



Indirect Taxes NEWS

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An Alternative to Sales Tax Registrations and other updates

Editorial

Dear Reader,

I am writing this editorial on the flight home from the ITPG Global Tax Summit (Frankfurt) and my thanks to GGI and host firm, Benefitax GmbH, for putting on a great event.

In the lead article, Pablo Garciga (Indirect Taxes PG Regional Chair, North America) has crafted an excellent article that in my opinion removes a lot of the mystique surrounding US sales and use taxes. My thanks to Pablo.

As many readers know, the IDT PG runs a workshop immediately prior to the ITPG Global Tax Summit and so it was at the Frankfurt event. The workshop was very well attended, with a lot of the post-workshop feedback saying that this was our best to date. Why do I mention this? Well, the workshop was concentrated on Importing post-

Brexit into the Netherlands, Germany and the UK, e-commerce / platforms and the “three quick VAT fixes”: call off stock, the intermediary trader, and the exemption (or zero-rate) presumption for intracommunity transactions. There was so much interest in the first two subjects that we were asked to extend the session by 45 minutes to fully cover them. Within this Newsletter there are no less than five articles covering one of these subjects in some form, including articles from Russia and South Africa revealing how those jurisdictions are tackling ‘e’ supplies.

Whatever is written in an article can only ever be a summary and as always with VAT (and indirect taxes generally), ‘the devil is always in the detail’. As such, the articles cannot and should not be relied upon as advice, which should be sought by the reader from their own adviser.



I trust that you find this newsletter interesting and commend it to you!

Kind regards,

Steve McCrindle
Global Chairperson of the
GGI Indirect Taxes Practice Group

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An Alternative to Sales Tax Registrations

By Pablo Garciga

Since *Wayfair* was decided by the US Supreme Court in October 2018, **economic nexus** has dominated state and local tax discussions. It is important to remember that **physical** connections to a state will still create nexus even if the economic nexus thresholds are not exceeded. For example, an out-of-state vendor (“vendor”) attends a trade show in a state and makes USD 25,000 in sales. This may not exceed the sales threshold to meet the state’s sales tax economic nexus definition, but the vendor may have created nexus for the sales or use tax.

Once nexus is established the vendor must register with the state and obtain a permit; however, many states have alternate registration procedures of which taxpayers may avail themselves. One such common procedure allows

vendors with no other connections to a state to participate in conventions and trade shows for a limited number of days without requiring the vendor to register and obtain a Sales Tax Permit or a Vendor’s Use Tax Permit.

These determinations hinge on the facts and circumstances and are highly contingent on state-specific definitions. Generally speaking, not having a physical location in a state or not keeping inventory or assets in a state means the vendor does not have sales tax nexus. But what if a representative enters the state for a limited number of days for a specific purpose? Will this create sales tax nexus? The answer depends on the state. Sometimes, instead of deeming sales tax nexus to exist, states will determine that use tax nexus has been created and offer temporary registrations which will reduce the vendor’s cost of compliance.

Use of the term “sales and use” tax can be confusing; oftentimes they are combined as if they were one and the same. They are not. Practically speaking, one may think of a **sales tax** as an indirect tax on sales both originating and terminating (i.e., delivered to the ultimate customer) within the same state – an “intrastate” sale. A **use tax**, on the other hand, is an indirect tax on a sale originating outside the state and terminating within the state – an “interstate” sale. There are other fundamental differences in their nature and their application.

Use tax itself is of two different kinds. The most familiar is the **consumer’s use tax**. When a consumer purchases a taxable item from a vendor which does not have sales or use tax nexus in the consumer’s state, it is incumbent on the consumer to self-assess the use tax on the item purchased without paying sales tax. The second, and less well known, is the **vendor’s use tax**. Under this scenario the vendor may not be deemed to have met the state’s definition of sales tax nexus but nevertheless has connections to the state which require the vendor to collect and remit the state’s use tax on its sales to customers in the state.

Let’s take California (CA) as an example. If a vendor’s only connection to CA is its participation in a trade show for not more than 15 days during any 12-month period, and during the prior calendar year the vendor did not earn more than USD 100,000 of net income from those activities in CA, the vendor will not be required to register for sales tax. However, the vendor participating in a trade show is a “retailer engaged in business” in CA and must collect the **use tax** with

...next page

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Funaro & Co. PC provide a wide range of services, including accounting and auditing, tax reporting and compliance, tax advisory, management consulting, and transaction advisory.

J. Pablo Garciga specialises in state and local taxes (SALT), with an emphasis on multi-state corporate income/

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respect to any taxable sale occurring at the trade show or pursuant to an order taken at or during the trade show.

If the vendor qualifies for this exception, it must register and obtain a **temporary permit** to sell products at the qualifying trade show and be responsible for the tax due with respect to sales made and orders taken at the trade show. A temporary permit will be granted to

entities with no permanent place of business in CA and covers a selling period of 90 days or less at one location. Holders of temporary sellers' permits are required to file returns by the last day of the month after the temporary sales location closes (e.g. if the vendor participates in a CA trade show between 15 February and 21 February, the return will be due on or before March 31). As an alternative, the vendor may

obtain a "vendor's use tax certificate"; however, this will require the vendor to collect and remit the applicable tax until the use tax certificate is closed.

Several other states have similar alternatives to obtaining Sales Tax Permits. These are worth investigating because they will reduce the time and cost of complying with a state's sales and use tax rules.



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