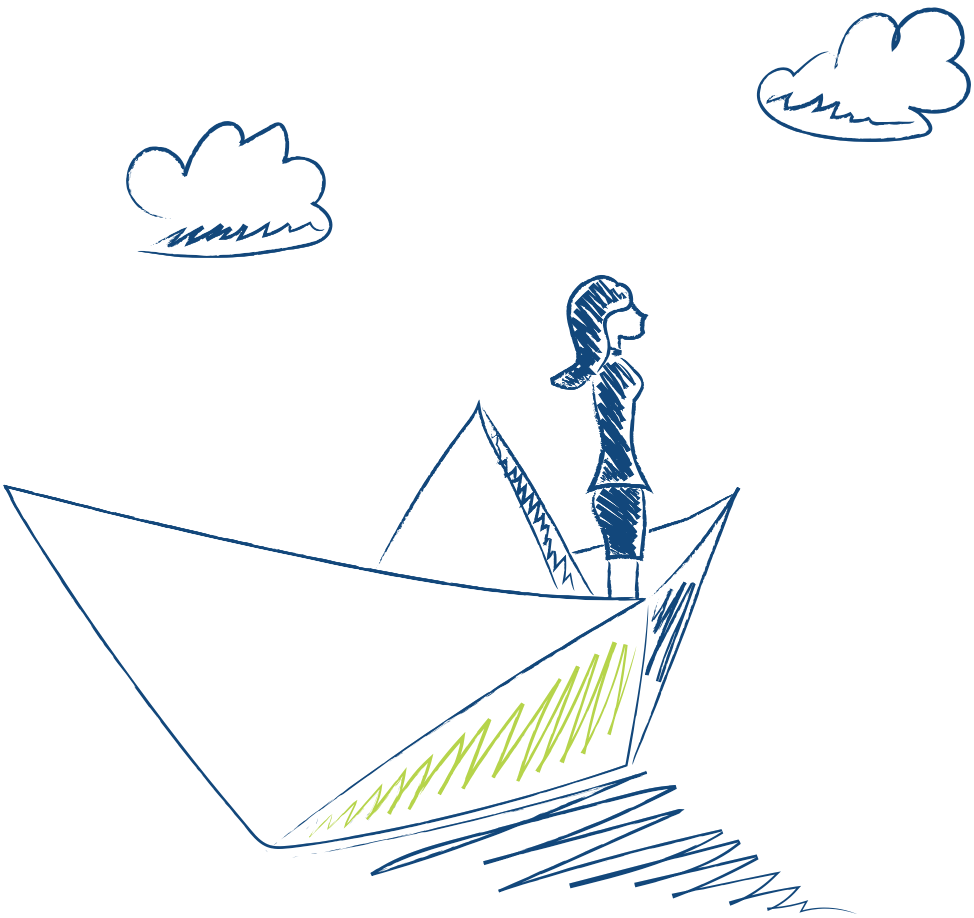
Internet Retailing

CROSS-BORDER PROTOCOLS

Managing the complexities of growth across borders – reducing the impact of tariffs and taxes on your customers



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VERTEX

EDITOR'S INTRODUCTION

LIZ MORRELL
Research Editor

Every border in retail represents risk, cost and process overhead - as well as an opportunity. Borders can be geographical, political, administrative or commercial, but they represent a different way of trading for a business to manage.

The recent history of UK retail has been one in which borders have been removed. The UK's entry into the Common Market (now the EU) opened new countries to UK trade, while efforts at deregulation and harmonisation made trading even more straightforward.

The USA had also proved an attractive market in that once you had a presence in the country the sales tax was based upon the state in which you operated rather than the many, different states to which you sold.

Such simplicity is no more, however. Political change in the last two years has introduced change and complexity around tax and tariffs that will not only impact growth-focused retailers but may also be visible to the consumer and impact their buying decisions and potentially, if retailers get it wrong, their loyalty.

The impact of the 'Brexit' vote for the UK to leave the EU is still to be decided at the time of going to press but looks likely to mean that UK retailers have reduced access, increased compliance and access costs and increased complexity.

