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.

Global Rate Changes

- **Greece:**[i] On June 29, 2018, Greece extended the 30 percent reduction in VAT applicable to the islands of Lesbos, Chios, Samos, Kos, and Leros until December 31, 2018 (previously June 30, 2018).
- **Moldova:**[ii] On July 27, 2018, the parliament of Moldova approved a bill reducing the VAT rate for restaurant services from 20 percent to 10 percent.
- **Russia:**[iii] Effective January 1, 2019, Russia will increase its standard VAT rate from 18 percent to 20 percent. The reduced VAT rate of 10 percent on basic foodstuffs, medicines, children's wear, and periodicals remains unchanged.
- **Spain:**[iv] Effective July 5, 2018, Spain reduced the VAT rate applicable to cinema tickets from 21 percent to 5 percent.
- **Swaziland:**[v] Effective August 1, 2018, Swaziland increased its standard rate from 14 percent to 15 percent.

The Americas

United States: Texas Court Rules That Software Used to Produce Semiconductor Chips Was Not Used in Manufacturing

On July 13, 2018, the Texas Court of Appeals, Third District, ruled that a taxpayer's software purchases were not exempt under the state's manufacturing sales and use tax exemption. *Silicon Laboratories, Inc. v. Hegar*. The taxpayer, a producer of semiconductor chips, purchased Electronic Design Automation (EDA) software tools to design and develop semiconductor chips in a virtual environment. The taxpayer did not produce the chips itself, but contracted with a third-party foundry, based in Taiwan, to manufacture and fabricate the semiconductor chips. The software, in essence, enabled the taxpayer to replicate the foundry's specific manufacturing tolerances in the virtual environment in which it designed the chips. After the design phase was complete, the taxpayer created and transmitted a graphic design system file to the third party, which was used to fabricate the semiconductor chips. The third-party did not use the taxpayer's EDA software tools in the manufacturing process. Under the applicable section of the manufacturing exemption, sales and use tax does not apply to property that causes a direct "chemical or physical change" and "is necessary or essential" to the manufacturing operation. The tangible personal property—here, the EDA software tools—must be "directly used . . . in or during the actual manufacturing . . . of tangible personal property for ultimate sale." After the Comptroller concluded that the taxpayer did not qualify for the exemption, a trial court affirmed.

On appeal, the taxpayer argued that the trial court erred when it ruled that its EDA software purchases were not exempt. The appeals court, however, upheld the assessment. In the court's view, the software, which was used during the creation of the graphic design system file, was used in an activity performed in preparation for manufacturing and not during the actual manufacturing process. Under Texas law, the taxpayer bore the burden of establishing that the EDA software tools were "directly used" in the actual manufacturing of the semiconductor chips and not in preparation for the first stage of the production of the chips. The taxpayer failed to do so. The appeals court also addressed an ancillary argument that the EDA software tools were exempt as semiconductor fabrication equipment. The Texas manufacturing exemption includes "semiconductor fabrication cleanrooms and equipment." This section of the exemption captures tangible personal property used in connection with manufacturing a semiconductor product in a cleanroom environment. The court concluded that the taxpayer failed to show that the software tools "had a reasonable nexus" with the third-party's cleanroom environment used for fabricating the semiconductor chips. Notably, the non-exclusive examples of exempt cleanroom property in the statute focused on property actually used in the cleanroom. The court also dismissed the taxpayer's remaining arguments.

Canada: New GST Rules on Management Services of Investment Limited Partnerships

On July 4, 2018, the Canada Revenue Agency (CRA) published Notice 308 regarding the goods and services tax (GST) and harmonized sales tax (HST) treatment applicable to investment limited partnerships (ILPs). Recall, the Canadian Department of Finance last year proposed new rules to require general partners (GPs) that provide management or administrative services to ILPs to collect GST/HST on the FMV of such services, effective September 8, 2017. This draft rule was later amended by the 2018 federal budget to clarify that the proposed measures applied to services rendered after September 7, 2017 (instead of to payments made after that date).

In general, the proposed rules for ILPs deem GPs that provide management or administrative services to ILPs to have made those services, otherwise than in the course of the partnership's activities, effective September 8, 2017. These rules override the deeming provisions under the existing partnership rules. In addition, the proposal provides various deeming rules and criteria, including how to determine the value of services and when tax becomes payable. A particular partner does not generally collect GST/HST from a partnership since, under the existing partnership rules, anything done by a partner as a member of a partnership is generally deemed to be done by the partnership in the course of the partnership's activities, and not by the partner. However, a partner that sells property or services to the partnership other than in the course of the partnership's activities is generally deemed to have made the sale at the fair market value (FMV) of the sale at the time when the sale is made, and must collect GST/HST. Prior to September 8, 2017, GPs that provided management or administrative services to ILPs had to determine which existing partnership rules applied to these particular sales.

In its new guidance, the CRA notes that GPs that provided management or administrative services to limited partnerships, including ILPs, prior to September 8, 2017, "may" have rendered management or administrative services "otherwise than in the course of the partnership's activities." The CRA provides some simplified examples and concludes that, in those scenarios, a GP of an ILP was effectively required to collect GST/HST on such services rendered prior to September 8, 2017. As a result, the CRA advises that some GPs may need to amend their GST/HST returns for prior periods to account for GST/HST that they were required to collect. The CRA further provides details on: (1) how the Selected Listed Financial Institutions (SLFI) rules will be expanded to apply to ILPs that qualify as SLFIs and the related special attribution method (SAM) formula for SLFIs; (2) how to determine whether an ILP qualifies as a SLFI; (3) the definition of "investment limited partnership;" (4) the election available to ILPs to be considered as an investment plan as of January 1, 2018 (instead of January 1, 2019) and how to make that election; (5) the transition rules announced in the 2018 federal budget's legislative proposals; (6) the GST/HST registration of ILPs and the compliance elections available for ILPs and their managers; and (7) examples of how the existing rules for partnerships and the proposed rules for ILPs affect the GP's collection and remittance GST/HST obligations on and after September 8, 2017, as well as before that date.

