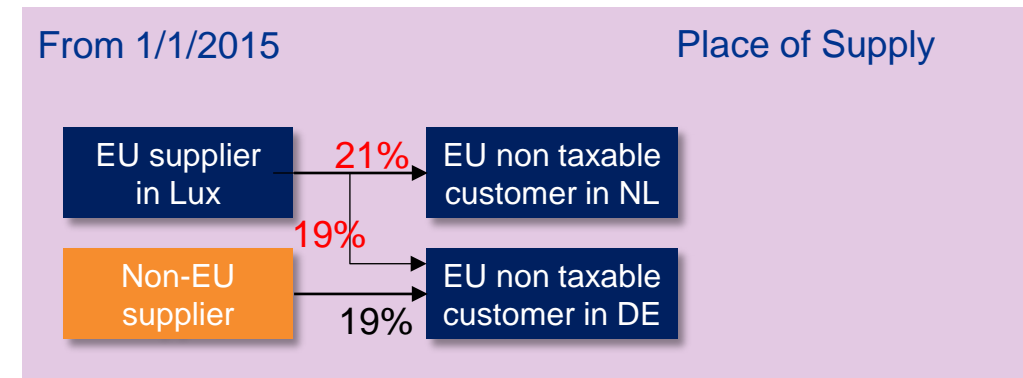
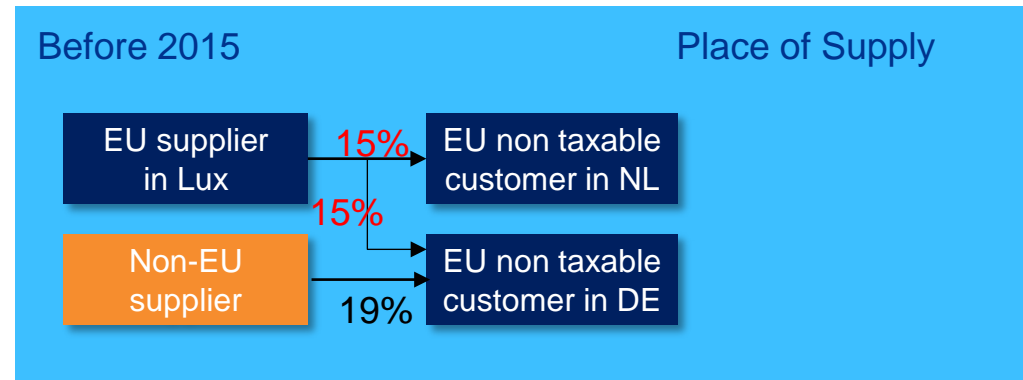
- Domestic sales
- Intra-EU sales → distance sales regime
- Non-EU sales → import – LVCR (EUR 22)



Taxing the digital economy V20 Electronic services



- Domestic electronic services
- Intra-EU electronic services → 1/1/2015 new rules, incl. MOSS
- Non-EU electronic sales → 1/1/2003 rules, incl. single EU registration



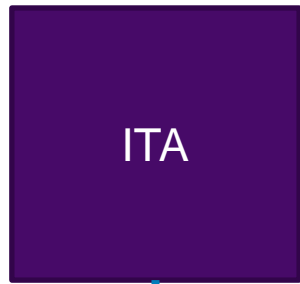
Taxing the digital New EU VAT The digital economy

- New rules adopted on 5 December 2017 - Directive 2017/2455
- Key changes:
 - B2C intra-EU sales of goods - replacing distance sales regime (2021)
 - B2C non-EU sales of goods / import (2021)
 - B2C electronic services - 'SME friendly' (2019)



Taxing the digital economy New EU VAT rules for the digital economy

- B2C intra-EU sales of goods
- Current distance sales regime



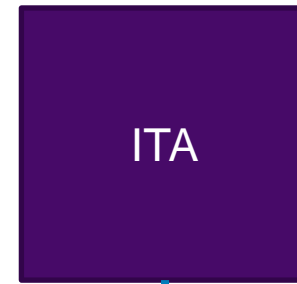
Place of supply POL, if threshold exceeded