But it's not just the confusion around Brexit and its implications that are muddying the waters of tax compliance. As we mentioned above change is afoot in other markets too. In Australia the country has changed its duty free levels on goods from overseas to protect its own retail market and in the US a landmark legal case (South Dakota vs Wayfair) means that online retailers now need to collect sales tax in the end-consumer's state when previously they only needed to do so if they had a physical presence there. It's a ruling that's being emulated by a number of different states in the US and has big implications.

What was once already to a degree complex is now a lot more so. The impact of such changes to tax compliance on a retailer selling globally is significant and can't be ignored. In this whitepaper, produced in association with our partner Vertex, we consider the impact of the tax compliance changes from a commercial perspective and look at how retailers might overcome them, reduce risk and prepare for the new 'business as usual'. ■

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WHY TAX NEED NOT BE TAXING WHEN RETAILERS EXPAND

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Expansion is the long-term strategy for most retailers, but they often are confronted by a multitude of hurdles while working toward it. Any time retail companies explore new territories or sales channels, they must abide by certain tax regulations and policies. Furthermore, when these companies plan to sell internationally, they need to understand and comply with the e-commerce rules and requirements of each country.

While the decision may not have shocked many in the e-commerce world, the U.S. Supreme Court dealt a blow to businesses across the globe with its ruling in South Dakota v. Wayfair in June 2018.

The new ruling allows state and local governments to require online merchants to collect sales tax even if they don't have a physical presence. Unlike other changes in US tax legislation that may not apply to companies outside the US, tax functions within affected companies – regardless of where they are based – should monitor this matter closely. Neglecting the numerous sales and use tax rules changes can expose some European remote sellers to compliance problems and reputational risks.

The Wayfair decision changes everything for a lot of businesses. If you're a small or mid-sized company, you may now have a much greater tax responsibility. Companies could also have an increased risk of audits. The requirements can be complex for a company that has never had to deal with out-of-state taxes before.

Partnering with a tax automation provider can help companies manage the complexity and prepare for these new e-commerce tax requirements.

Vertex is a leading provider of tax automation and services. Our ideologies stem from the concept of simplifying the complex. Vertex not only help companies solve today's challenges, but also enable them to confidently ask 'what's next'?

Vertex enables companies of all sizes to realize the full strategic potential of tax by automating and integrating tax processes, while leveraging advanced, predictive analytics of tax data.

As the retail industry continues to evolve, tax must also keep pace. Technology plays a key role in enabling tax professionals to manage many drivers of change, from regulatory complexity to omni-channel growth and global expansion. ■

INTRODUCTION AND OVERVIEW: WHY TAX COMPLIANCE IS VITAL IF SUCCESSFUL TRADE IS TO HAPPEN

When a retailer or seller is considering selling overseas there are many things that need to be considered – from product to marketing, payment options and delivery infrastructure – all of which need to be tailored to some degree to the preferences of the customer in that local market.

The challenge of tax compliance therefore often falls way down the list. And yet it shouldn't. Although not a direct enabler of trade without tax compliance trade can be impacted since goods can be held up, customers can end up paying more and retailers can lose valuable margin as well as customers.

It's a challenge that simply can't be ignored, according to Peter Olanday, retail practice lead for Vertex, since in recent years the world of retail and indirect taxes has become more complicated due to a mixture of new legislation, new real-time reporting requirements and a global nature which is accelerating at extreme pace.

The global economy is now "digital", and it is difficult, even for tax authorities implementing the new rules," says Olanday.

WHY TAX COMPLIANCE IS IMPORTANT FROM A CUSTOMER PERSPECTIVE

For the customer tax compliance by the retailer is vital since ultimately it is a tax on the end consumer and included in the total price paid by them and they don't want any nasty surprises. Despite that a customer doesn't want to be involved the process but simply trust that tax calculations have taken place, accurately, behind the scenes.

A comprehensive understanding by retailers of tax compliance therefore means that in turn their customers will have clear, consistent, competitive pricing in different markets that they understand and which allows them to make their purchasing decisions unimpeded.