With the release of the new guidance, ILPs should consider whether to elect to be investment plans for 2018, and whether they should register for GST/HST. With information sharing deadlines coming up in fall 2018 followed by filing obligations in 2019, ILPs should take this opportunity to understand how the proposed rules will affect their 2018 fiscal year and get their GST/HST affairs in order. To read a report prepared by the KPMG International member firm in Canada, please click here.

Europe, Middle East, Africa (EMA)

Czech Republic: Proposed Amendments to VAT Law

The government of the Czech Republic recently proposed amendments to the VAT Act. Currently, some credit or debit note issuers and recipients have problems with what date they should state in the VAT ledger statements as the date on which they must declare tax. It often happens that the dates in the issuer's and the recipient's VAT ledger statements do not match, resulting in a call for explanation from the tax authority. The proposed amendment should remove these ambiguities. Under the new amendment, the date of making a correction should be stated as the date of sale in a corrective tax document. Moreover, the proposed amendment would allow for the correction of the tax base due to inappropriately long insolvency and enforcement proceedings where more than five years have elapsed from the date of sale. In addition, the amendment also contains an option to correct the tax base as a result of a reorganization provided that the receivables at issue are part of the approved reorganization plan and have been included in the tax base. Another change likely to be in effect no earlier than in 2021 affects taxpayers who lease real property for further economic use. Currently, such taxpayers may decide to tax these leases, but effective 2021, this will in some cases no longer be possible. An explanatory report to the amendment states that this is to prevent any potential abuse or gaining significant cash flow savings and advantages. From 2021, the taxation of leases would only be allowed for structures in which more than 60 percent of the area is not intended for permanent residence. To read a report prepared by the KPMG International member firm the Czech Republic, please click here.

European Union: Holding Company Performs an Economic Activity by Leasing Building to its Subsidiary

On July 5, 2018, the Court of Justice of the European Union (ECJ) published its judgment in *Marle Participations SARL*, Case C-320/17, regarding whether the leasing of a building by a holding company to its subsidiary qualifies as management of the subsidiary. In the case at hand, the taxpayer was the holding company of the Marle group, the latter of which was involved in the business of manufacturing orthopedic implants. The taxpayer managed several subsidiaries to which it also leased a building. In 2009, the taxpayer conducted a restructuring operation that involved selling and buying securities. As part of the restructuring operation, it incurred various expenses that were subject to VAT, which the taxpayer later deducted. Following an audit of the taxpayer, the French tax authority did not agree with this VAT deduction arguing that the expenses were linked to the implementation of capital transactions, which were activities outside the scope of VAT. Therefore, the taxpayer could not have deducted the VAT in question.

The ECJ started its analyses by reiterating its own case law on the concept of taxpayer for VAT purposes, taxable sales, and right to deduct VAT. It subsequently reiterated the starting point for the VAT position of holding companies. Such companies are not regarded as taxpayers for VAT purposes, as they have as their sole purpose the acquisition of shares. However, this position is different when the holding is accompanied by direct or indirect involvement in the management of subsidiaries owned by the holding company (involvement). According to established case law, such involvement is an economic activity in so far as it entails carrying out taxable transactions, such as administrative, accounting, financial, commercial, information technology, and technical services. However, the ECJ emphasized that these activities are not exhaustive by concluding that involvement means all transactions that are economic activities carried out by the holding company for the benefit of its subsidiary, and thus the leasing of a building to a subsidiary can be regarded as such. Such activity gives the right to deduct the VAT that was charged on the expenses for acquiring the subsidiaries, provided that the letting was not VAT exempt. In that regard, the ECJ again reiterated its case law stating that expenditure connected with the acquisition of subsidiaries in which there is involvement is regarded as general expenditure. As a result, the VAT on such expenses can be deducted, provided that the taxpayer has taxable sales. However, such VAT position is different if there is only involvement in a part of the holding company's subsidiaries. Then, only part of the expenditure can be regarded as the holding company's general expenditure, which is for the referring court to make in the case at hand.

Source: FR: ECJ, July 5, 2018, Case C-320/17, Marle Participations SARL v. Ministère de l'Économie et des Finances, ECJ Case Law IBFD.

European Union: Sale of Online Auction Credits Qualify as Sale of Services Rather Than Advance Payments on Subsequent Sales of Goods

On July 5, 2018, the ECJ published its judgement in *Marcandi Ltd t/a "Madbid,"* Case C-544/16, regarding the applicable VAT treatment for the sale of online auction credits and the subsequent sale of goods. Recall, 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 partial 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 ECJ emphasized that the *Macdonald Resorts* case, Case C-270/09 (December 16, 2010), concerned an acquisition of point rights that was not an objective in itself for the customers, because the acquisition of those points was not entered into with the intention of collecting those points, but to use accommodations or obtain other services later on. However, in the case at hand, the customer bought the credits with the intention of being able to participate in a bid, giving the customer the chance to purchase goods below market value. Therefore, the sale of the credits could not be regarded as a preliminary transaction. This was also the case for the buy now and earned discount features. The ECJ further held that the sale of credits was made for consideration because (1) the credits were necessary to be able to bid and did not serve other purposes; (2) the number of credits used in auctions varied per auction, (3) the winner of an auction had the right to purchase the good and the value of the credits spent was exhausted, and (4) in a case of a subsequent cancellation, the value of the credit was not reimbursed. Therefore, the requirement to have a direct link between the sale of the credits and the consideration received was met. This conclusion was not undermined by the buy now and earned discount features. The ECJ pointed out that the sale of the credits and the subsequent sale of goods did not constitute a single sale. In addition, the ECJ held that the payment made for the credits was the consideration for the grant of the right to participate in auctions. Therefore, it could not also constitute the consideration or a payment on account for the subsequent sales of goods. With respect to the buy now or the earned discount features, using the credits to reduce the subsequent purchase price was regarded as a discount and could not be part of the taxable amount of those goods. That was also the case when spending the credits resulted in no payment by the customer, because the value of the credits was equal to the purchase price.

