KPMG

Inside Indirect Tax

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About this Newsletter

Welcome to *Inside Indirect Tax*—a publication from KPMG's U.S. Indirect Tax practice focusing on global indirect tax changes and trends from a U.S. perspective. *Inside Indirect Tax* is produced on a monthly basis as developments occur. We look forward to hearing your feedback to help us in providing you with the most relevant information to your business.

Announcement

KPMG International Published Global Benchmarking Report

KPMG's Global Indirect Tax Services practice recently published a report on global indirect tax and trade compliance. The report offers a snapshot of the structure, governance, priorities, and performance measures of indirect tax and trade compliance departments today – and delivers insights on how these functions expect their compliance models to change in the next three years. According to the report, indirect tax and trade compliance functions are well down the road of centralizing many of their activities for greater efficiency and control, and are enhancing these centralized models with stronger regional networks and more strategic use of outsourcing. Many respondents have not set clear performance metrics or systematically identified their areas of key risk, and they have yet to develop processes and systems for capturing, analyzing and deriving value from the resulting data. Finally, many respondents are prepared to make investments in technology and process improvements. While a lack of data may hamper their ability to gain support for these investments, there is a strong business case to be made for functional transformations that enable greater efficiency in compliance, global visibility and control, and opportunities to produce strategic value.

Global Rate Changes

- **Austria:**[i] Effective November 1, 2018, Austria will reduce the VAT rate applicable to accommodation services, including breakfast offered in connection with such services, from 13 percent to 10 percent.
- **China:** Effective May 1, 2018, China will reduce the VAT rate applicable to sales of goods, importation of goods, leasing of tangible movable property; repair and processing services from 17 percent to 16 percent. In addition, China will reduce the VAT applicable to transportation services, sales and leases of immovable property, basic telecommunications services, construction services, postal services, agricultural products, and water and gas from 11 percent to 10 percent. The 6 percent VAT rate will remain unchanged. To read a report prepared by the KPMG International member firm, please click here.

The Americas

United States: U.S. Supreme Court Hears Oral Argument in South Dakota Case Seeking to Overturn Quill

Policy and cost concerns dominated oral argument at the U.S. Supreme Court in South Dakota v. Wayfair, a case in which South Dakota seeks to have a statute imposing economic nexus standards on remote sellers upheld by the High Court. Specifically, South Dakota has asked the Court to revisit and abrogate the sales and use tax physical presence nexus requirement upheld in Quill v. North Dakota. The transcript from the April 17, 2018, oral argument can be found here. Based on initial observations from the oral argument the potential for Quill being overturned is perhaps less likely than it was before the arguments. The Justices seemed to be primarily concerned with three issues: the costs and burdens that would be imposed on sellers if the physical presence rule was overturned, whether states could retroactively apply an economic nexus standard, and whether the issue is better left to Congress. Chief Justice Roberts suggested that perhaps Congress has acted through its inaction. The U.S. Solicitor General made some surprising comments. Notably, he commented that he believed a single sale into a state could create nexus for a seller. Several Justices seemed concerned by this position and did not appear confident that Congress would act expeditiously to adopt a bright-line test should they overturn Quill. The Solicitor General also indicated that the states could apply economic nexus retroactively if Quill is overturned. Justice Breyer in particular seemed frustrated by the contradictory information included in the parties' briefs, such as the costs of complying with sales and use tax laws, and the accuracy of sales and use tax compliance software. Because the appeal arose from a summary judgement, there was no record of facts or evidence supporting each party's position. Much of the discussion was focused on policy and the practical considerations associated with Quill being overturned. There was a surprising lack of discussion and debate about South Dakota's statute and constitutional law in general. At this point, there is no clear indication as to how the Court will rule, and a number of veteran Court observers were quick to point out that the direction taken in the oral argument is not always indicative of the ultimate decision. Nonetheless, there likely will be much speculation in the coming weeks.

Brazil: Concept of PIS/COFINS Credits Broadened

On February 22, 2018, the Superior Court of Justice of Brazil (STJ) published Special Appeal 1,221,170/PR in which it broadened the concept of expenditures for the purpose of crediting under the non-cumulative regime of Brazil's federal social security contributions (*Contribuição para o Programa de Integração Social*, PIS, and *Contribuição para o Financiamento da Seguridade Social*, COFINS). The federal social contribution taxes (PIS/COFINS) are based on gross receipts from the sale of goods and services. PIS/COFINS apply also to the import of goods and on payments to nonresidents for services provided to Brazilian taxpayers, but not to the export of goods and services. Under the non-cumulative regime, taxpayers are allowed to credit expenditures directly applied or consumed in the manufacturing process or rendering of services, as stated in Normative Instructions 247/2002 and 404/2004. The Brazilian federal tax authority takes the restrictive view that only items listed in Normative Instructions 247/2002 and 404/2004 can be credited.

According to the STJ, every good and service that is considered essential to an entity's core business should be considered as raw material, and consequently should entitle taxpayers to claim PIS/COFINS credits with respect to its purchases. The STJ's point of view is that the definition of expenditures must be assessed on a case-by-case basis with respect to the essential character and relevance of the purchase for the development of the taxpayers' economic activity. This decision is important because it brings a broader concept of PIS/COFINS credits, and it represents a favorable precedent for taxpayers that are currently litigating at the administrative courts (CARF) level. The new interpretation by the STJ should, going forward, be applied to every administrative decision involving PIS/COFINS credits or refunds. However, although this is the final decision by the STJ, the matter will still be subject to examination by the Federal Supreme Court (STF) in the Extraordinary Appeal 841.979/PE, which will likely be the ultimate decision on this issue.

Source: Brazil – Concept of inputs for PIS and COFINS crediting purposes – enlarged by Superior Court of Justice (26 Feb. 2018), News IBFD.

Brazil: Update on ICMS Levy on Digital Goods

On March 15, 2018, a lower state court in São Paulo issued a preliminary decision suspending the levy of the state value added tax (*Imposto sobre Circulação de Mercadorias e Serviços*, ICMS) on software downloads and streaming. ICMS is due on the import of products and on the physical movement of goods, including electricity. ICMS also applies on interstate and inter-municipal transportation services and communications services.

In addition, ICMS applies to the resale of products in the domestic market and when products are physically removed from a manufacturing facility. Recall, in October 2017, the state representatives agreed that effective April1, 2018, states were allowed to levy ICMS on sales of certain digital goods. In addition, the municipally of São Paulo expanded the scope of services subject to the municipal services tax (*Imposto Sobre Servicos*, ISS) to include certain digital goods. The Brazilian Association of Information and Technology and Communications Company (Brasscom), which represents the country's software companies, filed and injunction seeking the suspension of the ICMS on downloads and streaming, based on the constitutional principle of non-cumulativeness (i.e., constitutional principle applicable to ICMS and the federal excise tax on manufactured goods, whereby taxpayers are granted the right to credit on incoming raw materials or goods against the amount of outgoing materials or goods) – in this case, the non-double taxation on downloaded software. The lower court ruled in favor of Brasscom, but is not final and applies only to Brasscom. As a consequence, Brazilian states are still authorized to issue legislation for charging ICMS on software and streaming.

On March 23, 2018, the state of São Paulo issued Portaria CAT Ordinance No. 24 of 2018, which implements new rules which require that website owners and electronic platforms involved in the transfer of software, programs, electronic games, applications and electronic files that are subject to ICMS effective April 1, 2018. The tax liability is imposed, for example, on software, programs, electronic games, applications, electronic files and similar items that are standardized (off-the-shelf), even if they have been or can be adapted, regardless of whether they are used by the purchaser by downloading or are "in the cloud" as well as contents of audio, video, image, and text. The ordinance further provides rules for invoicing and reporting obligations with respect to these transactions. The ordinance is, however, silent with respect to the ICMS treatment applicable to the sale of such products by nonresidents. Other states that are introducing ICMS rules on the sale of digital goods include: Rio de Janeiro, Paraiba, Goias, and Piaui e Rondonia. To read a report (in Portuguese) prepared by the KPMG International member firm in Brazil, please click here.

Europe, Middle East, Africa (EMA)

Bulgaria: Overview of Supreme Administrative Court Decisions

On February 13, 2018, the Supreme Administrative Court (SAC) of Bulgaria held that non-remittance of VAT for a number of periods qualifies as systematic non-compliance with the obligations under the VAT Act, thus allowing the tax authority to deregister the taxpayer for VAT purposes.

On February 15, 2018, the SAC held that the lack of licenses for wholesale trade by a vendor had no impact on the reality of the sales for VAT purposes, meaning the vendor is allowed to recover VAT incurred on expenditures.