If a retailer get its VAT or other tax calculations wrong there is a huge consequence to its business which will impact its customers. If the retailer is undercharging tax to the consumer it means less margin on the product. The customer is getting the product cheaper than they should and sadly isn't going to be welcoming of request for additional payments simply because the retailer got its sums wrong. In an age where brand reputation and loyalty is crucial getting it right first time is a must if a retailer is to retain customers and their trust.

WHY IT'S IMPORTANT FROM A RETAILER PERSPECTIVE

But of course it's not just about making it easier for the customer. Ensuring compliance from a trader's perspective means the retailer can get on with the role of selling rather than face any unwelcome surprises that could impact their bottom line. This could be from the impact of increased costs from unexpected tax or other issues around compliance which could slow trading or complicate making products available to customers. And of course non-compliance can also lead to unexpected tax costs or fines or interest.

For online retail the correct VAT amount needs to be included in the price – which will depend in many cases on the actual location of the end consumer. Because of this retailers also need to consider their tax responsibilities when expanding into new territories or acquiring stores, perhaps through mergers or acquisitions, or developing new channels of business. Doing so exposes them to new tax rules, calculations, compliance challenges and risks which have to be understood and adhered to. Sometimes the very thought of this can be daunting enough to turn retailers off from expanding at all so getting it right can be important in determining the company's future growth plans.

THE ISSUES TO THE BUSINESS AND HOW TO MAKE COMPLIANCE A MANAGEABLE TASK

Given such issues how do retailers make compliance a manageable task - even for the largest of enterprises - while minimising risk and cost?

It's essential that such sellers do comply since those who manage to incorporate this capability into their 'business as usual' activities can continue their international and cross-border growth unimpeded and satisfy both existing and future customers.

Olanday says that to better ensure compliance it's important this new tax function is the most appropriate team within the retail business. "That can be either the main corporate tax department or a dedicated transaction tax group. For smaller retailers there may not be a dedicated tax team, so then it would be a tax or accounting team," he says.

Tax automation is an increasingly popular option and Olanday advises that retailers should try to incorporate it into their business at an early stage. "It is best solved at the time of set-up of the automated system – whether that is an ERP/ point of sales solution or a web store – and possible to properly set-up and test the solution," he says. ■

HOW THINGS ARE CHANGING ACROSS THE GLOBE

As we explore in depth later in this whitepaper there are big changes around tax implications in the US and Europe but there are changes elsewhere too. Many retailers have Australia as part of their international expansion plan. However, since 1 July 2018, the exemption for the impartation of low-value consignments has been abolished and now GST applies to low value goods imported by consumers into the country.

In the case of impartation of low-value goods, GST applies to businesses selling more than AUS$75,000 of taxable goods a year to Australian consumers and as well as applying to retailers also extends to marketplace providers such as eBay and goods re-deliverers.

The ruling means that under the new legislation Australian consumers have to pay 10% GST on all online goods bought from overseas and means international retailers looking to sell to Australia need to register for GST, work out their liabilities and pay what's due.

WHAT OTHER COMMERCIAL CONSIDERATIONS ARE THERE WITH REGARDS TO THE NEED TO COMPLY ON TAX?

1. **Protecting reputation** - Tax compliance can be as much about protecting reputation as avoiding cost. Accounting and tax errors often cause provocative headlines that retailers will want to avoid, since they don't want to appear to be cheating the system or their customers.
2. **Minimising time spent** - Retailers will also want to minimise the time-consuming nature of tax compliance since this can prove disruptive to the business and its goals. This is particularly true for smaller companies or those that have plans for international expansion.
3. **Overcoming challenge of multiple touchpoints** - Even the many touchpoints of a retailer can prove problematic when retailers are trying to assess tax liabilities with a need to take an overall view of their operations that includes everything from wholesale to asset transfers and ecommerce, especially when selling diverse products and services. For example selling a product online delivered to a home address which is then returned to a physical store creates challenges in calculating tax. When that's further complicated for example by the different tax rates in the US it's even more of a challenge to master. As we've already alluded such challenges can be enough to put smaller retailers off expanding abroad since they can appear so daunting, limiting the growth potential of retailers and traders as a result.