Source: UK: ECJ, July 5, 2018, Case C-544/16, *Marcandi Limited, trading as "Madbid" v. Commissioners for Her Majesty's Revenue & Customs*, ECJ Case Law IBFD.

European Union: TIR Carnets May Prove That Shipping Services Are Connected With Exportation of Goods According to Advocate General

On July 12, 2018, the ECJ published the Opinion of its Advocate General (AG) in *Cartrans Spedition Srl*, Case C-495/17, regarding what documents constitute evidence that goods were exported outside of the EU. In the case at hand, the taxpayer, a shipping services broker, provided shipping services in Turkey, Georgia, Iraq, and Ukraine. Following an audit of the taxpayer, the Romanian tax authority assessed the taxpayer arguing that the taxpayer failed to demonstrate that the goods shipped had in fact been exported, as the taxpayer had not produced any of the following documents: a contract of carriage drawn up with the beneficiary of the service, specific documents of carriage and documents showing that the goods shipped were exported, in accordance with national rules. The taxpayer had merely demonstrated that it had provided certain shipping services abroad to exporters. The taxpayer challenged that assessment. In support of its request for zero-rating, it produced TIR carnets and CMR consignment notes certified by customs officials of the countries to which the taxpayer had shipped the goods concerned for export for each of the seven invoices subject to VAT assessment.

According to the AG, the EU VAT Directive provisions relating to zero-rating of exports are mandatory. As a consequence, if a taxpayer is able to demonstrate the provision of shipping and ancillary services within the meaning of the EU VAT Directive, the exemption provided must be granted. In the absence of an express provision, Member States do not retain a discretion to introduce additional substantive conditions. According to established case law, the services must be provided directly to the exporter, the importer, or the consignee of the goods for the zero-rating to apply. A national practice which requires a taxpayer to prove that the shipped goods were indeed exported is not compatible with EU law as the EU VAT Directive does not contain any such requirement. Rather, the Directive lays down the condition that the provision of services including shipment is to be directly connected with the exportation of goods. The national rules at issue whereby the competent authorities do not examine evidence indicating that the goods were delivered to a buyer outside the EU go beyond are not in line with the EU VAT Directive.

The AG further observed that the purpose of a certified TIR carnet, which is part of the customs transit regime, is not to prove that the goods concerned were in fact exported. Rather, that system demonstrates that the TIR carnet is a customs declaration for shipping goods. It provides proof of the existence of the guarantee provided by the national guaranteeing organization of a country. The taxpayer does not have to prove that the goods concerned were actually exported. What it needs to show is that the shipping services provided were directly connected with the export of goods. The procedure for establishing that fact is not governed by EU rules and is ultimately a matter for national authorities subject to the supervision of national courts. That said, while the TIR carnet is not necessarily conclusive proof of export, the AG is of the opinion that it is a document that is indeed relevant in the context of assessing whether the shipping services provided are directly connected with the export of the goods carried by the shipping company.

Source: RO: Opinion of Advocate General Sharpston, July 12, 2018, Case C-495/17, *Cartrans Spedition Srl v. Direcția Generală Regională a Finanțelor Publice Ploiești – Administrația Județeană a Finanțelor Publice Prahova, Direcția Regională a Finanțelor Publice București – Administrația Fiscală pentru Contribuabili Mijlocii*, ECJ Case Law IBFD.

European Union: Advocate General Clarifies VAT Treatment of Cross Sales of Goods under Excise Duty Suspension Regime

On July 25, 2018, the ECJ published the Opinion of its AG in *Arex CZ a.s.*, Case C-414/17, regarding the VAT treatment applicable to cross-border sales of excise goods under the excise duty suspension regime. In the case at hand, a Czech taxpayer purchased fuel subject to excise duty from Austria, where the fuel was sold in a chain of transactions, but shipped directly from Austria to the Czech Republic. The first party in the chain was Doppler Mineralöle GmbH (Doppler), a taxpayer established and registered for VAT purposes in Austria. The fuel was purchased from Doppler by four companies established in the Czech Republic (first Czech buyers), which, in turn, sold the fuel to two further companies established in the Czech Republic, which then further sold the fuel to Kont Fuel Distribution s.r.o. (Kont Fuel) and Benaft s.r.o. (Benaft), companies also established in the Czech Republic. Finally, Kont Fuel and Benaft sold the fuel to the taxpayer. The first Czech buyers engaged another Czech company to act on their behalf as a registered consignee to apply the duty suspension regime to the shipping of the excise goods from Austria to the Czech Republic. However, the goods were shipped from the premises of Doppler by the taxpayer in its own vehicles and at its own cost, first to a location in the Czech Republic designated by the registered consignee for the goods to be released into free circulation there, and from there to the final destination. The registered consignee paid the excise duty on behalf of the first Czech buyers. Kont Fuel and Benaft charged Czech VAT to the taxpayer on their sales. During a tax audit, the Czech tax authority challenged the taxpayer's VAT deduction right as it considered that the taxpayer performed intra-EU acquisitions of goods from Austria. Therefore, neither Kont Fuel nor Benaft should have charged VAT. The improperly charged VAT could thus not be deducted by the taxpayer.

