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Annual Conference Scottsdale, AZ

A New Era in Collecting and Remitting Indirect Taxes:

*E-Invoicing and Other
Emerging Indirect Tax Issues*

Tuesday, October 25, 2022

3:15pm-4:15pm



Moderator



David Card
Director of Indirect Tax
TC Energy



Scott Peterson
Vice President of US Tax
Policy and Gov. Relations
Avalara, Inc.



René Blocker
Practice Lead, State
Indirect Taxes
Bloomberg Industry Group



Christine Maddison
Partner
Reed Smith LLP

Session Description: In a world where electronic business interaction (“Ecommerce”) is now the norm, E-Invoicing and other technology-enabled business processes have moved indirect tax administration to a category of immediate resolution rather than a longer-term, more thoughtful response. This presentation will deal with the VAT, sales and use, and related tax issues that arise from an E-commerce world and other emerging issues in the indirect tax field.”

Learning objectives:

- Learn which jurisdictions are adopting e-invoicing and which are not, and why;
- Examine trends in tax agency interpretations of new technology and business models;
- Analyze potential implications on taxability of purchases in an Ecommerce world; and
- Review how companies might prepare for a future of faster, more intrusive tax compliance requirements

Agenda

- **Electronic Invoicing & Real-time Tax Reporting**
- **Additional Compliance Issues**
 - MA Accelerated Tax Payments
 - Cryptocurrency Tax Payments
 - CO Refund Claim Penalties
- **E-commerce Tax Liability and Collection Issues**
 - CO Retail Delivery Fee
 - Sales Tax Holidays
 - Remote/Marketplace Sellers
 - Marketplace Facilitators
- **E-commerce Taxability Issues**
 - SaaS/Cloud Computing
 - Bundled Transactions
 - NFTs



Electronic Invoicing & Real-time Reporting

A time-stamped commercial document accompanying a transaction

What is an invoice?

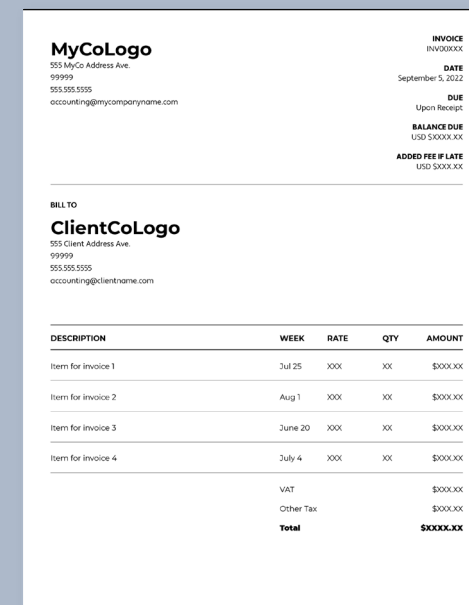
Sales invoice (outbound):

- Describe transactions & request payment
- Track and collect VAT / GST / Sales and Use Tax

Purchase invoice (inbound):

- For businesses requiring VAT reimbursement, the invoice is the primary evidence for input VAT

Content and format depends on local rules in each country.



MyCoLogo
555 MyCo Address Ave.
99999
555.555.5555
accounting@mycompanyname.com

INVOICE
INV0000XX
DATE
September 5, 2022
DUE
Upon Receipt
BALANCE DUE
USD \$XXXX.XX
ADDED FEE IF LATE
USD \$XXXX.XX

BILL TO
ClientCoLogo
555 Client Address Ave.
99999
555.555.5555
accounting@clientname.com

DESCRIPTION	WEEK	RATE	QTY	AMOUNT
Item for Invoice 1	Jul 25	XXX	XX	\$XXX.XX
Item for Invoice 2	Aug 1	XXX	XX	\$XXX.XX
Item for Invoice 3	June 20	XXX	XX	\$XXX.XX
Item for Invoice 4	July 4	XXX	XX	\$XXX.XX
	VAT			\$XXX.XX
	Other Tax			\$XXX.XX
	Total			\$XXXX.XX

- Paper invoice
- Digital invoice (PDF, Word)
- E-invoice

E-Invoices are submitted electronically and have a machine-readable structured format

What is an electronic invoice (E-Invoice/eInvoice)?

