



# Media & Entertainment Post-election Global and Domestic Tax Strategies

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December 1, 2020

1:00-2:00 PM ET



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# Agenda

- 1 Welcome/opening
- 2 U.S. election results and legislative outlook
- 3 Global transfer pricing
- 4 OECD changes and digital services tax (DST)
- 5 VAT implications
- 6 Closing

# Speakers



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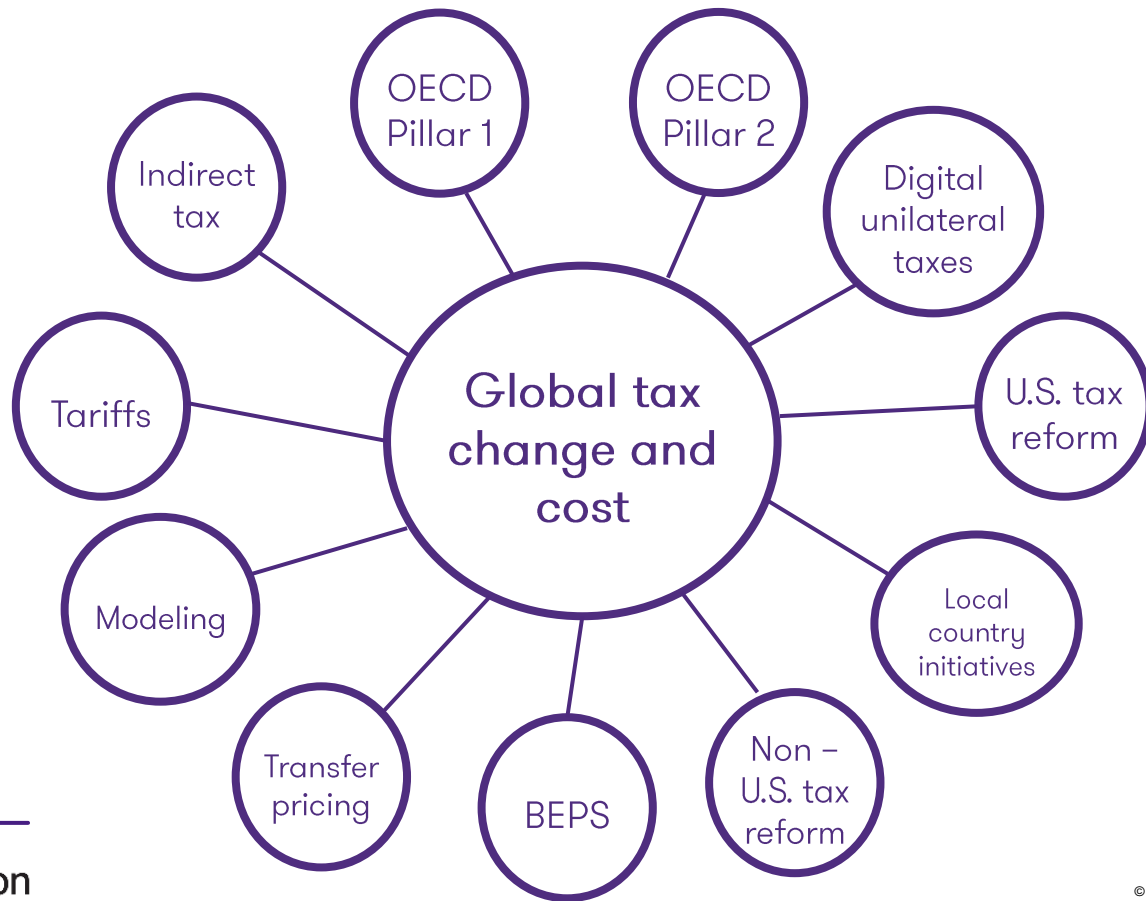
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# Media & Entertainment State of the Union

- COVID has both positive and negative impact based on subsector
- Remotely consumed, digital content businesses are thriving
- Massive long term implications
- Significant transformation pre, during and post COVID
- Almost nothing is business as usual
- Financial planning is necessary for the future
- US and Global Policy change has impacts
- Tax and Financial Planning is challenging