ITA supplier should register for VAT in POL

*

= POL VAT

New rules



Place of supply POL

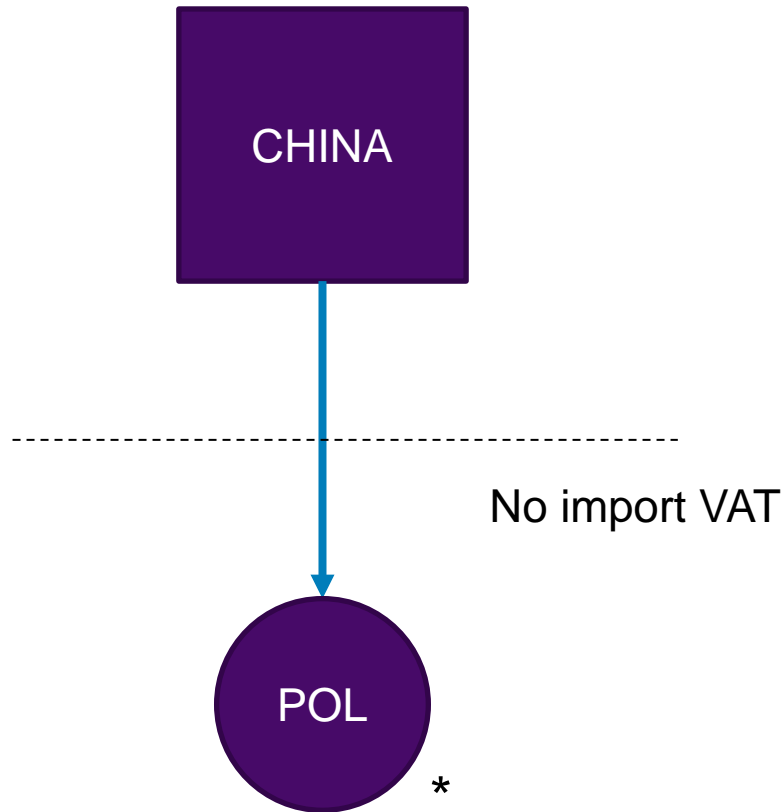
Liability with ITA supplier

* Payment via OSS

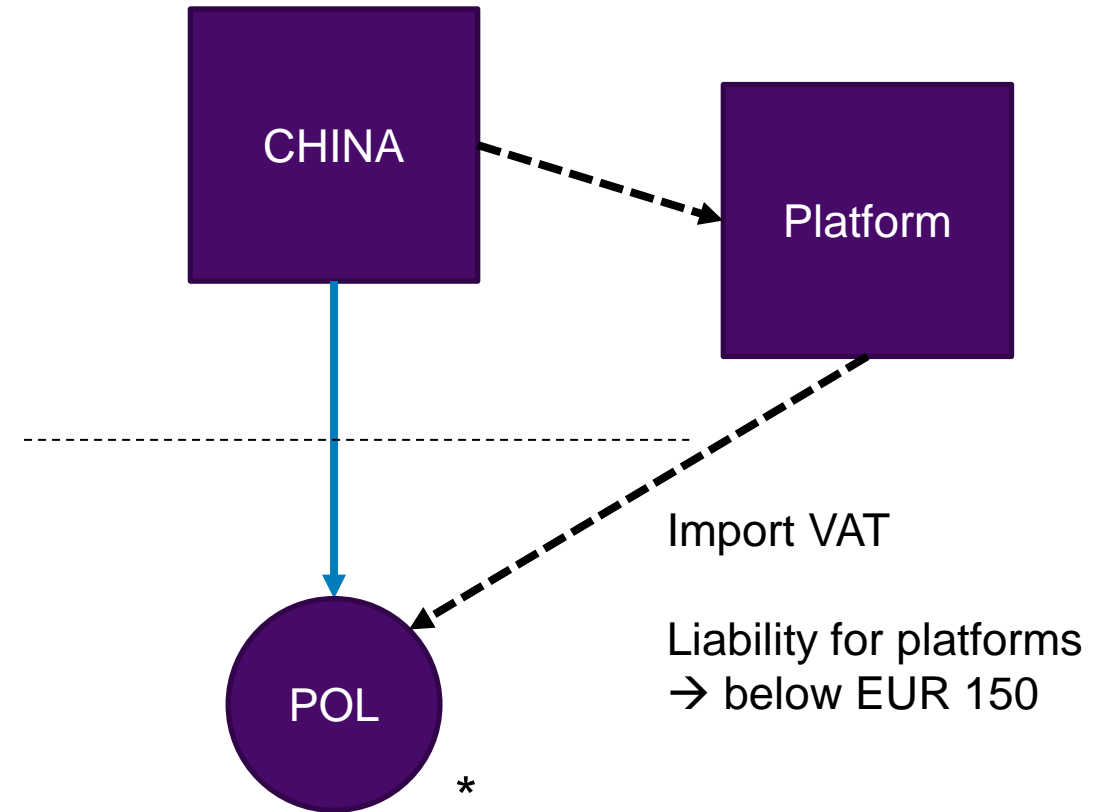
= POL VAT

Taxing the digital New EU VAT the digital economy

- B2C non-EU sales of goods / import
- Current low value consignment relief (LVCR; EUR 22)



New rules



Meanwhile on the other side of the Atlantic



Meanwhile, the other side of the Atlantic

Quill Corp. v. North Dakota

- Quill Corp. v. North Dakota, 504 U.S. 298 (1992) is a Supreme Court of the United States case concerning use tax. Quill Corporation is an office supply retailer. Quill had no physical presence in North Dakota (neither a sales force, nor a retail outlet), however it did have a licensed computer software program that some of its North Dakota customers used to check Quill's current inventories and place orders directly. North Dakota attempted to impose a use tax on Quill, which was struck down by the Supreme Court.



Wikipedia

Meanwhile on the other side of the Atlantic

South Dakota v. Wayfair, Inc. - 22 June 2018

- U.S. Supreme Court overruled the long-standing rule that an out-of-state seller must have a physical presence in a state before the state can require the seller to collect sales and use taxes



Meanwhile, the other side of the Atlantic

South Dakota v. Wayfair, Inc. - 22 June 2018

- “the physical presence rule has been the target of criticism over many years from many quarters.”
- “[e]ach year, the physical presence rule becomes further removed from economic reality and results in significant revenue losses to the States.”
- “Rejecting the physical presence rule is necessary to ensure that artificial competitive advantages are not created by this Court’s precedents.”
- “In the name of federalism and free markets, *Quill* does harm to both. The physical presence rule it defines has limited States’ ability to seek long-term prosperity and has prevented market participants from competing on an even playing field.”

Taxing the digital highway forward?





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