Unstructured

Visible to humans:
human-readable



MyCoLogo
100 Main Street, Suite 100
New York, NY 10001
accounting@mycompany.com

INVOICE
INVOICE
September 1, 2022
Upon Receipt
BALANCE DUE
USD \$500.00
AMOUNT DUE
USD \$500.00

BILL TO
ClientCoLogo
500 Main Street, Suite 100
New York, NY 10001
accounting@clientco.com

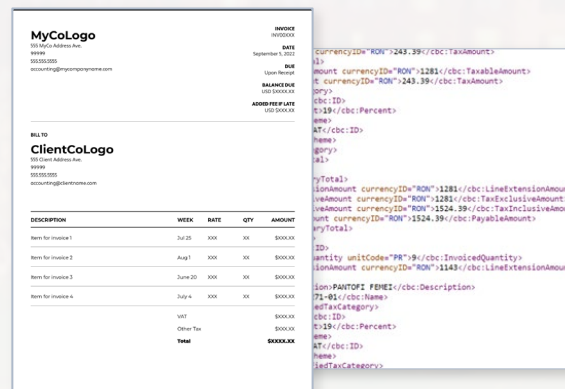
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Item for Invoice 2	Aug 1	200	XX	\$500.00
Item for Invoice 3	June 20	200	XX	\$500.00
Item for Invoice 4	July 4	200	XX	\$500.00
VAT				\$500.00
Other Tax				\$500.00
Total				\$5000.00

PDF, Word, Excel

VISUAL

Hybrid

Visible to humans & machines:
human-and-machine-readable



MyCoLogo
100 Main Street, Suite 100
New York, NY 10001
accounting@mycompany.com

INVOICE
INVOICE
September 1, 2022
Upon Receipt
BALANCE DUE
USD \$500.00
AMOUNT DUE
USD \$500.00

BILL TO
ClientCoLogo
500 Main Street, Suite 100
New York, NY 10001
accounting@clientco.com

DESCRIPTION	WEEK	DATE	QTY	AMOUNT
Item for Invoice 1	Jul 20	200	XX	\$500.00
Item for Invoice 2	Aug 1	200	XX	\$500.00
Item for Invoice 3	June 20	200	XX	\$500.00
Item for Invoice 4	July 4	200	XX	\$500.00
VAT				\$500.00
Other Tax				\$500.00
Total				\$5000.00

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<cbc:TaxableAmount currencyID="USD"=
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PDF/A-3 with XML

