U.S. SALES TAX 101 FOR NON-U.S. COMPANIES

U.S. sales tax rules are complex and can be confusing for foreign companies selling products and/or services in the United States or planning to do so.

Here is what you need to know:

1. U.S. sales tax is imposed at the state level. The U.S. does not have a federal sales tax. Each individual state has its own sales tax rules and regulations. This means that if you are selling services and goods across the U.S., you may have to deal with 46 unique tax laws. 46 because the following five states do not impose sales tax: Alaska, Delaware, Montana, New Hampshire, and Oregon. Beware that sales tax rates differ from state to state, and state sales tax filing due dates are not all the same.
2. The NEXUS* concept limits a state's ability to impose its sales tax law. A NEXUS in general means a connection. In U.S. tax law the term NEXUS describes a situation in which a business has a sufficient tie to a state or a physical presence in a state (e.g., inventory, employee, plant, store, etc.). If a business has a NEXUS in the state, it will be subject to that state's sales taxes rules.
3. U.S. sales tax is not a value added tax (VAT). U.S. sales tax is only imposed once on the final consumer, while the value added tax that most French companies know is a transaction tax collected at every step of production.
4. Bilateral tax treaties do not apply to state sales tax. Federal tax treaties between the U.S. and foreign countries, that can limit the U.S. government's ability to impose taxes on foreign companies, do not apply to state taxes. As a result, while a foreign entity may avoid the imposition of U.S. federal income tax under a bilateral tax treaty, it could be subject to sales tax rules of individual U.S. states.

For foreign companies looking to expand their business operations into the United States, it is important to have a general understanding of U.S. sales tax rules, as they can lead to significant financial exposure. To gain additional advice about the sales tax landscape in the U.S., contact Axelia Partners' tax compliance service at +1 617-576-2005.

* *To complicate matters, in June 2018, the U.S. Supreme Court decided South Dakota vs. Wayfair Inc. In this case, the Supreme Court considered that any company with at least 200 sales or $100,000 in sales in a given state, must collect sales tax in that state. As a result of this ruling, a growing number of states may now start to disregard the physical presence NEXUS standard for sales tax purposes, and instead adopt the 'economic' nexus criteria to determine whether a business that makes remote (online) sales should collect and remit sales tax in their state. The economic nexus is often based on a volume of sale transactions, or the total revenue from sales to clients located in that state.*