On February 15, 2018, the SAC held that services consisting of finding clients and promoting the products of two insurance agents and one insurance broker do not qualify as zero rated intermediary services as exempt insurance services. To qualify as VAT exempt insurance services, a vendor must conclude agreements for insurance agency services and must be included in the register of the Commission for Financial Supervision. If these conditions are not met, the services are subject to VAT at the standard of 20 percent.

On February 19, 2018, the SAC held that a company which retained written confirmation from the recipient that the goods arrived in Romania, verified the validity of the customer's VAT identification number, and performed checks regarding the reliability and solvency of its potential clients was allowed to zero-rate sales of goods to customers in Romania. The fact that the customers did not report intra-EU acquisitions in their Romanian VAT returns was beyond the control of the Bulgarian vendor.

On February 20, 2018, the SAC held that a customer's Italian tax identification number and a letter provided by the customer's accountant do not constitute sufficient evidence that the customer is a taxpayer for VAT purposes in his Member State. As a consequence, the Bulgarian vendor was not allowed to zero-rate the sale of goods to its Italian customer and should have applied the standard VAT rate of 20 percent on the transaction.

On March 7, 2018, the SAC held that it is an obligation of the taxpayer to prove that it met all statutory requirements to deduct VAT incurred on the purchase of goods provided as gifts. As a consequence, the tax authority is allowed to deny the VAT deduction to a taxpayer if that taxpayer cannot (1) prove that the marketing campaign had an impact on sales, (2) provide evidence of the purchased goods, and (3) prove that the gifts were of low value and were provided to different persons.

On March 7, 2018, the SAC held that a UK company with a branch in Bulgaria is not allowed to deduct any VAT incurred in Bulgaria through the VAT return of its local branch if that branch is only involved in providing services to its head office in the UK.

Source: Bulgaria – Supreme Administrative Court publishes decision on right to VAT credit for purchase of medicinal products (Feb. 27, 2018), News IBFD; Bulgaria – Supreme Administrative Court decides on grounds for VAT deregistration (Feb. 27, 2018), News IBFD; Bulgaria – Supreme Administrative Court publishes decision on VAT aspects of intermediary services rendered and supplies of diesel received (Feb. 27, 2018), News IBFD; Bulgaria – Supreme Administrative Court decides on VAT implications of intra-Community when recipient is considered "missing trader" (Mar. 5, 2018), News IBFD; Bulgaria; European Union – Supreme Administrative Court decision on case regarding status of recipient of intra-Community supply as condition for 0% VAT rate – published (05 Mar. 2018), News IBFD; Bulgaria - Supreme Administrative Court decides on VAT aspects of providing gifts in marketing campaign (Mar. 20, 2018), News IBFD; Bulgaria – Supreme Administrative Court decision on deduction of input VAT by Bulgarian branch of UK company (Mar. 20, 2018), News IBFD.

Czech Republic: Supreme Administrative Court Limits Tax Authority's Powers for Deeming Existence of VAT Fraud

The Supreme Administrative Court of the Czech Republic recently published a judgment limiting the power of the tax authority for deeming a transaction to be fraudulent. In the case at hand, a single general contractor sold high-tech machinery and equipment, while a number of subcontractors also participated in the project. The tax authority argued that one of the subcontractors had not paid VAT and considered this as tax fraud that the final customer could have known of. As a consequence, the tax authority denied the final customer the right to deduct VAT equal to three times the missing tax ascertained at one of the subcontractors.

According to the SAC, it is up to the tax authority to prove that the taxpayer knew or should have known that the transaction was subject to VAT fraud and that its right to deduct VAT was thus not protected by good faith. In proving this, the tax authority must equally assess the evidence in favor of and against the taxpayer; it cannot ignore one and highlight the other. The tax authority must further take into consideration common business practices and facts only occurring ex post cannot be used against the taxpayer. The SAC further observed that the existence of unpaid tax does not necessarily mean VAT fraud that would make it possible to limit the taxpayer's right to deduct VAT. It is necessary to distinguish the failure to meet tax obligations from a knowing enrichment by not paying VAT. Most importantly, the SAC rejected that taxpayers had unlimited liability for checking the trustworthiness of business partners throughout the chain of vendors and deemed a strict (no-fault) liability for any VAT not paid within the chain as inadmissible. According to the SAC, fighting tax fraud cannot mean that the tax authority focuses on the "most lucrative" entity in the supply chain and collects the tax from them. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

European Union: Member States Cannot Reduce Default Late Interest for Late VAT Refunds

On February 28, 2018, the Court of Justice of the European Union (ECJ) published its judgment in *Nidera*, Case C-387/16, regarding whether interest is due on non-paid VAT refunds. Recall, in the case at hand, the taxpayer purchased goods in Lithuania and exported these outside the EU. The taxpayer obtained a VAT registration and applied for a refund of VAT incurred on the domestic purchase of the goods. After obtaining the right to claim the VAT following an ECJ decision, the taxpayer requested the payment of related interest, which the tax authority paid, but only for the period between the ECJ decision and the date the refund was paid.

According to the ECJ, while Member States have a certain freedom in determining the conditions for the refund of overpaid VAT, those conditions cannot undermine the principle of fiscal neutrality by making the taxpayer bear the burden of the VAT in whole or in part. In particular, such conditions must enable the taxpayer to recover the entirety of the credit arising from overpaid VAT within a reasonable period of time and ensure that the refund method does not entail any financial risk for the taxpayer. The default interest payable is only compensation for a taxpayer's lost income that results from the non-payment of the refund. A reduction in that interest amount based solely on the significance of that amount would imply a risk for the taxpayer that the payment of default interest does not cover the entire period of non-payment. The duration of the period of non-payment cannot in itself justify a reduction in the default interest, since the amount of that interest is specifically intended to compensate the financial losses incurred by the taxpayer during that period. In addition, this would not encourage the tax authority to refund the overpaid VAT as soon as possible. Moreover, the tax authority cannot refuse to refund the interest for that period before the delivery of an ECJ's judgment because an ECJ judgment explains EU law and clarifies how it must be, or ought to have been, understood and applied as from the time of entry into force. Finally, the ECJ pointed out that Member States may set a flat rate to calculate the default interest payable to ensure compensation according to rules that can be easily managed and supervised. The fact that some taxpayers would receive an amount of interest exceeding the amount of actual loss is a mere result of such a calculation method. In that regard, national legislation cannot provide for the possibility of excluding the payment of default interest and merely compensate the actual losses incurred solely on the basis of the criteria of reasonableness and fairness. In such a case, a taxpayer would not be able to foresee the circumstances in which it can expect to receive the payment of default interest and adjust its activity accordingly.

Source: LT: ECJ, Feb. 28, 2018, Case C-387/16, Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos v. Nidera B.V., intervening party: Vilniaus apskrities valstybinė mokesčių inspekcija, ECJ Case Law IBFD.

European Union: Member States May Deny VAT Deduction for Non-Compliant Taxpayers

On March 7, 2018, the ECJ published its judgment in *Dobre*, Case C-159/17, regarding whether a taxpayer's right to deduct VAT may be denied if its VAT registration was revoked because of noncompliance with VAT filing obligations. In the case at hand, the taxpayer was a VAT-registered taxpayer who failed to file two quarterly VAT returns. On this basis, the Romanian tax authority revoked its Romanian VAT identification number. The taxpayer nevertheless continued with its activity and issued invoices including VAT, but did not file any VAT returns.

The ECJ recalled that according to settled case-law the fundamental principle of VAT neutrality requires Member States to allow the deduction of VAT incurred on expenditures if the substantive requirements for deduction are satisfied, even if the taxpayer has failed to comply with some of the formal requirements. In this respect, the requirement to register for VAT and the obligation of the taxpayer to state when its activity starts are only formal requirements. Penalizing the failure on the part of the taxpayer to comply with the obligations relating to accounts and tax returns by denial of the right to deduct clearly goes further than is necessary to attain the objective of ensuring the correct application of those obligations. However, the failure to satisfy formal requirements may prevent the production of conclusive evidence that the substantive requirements have been satisfied, which would thus lead to a denial of deducting VAT. Moreover, the right to deduct may be refused, if it has been established, in the light of objective evidence, that that right is being invoked fraudulently or abusively. In the case at hand, while the ECJ held it was for the referring court to ascertain whether the tax authority was not in a position to verify that the substantive requirements were met, the ECJ also noted that failure to file a VAT return that would allow VAT to be applied and monitored by the tax authority prevents the correct collection of the tax. As a consequence, EU law does not prevent such infringements from being considered to amount to tax fraud and the right to deduct being refused in such a case.