VISUAL

STRUCTURED

Structured

Visible to machines:
machine-readable

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<cbc:TaxableAmount currencyID="USD"=
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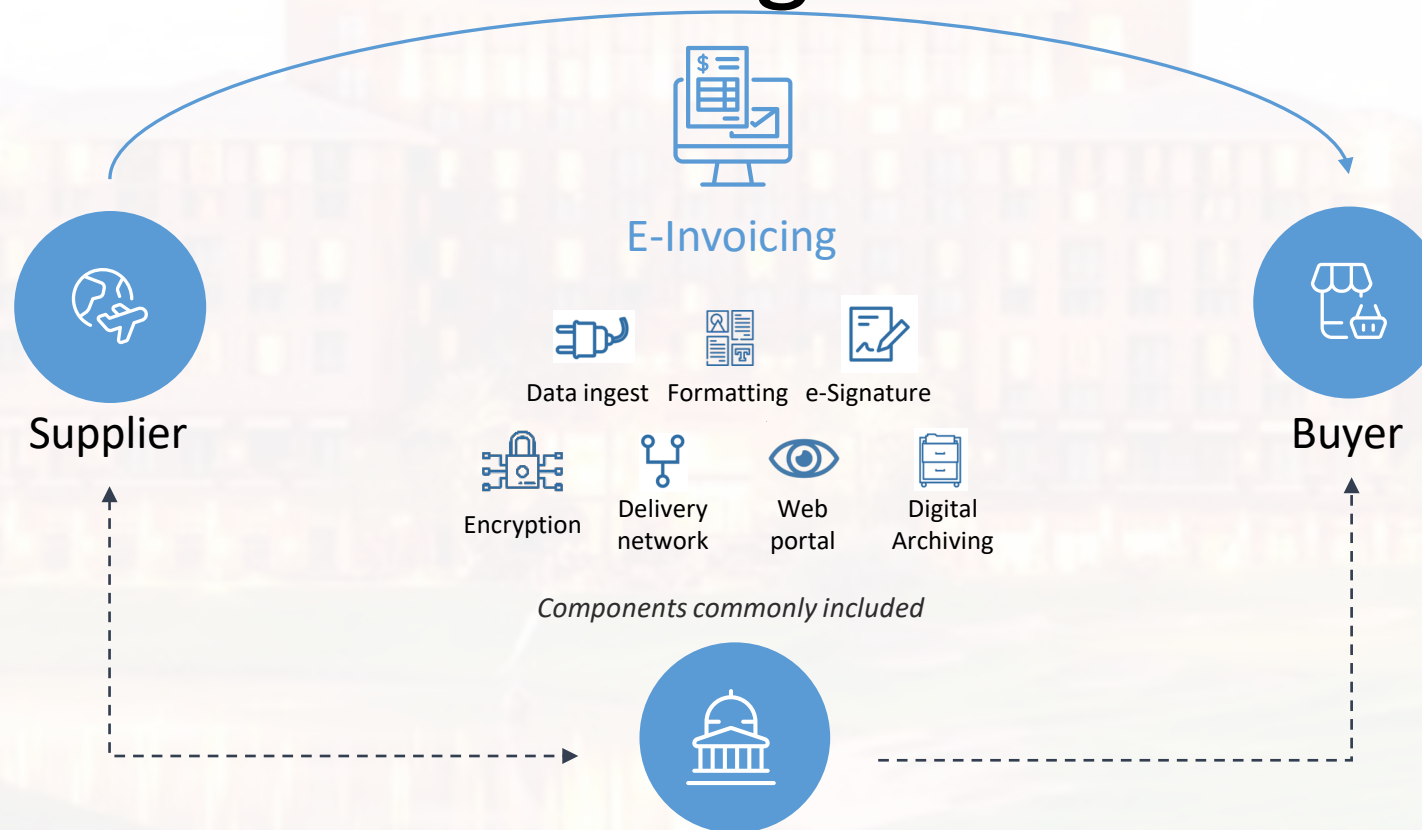
XML

STRUCTURED

Fully automated invoice processing

E-Invoicing involves generating, securely transmitting, automatically processing, and storing structured invoice data

