



## Daily Tax REPORT

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### **VAT**

## **Indirect Taxes Likely to be in Forefront As Governments Pursue Taxpayers, PwC Says**

Indirect taxes are likely to come to the forefront in the year ahead as taxpayers confront complex value-added taxes abroad and U.S. states work to create taxing nexus in new and onerous ways at home, PricewaterhouseCoopers LLP practitioners said Jan. 27.

"We suspect that 2011 is going to be a big year for indirect taxes," John Cooney, a partner in PwC's Houston office, said on a webcast. He said enforcement activity is increasing as cash-strapped governments seek more revenue and states are seeking nexus for online sales and business activity through legislation and other means.

"We really see a perfect storm of indirect taxes affecting taxpayers in a way they never have before," Cooney said. He noted that both state corporate taxes and income taxes are down significantly, with a much smaller decrease in state and local sales taxes.

### **States Becoming Aggressive, Cooney Says**

"States are beginning to see additional revenue opportunities and are aggressively pursuing taxpayers," Cooney said (see [related report](#) in this issue).

Tom Boniface, a partner in the New York PwC office, said the prevalence of the value-added tax is growing around the world, with even some developing countries introducing such taxes.

Essentially, "if you are a company with international activity, you should expect to be dealing with some kind of VAT," Boniface said on the webcast. He noted that in comparison to the sales and use tax, the reach of the value-added tax is very broad, stressing that it is a multistage transactional tax that applies to both inputs and outputs at virtually every stage of a transaction.

Boniface said the United States is one of the few countries that still has a retail sales tax. He said he has seen data showing that it costs taxing authorities less to collect VAT—usually done at the federal level in countries—than it costs to collect a sales tax in the United States, with more than 7,000 taxing jurisdictions.

### **VAT Compliance Complex, Boniface Says**

Compliance with VAT can be complex and time-consuming, however, Boniface said. On average, he said, it takes companies longer to comply with VAT than with the corporate income tax.

Asked by Cooney for his thoughts on the likelihood of a VAT in the United States, Boniface said although this has been "a dynamic question" as part of the past year's debate, the midterm elections make the progress of any VAT proposal far less certain.

With Republicans taking control of the House, forward movement on VAT is “much less likely” than if Democrats had remained in power, Boniface said. However, given the skyrocketing deficit, a VAT may yet come into play as “the best worst option” in the opinion of some in the debate, he added.

“It's not going to be a short-term solution,” he said, adding that, if the United States does enact a value-added tax, it likely would follow the Canadian model, in which the federal government imposes VAT and jurisdictions still have a sales tax.

### **Goldstein Describes State Efforts**

Brian Goldstein, also a partner in PwC's New York office, detailed multiple state efforts to find “different ways of saying that there is a physical connection with the state” for tax purposes, including New York's controversial “click-through nexus” legislation (Tax Law Section 1101(b)(8)(vi)). Under the law, which has been challenged in the courts by both Amazon.com and Overstock.com ([213 DTR K-2, 11/5/10](#)), a person would be considered to have solicited business in the state if any in-state entity is compensated, directly or indirectly, for referring customers to the person by a link on an internet website or otherwise, and if that person generates more than \$10,000 in sales during the previous four quarters.

Taxpayers can only rebut the presumption of solicitation by proving that the resident with whom the taxpayer has an agreement did not engage in any solicitation on behalf of the taxpayer that would satisfy the nexus requirements of the U.S. Constitution.

### **More States Seeking Online Nexus**

Goldstein said similar legislation was enacted in North Carolina and Rhode Island in 2009, and a number of other states considered such legislation in 2010, including California, Connecticut, Florida, Iowa, Maryland, Minnesota, Mississippi, New Mexico, Tennessee, Texas, Virginia, Vermont, and Wisconsin.

He also detailed efforts to establish so-called “affiliate nexus” in Colorado, under a law (H.B. 1193) which presumes that a retailer not otherwise subject to a Colorado sales tax collection obligation is doing business in and required to collect and remit tax to the state under certain conditions ([41 DTR H-2, 3/4/10](#)).

The presumption exists if the retailer is part of a controlled group of corporations with a member that is a retailer with physical presence in the state. Taxpayers would have to rebut the presumption by proving that, during the calendar year in question, that member did not engage in any solicitation in the state on behalf of the retailer that would satisfy U.S. constitutional nexus requirements.

By [Alison Bennett](#)