Source: RO: ECJ, Mar. 7, 2018, Case C-159/17, Întreprinderea Individuală Dobre M. Marius v. Ministerul Finanţelor Publice – A.N.A.F. – D.G.R.F.P. Galaţi – Serviciul Soluţionare Contestaţii, A.N.A.F – D.G.R.F.P. Galaţi – A.J.F.P. Constanţa – Serviciul Inspecţie Fiscală Persoane Fizice 2 Constanţa, ECJ Case Law IBFD.

European Union: Sale of Auction Credits Qualify as Sale of Services Rather Than Advance Payments on Subsequent Sale of Goods According to Advocate General

On March 7, 2018, the ECJ published the Opinion of its Advocate General (AG) in *Marcandi Ltd t/a "Madbid,"* C-544/16, regarding the applicable VAT treatment to the sale of online auction credits and the subsequent sale of goods. In the case at hand, the taxpayer operates an on-line penny auction website. Instead of the items being sold to the highest bidder, participants pay a non-refundable fee allowing them to place a bid. Depending on the item, the site will specify the number of credits required to make a bid (1-8 credits). When the auction begins, the timer begins to count down to zero. Each bid increases the price of the auctioned goods by 0.01 pounds sterling (GBP) and restarts the timer. The auction ends when the timer reaches zero. The winner is the person who was the last to bid. The winner can then buy the item for the amount of the winning bid plus the shipping and handling charge. The auction platform also has a "Buy Now" feature which allows users to buy goods identical to those being auctioned. These are typically priced at the recommended retail price. If a user has bid in an auction and selects "Buy Now," the value of credits used to bid are treated as a discount from the Buy Now price. Losing bidders, who do not use "Buy Now" are credited with "Earned Discount" to the value of credits that have been used to bid unsuccessfully. The Earned Discount can be used against purchases from the Madbid shop. Having expanded from the UK to other countries, Madbid was subject to different tax treatments. The German Tax Authority, for example, did not consider the credits to be subject to VAT, but saw the credits as part payment for a later sale of goods. The UK tax authority disagreed with this position arguing that the amount paid by users for the issue of credits was consideration for a sale of services, namely, the grant of a right to take part in Madbid auctions, and that the service was sourced where Madbid is established, namely the United Kingdom.

The AG began by considering the VAT treatment of the credits and noted that participation in an auction is unlikely to be an aim in itself as the ultimate aim is to purchase goods. However, the AG distinguished the current case from *McDonalds Resorts*, Case C-270/09 (Dec. 16, 2010), in which the service of providing hotel accommodation or the right to use a property temporarily, was not fully provided until the Points Rights were converted into specific services. In the current case, when users purchase credits, they know what service will be provided: the right to participate in Madbid auctions. The AG further opined that the service is identified and it is provided immediately. While noting the value of credits spent can be set off against purchase of goods, it is only the value of those credits that can be so set off. Credits not spent in bidding cannot be used against the cost of the goods. The AG concluded that the purchase of auction credits constituted a sale for VAT purposes. As a consequence, the credits could not be treated as a payment on account for goods before any goods are sold.

With respect to the sale of goods via the website, the AG was of the view that when customers use credits to make Buy Now and Earned Discount purchases, that the taxable amount is the price of the goods, plus shipping and handling, less the value of credits. The credits are a discount – not part payment for the goods. The AG also addressed the scenario in which the user's value of credits is greater than the Buy Now or shop price. In such a circumstance, the transaction does not qualify as a disposal free of charge. Unlike in *Kuwait Petroleum*, Case C-48/97 (Apr. 27, 1999), where the price of fuel was the same regardless of whether the customer took the vouchers, in the current case the price of the goods purchased is clearly identifiable and users were required to pay the shipping and handling charge. As a consequence, even if the value of the credits spent in bidding is equal to the initial Buy Now price or the price in the Madbid online shop, the value of those credits must be regarded as a price discount.

In its Opinion, the AG attempts to define when a sale takes place, distinguishing the current case from *McDonalds Resorts*. In the current case, users purchase the credit to partake in an auction, and this is an identifiable provision of services at that time. While noting the ultimate aim is to buy goods, this is not enough to consider the credit as a preliminary transaction and look through it to the uncertainty of what (if any) goods will be purchased. The ECJ must now decide whether to follow the nonbinding Opinion of its AG.

European Union: Temporary Inactivity Should Does Not Preclude Right to Recover VAT

On February 28, 2018, the ECJ published its judgment in *Imofloresmira – Investimentos Imobiliários*, Case C-672/16, regarding whether the temporary vacancy of a real estate results in the disallowance of VAT deduction incurred in relation to that real estate. In the case at hand, a taxpayer opted to subject to VAT the lease of two properties in accordance with Portuguese law. After the lease agreements came to an end, parts of the real estate stood empty for more than two years. The Portuguese tax authority issued a tax assessment arguing that because the real estate was empty the taxpayer should have adjusted VAT deducted on expenses incurred. However, the taxpayer had continuously advertised the available space in these properties with a view to leasing them. Among other things, it created a brochure, a mailing list and an internet site, press releases with a wide-ranging public distribution, as well as billboards on the properties in question. Moreover, the taxpayer amended its offering, namely by providing space for lease at competitive prices on the one hand, and on the other offering the opportunity of a grace period to the lessees for the time during which the properties were being made ready.

The ECJ first addressed the taxpayer's right to recover VAT incurred on expenses. According to the ECJ, a taxpayer retains the right to deduct VAT incurred on expenditures as soon as this right has arisen, even if he is unable to use, in the context of taxed transactions, the items or services which led to the deduction due to circumstances independent of his volition. This applies both to the initial, as well as the interim vacancy in a property, if the company has, in each case, demonstrably intended to lease the unoccupied spaces subject to VAT. In addition, the ECJ rejected the Portuguese tax authority's argument that VAT initially deducted should have been adjusted. While there may be a requirement to adjust VAT initially deducted in case of change of use of the assets initially acquired, based on established case-law the right to deduct is retained if, by reason of circumstances beyond the taxpayer's control, the taxpayer does not make use of those goods and services which gave rise to a deduction in the context of taxed transactions. Finally, the ECJ held that while Member States have broad discretion in determining the manner in which an option to tax is applied, they cannot use this authority to withdraw a right to deduct VAT which has already accrued. The tax authority can only demand the refund of the initially deducted amounts, if the VAT recovery right is exercised in a fraudulent or abusive manner. To read a report prepared by the KPMG International member firm in Germany, please click here.

European Union: VAT Charged and Paid Several Years After Sale Not Subject to Original Time Limit

On March 21, 2018, the ECJ published its judgment in *Volkswagen AG*, Case C-533/16, regarding whether a tax authority may deny the right to recover VAT related to initial transactions that were not subject to VAT, but subsequently become subject to VAT. In the case at hand, a number of Slovakian companies sold the taxpayer moulds for car lights. From 2004 to 2010, the companies did not charge and invoice VAT because they considered the sales as exempt financial compensation, but realized later that the sales should have been subject to VAT. On realizing the mistake, the vendors invoiced the VAT to the taxpayer, collected and paid it over to the tax authority. Because the taxpayer was not established and registered in Slovakia, it filed a VAT refund claim for nonresident taxpayers established in the EU. The tax authority allowed five years of recovery, but refused the VAT on sales made in older periods.

The ECJ observed that according to Directive 2008/9, which provides the framework for the VAT refund claims incurred in one Member State by a taxpayer established in another Member State, entitlement to a refund of VAT is to be determined pursuant to the EU VAT Directive as applied in the Member State of refund. Consequently, the right of a taxpayer established in a Member State to obtain the refund of VAT paid in another Member State is the counterpart of such a person's right established by the VAT Directive to deduct VAT incurred on expenditures in its own Member State. According to the EU VAT Directive, the right to deduct VAT must be exercised during the same period as that in which it has arisen, namely once the tax becomes due. A taxpayer may be authorized to make a VAT deduction even if it did not exercise its right during the period in which the right arose, subject to compliance with the conditions and procedures determined by national legislation. However, such a right is subject to temporal limits, but such rights cannot be used so as to have the likely effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT. The ECJ held that it was objectively impossible for the taxpayer to exercise its right to VAT refund prior to the adjustment made by the vendors, as it had neither been in possession of the invoices nor was aware that the VAT was due. Only following that adjustment, the substantive and formal conditions giving rise to a right to VAT deduction were met and the taxpayer could therefore apply for VAT refund. As a consequence, since the taxpayer did not demonstrate a lack of diligence, and in the absence of an abuse or fraudulent collusion with the vendors, the tax authority cannot use a limitation period which began from the date of sale of the goods and which, for certain periods, expired before this adjustment. To read a report prepared by the KPMG International member firm in Slovakia, please click here.