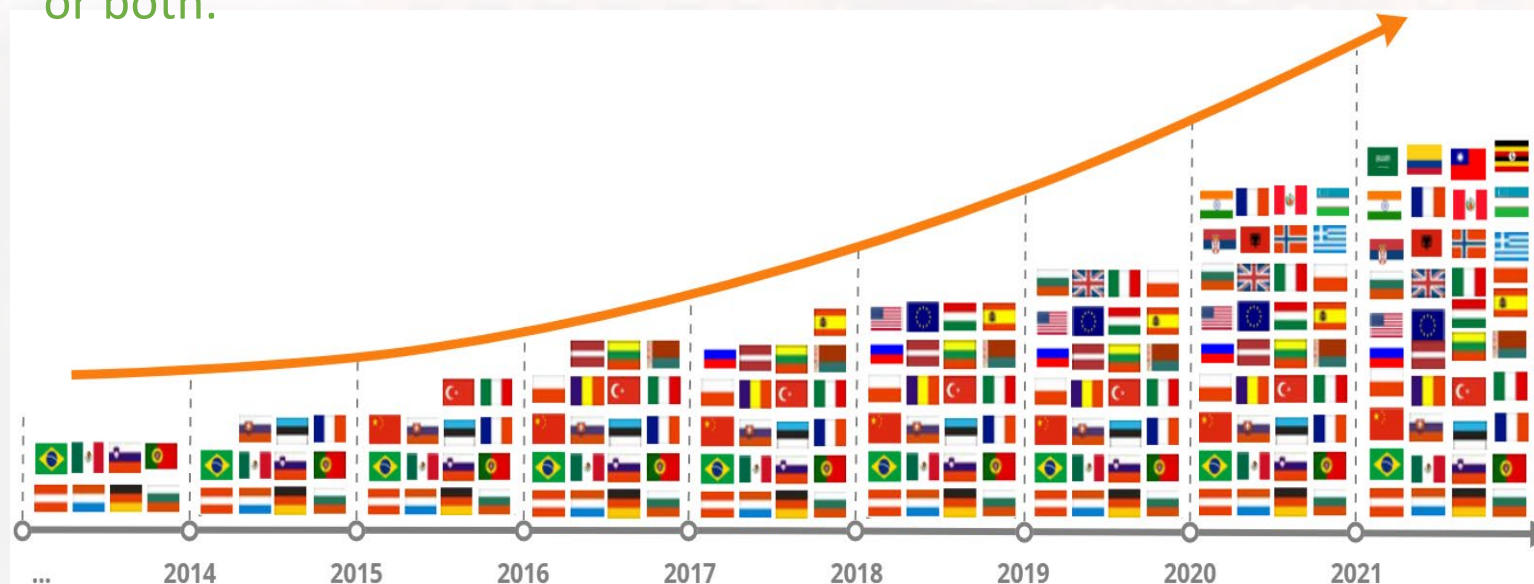
How does E-Invoicing work?



Tax Authority may dictate format and other requirements, and be directly involved in the invoicing process

Digitization trends: E-Reporting & E-Invoicing mandates

Governments of many countries require digital reporting of tax obligations, usage of E-Invoicing or both.



Source: PwC e-invoicing & e-reporting CoE, September 2021

Drivers behind mandates:

Reduce the VAT gap

- Receiving transactional details in real time limits the time for fraud
- Summary VAT reporting not sufficient

Compliance standardization

- Invoices contain all VAT relevant data
- Efficient audit checks in real time

Businesses benefit from compliance, efficient E-Invoicing workflows, cost savings, and improved business relationships

How can you benefit from E-Invoicing?

• As a **supplier**

- Less material, postage & handling cost*
- Fast, secure & confirmed invoice delivery
- Faster cash collection & lower DSO (days sales outstanding)
- Improved ESG (environmental, social and governance) score

• As a **buyer**

- Automated invoice processing saves labor cost**
- No data entry mistakes due to direct data ingestion
- Fast internal invoice processing allows leveraging discounts
- Higher employee satisfaction due to less tedious data entry work

* Up to 80% according to Billentis.

** According to Australian Tax Office, to process paper and emailed PDF invoices costs between \$27 and \$30.

E-Invoicing enables process-automation and reduces costs to less than \$10 an invoice.

**Governments
in many countries mandate
E-Invoicing.**

**This offers many benefits
for companies.**

Mandates vary between countries and evolve over time

NOW

NEW

NEXT

2010 - 2021

2022

2023

2024

2025/6

- **Brazil** - NF-e electronic invoicing
- **Argentina** - e-facture (& QR B2C since 2021)
- **Italy** - B2B/B2C (extension of B2G)
- **India** - B2B, QR codes B2C
- **Colombia** - e-invoice CUFE
- **Mexico**
- **Bolivia, Costa Rica, Chile, Ecuador, Peru, Paraguay**
- **South Korea, Indonesia, Taiwan, Vietnam**
- **Turkey**
- **Portugal** - use of certified invoicing software
- **EU** - B2G (optional pan-EU using Peppol or individual mandates)
- **KSA** - Fatoorah E-Invoicing (Phase 1) + QR
- **Norway, Iceland, Australia, New Zealand, Singapore** — **Peppol**
- **Greece** - MyData VAT books - can send invoice data via E-Invoices