According to the AG, the EU VAT Directive zero rates the sale of excise goods that are shipped within the EU for taxpayers, or non-taxpayers, that are legal persons, whose intra-EU acquisitions of goods other than products subject to excise duty are not subject to VAT if those products have been shipped under the duty suspension regime. Consequently, this special rule applies under the following conditions: (1) excise goods are being shipped between Member States; (2) the taxpayer or non-taxpayer buyer is not subject to VAT regarding its intra-EU acquisitions of non-excise products; and (3) the excise products are shipped under a suspension regime. If only the first two conditions are met, the VAT becomes due in the Member State of dispatch. However, if all three conditions are met, the VAT becomes due in the Member State of destination. Moreover, in case of chain transactions subject to the duty suspension regime the relevant provision of the EU VAT Directive does not provide rules regarding the to which transaction the shipment should be allocated. The AG came to the conclusion that the case should be decided based on the general VAT rules applicable to chain transactions. For the purpose of deciding which party performs the zero-rated intra-EU sales, it has to be determined which party performs the shipping, which party bears the costs of the shipment, and which party bears the risk of the goods being destroyed during the shipment. These factors need to be evaluated by the referring court. Although the excise duty suspension regime may be a circumstance which might influence the question regarding which party has the right to dispose of the goods, the mere fact which party is subject to the excise duty obligation is not decisive.

Source: European Union; Czech Republic – ECJ Advocate General's opinion (VAT): Arex CZ (Case C-414/17) – Zero rate; transport of goods under excise duty suspension – details (31 July 2018), News IBFD.

European Union: Debt Collection Services Do Not Qualify as VAT Exempt Financial Services

On July 25, 2018, the ECJ published its judgment in *DPAS Limited*, Case C-5/17, regarding whether transfer and payment services are VAT exempt. Recall, 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 deposits 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 considered these services to patients also subject to VAT.

The ECJ noted that based on established case law a transfer is a transaction consisting of the execution of an order for the transfer of a sum of money from one bank account to another. It is characterized in particular by the fact that it involves a change in the legal and financial situation existing, on the one hand, between the person giving the order and the recipient and, on the other, between those parties and their respective banks and, in some cases, between the banks. Moreover, the transaction which produces that change is solely the transfer of funds between accounts, irrespective of its cause. Thus, a transfer being only a means of transmitting funds, the functional aspects are decisive for the purpose of determining whether a transaction constitutes a VAT exempt transfer. Moreover, the wording of the EU VAT Directive provision at issue does not, in principle, preclude a transfer from being broken down into separate services, which then constitute "transactions concerning transfers" within the meaning of that provision. The exemption provided for in that provision can, however, relate only to transactions which, viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of such transfers, in so far as they have the effect of transferring funds and entail changes in the legal and financial situation resulting from that transfer. This interpretation does not presuppose any particular method for effecting those transactions, since a transfer may be effected by an actual transfer of funds or by means of accounting entries. However, services exempted under the EU VAT Directive must also be distinguished from the provision of mere physical, technical or administrative services. To that end, it is relevant to examine, in particular, the extent of the liability of the services in question and, inter alia, whether that liability is restricted to technical aspects or whether it extends to the specific, essential aspects characterizing the transactions.

In the present case, the services provided by the taxpayer do not, as such, effect the legal and financial changes which characterize the transfer of a sum of money; they are instead administrative in nature. The taxpayer does not itself carry out the transfers or actually enter into the relevant bank accounts of the sums of money agreed in the context of the dental plans at issue in the main proceedings. Instead, it asks the relevant financial institutions to carry out those transfers. Services such as that at issue in the main proceedings are merely a step prior to the VAT exempt transactions concerning payments and transfers. Moreover, the purpose of the exemption at issue is to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible. However, the amount of remuneration due from the patient to the taxpayer corresponds to a difference between the amount collected from the account of that patient and the amounts subsequently transferred by the taxpayer to that patient's dentist and insurer. In those circumstances, the determination of the taxable amount does not present any particular difficulty. As a consequence, services such as those at issue in the main proceedings cannot qualify as VAT exempt transactions concerning payments and transfers.

Source: UK: ECJ, July 25, 2018, Case C-5/17, *Commissioners for Her Majesty's Revenue and Customs v. DPAS Limited*, ECJ Case Law IBFD.

European Union: VAT Committee Clarifies VAT Exemption Regarding Management of Special Investment Funds

On July 2, 2018, the European Commission published an update of the nonbinding VAT Committee Guidelines. The Committee was set up to promote the uniform application of the provisions of the EU VAT Directive. The new guidelines include comments on the VAT treatment of management services provided to special investment funds and of waterway-related services. The Committee almost unanimously (27-24 out of 28 Member States) confirmed that services connected with immovable property should include: services consisting of making available the navigational infrastructure of waterways for which a transit fee is charged (transit services), and the use of the port infrastructure of waterways for which an infrastructure usage fee is charged (port services).

The Committee also reached agreements on the scope of the exemption for the management of special investment funds. It reached conclusions on what constitutes management activities, the classification of an investment fund as a special investment fund, and whether alternative investment funds and pension funds should also be exempt. On management activities, the VAT Committee almost unanimously confirmed that, in accordance with settled case-law of the ECJ, services consisting in the provision of investment advice by an advisory company to a taxpayer's management of a special investment fund should be exempt, provided that such advisory services form a distinct whole and are specific to and essential for the management of such special investment funds. The VAT Committee further confirmed (almost unanimously) that advisory services which consist in giving recommendations to purchase and sell assets should qualify for the exemption, in line with ECJ settled case-law, subject to a case-by-case assessment to substantiate that this condition is met.