Source: SK: ECJ, Mar. 21, 2018, Case C-533/16, Volkswagen AG v. Finančné riaditeľstvo Slovenskej republiky, ECJ Case Law IBFD.

European Union: VAT Exempt Payment and Transfer Services Should be Limited to Services Operated as a Way of Transferring Money

On March 21, 2018, the ECJ published the Opinion of its AG in *DPAS Ltd*, Case C-5/17, regarding whether transfer and payment services are VAT exempt. In the case at hand, the taxpayer manages the administration, finance and insurance aspects of UK dental plans, which are agreements under which a dentist agrees to provide a certain level of dental care in return for a fixed monthly payment that is normally made by direct debit. The taxpayer receives the monthly direct debits from patients and then instructs direct debits to be made to the dentists and insurance providers less amounts for its services. Historically, the taxpayer entered into contractual arrangements with the dentists, and the UK tax authority considered the taxpayer's activities as VAT exempt transactions concerning payments and transfers. However, in *AXA UK*, Case C-175/09 (October 28, 2010), the ECJ held that similar services constituted, "as a matter of principle," transactions concerning payments, but had to be regarded as debt collection and factoring services subject to VAT at the standard rate. The taxpayer restructured its business, effective 2012, so that it was making sales to both the dentists and patients. It accepted that the sales to the dentists were subject to VAT and decided to absorb the added VAT as a cost. However, the taxpayer argued that its services to patients were exempt on the basis that these were the same type of services as before, but could not qualify as debt collection as they were being provided to the patient. HMRC however considered these services to patients also subject to VAT.

The AG began by analyzing whether the services at issue fall under the VAT exemption for transactions concerning payments and transfers. The AG noted that according to established case law, the definition of "transaction concerning payments or transfers" strictly refers to the concept of a "transfer" and not to that of a "transaction concerning transfers." In essence, such services operate as a way of transferring money. The AG stated that such services can be broken down into separate services, which can still constitute transactions concerning transfers as long as the transactions as a whole fulfil the specific, essential functions of such transfers. As a consequence, the AG opined that in the current case the taxpayer's services are physical, technical, or administrative services, which do not result in the legal and financial changes required for exemption. The taxpayer does not carry out the transfers, but instead asks the relevant financial institutions to do so.

Acknowledging that the ECJ's decision in *AXA* is not reconcilable with his own, (which is that the service is not a transaction concerning transfers or payments at all), the AG is of the view that the ECJ in *AXA* did not examine the correct criteria when establishing whether the taxpayer's services were transactions concerning payments or transfers. In *AXA*, the ECJ did not consider the change of legal and financial relationship test that was set out in prior cases. The AG added that he did not think that the ECJ intended to depart from existing case law and did not establish new criteria by which to define the concept of a transaction concerning payments and transfers. Noting the subsequent application of traditional case law in cases following *AXA*, the AG's proposed response is that the ECJ should not follow the solution adopted in *AXA*.

Source: European Union; United Kingdom – ECJ Advocate General's opinion: Commissioners for Her Majesty's Revenue and Customs v. DPAS Limited (Case C-5/17) – Exemption; financial services; debt collection (Mar. 21, 2018), News IBFD.

European Union: Report on VAT & E-Commerce Published

On March 12, 2018, the European Commission published a report on cooperation between Member States and businesses in the field of e-Commerce/modern commerce. The report highlights the following challenges tax authorities face regarding e-commerce: non-registration for VAT purposes; under-declaration of VAT; criminal activity disguised as legitimate transactions; access and exchange of data; and enforcement of VAT claims. On the other hand, businesses face the following challenges: different domestic tax and legal obligations; balancing customer privacy and provision of data for tax purposes; complex and inconsistent international VAT rules; compliance burden; online compliance is not supported sufficiently; tax authorities are not familiar with business models; and communication channels between businesses and tax authorities or between tax authorities are sometimes ineffective. The report further identifies short and long-term initiatives to address the challenges. In the short term, the report suggests: access and exchange of relevant data; exchange of information on non-compliant businesses and practices; education of users and sellers; online registration and compliance processes; improve public databases to support business due diligence checks; improve tax authority systems and knowledge; and encourage voluntary disclosure and corrections. Finally, as long-term initiatives, the report suggests: cooperation with third countries; single, harmonized procedure for transmitting, accessing and sharing data; and VAT legislation that supports the digital economy.

Source: European Union – European Commission report on VAT aspects of e-commerce (Mar. 20, 2018), News IBFD.

European Union: Overview of Infringement Proceedings Opened Against Member States

On March 8, 2018, the European Commission decided to send notifications of infraction proceedings against several Member States.

Against Bulgaria, the Commission argues that the Bulgarian VAT rules requiring companies trading in fuel to provide an advance guarantee are incompatible with the EU VAT Directive and with the freedom to conduct a business stemming from the Charter of Fundamental Rights of the European Union. Moreover, the Commission is of the opinion that the Bulgarian VAT rules for determining the taxable amount for sales consisting of the use of business assets for private or non-business purposes and for the transfer of a taxpayer's own goods to another EU Member State are incompatible with the EU VAT Directive.

Against Cyprus, Greece, and Malta, the Commission argues that the Cypriote VAT rules for the provision of yachts is incompatible with the EU VAT Directive because Cyrus and Greece consider that the leasing of larger vessels are likely not taxable in the Member State. In addition, Cyprus and Malta treat hire-purchase agreements as sales of services and not as sales of goods, thus resulting in less VAT being charged.

Against Germany, the Commission argues that Germany's flat rate scheme for farmers is incompatible with the EU VAT Directive because large farmers are also required to apply the flat-rate farmer scheme, resulting in overcompensation for the farmers' VAT incurred on purchases, which is not allowed and creates major distortions of competition.

Source: European Union; Bulgaria – European Commission sends Bulgaria letter of formal notice regarding VAT rules for companies trading in fuel (Mar. 8, 2018), News IBFD; European Union; Bulgaria – European Commission sends Bulgaria letter of formal notice regarding VAT rules for private or non-business use of business assets (Mar. 8, 2018), News IBFD; European Union; Cyprus – European Commission sends Cyprus letter of formal notice for VAT rules for provision of yachts (Mar. 8, 2018), News IBFD; European Union; Germany – European Commission sends Germany letter of formal notice regarding VAT flat-rate farmer scheme (Mar. 8, 2018), News IBFD; European Union; Greece – European Commission sends Greece letter of formal notice for VAT rules for provision of yachts (Mar. 8, 2018), News IBFD; European Union; Malta – European Commission sends Malta letter of formal notice for VAT rules for provision of yachts (Mar. 8, 2018), News IBFD.

Poland: Proposed Amendments to VAT Law

On February 13, 2018, the government of Poland presented a new bill which, if approved, would amend the country's VAT law effective July 1, 2018. The Bill would amend the definition of "first occupation" applicable with respect to the sale of buildings, clarifying that a first occupation will not be dependent on any taxable sales. The government further proposes to eliminate the opportunity obtain a refund or to carry forward excess VAT incurred in situations in which the tax authority proves that the burden of tax was passed onto a buyer of goods, a recipient of services or a third party, and the refund would result in the taxpayer's unjust enrichment. In addition, the Bill would allow taxpayers to ask a vendor to replace cash receipts with an invoice only if the buyer's VAT number is on the cash receipt. Moreover, a vendor who fails to comply with this rule will be obligated to pay additional tax liability equal to the amount of tax indicated in the invoice that was issued in exchange for a tax receipt without the buyer's VAT number. Buyers would also incur a tax liability equal to the amount of VAT deducted from an invoice that has been issued in exchange for a cash receipt. Finally, the government proposes to extend the list of businesses that may be VAT exempt provided their gross receipts are below PLN 200,000 ($57,350) to include: distance sales of computers, electronic and optical devices, electronic and non-electronic house equipment and other equipment, and debt collection services companies.

Source: Poland – Amendments to VAT Law announced (Mar. 13, 2018), News IBFD.

Russia: Overview of Recently Published VAT Guidance

On February 20, 2018, the Ministry of Finance of Russia (MOF) published Guidance Letter No. 03-07-08/4403 in which it held that where consulting services are provided directly to the non-resident legal entity and not its permanent establishment in Russia, such services are not deemed to be provided in Russia and are therefore not subject to VAT in Russia.