PREPARING FOR UNCERTAINTY AROUND EUROPEAN CROSS-BORDER TRADE

For a long time the UK has enjoyed an enviable position with European cross-border trade. The single European market meant that tax compliance was relatively straightforward and the UK led Europe in terms of sales to other EU member states, driven by competitive pricing, keen availability and delivery options and expert ranging.

Retailers were able to sell online and ship to any citizen in the EU without worrying about import or export formalities and import or customs duties. Retailers still had to understand what VAT they needed to pay to which government on their sales and in 2015 new EU rules were brought in that changed how VAT operates for business-to-consumer sales of electronically supplied services. This added a new level of complexity since it now required retailers to apply the VAT rate of the country where the consumer was located rather than charging VAT at the rate applying in the country of the seller. But even with such changes the landscape was relatively simple.

IMPLICATIONS FOR THE FUTURE

But for the near future, complexity is inevitable, according to Olanday. "The UK will no longer be a part of the EU, so import/export trade formalities, applicable to non-bloc countries, may apply. At the very least, that will mean more trade-related documentation when shipping from the UK to another member state or the other way round, which may be burdensome and costly," he says.

Under current practices VAT rules are governed by the EU VAT Directive which in many cases allow member state options. Examples of this are the fact that the distance sales regime thresholds or small entrepreneur thresholds are different in most countries. "The bigger question will be whether the UK will still have the same beneficial regimes for smaller retailers and if yes, how they relate to the EU rules," says Olanday. "For example if UK retailers can no longer benefit from the current thresholds, they may need to register for VAT sooner in more EU countries than under the currently applicable legislation," he says.

This is going to have a direct impact on the complexity of their trade model with a need for more sophisticated tax technology in order to get the VAT right, according to Olanday, as well as a significant increase in the cost of doing business as VAT returns will need to be filed, he says.

Other impacts are less obvious. Although he says the distance-sales regime, where customers are charged the VAT rate of the country in which they are living when goods are being shipped from one EU country to another above a certain threshold may not change, other factors may. "The requisite to observe will be whether post-Brexit, the rules applying to UK retailers or EU retailers selling into the UK will be the same or different," says Olanday.

BOARD LEVEL CONSIDERATIONS

Boards needs to prepare their businesses not only for the uncertainty of Brexit on trade but also its implications on tax. They need to do a business review that encompasses all teams and departments of the business to ensure all its elements are included.

"Upon announcement of the final Brexit settlement, as we do not yet know the precise terms of the withdrawal, retailers should perform a Brexit-analysis, evaluating possible impacts on their supply chain and business model. This will be different for each retailer as it will depend on their current footprint both in terms

of VAT registrations, establishments, distribution centres/inventory as well as the sales volumes into the various countries," says Olanday.

"For such an assessment, retailers should model both the best and worse case outcomes and evaluate whether their current structure is agile enough to cope with the possible changes in the short term, he says.

Olanday says all UK/EU retail business companies currently doing business there, should take part in a Brexit strategy assessment to ensure all trade and tax issues are considered. But there are other trade implications too. "Depending on the outcome of the withdrawal settlement, the UK may no longer benefit from all the preferential treatment it had under the common EU customs duty scheme, which may lead to new duties and fees being applied to goods imported into the UK from certain third countries and vice versa," he says. ■

HOW BREXIT COULD IMPACT RETAILERS FROM A TAX POINT OF VIEW

- Increased paperwork
- Possibility of having to register for VAT in more countries sooner
- Increased complexity of trade model
- Increased cost of doing business
- Possibilities of duties being applied on goods

UNDERSTANDING THE TAX IMPLICATIONS OF THE WAYFAIR JUDGEMENT ON RETAIL IN THE US

Whilst trade into Europe remains a challenge in the US the sales and use tax scenario is an even more complicated beast than its European counterpart VAT. Once sales tax is collected in a state a sales tax return is due and sellers need to remit the amounts they collect from their customers and file a return. Although rates vary they are typically around 9% or so and are a figure added to the current price charged to customers. Sellers collect this on behalf of the state and then remit it to the state.

According to Vertex, in the US there are literally tens of thousands of tax rates and rules and usually tax rate changes occur in the hundred-fold each year. That in itself makes it hard for a retailer to manage their tax liabilities in the US. Add in other challenges such as sales tax holidays and increased discounts and promotions and tax processing becomes even more complicated for retailers to deal with.