On rules concerning what constitutes a special investment fund, the VAT Committee almost unanimously agreed that not all investment funds may qualify as special investment funds for the purposes of the relevant VAT exemption. It almost unanimously confirmed that, in line with settled ECJ case-law, funds which constitute Undertakings for Collective Investment in Transferable Securities (UCITS) within the meaning of the UCITS Directive qualify as special investment funds and that, in consequence, management services provided in respect of any UCITS shall be exempted in accordance with that provision. The VAT Committee further almost unanimously confirmed that, in line with ECJ case-law, even if a fund does not qualify as a UCITS within the meaning of the UCITS Directive, the fund may still qualify as a special investment fund if it displays characteristics identical to those of a UCITS and therefore carries out the same transactions or at least displays features that are sufficiently comparable for it to be in competition with such undertakings. In this regard, the VAT Committee by a large majority (23-19 out of 28 Member States) agreed, again based on ECJ case law, that for any such fund to be considered as sufficiently comparable to a UCITS, each of the following conditions shall be met: (1) the fund must be a collective investment; (2) the fund must operate on the principle of risk-spreading; (3) the return on the investment must depend on the performance of the investments, and the holders must bear the risk connected with the fund; (4) the fund must be subject to state supervision; and (5) the fund must be subject to the same conditions of competition and appeal to the same type of investors as UCITS.

Finally, the VAT Committee concluded with guidance on whether the scope of the exemption should cover alternative investment funds and pension funds. In summary, it decided that a case-by-case analysis should be undertaken to determine, among other things, whether the aforementioned conditions are met. On the VAT treatment of pension funds, the VAT Committee almost unanimously confirmed also that, in line with ECJ case-law, only pension funds in which the investors themselves bear the risk connected with the pension fund (as opposed to that risk being borne by someone other than the investor) may be seen as sufficiently comparable to UCITS and, therefore, qualify as special investment funds. In addition, it decided that defined-contribution pension funds, in which the contribution to be made to the pension fund is limited, but the retirement benefit received depends on the performance of the investment (the risk thus being borne by the investor), should be seen as sufficiently comparable to UCITS and qualify as special investment funds. It concluded however that the exemption should not be permitted for defined benefit pension funds in which the retirement benefit received by the investor is defined regardless of the contributions to be made to the fund or the performance of the fund (the risk thus not being borne by the investor), as these are not comparable to UCITS.

Source: CCH, Global VAT News & Features, New EU Guidelines On VAT On Funds, Waterways Services (July 12, 2018).

European Union: Infringement Proceedings against Member States for Noncompliance with EU Law

On July 19, 2018, the European Commission published its legal actions against Member States for failing to comply with their obligations under EU law. The Commission sent a reasoned opinion to Germany asking it to bring its VAT refund rules into line with EU VAT Directive and the EU VAT Refund Directive. In some cases, Germany currently refuses to refund VAT applied for by taxpayers established in another Member State as it considers that the information provided is insufficient without having requested additional information from the applicant. This leads to refunds being denied even if applicants fulfil the substantive requirements as laid down in EU law. If Germany does not act within the next two months, the Commission may decide to bring the case before the ECJ.

In addition, the Commission sent a letter of formal notice to Italy concerning the fact that it adds further conditions for the exemption from VAT of services relating to importation of goods. The Italian legislation currently requires that for the exemption from VAT to be applied to ancillary services relating to the importation of goods, not only must their value be included in the taxable amount, but also that VAT must actually be charged on them at the customs stage at the time of importation. This runs against the provisions of the EU VAT Directive. If Italy does not act within the next two months, the Commission may send a reasoned opinion to the Italian authorities.

Finally, the Commission sent a reasoned opinion to the United Kingdom for failing to collect and transmit to other Member States the bank account details for each taxpayer registered for the EU-wide system for VAT collection on online sales of e-services (VAT Mini One-Stop-Shop – MOSS). This practice violates EU rules on administrative cooperation and exchange of information. At the moment, Member States that want to provide a refund to taxpayers in the UK must collect additional information on a case-by-case basis, which is burdensome and delays refunds. If the UK does not act within the next two months, the Commission may decide to bring the case before the ECJ.

Source: IBFD – EVD News: Terra/Kajus (July 23, 2018).

Germany: Proposed Amendments to VAT Law

On June 26, 2018, the German Ministry of Finance (BMF) published a draft of the German Annual Tax Act 2018 which, if approved, would amend the country's VAT law. The draft proposes to introduce new provisions consistent with the EU VAT Voucher Directive effective January 1, 2019. According to the proposal, a voucher entitles the owner to use it to redeem items or services. Instruments which merely provide an entitlement to a reduction in price should not qualify as vouchers. Moreover, the draft defines a single-purpose voucher as a voucher in which the sourcing and the VAT owed for the underlying transactions at the time the voucher is issued are already known. Consequently, VAT is already levied at the point in time at which the voucher is issued or granted, as all the information necessary for the VAT treatment is already present. All other vouchers for which all the information for a reliable determination of VAT are not present at the time of issue, are multi-purpose vouchers. Only the actual sale of goods or services is liable for VAT, not the issuance of the multi-purpose voucher.

The proposal would further introduce simplifications to the VAT rules applicable to final consumers of sales of telecommunications, radio and television services, and services provided electronically. Cross-border sales of less than EUR 10,000 ($11,800) per year will be subject to VAT according to the rules of the home Member State of the vendor, instead of the Member State of the consumer. Alternatively, such transactions may be subject to VAT in the Member State of the consumer if the vendor declares such to the tax authority and adheres to the declaration for at least two calendar years. Moreover, EU businesses will benefit from simpler procedures for cross-border sales of up to EUR 100,000 ($118,000) annually. To minimize the burden on sellers, the invoicing regulations of the Member State in which the vendor participates in the simplified EU-wide mini one stop shop (MOSS) apply. Finally, the proposal would repeal the German position that authors and copyright collecting societies provide miscellaneous services subject to VAT as this position was ruled not in compliance with EU VAT law. Case C- 37/16, *SAWP* (January 18, 2017). To read a report prepared by the KPMG International member firm in Germany, please click here.