- **Portugal** - QR code on invoice
- **Poland** - KSeF E-Invoicing voluntary phase
- **Serbia** - B2B E-Invoicing
- **Italy**
 - Extension of SDI E-Reporting to cross-border
 - Extension of SDI E-Invoicing to SMEs
- **Romania** - e-Factura E-Invoicing pilot
- **Belgium** - Peppol B2G E-Invoicing (Sep 22)
- **EU VAT** in Digital Age proposal (Oct 22)

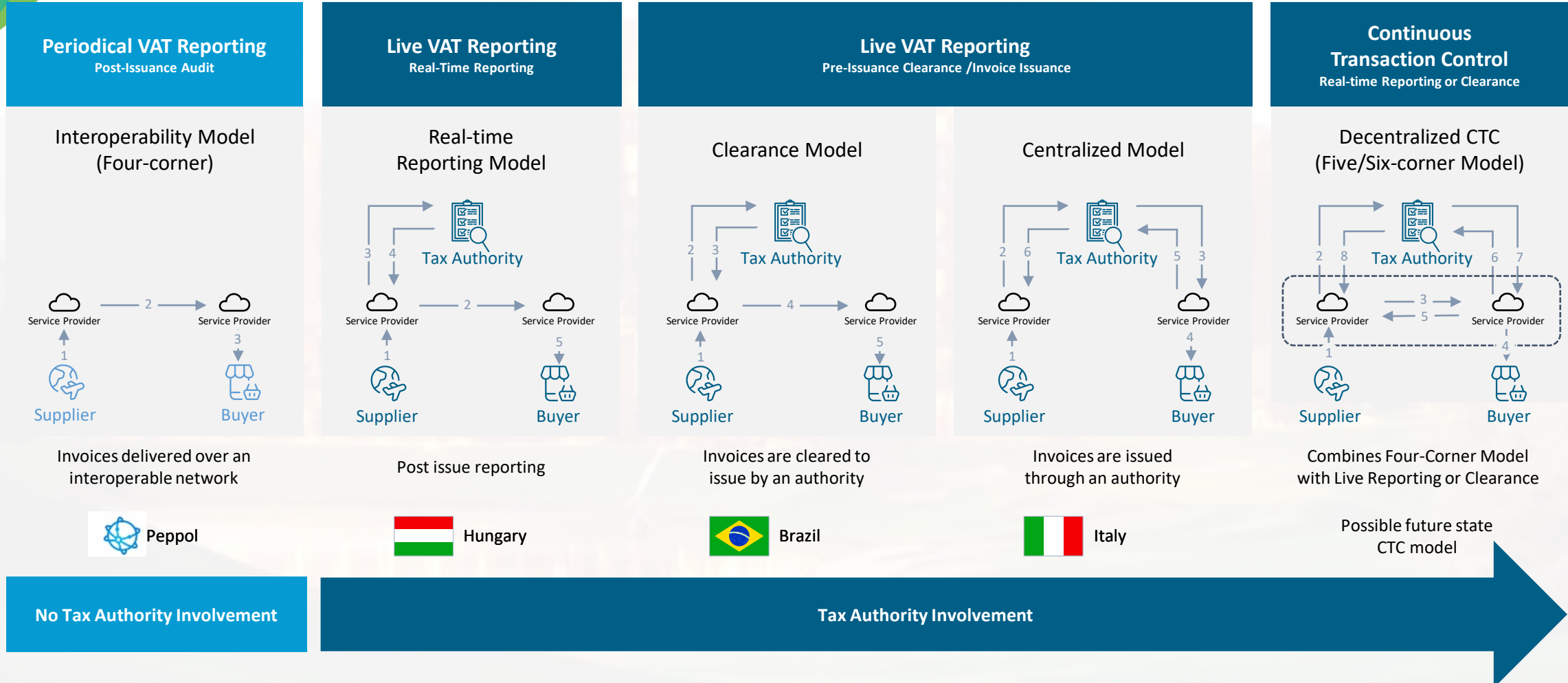
- **Portugal**
 - Invoice SAF-T for non-residents
 - Digital signatures required on non-EDI e-invoices
 - ATUD pre-clearance codes
- **Serbia** - B2B E-Invoicing
- **Australia** - "Business E-Invoicing Right" for Enterprise (tbc - July 23)
- **China** - e-fapiao e-invoicing
- **Japan** - Tax Qualified Invoices (Peppol - tbc)
- **Philippines**
- **UAE** - B2B E-Invoicing (tbc)
- **Oman** - B2B E-Invoicing (tbc)
- **Australia** - Peppol B2G E-Invoicing
- **New Zealand** - Peppol B2G E-Invoicing
- **KSA** - Fatoorah e-invoicing phase 2 (Jan 23)