But that's not the end of it. In the US there are also significant challenges around state and local tax regulations and these are likely to be further impacted by the recent Wayfair judgement which will change retailers' liabilities and introduce further complications into planning for tax.

THE IMPACT OF THE WAYFAIR JUDGEMENT

The Wayfair judgement was made in June 2018 in the South Dakota v Wayfair Inc case. It saw the US Supreme Court rule that sales tax can be collected by states in the US on purchases made by residents from out of state online retailers, regardless of whether or not the retailers concerned have a physical presence in the state.

A previous case in 1992, Quill Corp v North Dakota, barred states from doing so unless those retailers had a physical presence for sales tax nexus. In the new ruling the previous sales nexus is replaced by economic nexus, meaning that it's an economic presence in a state that creates sales tax nexus. In the new ruling the previous sales nexus is replaced by economic nexus, meaning that it's an economic presence in a state that creates sales tax nexus.

That means that once a retailer passes the state's economic threshold for total revenue or transactions in the state concerned then they have a legal obligation to collect and remit sales tax to that state. For those states already operating such thresholds the limit can vary from tens to hundreds of thousands dollars of sales.

In the ruling Justice Anthony Kennedy said that the expansion and power of the internet was increasing the revenue shortfall faced by states seeking to collect their sales and use taxes. Other states are likely to follow, such as the Colorado Department of Revenue, which announced that retailers that met the legislative thresholds would need to start collecting and remitting sales tax in November of 2018. ■

IMPLICATIONS FOR EXPORTING RETAILERS AS WELL AS THOSE WITH US BRANCHES OR SUBSIDIARIES

Following the Wayfair case out of state retailers will have to review the need to charge sales tax to consumers under certain conditions – such as state, number of transactions and gross revenues etc. "This means that they will need to ensure they follow legislation, monitor whether they need to collect/remit sales tax in a certain state, and ensure they can accurately calculate the sales taxes for that state," says Olanday.

Many US-based online retailers already collect sales tax in different states due to having a physical presence in the form of a warehouse or stores. Those that need to start charging the sales tax need the infrastructure that will enable them to collect the tax and pay the relevant taxing authority.

"Apart from this new sales tax complexity challenge, companies may need to invest in an effective and efficient tax engine to ensure that they are accurately calculating sales tax everywhere it is applied, where prior to Wayfair, there was no such necessity provided they did not have nexus/physical presence," he says.

UNDERSTANDING AND PREPARING FOR THE NEW 'BUSINESS AS USUAL'

As we have seen with the last two examples global political, economic and legal change is having a big impact on retailers, their business models and the subsequent implications on tax compliance. It's obvious that things are changing fast, even Brexit is undetermined as we go to press on this whitepaper.

Retailers and sellers have to ensure they understand the complex requirement of indirect taxes – especially as it relates to selling online where rules can already differ dramatically in Europe and beyond. Add in changes such as Brexit and the US's Wayfair judgement and it's no surprise it's a challenge that can be daunting for both retailer and customer to get their heads around.

But the implications of ignorance can have a devastating impact on business; both economic and reputational. "Applying the incorrect sales tax amount to consumers can not only diminish the retailer's margin, but further, as the trend towards digital reporting continues, retailers will face an increasing burden on multi-faceted compliance, thus, having to deal with greater requirements that may go far beyond the traditional VAT return," says Olanday.

IGNORANCE COULD HAVE A DEVASTATING IMPACT

He suggests retailers consider the need for tax automation so that they can ensure that they have the most effective and appropriate system in place that will allow them to more easily deal with change, as well as to be agile enough to respond to future, inevitable changes too.

"Retailers should ensure they evaluate their needs for specialised tax technology solutions that can help them with their tax obligations, both as it relates to calculating the right tax for the consumer as well as dealing with the burden of compliance and reporting," he says.

The new reality is that there is no simple answer to the new multi-tax, multi-tariff cross-border environment and that also means there is no single model that works best. "It all depends on the location (physical presence) of a retailer, volume of internet sales, available inventories for supply, and where customers are located, etc," says Olanday.