# Tax Wheel of Change - Which Way to Turn

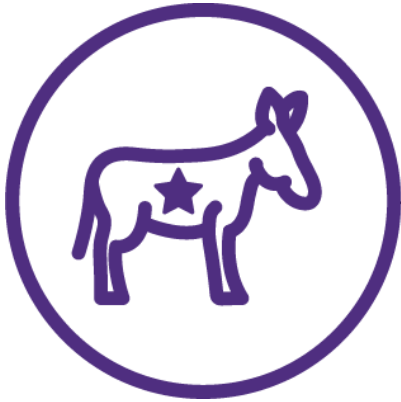


# U.S. Election Results Legislative Outlook

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Dustin Stamper | David Zaiken

# Election of Biden brings shift in tax policy and planning outlook



Biden will take office with one of the most robust and ambitious tax plans in recent history

Failure of Democrats to make more sweeping election gains blunts potential for the more transformational proposals



# Senate will be key check on Dem power regardless of who wins runoffs

## Control of Congress and the White House by party

Source: National Journal

■ Republican control ■ Democratic control

\*Independents Sanders and King, who caucus with the Democrats, have been included in the Democratic tally

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
House	D+77	D+78	R+49	R+50	R+33	R+33	R+59	R+59	R+47	R+45	D+36	D+35	~D+17
Senate*	D+16	D+20	D+6	D+6	D+10	D+10	R+8	R+8	R+4	R+2	R+5	R+6	?
White House	Obama	Obama	Obama	Obama	Obama	Obama	Obama	Obama	Trump	Trump	Trump	Trump	Biden

# Other reasons tax hikes may not be imminent

1

First priority priorities will be battling COVID-19 and stimulus and economic relief

2

Key Democrats have signaled tax increases should wait until economy is less fragile

3

Retroactive tax increases are rare (but not unprecedented)

4

Could be shift to more bipartisan horse-trading on more modest tax priorities

# Pivoting to more modest priorities

- Significant gridlock possible (GOP in a position to block tax increases)
- Bipartisan compromise on more modest initiatives:
  - Stimulus and economic recovery (possible in lame duck)
  - Government funding (expires Dec. 11)
  - Tax priority horse-trading
  - Infrastructure

# Potential tax provisions in next stimulus bill

- Bipartisan proposals with broad support:
  - New round of individual rebates
  - Enhanced employee retention credit
  - New category of WOTC: \$5,000 credit for hiring someone on unemployment
  - Allow deduction for expenses paid by forgiven PPP loans
- Uphill battle for more partisan proposals:
  - Refundable general business credits
  - Limits on NOL provisions

# Potential tax priorities for each side

## Republicans

- Prevent TCJA tax increases:
  - §163j calculation includes depreciation and amortization in 2022
  - 5-year for R&D amortization in 2022
  - Bonus depreciation to 80% in 2023

## Democrats

- Lift SALT deduction cap
- Enhance EITC and child credits
- Green incentives

# Biden could turn to regs if stymied by GOP

1

Tax regs historically more technical and less political than other areas

2

Treasury Secretary would need to be confirmed by GOP Senate

3

Aggressive maneuvering still possible: Trump ordered review of all tax regs released in year before election

4

Will administration still review tax regs? Could favorable TCJA guidance be reversed?

# Biden Platform: Side-by-side comparison

## Biden's proposed top tax rates versus current rates



Current



Joe Biden

Corporate rate	21%	28%
Top Individual rate	37%	39.6%
Top effective rate on pass-through income eligible for Section 199A	29.6%	39.6%
Top rate on long term capital gains	20%	39.6%

*\*Does not include net investment income tax or any state and local tax*

# Biden platform: Impact to business

Corporate rate at 28%

Minimum tax on book income at 15%

Incentivize 'onshoring':

- 10% advanceable credit
- 31% rate for producing goods and services overseas and selling back to U.S.