Italy: Guidance on New E-Invoicing Requirements

On July 2, 2018, the Italian Tax Authority (ITA) published Circular No. 13/E/2018, which clarifies various issues related to the mandatory e-invoicing introduced by the 2018 Budget Law. (For KPMG's previous discussion on the new e-invoicing requirement, click here.) The ITA clarifies that the mandatory e-invoicing rules will not apply to non-established VAT-registered persons in Italy, but only to taxpayers established in Italy. However, the ITA authorizes Italian taxpayers to issue e-invoices towards non-established VAT-registered persons in Italy, together with a paper copy where required.

The ITA further clarifies that fuel sold for use in vehicles other than those that travel on roads (e.g., aircrafts and vessels) are excluded from the mandatory e-invoicing applicable to all business-to-business (B2B) sales of gasoline or diesel fuel intended for use as motor fuel for road vehicles, effective July 1, 2018. The mandatory e-invoicing for B2B sales of gasoline or diesel destined to be used as motor fuel sold at petrol stations was postponed from July 1, 2018 to January 1, 2019.

Finally, the ITA clarified that taxpayers may transmit e-invoices rejected by the ITA's system (*Sistema di Interscambio* (SDI)) again on the following five days after the notification of the rejection. The ITA will not apply penalties for late e-invoicing if the delay is "minimal" and does not compromise the periodic settlement of VAT. The ITA further clarified that besides the XML format other formats stated in the Decree dated September 3, 2013 (e.g., PDF, JPG, TXT) are also suitable for e-archiving purposes. To read a report prepared by the KPMG International member firm in Italy, please click here.

Serbia: Amendments to VAT Regulations

Serbia recently published amendments to the rulebook of the country's VAT law in the official gazette. Effective July 1, 2018, the Rulebook on the Method and Procedure for Exercising Tax Exemptions for VAT with Right to Deduct VAT specifies the tax treatment for situations in which exported goods have cleared customs in one tax period, while the customs authority's certificate confirming the export is issued in another tax period. In that situation, the taxpayer who exported the goods is entitled to zero-rate the transaction in the period in which he obtains the export declaration. However, if the certificate confirming the export is not issued in the tax period immediately following the export, the exporter is required to calculate VAT and file an amended return in the period in which the goods have cleared customs. The taxpayer is subsequently allowed to deduct the VAT in the period in which he procures an export declaration. The Rulebook further clarifies that the zero-rating applicable to entry of goods into a free zone may be established if the tax debtor (i.e., either the vendor or the recipient of the goods depending on the circumstances) possesses: (1) the invoice from the vendor of goods which are entering the free zone certified by the customs authority; or (2) the certified copy of the declaration confirming that the goods have entered the free zone. In addition, the Rulebook specifies the requirements for the VAT zero rate to apply to sales of goods that enter a free zone, sales of services related to goods entering a free zone and sales performed by a taxpayer in a free zone to a nonresident.

Effective July 1, 2018, the Rulebook on Form, Content and Method of Keeping Records and Form and Content of Overviews of VAT Calculations specifies the method for recording sales of investment gold. In addition, the Rulebook clarifies that, for audits performed between July 1, 2018 and June 30, 2019, the tax authority will not consider inaccuracies reported in reviews of VAT calculations that do not affect the final amount of the VAT liability.

Effective July 7, 2018, the Rulebook on Determining Cases in Which There is No Obligation for Issuing an Invoice and on Invoices in Which Certain Data Can be Left Out clarifies that a taxpayer should issue an invoice for: (1) sales without compensation for complete or partial transfer of assets, if the acquirer is a taxpayer or becomes a taxpayer through such transactions and continues to perform the same commercial activity; (2) sales that are part of a public-private partnership contract with elements of a concession; and (3) sales without compensation that are deemed to be carried out abroad. In these circumstances, the issuer of the invoice should include the value of the transaction instead of the tax base, applicable VAT rate, amount of VAT, and collection method. To read a report prepared by the KPMG International member firm in Serbia, please click here.

United Arab Emirates: Overview of Recently Published VAT Guidance

The United Arab Emirates' Federal Tax Authority (FTA) recently issued Public Clarification VATP003 on the VAT treatment applicable to labor accommodations. According to the FTA, labor accommodation can be either subject to VAT at 5 percent, if additional services are provided to residents, or exempt from VAT (or zero-rated, for the first sale of such property). Taxpayers must determine whether they simply provide the use of a residential building (which would be VAT exempt) or provide serviced accommodation (subject to VAT at 5 percent). The labor accommodation would be exempt or zero-rated if the building or lodging is occupied by the employees as their principal place of residence; it is a building which is fixed to the ground and which cannot be moved without being damaged; the building has been constructed or converted with lawful authority; and it is not a building that is similar to a hotel, motel, bed and breakfast establishment, or serviced apartment, for which services in addition to the accommodation are provided. If extra services are provided, taxpayers must determine whether the amount of service provided transforms the building from a residential building to a serviced accommodation. In a residential building, there are usually ancillary services that are typically provided for no additional cost which form part of the exempt provision of accommodation. These include cleaning of communal areas; maintenance services required for the general upkeep of the property; pest control; garbage collection; security; utilities; facilities within the building for residents to use, e.g. laundry, gym, pool, and prayer rooms. According to the FTA the following services would go beyond the notion of these ancillary services and would result in labor accommodation being subject to VAT at 5 percent: telephone and internet access; cleaning of the rooms, other than purely the communal areas of the property; laundry services, including the regular changing of bed linen; catering; and maintenance services other than those required for the general upkeep of the property.