On February 22, 2018, the MOF published Guidance Letter No. 03-07-08/11188 in which it held that the sale by a Russian legal entity of goods to a foreign buyer if the ownership title to those goods passes to the buyer in Russia and the goods are kept by the Russian seller until their actual export to the foreign buyer should be zero-rated. The zero-rating will apply only if the taxpayer provides the tax authority with the documentation stipulated by Tax Code within 180 days of the placement of the goods under export customs procedure (i.e., the purchase and sale contract (or a copy), copies of shipping documents, documents of title, certified customs declarations (or copies), and other documents confirming the export of the goods).

On March 2, 2018, the MOF published Guidance Letter No. 03-07-08/7923 in which it held that services provided by a foreign company to a Russian entity regarding the organization of a conference abroad are not subject to VAT in Russia. On March 2, 2018, the MOF further clarified that the transfer of immovable property as payment of dividends to its founders is subject to VAT. Finally, on March 5, 2018, the MOF published Guidance Letter No. 03-07-08/8005 in which it held that the sale of equipment purchased and used abroad without importation in Russia is not subject to VAT in Russia.

Source: Russia – VAT on consulting services provided under contract between non-resident companies – MoF clarifications (01 Mar. 2018), News IBFD; Russia – No VAT on organizing conferences abroad (12 Mar. 2018), News IBFD.; Russia – Equipment purchased and used abroad not subject to Russian VAT (12 Mar. 2018), News IBFD; Russia – VAT implications of dividend payment in form of immovable property (19 Mar. 2018), News IBFD; Iurie Lungu, Russia Issues Guidance on Corporate Tax, VAT Matters, Tax Analysts (Mar. 15, 2018).

United Kingdom: Updated Guidance on VAT Treatment of Grants

On January 24, 2018, the UK tax authority (HMRC) updated its guidance on grants, addressing specifically the question of when a payment is consideration for a sale for VAT purposes. A grant can be different from a donation (which is defined as an amount freely given with no expectation of anything in return). A grant will often come with strings attached such that it can only be spent on certain things, and the grant recipient must send reports to the funder showing how the money has been spent and the progress that has been achieved in the project the grant is funding. At its simplest, a grant payment is consideration for a sale if there is a benefit provided to the funder in return for the payment. It is not consideration if there is no direct benefit, and any benefit accrues to the wider community. However this definition does not cover the situation in which the grant is actually third party consideration (a targeted payment/subsidy for a sale made to someone else) such as was the case in *Keeping Newcastle Warm*, Case C-353/00 (Jun. 13, 2012). In *Keeping Newcastle Warm,* the ECJ held that a sum paid as a subsidy by a public authority to an economic operator in connection with the service of energy advice provided by the latter to certain categories of households constitutes part of the consideration for the provision of services and forms part of the taxable amount in respect of that sale. However, such a situation should not be confused with a general subsidy paid to help cover the costs of a public service, which is outside the scope of VAT. The guidance lists some factors that can point to a grant being consideration, or not, such as: whether there is a contract; who benefits from what is done with the money; who holds the balance of power; and who controls what is done with the money. The guidance also lists some neutral factors, clarifying for instance that just describing something as a grant is not enough if the facts point to it being payment for a sale.

United Kingdom: EU Opens Infringement Proceeding Regarding Zero-Treatment of Derivatives

On March 8, 2018, the European Commission issued a notification of infraction proceedings against the UK in respect of VAT treatment of certain commodity derivatives, trading under the Terminal Markets Order (TMO). The TMO is a Statutory Instrument (SI) that allows a specific VAT zero rate for derivative transactions in spots, futures (and options on) commodity contracts, when traded on an exchange. Currently the UK interprets the TMO as permitting zero-rating for futures transactions between two market members as well as those between a market member and non-market member, provided the transactions do not lead to physical delivery. For options, the zero-rating applies if the option is exercisable at a future date provided the commodity is ordinarily dealt with on a terminal market listed under the TMO.

The Commission argues that since notifying its derogation in 1977, the UK has considerably extended the scope of the measure, and it is no longer limited to trading in the commodities originally covered by the derogation. This infringes on EU law because this type of "standstill" derogation cannot be extended and because it generates major distortions of competition to the detriment of other financial markets within the EU. In a statement, HMRC confirms that the UK's current tax treatment of commodity derivatives remains unchanged until such time as it is changed. The UK Government will no doubt be considering the Commission's views. If the Commission is unsatisfied with the UK's response, it will then send a reasoned opinion. If the Commission remains unsatisfied with the UK's subsequent response, it can make an application to the CJEU. The whole process can be quite lengthy and has been known to take a number of years before the CJEU gives judgment. To read a report prepared by the KPMG International member firm in the UK, please click here.

United Kingdom: Update on Brexit

On March 19, 2018, the UK Department for Exiting the European Union published the draft agreement on the withdrawal of the UK from the EU, which is expected to be effective March 29, 2019. The draft agreement includes legal text for the implementation period, citizens' rights, and the financial settlement, as well as a significant number of other articles, including a transition period that will start at the entry into force of the agreement and end on December 31, 2020. The transition period applies for different aspects of the agreement, including with respect to ongoing VAT and excise duty matters. According to the draft agreement, the EU VAT Directive will continue to apply in respect of goods shipped from the UK to an EU Member State, and *vice versa*, provided that the shipment starts before the end of the transition period. Moreover, the EU Excise Duty Directive will continue to apply in respect of shipments of excise goods under a duty suspension arrangement and shipments of excise goods after release for consumption from the UK to an EU Member State, and *vice versa*, provided that the shipment starts before the end of the transition period. The UK and the EU negotiating teams will continue to work on the draft agreement, with the goal of finalizing the agreement by October 2018. To read a report prepared by the KPMG International member firm in the UK, please click here.

Source: Orbitax, UK Draft Agreement on Withdrawal from the EU including Transition for VAT and Excise Duty (Mar. 22, 2018).

Asia Pacific (ASPAC)

Australia: Guidance on Import GST Rules

On March 7, 2018, the Australian Taxation Office (ATO) released three goods and services tax (GST) Law Companion Rulings (GST LCR) clarifying the new GST cross-border rules for low-value goods that are effective July 1, 2018. Recall, under the upcoming changes, remote sales of low value goods, which are imported goods with a value below AUD 1,000 ($775) that are purchased by consumers and brought to Australia will be subject to GST.

In LCR 2018/1, the ATO discusses when a sale of low value goods will be connected with Australia because of the amendments. This will be relevant to merchants, operators of electronic distribution platforms (EDP operators) and "redeliverers" (e.g., postal and courier services). This Ruling further discusses: how to calculate the GST payable on a sale of low value goods; the rules to prevent double taxation of goods, and to correct errors or deal with changes in the GST treatment of a sale; and how the rules interact with other rules under which sales are connected with Australia.

In LCR 2018/ 2, the ATO discusses sales made through electronic distribution platforms (EDPs) because under the new rules EDP operators are responsible for GST not only on sales of digital products and services (since July 1, 2017), but also remote sales of low value goods brought to Australia. The Ruling provides a four step analysis to determine an EDP's GST liability: whether a sale is made through an EDP; whether a sale is subject to the EDP rules; whether a sale is excluded from the EDP rules; and if multiple EDPs are involved, which EDP operator is responsible for the GST.

In LCR 2018/3, the ATO discusses the amendments that make a "redeliverer" responsible for GST on a remote sale of low value goods brought to Australia, in particular clarifying: who is a redeliverer; who is not a redeliverer; when a redeliverer is responsible for GST on an offshore sale of low value goods; and who is responsible for GST when there are multiple redeliverers of such sales.

Source: Orbitax, Australia Issues Three Law Companion Rulings on GST for Low Value Goods (Mar. 14, 2018).