International:

- GILTI rate at 21% (or 28%)
- Applied separately to each country
- Potentially expand scope to true global tax

Financial Transaction Tax

Green energy incentives

Employee benefits

- Implementing workplace savings plan
- Childcare construction tax credit

Infrastructure

- New Markets Tax Credit *permanent*
- Opportunity Zone tax incentives *increased reporting*



# Threat of immediate tax increase has dimmed. . .

- Many important year-end planning considerations offer liquidity for taxpayers expecting loss in 2020 or unconcerned with rate increases:
  - Accelerate deductions into 2020 to juice up NOL carryback for larger refund and rate arbitrage opportunity
  - Amend 2019 return for quick refund from disaster loss attributable to COVID-19
  - Claim the employee retention credit
  - Claim retroactive benefit of bonus depreciation on QIP

## . . .But immediate tax hikes are not impossible

- Taxpayers could still hedge against risk of future tax increases by accelerating transactions scheduled for new year into 2020 if downside is minimal
  - There are many gain accelerations strategies
- Any reverse planning should be balanced against downside risk
  - Be cautious about rushing transactions or asset sales in ways that forfeit value to avoid tax increases that appear increasingly unlikely to materialize
  - Also consider affect on liquidity, cash flow, and the time value of money
  - Taxpayers should analyze the state and local income tax effect of any strategy

# Business planning

1

## Planning for tax increase and incentives

- Location of IP
- FDII planning
- Surcharge and credit for production location
- Timing of income
- Values low may be good time to restructure
- Planning for regulations
- Modeling

2

## Compensation and benefits

- Many rules affect the timing of deductions and can be controlled to postpone deduction
- Employees and employers may have competing interests – employees may want to accelerate income to avoid a tax increase while employer may want to postpone deductions
- Consider year-end bonuses, including the 2.5 month rule
- NQDC opportunity to accelerate payroll tax

3

## Deferring expenses

- Many elections affect timing and can postpone significant deductions:
  - Slowing depreciation, including electing out of bonus
  - Expanding costs capitalized under Section 263
  - Capitalizing certain transaction cost and intangible costs
  - Amortizing R&D
- Caution:
  - These options defer deductions not just into next year, but well into the future
  - Accounting method changes not great option because of the 4-year spread of the unfavorable Section 481 adjustment
  - If facing a potential loss in 2020, it is probably better to defer for a larger NOL carryback and rate arbitrage going backward

4

## Transfer pricing/profit allocation/location

- Key areas of focus

# Biden win changes tax policy and planning outlook

<https://www.grantthornton.com/library/alerts/tax/2020/Insights/biden-win-changes-tax-policy-planning-outlook.aspx>



Biden win changes tax policy and planning outlook \_ Grant Thornton.pdf

# Global Transfer Pricing

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Steven Wrappe | Christoph Ludwig

# Recent Transfer Pricing Trends

- OECD Base Erosion and Profit Shifting (BEPS) – changes and reporting requirements
- Tax Cuts and Jobs Act (TCJA) – created additional complexity of impact of transfer pricing
- Tariffs affected some industries and companies

# Transfer Pricing Issue 2020 - Pandemic Recession

- Plant closures, stay home orders, transportation problems caused physical disruption to operations
- Sales volumes, prices, sales and general expenses fluctuated widely
- Intangibles values impacted by profitability swings
- Impact of the recession varies greatly by industry and industry served
- Comparability undermined by unidentified differences
- “Extraordinary” events affect risk between related and unrelated parties
- Taxpayers must evaluate whether to continue pre-pandemic transfer pricing approach
- Governments have given little guidance

# Next Year's Transfer Pricing Problem - Tax Challenges of Digitalization

- Sweeping changes are proposed to taxing jurisdiction and transfer pricing methodology
- 137-country “inclusive framework” struggling to develop a consensus
- The effort has created a focus on “marketing intangibles”



# The Impact of Recent Changes on Media and Entertainment Industry

- Intangibles valuation is much more difficult by pandemic and governmental disruption of companies and comparables
- Risk allocation will need to be re-evaluated in light of uncontrolled transactions
- OECD discussions of Tax Challenges of Digitalization could impact this industry
- Marketing intangibles will be more closely scrutinized

# OECD

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**Steven Wrappe | Christoph Ludwig**