The FTA recently issued Public Clarification VATP004 on the use of exchange rates for VAT purposes. According to the FTA, where a tax invoice was issued prior to May 17, 2018 in a currency other than UAE Dirham, the tax invoice should have been converted to UAE Dirham using an exchange rate from a reliable source. Reliable sources include, but are not limited to: Thomson Reuters; Oanda; and the exchange rate published by an UAE bank. For tax invoices issued on or after May 17, 2018, taxpayers are required to use the exchange rates published by the UAE Central Bank to convert the foreign currency into UAE Dirham. Businesses must use the exact exchange rate as published by the UAE Central Bank, which includes using the same number of decimal places as published. If a tax invoice is issued after May 17, 2018, but the date of the sale was prior to the cut-off date, businesses should use the historical rates as published by the Central Bank.

The FTA recently issued Public Clarification VATP005 on non-deductible VAT incurred on entertainment services. According to the FTA, VAT incurred on any costs which are used for a genuine business purpose, or which are incidental to a business purpose (e.g., food and drink provided during a business meeting), should be recoverable. However, where the hospitality provided becomes an end in itself and could be construed as the purpose for attending an event, such costs will be considered to be entertainment in nature, and the VAT incurred shall not be recoverable.

The FTA recently published an updated version of its VAT Refund User Guide, which is intended to help eligible taxpayers prepare claims to the FTA for VAT refunds. It includes an explanation of the process to be followed along with the forms and information that need to be provided. In general, a claim can be submitted by the taxpayer, or another person who has the right to do so on the taxpayer's behalf (e.g., a tax agent or a legal representative). According to the updated guide, before submitting a refund claim, a taxpayer must provide its full bank account details, together with a validation letter or certificate issued and stamped in the name of the taxpayer, which must be uploaded as an attachment to the electronic form.

The FTA recently published a Voluntary Disclosure User Guide for VAT & Excise Tax, which is intended to help taxpayers successfully complete a voluntary disclosure form to notify the FTA of an error or omission in a tax return, tax assessment, or tax refund application. A voluntary disclosure should be submitted in cases in which the tax payable or to be refunded is more or less than it should have been. With respect to underpaid tax, however, a voluntary disclosure is not needed if the amount is not more than AED 10,000 ($2,700), and the underpayment is corrected in the return for the period in which the error was discovered.

The FTA recently published a Clarifications User Guide aimed at helping taxpayers to submit clarification requests to the FTA regarding specific matters of uncertainty on which further guidance is needed. The clarifications form is for use by all persons seeking technical clarifications from the FTA on matters of uncertainty they encounter after analyzing the relevant legislation.

The FTA recently published a Designated Zones VAT Guide. According to the guide, Free Zones have historically been excluded from the territorial scope of the UAE. However, this is not automatically the case for VAT purposes as only those Free Zones listed as Designated Zones for VAT purposes in a Cabinet Decision qualify for special VAT treatment and that special VAT treatment has certain limitations. Designated Zones are (1) subject to strict control criteria; (2) required to have security procedures in place to control the movement of goods and people to and from the Designated Zone; (3) required to have Customs procedures to control the movement of goods into and out of the

Designated Zone; and (4) treated as being outside the territory of the UAE for VAT purposes for certain sales of goods. As a consequence, sales of goods in Designated Zones will likely be outside the scope of UAE VAT, subject to strict criteria and detailed record keeping. However, sales of services are subject to the normal UAE VAT rules.

Source: CCH, Global Daily Tax News, UAE Issues VAT Guidance On Labor Accommodation (August 8, 2018); Orbitax, UAE Issues Guidance on Use of Exchange Rates for VAT Purposes (July 20, 2018); Bloomberg Tax, UAE Demands Bank Account Validation for VAT Refund Requests (July 25, 2018); Orbitax, UAE Issues VAT and Excise Tax Users Guides on Refunds, Voluntary Disclosure, and Clarifications (July 27, 2018); UAE Issue VAT Guidance on Designated Zones and Non-Recoverable Input Tax for Entertainment Services (August 1, 2018).

United Kingdom: Upper Tribunal Confirms that VAT Incurred in Non-Commercial Leasing Activity is Not Refundable

On May 15, 2018, the Upper Tribunal (UT) of the United Kingdom published its decision in *JDI International Leasing Ltd. v. HM Revenue & Customs*, [2018] UKUT 0214 TCC, regarding whether a non-EU company may recover VAT incurred on goods purchased in the UK that are leased for free to a related entity. Recall, in the case at hand, JDI International Leasing Limited (JDI), a Cayman Islands entity, incurred VAT in the UK on the acquisition of specialized tools for use in oilfields that were located in the UK. JDI leased the tools to a related entity for no consideration. JDI further sold spare parts for the tools for which it made a charge. JDI filed a VAT refund claim under the procedure allowing non-EU companies to claim a VAT refund. HMRC refused the claim on the grounds that JDI made no use of the tools for an economic activity.

In April 2017, the First-Tier Tribunal (FTT) found that because there was no obvious link between the acquisition by JDI of the tools and the sale of spare parts JDI was not entitled to recover the VAT incurred on the acquisition. On appeal, JDI contended that it was entitled to deduct input tax on the UK tools because they had a direct and immediate link to its economic activity as a whole, and the company was acting as a taxpayer in acquiring them. JDI argued that without the purchase of the tools, it could not have bought the IP, and the IP was necessary or essential to carrying out its taxable business. It said the spare parts business is directly related to the tools and that JDI had to get the tools into the market to ensure a demand for spare parts. The UT found no legal errors in the FTT's conclusion that there was no direct and immediate link between JDI's acquisition of the U.K. tools and the sale of spare parts. The UT noted that JDI did not contest the FTT's finding on that issue, and therefore it must be correct. The UT concluded that the leasing of the tools was not by itself a taxable transaction, since no consideration was charged.