Australia: Proposal to Introduce GST Withholding on Sales of New Residential Properties

In February 2018, the government of Australia proposed a Bill which would, if approved, amend the GST treatment of the sale of "new residential premises" effective July 1, 2018. According to the proposal, a purchaser would be required to withhold and remit an amount to the ATO when purchasing new residential property rather than having the seller charge GST. The proposal includes transitional provisions if a contract of sale is entered into prior to July 1, 2018 and any consideration under the contract (excluding the deposit) is provided before July 1, 2020. Otherwise, any consideration paid for the sale of new residential premises after July 1, 2018, will be subject to the new “GST withholding.” The amount to be withheld is 1/11th of the purchase price. If the seller uses the margin scheme, it is seven percent of the purchase price. Settlement adjustments are ignored for determining the amount of GST withholding. Prior to settlement, the seller must provide a statement to the purchaser setting out the amount to be withheld and paid to the ATO. Failure to comply with this requirement may result in penalties up to AUD 21,000 ($16,290). Moreover, the seller is entitled to credit the GST amount withheld by the purchaser and remitted to the tax authority. This means if the purchaser withholds an amount from the seller, but does not pay it to the tax authority, the seller will not be entitled to credit any amount. The proposal further clarifies that a long term lease of more than 50 years is treated as a sale and subject to the new provisions. In addition, the sale of a house and land package under a single contract will have different treatment (i.e., full withholding) compared to the sale of land with a separate contract for construction (i.e., withholding only on the sale of land.) To read a report prepared by the KPMG International member firm in Australia, please click here.

China: Amendments to VAT Law

On March 28, 2018, China’s State Council introduced amendments to the country’s VAT law that are effective May 1, 2018. In addition to the VAT rate changes discussed above, China will amend its VAT registration threshold. When the VAT pilot program was first introduced in 2012 for the services sectors, the threshold for compulsory registration as a general VAT taxpayer was RMB5 million ($797,000) of annual gross receipts. By contrast, the threshold for compulsory registration as a general VAT taxpayer for industrial companies was RMB 500,000 ($79,700) per year and for trading companies it was RMB800,000 ($127,600) per year. The State Council’s announcement seeks to ensure uniformity by applying a RMB5 million threshold of annual gross receipts for all taxpayers. Any business below this threshold will be able to register as a small scale VAT taxpayer and pay VAT at a flat rate of three percent VAT on its sales, without entitlement to claim credits, unless it opts to register as general VAT taxpayer. This change will likely result in some small taxpayers in sectors such as manufacturing, wholesaling, distribution, importation ceasing to register as general VAT taxpayers. This will, in turn, affect businesses that receive goods from such taxpayers as they may now potentially be unable to obtain special VAT invoices at standard VAT rate from them for crediting purposes.

The State Council further announced that businesses engaged in advanced manufacturing, qualified modern service companies such as those carrying out R&D services, and companies operating electrical grids will be entitled to a one-off refund of excess VAT credits accumulated over a specific period of time. The entitlement to a VAT refund has been available for certain industries already such as integrated circuits, large planes, naphtha, fuel and oil as part of a pilot in certain provinces such as Shandong. This now appears to be extended nationally, though for specific sectors only. Further details of these arrangements will likely follow to clarify the potential impact.

Finally, the State Council announced that small scale taxpayers that have opted for the general VAT taxpayer status can choose to convert back to being small scale taxpayers within a certain period of time. However, it is not clear whether such a company will be entitled to a VAT refund if it has excess VAT credits at the time of conversion, or whether such a balance can be carried forward to offset its future VAT payable. To read a report prepared by the KPMG International member firms in China and Hong Kong, please click here.

Trade & Customs (T&C)

European Union: Proposal to Use Existing Customs Systems for Certain Customs Formalities Until 2025

On March 2, 2018, the European Commission proposed that customs authorities and economic operators should be allowed to continue using already existing systems for the completion of a small number of customs formalities until 2025. The change concerns the Union Customs Code (UCC), a new framework regulation for the rules and procedures for customs throughout the EU, which was introduced on May 1, 2016. It represents a major overhaul of existing EU customs legislation, which dates back to 1992. In January 2018, the European Commission reported that the new UCC was introduced into Member States' legislative frameworks without a hitch, but new IT frameworks may take longer than planned to implement. While most of the new or upgraded electronic systems that are necessary to apply the provisions of the UCC will be operational by 2020, some electronic systems may not be fully completed until 2025. The proposal would ensure that, in the case of customs formalities to be managed by electronic systems that will not be completed by 2020, already existing electronic systems or paper-based procedures can continue to be used until the new systems are ready. For more information, click here.

Source: CCH, Global VAT News & Features, EU Agrees Customs Code Changes (Mar. 9, 2018)

European Union: Customs Registration Process Updated

Effective March 5, 2018, the European Commission introduced a new application process to obtain an "economic operators registration and identification" (EORI) number. Before beginning customs activities in the EU, economic operators need to complete certain steps. First, any economic operator established in the EU needs to have an (EORI number. Economic operators established outside the EU need an EORI number if they file a customs declaration, an entry summary declaration, or an exit summary declaration. An EORI number also is needed to apply for Authorised Economic Operator (AEO) status (AEO applicants need to have an EORI number that is entered in box 9 of the AEO application form). According to the European Commission, the updated application process—EORI2—reflects legal changes brought about by the UCC and the delegated and implementing legislation.

Under the new application process the size of the fields for company names is expanded to reflect international standards, making it possible to insert company names with up to 512 characters. In addition, for EORI numbers that are no longer active, the expiry date is a mandatory data element. The information must be kept for 10 years after the expiry date to facilitate the correction of customs declarations that were filed before the economic operator became inactive. Finally, for economic operators with an address in a third country, there is information available regarding whether this economic operator is considered as being established in the customs territory of the EU and therefore entitled to file a customs declaration in the EU. This is intended to avoid "cumbersome checks" at the border when the customs declaration is actually filed, and to allow for a smooth flow of goods across the border. For more information, click here.

In Brief

Bangladesh: The government of Bangladesh recently announced that the introduction of the New Value Added Tax Act 2012 will be postponed until July 1, 2019. As a consequence, the provisions of the current VAT Act remain in force. However, all businesses are required to obtain a nine-digit electronic business identification number (e-BIN) by June 30, 2018. To read a report by the KPMG International member firm in Bangladesh, please click here.

Belarus:[ii] On February 16, 2018, the Ministry of Taxes and Duties of Belarus published an excerpt from Letter No. 2-1-10/00201 in which it clarifies that taxpayers may deduct VAT paid on imports of goods in a reporting period if the electronic VAT invoice (EVI) on the transaction was submitted to the online VAT portal before the due date for filing the VAT return for that reporting period. However, if the EVI is uploaded to the online VAT portal after the due date, the right deduct VAT incurred on the importation arises in the reporting period when the EVI was uploaded.

Bulgaria:[iii] On March 1, 2018, the parliament of Bulgaria adopted a law with amendments to the Customs Act which also includes various VAT amendments. Effective January 1, 2019, companies will be required to use sales management software that is included on a list maintained by the National Revenue Agency. As a consequence, taxpayers are required to replace older cash registers, and any upgrades of more modern devices must include the new software. In addition, the National Revenue Agency will create an electronic list of sales management software in retail outlets. Traders will only be allowed to use the listed software in their outlets.

Belize:[iv] The government of Belize recently presented the Budget for 2018. If adopted, the Budget would impose GST at a rate of 12.5 percent on the purchase of internet data. Moreover, the government proposes to repeal exemptions for the broad categories of land clearing, crop dusting, and harvesting. The government further proposes to levy GST on contracts, imports, and purchases to which the government of Belize is a party; these are currently exempt. Finally, the government proposes to harmonize the GST applied to Belize's business processing outsourcing sector, with operating expenses becoming ineligible for classification as deductible expenditures. This policy will apply to all processors ensuring a level playing field across this sector.

Canada:[v] On February 27, 2018, the government of Canada presented the Budget for 2018 which, if adopted, would amend the country's goods and services tax/harmonized sales tax (GST/HST) law. The Budget revises certain proposed rules relating to the application of the GST/HST to investment limited partnerships. These proposals would clarify that GST/HST is payable on the fair market value of management and administrative services provided to an investment limited partnership by the general partner of the investment limited partnership in cases in which consideration becomes due or is paid on or after September 8, 2017. Moreover, the government will initiate consultations regarding the GST/HST holding corporation rules, which allow a parent corporation to deduct GST/HST paid in respect of expenses that relate to another corporation. Finally, the Budget proposes a new federal excise duty framework for cannabis products to be introduced as part of the Excise Act, 2001.

Colombia:[vi] Colombia recently published in the official gazette Administrative Regulation 010 of 2018. It lists large taxpayers that will be required to issue invoices electronically effective September 1, 2018. To issues such invoices, large taxpayers must put in place the technical and technological resources required for issuing electronic invoices in XML format, and update the National Tax Registry (*Registro Unico Tributario*, RUT) by including the requirement regarding electronic invoicing.

Colombia:[vii] The National Tax Authority of Colombia (Dirección de Impuestos y Aduanas Nacionales, DIAN) recently published Ruling 034951 of 2017 in which it clarified that the VAT exemption relating to services of cloud computing, web hosting, and remote software and hardware maintenance is not only limited to services provided by the vendor to the final consumer, but also to intermediate supplies of such services.