# OECD Blueprints Pillar 1 and 2

G20 Riyadh Summit, November 21-22, 2020 – Leaders' Declaration

*We will continue our cooperation for a globally fair, sustainable, and modern international tax system. We welcome the Reports on the Blueprints for Pillar 1 and Pillar 2 approved for public release by the G20/OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Building on this solid basis, we remain committed to further progress on both pillars and urge the G20/OECD Inclusive Framework on BEPS to address the remaining issues with a view to reaching a global and consensus-based solution by mid-2021. ...*

# OECD Blueprints Pillar 1 and 2

## Pillar 1

nexus & profit allocation

**Amount A:** reallocate a portion of residual profit of in-scope businesses to market/user jurisdictions

**Amount B:** fixed rate of return on base-line marketing and distribution activities

In-scope businesses

**Automated digital services (ADS)**

**Consumer facing businesses (CFB)**

## Pillar 2

global minimum tax

**GloBE (global anti-base erosion) rules:**

IIR - income inclusion rule

UTPR – undertaxed payments rule

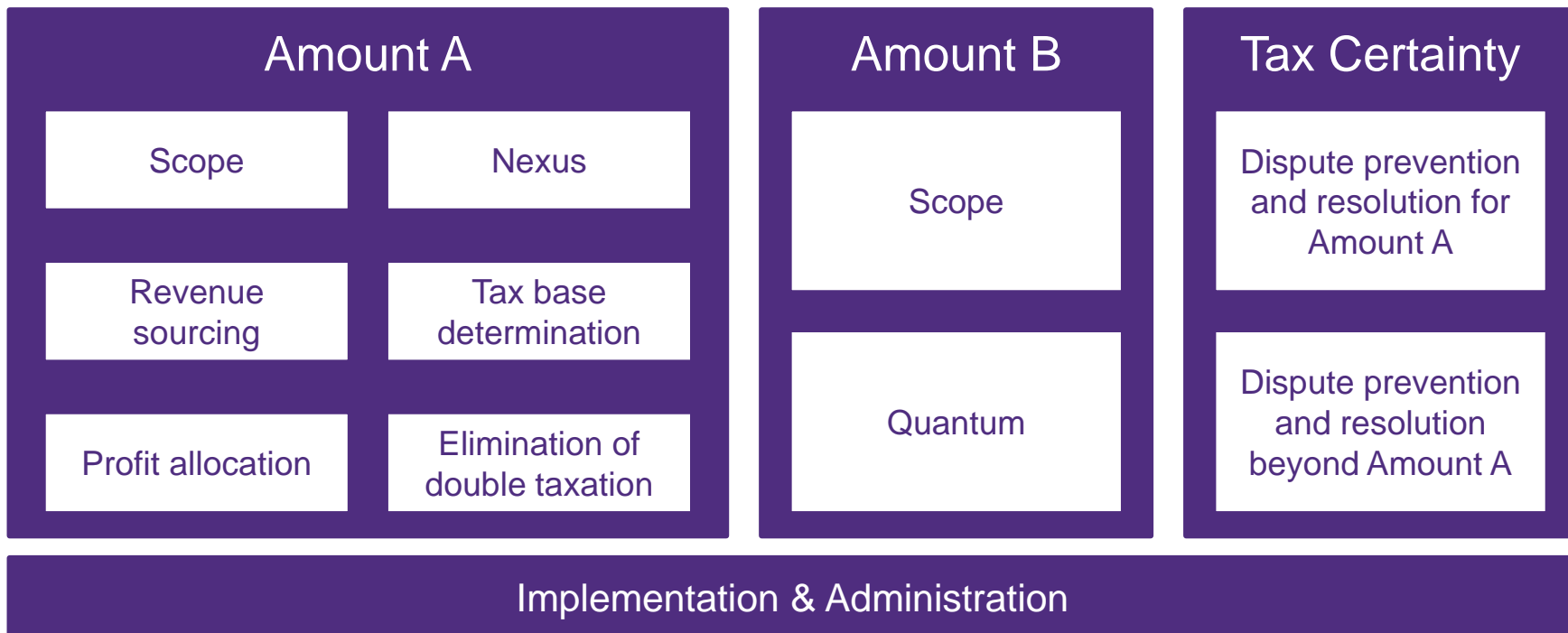
STTR – subject to tax rule

In-scope businesses

**Consolidated group revenue > EUR 750 million**

Excluded: investment funds, pension funds, sovereign wealth funds, government bodies, international organizations, and non-profit organizations

# Pillar One - Building Blocks



# Pillar One - Positive/negative Lists & Definition of Terms

## ADS

ADS are services that are a) on the positive list or b) automated and digital and not on the negative list.