What is evident is that technology and tax automation solutions can help to at least reduce the administrative burden of Sales, Use, and Value Added Tax – leaving retailers and sellers free to focus on their global ambitions instead. ■

REASONS WHY RETAIL TAX AUTOMATION SHOULD BE CONSIDERED

- Retailers are expanding – either operating in new areas or buying into new markets/channels
- New channels and retail complexities can confuse compliance (eg instore sales shipping to another location)
- Greater complexity in tax calculation, exemptions, reporting and returns
- Need to align with other technology and systems within the business (eg POS, ecommerce and back office)
- Changing rules and requirements (eg Wayfair judgement and Brexit)
- Need for a uniformity across multichannel operations
- Risk of audit costs and penalties for non-compliance
- Mind-blowing tax maths (such as with the growing volume of tax rules and rates changes in the US)

OTHER BENEFITS OF TAX AUTOMATION

- Saves time by allowing tax professionals to concentrate on strategy rather than tracking down tax data
- Ensures customer satisfaction and means customer can be assured tax calculations have been done accurately in the background
- Can ensure compliance with things such as tax holidays and tiered taxes
- Potential for bottom line savings
- Automatic updates for tax rates and rules
- Greater consistency within the business

RETAILER FOCUS

A EUROPEAN FASHION RETAILER: NAVIGATING SIGNIFICANT, EVER CHANGING CHALLENGES IN COMPLIANCE

The director of finance for one global fashion retailer, for whom two-thirds of trade is overseas, says tax compliance is a challenge. "Remaining tax compliant presents us with significant, ever changing challenges, especially when no two countries, or states in the US have the same regime. Differing thresholds, rates, collection methods and languages create this challenge across all direct and indirect taxes," he says.

He says the company relies on a range of advisors and materials to alert it on upcoming changes. For its smaller markets it uses a UK third party to fulfil its exports who handles the tax compliance for those exports.

In the US the company uses Vertex to handle its US sales tax calculations and returns. However, he admits tax compliance is no easy task. "We have increased the resource internally to ensure that time is permanently dedicated to testing and reconciling tax calculations, systems changes, tax returns etc," he says.

Retailers must take note of the cost of systems developments, additional internal resource and advisory fees in relation to tax compliance when considering whether to enter a new territory and local indirect tax costs must also form part of the thinking when establishing pricing and understanding margins in a territory according to the finance director. "For all this to happen, the person responsible for this area must be effective at ensuring that this gets the profile required in the business," he says.

He says that in terms of indirect taxes there hadn't been too many added complications in recent years. That has now changed. "The compliance had become more challenging due to the growth of the business into new territories rather than changes by foreign governments. The GST changes in Australia were relatively straightforward to deal with. The Wayfair case however changes all of that. It has made the area of overseas indirect tax compliance significantly more onerous and complex for us," he says.

"It has had a huge impact. We expect that we will be required to register in virtually every state once they have all established their own economic nexus thresholds. We do not anticipate a significant impact on the demand from our US customers, but of course the complexity of the compliance will have a significant effect on us internally," he says.

"Fortunately we were already a Vertex user before the Wayfair case was concluded. This means that from a systems point of view it is far easier to switch on multiple states' collections in a short period of time."

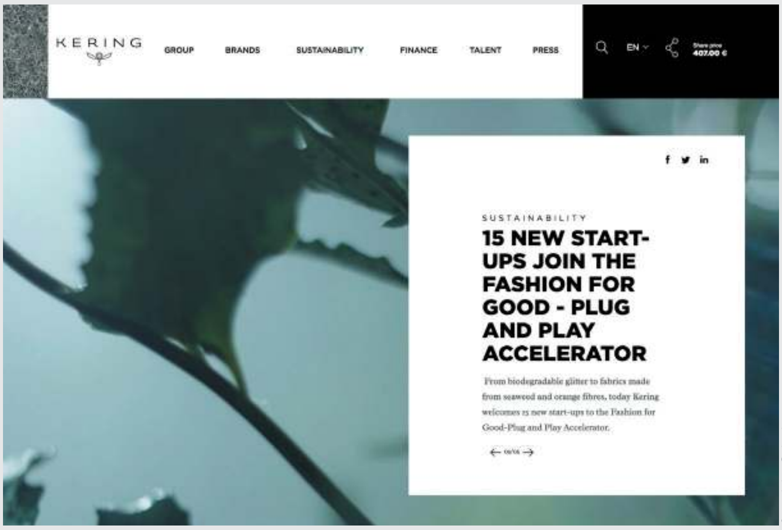
"We have engaged with a specialist sales tax advisor to establish which states need a registration and to develop a timetable. We are also quantifying the impact that it will have on resource internally once the registrations are in place. Even with Vertex in place, it is clear that it will have a significant impact, and we need to be sure that we can continue to reconcile, internally audit and deal with external audits even when registered in 40+ states," he says.