Dominican Republic:[viii] On February 13, 2018, the Directorate General of Internal Revenue (*Dirección General de Impuestos Internos*, DGII) published Taxpayer Guide 20 on the special consumption tax (*impuesto selectivo al consume*, ISC). The guide covers: persons subject to ISC (persons who pay ISC); products and services subject to ISC; persons subject to compliance (persons who collect and remit ISC); tax rates; tax compliance; settlement procedures; and interest and penalties.

Ethiopia:[ix] Effective February 20, 2018, Ethiopia increased the mandatory VAT registration threshold from ETB 500,000 ($18,000) to ETB 1 million ($36,000) effective February 20, 2018.

European Union:[x] On February 22, 2018, the ECJ published the Opinion of its AG in *Gmina Wrocław*, Case C-665/16, involving a transfer of ownership of immovable property owned by a municipality to the Public Treasury in return for effective payment of compensation. It concluded that in a case in which, under the rules of national law, that immovable property continues to be managed by the mayor of a municipality, who is simultaneously the representative of the Public Treasury and the executive body of the municipality, there is a taxable sale of goods within the meaning of the EU VAT Directive.

European Union:[xi] On February 28, 2018, the ECJ published its judgment in *Stanisław Pieńkowski*, Case C-307/16, regarding whether Poland was allowed to subject the benefit of a zero-rate to the attainment of a certain gross receipts threshold or the conclusion of an agreement with a person authorized to make VAT refunds to travelers. Recall, in the case at hand, the taxpayer sold telecommunications equipment to travelers residing outside the EU. He applied a zero VAT rate to such sales. The Polish tax authority challenged this approach arguing that the taxpayer did not exceed the gross receipts threshold that would allow application of a zero VAT rate. The ECJ held that a Member State cannot make the application of the VAT zero rate for export sales carried in the personal luggage of travelers dependent on the requirements that the seller must have attained a certain amount of gross receipts in the preceding year or has concluded an agreement with a taxpayer authorized to refund VAT to those travelers where the failure to meet these requirements results in a definitive loss for the vendor to apply that VAT zero rate.

European Union:[xii] On February 28, 2018, the European Commission launched a consultation on proposals to enhance the amount of data available to member states and European law enforcement bodies to better combat e-commerce VAT evasion and fraud. The consultation is intended to collect stakeholders' opinions on: (1) the problem of VAT fraud in the field of e-commerce and its EU dimension; (2) whether the current EU legal framework to fight VAT fraud provides the tax authorities with the proper tools to fight VAT fraud in the field of e-commerce; (3) whether an EU harmonized approach could provide better tools to tax authorities to fight the VAT fraud in the field of e-commerce; and (4) the impact of the different policy options in terms of fighting fraud, regulatory costs, and individual rights, including issues of privacy and protection of personal data.

European Union:[xiii] On March 22, 2018, the ECJ published the Opinion of its AG in *Fontana*, Case C-648/16, in which the AG argued that the principles of proportionality and fiscal neutrality do not preclude national legislation that allows the authorities to assess the tax due by a taxpayer presumed to have under-declared value added tax through an inductive method based on sectoral studies which estimate the likely revenues of certain categories of taxpayer, provided that such legislation is applied in conformity with the Charter of Fundamental Rights of the European Union. The ECJ must now decide whether to follow the nonbinding Opinion of its AG.

European Union:[xiv] On March 8, 2018, the European Commission published a report on the effects of the reverse charge mechanism and the Quick Reaction Mechanism (QRM) on combating fraud. The EU VAT Directive allows Member States to require the customer to self-assess VAT under the reverse charge mechanism either to certain sales or under the QRM. Both measures are limited in time and may be applied until December 31, 2018. In general, both Member States and stakeholders consider the reverse-charge mechanism an effective tool for combating "missing trader" fraud; however, some Member States mentioned that the mechanism is still not entirely fraud proof, and some stakeholders noted that it is only effective for a short term. All parties involved confirmed the necessity of the reverse-charge mechanism.

However, Member States are divided on whether a shift to other sectors occurs when the reverse-charge mechanism is introduced for one sector. Similarly, Member States are divided whether a shift to other Member States occurs when the reverse-charge mechanism is introduced in a Member State. Although the increase of compliance costs was confirmed by both Member States and stakeholders, the increase was regarded as proportional to the effectiveness for combating VAT fraud. While the QRM was never applied due to the difficulty in meeting the underlying conditions, the majority of Member States considers the QRM a useful tool. Given the generally positive feedback from Member States, the Commission recommends continuation of these provisions.

Hungary: On March 14, 2018, the European Union published in the official gazette a Decision authorizing Hungary to require the customer to self-assess VAT under the reverse charge mechanism on sales of capital goods by a taxpayer under liquidation or any other proceedings legally establishing its insolvency and sales of other goods and services with an open market value exceeding HUF 100 000 ($396) by a taxpayer under liquidation or any other proceedings legally establishing its insolvency until December 31, 2021.

Germany:[xv] On February 28, 2018, the federal Ministry of Finance of Germany clarified that exchanging virtual currency for conventional currency and *vice versa* is exempt from VAT. Sales of goods and services for consideration in virtual currencies are treated in same way as transactions carried out in conventional currencies and are therefore subject to the same VAT rules.

Isle of Man:[xvi] Effective March 1, 2018, the Isle of Man introduced a new penalty of 30 percent of the potential lost VAT for businesses and company officers participating in VAT fraud if they knew, or should have known, that the transactions were connected with the fraudulent evasion of VAT by another person. In addition, the Treasury has the power to issue regulations requiring registered businesses, or businesses liable to be registered, to use digital tools to keep records and submit VAT information and VAT returns.

Qatar:[xvii] According to recent news reports, Qatar is planning to launch its VAT regime effective January 1, 2019. As a Gulf Cooperation Council (GCC) member state, Qatar has agreed to implement a VAT regime with a standard rate of five percent VAT (For KPMG's previous discussion on the introduction of VAT in the GCC, please click here).

Latvia:[xviii] On March 13, 2018, the European Union published in the official gazette a Decision authorizing Latvia to require the customer to self-assess VAT under the reverse charge mechanism on sales of game consoles until December 31, 2018.

Moldova:[xix] On February 19, 2018, the State Tax Service of Moldova (STS) clarified that VAT deduction related to a purchased building that was subsequently demolished is allowed, provided that new immovable property used for business activities is built in its place. At the same time, the VAT deduction is allowed on services related to loading, unloading, building site preparation, installation and assembly, testing and inspection of the functionality of the building site, preparation of land for use according to its designation (leveling, cleaning, demolition of old buildings, cost of drainage, etc.), as well as payment of fees to architects, engineers and other professionals.

Moldova:[xx] On February 28, 2018, the STS clarified that marketing services that are carried out in Moldova and are provided by a resident of Moldova to a non-resident are regarded as an export of services for which VAT deduction of related expenses is allowed.

Moldova:[xxi] On 28 February 2018, the clarified that taxpayers are not allowed to deduct VAT paid or payable on goods and services not used for a business activity, or on goods, which were stolen, wasted, spoiled or are subject to natural losses over the annual framework established by the government.

Norway:[xxii] On March 20, 2018, the Ministry of Finance published a consultation note in which it recommends broadening the financial tax to target financial companies' use of loaned staff or support services provided by a jointly registered subsidiary that is not classified as a financial company. The amendments would exclude entities with wage costs associated with taxable financial activities that account for less than 30 percent of total wage costs. They would also exempt from VAT outsourced support services provided by external parties to stand-alone savings banks.

Poland:[xxiii] Poland is considering introducing a compulsory online cash register system for gas stations and car repair shops effective January 1, 2019. The cash registers will transmit information about sales transactions in real time to the tax authority. Companies must initially invest in online cash register systems, but they will then benefit from fewer tax audits and on-site inspections, because the registers will be able to communicate with a central database and analyze sales data remotely. There are also plans to roll the requirement out to other industries using cash registers: restaurants and short-term rentals (effective July 1, 2019); and legal practitioners, doctors, dentists, hairdressers, beauticians, and those involved in construction services (effective January 1, 2020). All other companies not explicitly mentioned in the proposal would have to convert to online cash registers by end of 2018 if using cash registers with paper archiving and by the end of 2022 if using cash registers with electronic archiving.

South Africa: On March 8, the South African Revenue Service (SARS) published a guide on the taxation of professional sports clubs and players, which covers, among other items, the VAT treatment applicable to transfer fees, signing-on fees, sponsorships, prizes, ticket sales, insurance premiums paid by clubs, fringe benefits, image rights payments to players, travel allowances, reimbursements, and medical expenses.