- **Poland** - KSeF B2B E-Invoicing mandatory
- **France** - B2B E-Invoicing and e-reporting (July 24)
- **Spain** - B2B E-Invoicing (tbc) and invoice software certification
- **Belgium** - Peppol B2B e-invoicing (anticipated)
- **Slovakia** - IS EFA B2B/B2C e-invoicing
- **Romania** - B2B e-Factura e-invoicing (tbc)

- **EU VAT** in Digital Age **E-Invoicing** and e-reporting reform?
- **Germany** - B2B E-Invoicing (tbc)
- **Latvia** - B2B Peppol? (tbc)

Note: List as of September 2022

Multiple implementation models



Real-time reporting

Real-time invoice reporting (RTIR) means that **businesses must report sales transactions electronically in real-time or near real-time to the tax authority of the respective country**. In practice, real-time invoice reporting is tightly related to invoice issuance.



Additional Compliance Issues

Massachusetts - Advance Tax Payments

- Vendors and marketplaces with more than \$150,000 in cumulative tax liability in previous calendar year
- Tax Types: General sales and use tax; telecommunications; meals; room occupancy excise; cannabis retail tax
- Threshold applied for each return/tax type
- 5% underpayment penalty

Seller's cumulative annual tax liability > \$150K

Advance payment due on the 25th of monthly filing period of either:

- **amount of tax collected through 21st day of the month; -OR-**
- **at least 80% of prior month's total tax liability**

Sales and Use Tax Payments With Cryptocurrency

- Colorado: DOR accepting payments beginning Sept. 1, 2022
 - via PayPal Cryptocurrencies Hub
- Legislative Proposals
 - Arizona (SB 1341): Bitcoin deemed legal tender acceptable for paying taxes
 - Wyoming (working draft bill): Any approved virtual currency acceptable to pay sales tax. Smart contracts also acceptable.

Colorado – Penalties for Purchaser Refund Claims (CO H.B. 1118, *eff.* 4/22/22)

- Penalties for incomplete, duplicative, or “frivolous” refund claims
 - 5% -- materially incomplete
 - 10% -- duplicative
 - 10% -- lacking basis in law or fact
- Imposed on purchaser or representative filing claim



E-commerce Tax Liability and Collection

Colorado - Retail Delivery Fee (*eff.* July 1, 2022)

- All deliveries by motor vehicle into CO
- At least one item of taxable tangible personal property
- \$0.27 nonrefundable fee – consisting of six different fees
- Must display fee on receipt or invoice
- Retailer or marketplace facilitator must collect fee along with sales or use tax
- Separate account required to pay retail delivery fee
- Proposed regulations: Nov. 3, 2022, public hearing

Tax Holidays

- Florida Sales Tax Holidays
 - Eight sales tax holidays in 2022
 - More to come in 2023?
- Gas Tax Holidays
 - MD, GA, NY, CT, other states

Remote/Marketplace Sellers

- **Nexus:**
 - What Creates Physical Presence?
 - Shipping your goods directly to a warehouse in a state?
 - Having your goods shipped among states without your knowledge, consent or direction?
 - What Creates Economic Nexus?
 - E.g., 100K/200 transaction
 - Marketplace sellers: Direct + Facilitated Sales
- **Registration:**
 - When does a marketplace seller need to register with the state?
 - Sell exclusively through a marketplace facilitator and satisfy the economic nexus thresholds (i.e., you do not make direct sales)?
 - Register only if physically present?
 - Register & file return if have either economic or physical presence, but \$0 tax due.