### Positive List

- Online advertising services;
- Sale or other alienation of user data;
- Online search engines;
- Social media platforms;
- Online intermediation platforms;
- Digital content services;
- Online gaming;
- Standardised online teaching services; and
- Cloud computing services

### Negative List

- Customised professional services;
- Customised online teaching services;
- Online sale of goods and services other than ADS;
- Revenue from the sale of a physical good, irrespective of network connectivity ("Internet of things"); and
- Services providing access to the Internet or another electronic network.

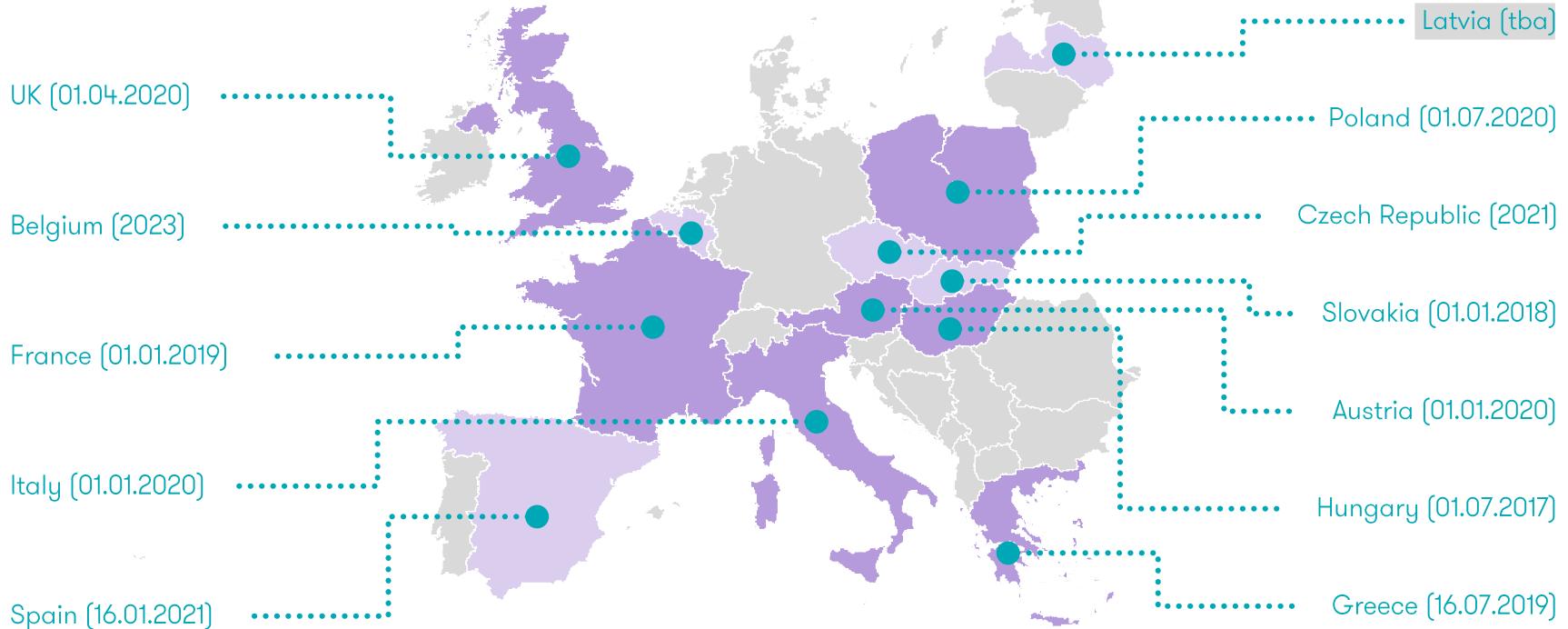
## CFB

A CFB supplies goods or services, directly or indirectly, that are of a type commonly sold to consumers, and / or licenses or otherwise exploits intangible property that is connected to the supply of such goods or services.