Although Brexit remains up in the air currently he says the company is forecasting that Brexit will have a negative impact on demand from its European customers. "Additionally, in the event of a no-deal, we will experience significant additional duty costs on both our imports and exports," he says.

KERING AMERICAS: FACING A FOUR-FOLD INCREASE IN TAX COMPLIANCE FOLLOWING THE WAYFAIR JUDGEMENT

Global luxury group Kering Americas is the parent company of brands including Gucci, Yves Saint Laurent, Brioni and Stella McCartney, etc.). The company resales and wholesales such luxury goods and accessories throughout North America. Since the introduction of the Wayfair judgement the company's indirect tax manager Keyur Shah says that compliance responsibilities have got even tougher.

"Since we are in the United States and deal with sales/use tax, and overseas is based on VAT, the tax compliance is very complicated," he says. "Our biggest challenges are understanding the complexity of the tax rules and applying them to our core business practices," he says.



RETAILER FOCUS

The company has recently upgraded to a more comprehensive tax software and has mapped all the tax rules by state within the software, so that the proper tax is collected from its POS and ecommerce platforms.

"Our biggest learning is to understand how each state assesses tax on each of our products," says Shah. "For example, the taxability of clothing varies by state. Understanding what is considered clothing and collecting the proper tax on the sales receipts sometimes poses a challenge," he says.

He says the Wayfair judgement has had a huge impact on the business. "In prior years, the collection of tax was based on physical presence. As of June 2018, that has changed to "Economic nexus". This has caused our compliance to quadruple per month," he says.

And this is directly changing how the business needs to operate. "We have to do a better job of analysing our transactions for the proper collection of sales tax, as well as adding headcount to meet the increased filing requirements," he says.

He advises other retailers to not get caught out by the new complexities. "My recommendation would be to understand what the business does and how the tax rules and regulations fit with the core business," he says.

CONCLUSION

This whitepaper is a snapshot into the ever-changing world of tax compliance for retailers. The implication of changes in Australia and the US are a big enough hurdle to overcome. The issue of Brexit and impact upon retailers and their trade into and out of Europe is even bigger. It's simply not an easy task.

Retailers looking to expand their business and grow internationally have to be able to do so profitably and without distraction. The challenges and logistics of selling internationally are hard enough without being caught out by failing to comply with ever changing tax laws too. But global expansion naturally brings new risk, new regulations and new tax compliance challenges that retailers have to face head on.

Meanwhile changes such as the Wayfair judgement show that many state and local governments are looking at how to raise more tax revenue and examining what retailers are doing in their locations with more scrutiny than ever.

So what can retailers do? Naturally it's a challenge that they can try to tackle themselves – but many simply don't want the distraction of spending time tracking down and processing the data they need. Manual processes are increasingly outdated – being time consuming and labour intensive.

Retailers also don't want to open themselves up to the risk of mistakes and miscalculations that at the best could disgruntle customers and at worst mean fines and audits. Instead they want systems that allow them to meet tax compliance obligations and operate more efficiently and allow them to get on with the bigger picture of expanding their business into new markets and continue their growth.
It is here that advanced tax technologies and automation can vastly improve the tax function across-borders in a digital tax ecosystem, where economic nexus and physical presence is now the standard, thus allowing retailers to focus their energy and assets instead on selling and expanding their markets around the globe. ■

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