Marketplace Facilitators

- **Liability**: Generally, the MF is liable for incorrectly charging tax.
 - Does the MF need to conduct its own taxability analysis?
- **Safe Harbors**: In many states, the liability shifts from the MF to the MS if:

"the marketplace provider demonstrates to the department's satisfaction that the marketplace provider made a reasonable effort to obtain accurate information related to the retail sales facilitated through the marketplace from the marketplace seller, but that the failure to collect and remit the correct amount of tax imposed . . . was due to the provision of incorrect or incomplete information to the marketplace provider by the marketplace seller."

Fla. Stat. Ann. section 212.05965(5)(b).
- How does a MF fall within this safe harbor?
- Does the safe harbor extend to:
 - taxability determinations?
 - exemptions from tax? If so, does the MF need to obtain an exemption certificate?

E-commerce Taxability Issues

ECommerce Products

- Digital Products
- Streaming Services
- Software as a service (“SaaS”)
- Infrastructure as a service (“IaaS”)
- Platform as a service (“PaaS”)

Bundled Transactions

SSUTA – “bundled transaction” is the retail sale of two or more products where:

- (1) the products are otherwise distinct and identifiable; and
- (2) the products are sold for one nonitemized price.

Bundled Transactions

Essence/Object tests: distinguishing between purchasing a “taxable item” or a “non-taxable” when the items (or services) were bundled together:

- Essence of the Transaction test
- True Object test
- Dominant Purpose test

Bundled Transactions

- Software or a digital product and a nontaxable service
 - Data Transfer Fees

Having concluded [that IaaS] is not a taxable service, data transfer fees associated with [IaaS] will not be subject to Iowa Sales Tax....However, data transfer fees associated with [cloud storage] *will* be subject to Iowa sales tax beginning January 1, 2019.” *In re Amazon Web Services, No. 2018-300-2-0508, Iowa Dep’t of Rev., Dec. 18, 2019.*
 - Payment Processing and Lead Generation

Marketplace facilitator isn’t liable for sales and use tax on fees it charges to sellers or service providers because the “Taxpayer’s non-taxable lead generation and payment processing services are the true object of the transactions covered by these fees, and the taxable web-based interface and App are merely incidental.” *Tenn. Dep’t of Rev. Letter Ruling No. 22-02.*

NFT Sales Tax Issues:

- What IS an NFT?
- Software?
- Other digital product?
- Is there a taxable transaction?
- Is an NFT “delivered,” “transferred” or “accessed”?
- To what state is it sourced?

What is an NFT (non-fungible token)

A **non-fungible token (NFT)** is a non-interchangeable unit of data stored on a blockchain, a form of digital ledger (collection of accounts in which transactions are recorded), that can be sold and traded.

It may provide license to use underlying digital asset, but not copyright. NFTs do not restrict sharing or copying of the underlying digital files.

- Digital art
- Music
- Game in-assets
- Event tickets

Taxability of NFTs

Washington State Department of Revenue –

- July 1, 2022, - interim statement regarding the taxability of non-fungible tokens (NFTs)
- Extends sales tax on digital goods to NFTs that can be viewed or heard
- Looks to sourcing for sales of digital goods
 - A hierarchy of sourcing methods – look to location of receipt/purchaser
 - If cannot determine any of the four customer-based locations, will look to the address from which the digital code was first available for transmission by the seller, or from which a digital automated service was provided (but disregarding any location that merely provides the digital transfer of the product).