### Definition of relevant terms

- "Consumer" means an individual (whether or not the direct purchaser) who acquires a good or service for personal purposes, rather than for commercial or professional purposes.
- A good or service is "of a type commonly" sold to consumers if the nature of the good or service is such that it is designed primarily for sale to consumers.
- "Sold to" includes sale, lease, license, rent or delivery, whether directly or indirectly (e.g. through a broker, agent, intermediary or representative).

# DST/DAT/WHT Overview – Continental Europe



# Pillar Two - ETR & top-up tax

## Computation of the ETR for the Jurisdiction

ETR for a jurisdiction is equal to:

*Adjusted Covered Taxes / Adjusted GloBE Income*

Where,

- a. Adjusted Covered Taxes means the covered taxes assigned to the jurisdiction, except taxes attributable to income excluded from the GloBE tax base, increased by the lesser of the total local tax carry-forward or the amount of the local tax carry-forward necessary to achieve an ETR that is equal to the minimum rate; and
- b. Adjusted GloBE Income means the combined income and loss of all CEs located in the jurisdiction for the year decreased by the loss carry-forward for the jurisdiction.

## Computation of the top-up tax for each Constituent Entity (CE)

Top-up tax for each CE in a jurisdiction is equal to:

*Adjusted GloBE Income of the CE x Top up Tax Percentage*

Where,

- a. Adjusted GloBE Income of the CE means, in respect of the income of a CE in the relevant period, the income of that entity as calculated for the purposes of the GloBE rules reduced by its share of any loss carry forward and of any loss suffered by other CEs in the same jurisdiction in the same period and the proportionate share of any carve-out for the jurisdiction.
- b. Top-up Tax Percentage means the excess of the minimum ETR over the ETR as calculated for that jurisdiction in the relevant period.



# VAT

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**Frank Sangster**

# VAT- Growing registration, collections & filing challenges

VAT obligations for foreign ecommerce organizations exist in nearly 70 countries, including:

- All 28 EU countries;
- Mexico, some Canadian Provinces (eg Quebec and soon British Columbia), Costa Rica, Chile;
- Japan, Taiwan, India, Malaysia, Indonesia, Singapore (not China);
- Australia, New Zealand; and
- South Africa, Russia, Turkey, Switzerland, Norway, UK.

*Separate to Digital Services Tax – DST. May need to consider both in some countries.*

***At least 10 new countries this year***

# VAT- Growing registration, collections & filing challenges

For ecommerce supplies of services:

- Obligations driven initially by LOCATION OF CUSTOMER;
- Irrelevant if ecommerce business has no staff or assets outside the US – instead, look at each customer's location;
- Obligations apply to automated services (eg games, music, video, books, agency services, preloaded education content, membership and certification programs etc)
- Most countries do not have a revenue threshold so first sale = registration, collection and filing obligation. If threshold exists, tends to be relatively low.

Thus, US ecommerce businesses need to register for VAT based on customers' locations.

# VAT- Impact on US Business

- US ecommerce businesses need to identify location of customers and revenue by country (Province in Canada)
- US ecommerce businesses may need to register, collect and account for VAT in 60+ countries (EU does have simplification for registration)
- Such businesses will need to negotiate any historic VAT exposures (and penalties/interest) with tax authority and comply with future filing requirements. Note average VAT rate is approx 18% globally.
- Businesses will need to update their platforms to accommodate VAT requirements and impact on pricing

# GT can help

Each company has its own individual circumstances and related needs.

It really is the most interesting of times due to changes locally and globally.

Understanding both the business and tax changes are core to financial and tax efficiencies and planning.

We can provide an individualized meeting for you and your company to discuss these topics in more detail.

Reach out to [deborah.newman@us.gt.com](mailto:deborah.newman@us.gt.com) to learn more and schedule time with our professionals.

# Thank you for attending!

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<https://www.grantthornton.com/industries/media-entertainment.aspx>



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