Sweden:[xxiv] On March 1, 2018, the Ministry of Finance of Sweden proposed amendments to the country's VAT Act to implement the new EU voucher rules into Swedish legislation effective January 1, 2019. (For KPMG's previous discussion on the EU Voucher Directive, click here.) The proposal would introduce definitions of vouchers, single-purpose vouchers, and multi-purpose vouchers and introduce rules regarding when VAT can be charged on transactions with single-purpose or multi-purpose vouchers, as well as clarifying the tax base for transactions with multi-purpose vouchers.

Taiwan: Taiwan's Executive Yuan has published an English-language release from the National Taxation Bureau of Taipei clarifying the requirements for domestic businesses to pay VAT on e-services acquired from non-resident vendors. Recall, effective May 1, 2017, non-resident vendors with no fixed place of business in Taiwan that provide electronic services to domestic individuals (B2C) need to register and account for VAT. The requirement does not apply to sales made to domestic businesses (B2B).

Ukraine:[xxv] Effective February 21, 2018, taxpayers can opt to pay VAT in instalments over two years for equipment imported into the customs territory of Ukraine for the purposes of own production in Ukraine. The application form must be accompanied by (1) a business plan or other document stating the technological process plus economic calculations and expected performance results; and (2) if available, conclusions of the state authorities, expert institutions, organizations, state standards and enterprise standards, technical conditions, technical documentation, and documents confirming the availability of production capacities and premises. In general, the customs office issues a decision on the application within 10 business days. However, if, at the date of receipt of the application, the amount of VAT due exceeds UAH 1 million ($38,000), the decision will be issued in agreement with the head of the tax office within 25 business days.

Ukraine:[xxvi] On March 9, 2018, the State Fiscal Service of Ukraine (SFS) published Guidance Letter No. 796/6/99-99-15-03-02-15/IPK in which it held that services provided by an agent under the commission contract with its principal, including the provision to the principal of the results of the services received by the agent from third parties at the request of the principal, are subject to VAT in Ukraine if these services are provided in Ukraine.

United Arab Emirates:[xxvii] The UAE Federal Tax Authority (FTA) recently issued a release clarifying whether the vendor or end-consumer is liable for VAT on goods and services to be delivered fully or partially in 2018, but contracted prior to 2018. According to the Federal Tax Authority (FTA), the only case in which consumers are directly responsible for paying VAT on received services that are delivered fully or partially after VAT went into effect, is where the contract, issued before January 1, 2018, states that the amount due is exclusive of tax. Vendors are liable for VAT in two cases: (1) if the contract states that the amount received against the good or service is inclusive of VAT or (2) if the contract issued to the consumer did not refer to VAT. In the latter case, if the recipient is registered for tax, the amount due is treated as exclusive of tax and the vendor is required to ascertain whether the recipient is registered and the recipient's ability to recover VAT. The FTA stressed that in all cases, the vendor remains liable for accounting for the tax and paying it to the FTA.

United Kingdom:[xxviii] On February 28, 2018, the UK government released the Value Added Tax (Amendment) Regulations 2018, which introduce the new digital tax administration obligations for VAT-registered persons in the UK, stemming from the Government's Making Tax Digital (MTD) project. Under MTD, effective April 1, 2019, businesses with gross receipts above the VAT threshold are required to keep their records digitally (for VAT purposes only) and provide their VAT return information to the tax authority (HMRC) through MTD-compatible software. MTD will be available on a voluntary basis to other businesses, for both VAT and income tax.

United Kingdom: On March 13, 2018, the UK announced a several tax related consultations including one on using the split payment method for VAT collection, one on the effects of the current VAT registration threshold, and one on the impact of VAT and Air Passenger Duty APD on tourism in Northern Ireland. Moreover, the UK government has published an updated position paper on the taxation of the digital economy, with the clear overriding message that the Government has a strong preference for coordinated, multilateral action in this space. The Government is waiting to see how the landscape evolves in light of anticipated recommendations to be published at OECD and EC level over the coming weeks. Finally, the UK government will explore how online platforms could work with HMRC and taxpayers to help people who sell through the platforms understand and meet their tax obligations. To read a report prepared by the KPMG international member firm in the UK, please click here.

United Kingdom:[xxix] On March 22, 2018, the UK tax authority (HMRC) published Revenue and Customs Brief, 3/2018, and Information Sheet 2/2018, which provide changes in its policy concerning Cost Sharing Groups (CSGs) effective June 1, 2018. In the Information Sheet, HMRC indicates that its Cost Sharing Exemption Manual will be updated. Details of the changes to be made to the Manual are contained in Appendix A of the Information Sheet. The change in policy is the result of HMRC's analysis of the following recent ECJ cases involving CSGs: Commission v. Luxembourg (Case C-274/15 (May, 4, 2017)); Aviva (Case C-605/15 (September 21, 2017)); DNB Banka AS (Case C-326/15 (September 21, 2018)); and Commission v Germany (Case C-616/15 (September 21, 2017)). As a consequence of the new policy, housing associations will be excluded from the CSG exemption. In addition, CSGs that are based outside the UK, or which have members based outside the UK, are no longer able to take advantage of the CSG exemption. The Information Sheet gives guidance on transitional arrangements for existing CSGs that no longer qualify to use the Cost Sharing exemption. Any Cost Sharing Groups that foresee significant difficulty in implementing the transitional arrangements must contact HMRC by May 1, 2018.

Uzbekistan:[xxx] Effective January 1, 2019, Uzbekistan will repeal the VAT exemption for imported medicines and other medical products. Between April 15, 2018 and January 1, 2019, this exemption applies only if those types of imported medicines and other medical products are not produced in Uzbekistan.

About *Inside Indirect Tax*

Inside Indirect Tax is a monthly publication from KPMG's U.S. Indirect Tax practice. Geared toward tax professionals at U.S. companies with global locations, each issue will contain updates on indirect tax changes and trends that are relevant to your business.

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i. **Austria** – Parliament approves draft bill on reduction of VAT rate for accommodation services (Mar. 29, 2018), News IBFD.

ii. **Belarus** – VAT deduction on imports – clarifications issued (Feb. 28, 2018), News IBFD.

iii. **Bulgaria;** European Union – Various VAT amendments adopted by parliament (Mar. 2, 2018), News IBFD.

iv. **CCH,** Global Daily Tax News, Belize's Budget Broadens GST, Excise Taxes, (Mar. 19, 2018)

v. **Canada** – Budget 2018 – sales and excise tax measures (Feb. 28, 2018), News IBFD.

vi. **Colombia** – Large taxpayers required to invoice electronically (Feb. 27, 2018), News IBFD.

vii. **Colombia** – National Tax Authority amends unified ruling on VAT exemption for cloud computing, web hosting, and remote software and hardware maintenance services (Mar. 2, 2018), News IBFD.

viii. **Dominican Republic** – Guidance on consumption tax (Mar. 1, 2018), News IBFD.

ix. **Ethiopia** – VAT registration threshold – increased (Feb. 28, 2018), News IBFD.

x. **European Union**; Poland – ECJ Advocate General's opinion (VAT): Minister Finansów v. Gmina Wrocław (Case C-665/16) – Transfer of immovable property against payment of compensation (Feb. 28, 2018), News IBFD.

xi. **PL:** ECJ, Feb. 28, 2018, Case C-307/16, *Stanisław Pieńkowski v. Dyrektor Izby Skarbowej w Lublinie*, ECJ Case Law IBFD.

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xix. **Moldova** – Input VAT related to purchased and demolished building – State Tax Service clarifications (Feb. 28, 2018), News IBFD.

xx. **Moldova** – VAT regime applicable to marketing services – State Tax Service clarifications (06 Mar. 2018), News IBFD.

xxi. **Moldova** – Input VAT deduction on expired goods – State Tax Service clarifications (06 Mar. 2018), News IBFD.

xxii. **Ryan Finley**, Norway Proposes Expanding Scope of Financial Tax, Tax Analysts (Mar. 21, 2018).

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xxv. **Ukraine** – VAT payment in instalments – Order of Cabinet of Ministers in force (Feb. 27, 2018), News IBFD.

xxvi. **Ukraine** – VAT on marketing services provided by non-resident to resident agent – SFS clarifications (Mar. 16, 2018), News IBFD.

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xxix. **United Kingdom**; European Union – VAT Cost Sharing Groups – change of policy in UK (Mar. 23, 2018), News IBFD.

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