Source: J.P. Finet, No Taxable Transactions in Equipment Leases, U.K. Tribunal Finds, TaxAnalysts (July 17, 2018).

United Kingdom: Temp Agency Expense Scheme Not Subject to VAT According to Lower Tribunal

On July 6, 2018, the FTT published its decision in *Pertemps Ltd. v. HM Revenue & Customs*, [2018] UKFTT 369 (TC), regarding whether a scheme in which temporary employees pay a nominal fee to be reimbursed for expenses in exchange for equivalent wage reductions is a taxable service for VAT purposes. In the case at hand, the members of the Pertemps VAT group operate as recruitment agencies that provide temporary and permanent workers to clients. The workers usually spend a short period working for each client before moving on to another client location. The workers who move between jobs are referred to as "flexible employees" by Pertemps and are offered the opportunity to participate in the mobile advantage plan. Under the plan, a flexible employee agrees to a wage reduction in return for a payment from Pertemps to cover travel and subsistence expenses. Pertemps reached an agreement with HMRC in 2004 that allowed the company to make payments under the plan without deducting Pay As You Earn (PAYE) income tax and National Insurance contributions. The company received additional dispensations, but HMRC eventually challenged the Pertemps position that VAT did not apply to the plan and issued the assessment being contested.

The FTT explained that both UK and EU case law show that to be taxable, there must be a sale of services for consideration. It added that the courts have also found that a taxpayer is an individual carrying out an ongoing economic activity. According to the FTT, the potential sale in the case at hand would be the exchange by the employee of the right to receive salary for the right to receive a payment of expenses for consideration. The essential test for determining whether a sale of goods or services constitutes an economic activity is whether the sale is made for the purposes of obtaining income on a continuing basis. The FTT then determined that the plan was not an economic activity undertaken by Pertemps based on the following findings: (1) the operation of the mobile advantage plan did not provide an income stream for Pertemps; (2) the plan was not a service that could be provided by a third-party vendor; (3) the plan was provided in accordance with an employment relationship; and (4) there is no reason to charge VAT on the plan to ensure the coherence of the VAT system.

Source: J. P. Finet, No VAT on Temp Agency Expense Scheme Fees, U.K. Tribunal Says, Tax Analysts (July 17, 2018).

United Kingdom: VAT Refund Claims Can Only Be Made By VAT Group Representative According to UK Supreme Court

On July 11, 2018, the Supreme Court of the United Kingdom published its decision in *HM Revenue & Customs v. Taylor Clark Leisure Plc*, [2018] UKSC 35, regarding whether a claim for a VAT refund could be considered timely made if claimed by a group member other than the VAT group's representative. In the case at hand, Taylor Clark Leisure Plc (TCL) was the representative member of the Taylor Clark VAT Group between 1973 and 2009. In 1990, TCL undertook a group reorganization that involved the transfer of its bingo business to another member of the VAT group, Carlton

Clubs Ltd (Carlton). In 1998 Carlton ceased to be part of the VAT group. In November 2007, Carlton submitted four claims to HMRC for repayment of VAT on sales, which TCL as representative member of the VAT Group had accounted for in the years between 1973 and 1998. TCL submitted that it, as the representative member of the VAT Group, is entitled to rely on Carlton's claims because those claims are to be regarded as having been submitted on behalf of the VAT Group, which EU law treats as a single taxpayer entitled to repayment of the unduly levied tax. After initially refusing all claims, HMRC paid one of the claims to TCL in 2009, but later confirmed an assessment for repayment of the amount paid. The final decision of HMRC was appealed and made its way to the Inner House, which found in 2016 that a claim by an individual member of a VAT group, as a quasi-person, must normally be construed as a claim made on behalf of the representative member embodying the group and that the claims made by Carlton should be regarded as claims made by TCL as representative member of the VAT Group.

The UK Supreme Court overturned the decision of the Inner House. The UK Supreme Court noted that the provisions of the EU VAT Directive regarding VAT grouping do not lay down a template as to how a Member State should treat a group of persons as a single taxpayer. However, it is clear from the relevant provisions of the UK VAT Act that the UK chose to achieve VAT grouping not by deeming the group to be a quasi-person but by treating the representative member as the person that provided or received the sale of goods or services. Further, it was clear that HRMC's liability to credit or repay the overpaid output tax is owed to the person who accounted to them for VAT in the relevant accounting period or periods. As such, only TCL, or a person acting as its representative, is entitled to make the claim for refund. In an earlier decision, the FTT correctly found that Carlton did not make the claims on behalf of TCL. Four reasons supported this finding. First, when Carlton made the claims, it had long ceased to be a member of the VAT group. Second, it appears from the 2007 letters that Carlton had already presented claims in relation to its own business activities in the period after it had left the VAT group. Third, the use by Carlton of the VAT group's VAT registration number was necessary to identify the original source of the allegedly overpaid VAT, but did not disclose who was entitled to the repayment. Fourth, in each of the claims submitted in 2007, Carlton was claiming repayment of sums paid from 1973, long before its incorporation in 1990, as well as in the periods after 1990 when it was member of the VAT group. It clarified the basis on which it made those claims in its 2009 revised claim. As a consequence, Carlton did not act as TCL's agent.

Source: CCH, Global VAT News & Features, UK Supreme Court Rules In Complex VAT Group Refund Case (July 19, 2018); Orbitax, UK Supreme Court Holds VAT Refund Claims May Only be Considered Timely Made when Made by Group Representative (July 20, 2018).

United Kingdom: Guidance on VAT Treatment of Car Finance Deals

On July 17, 2018, HMRC published Revenue and Customs Brief 7 (2018) regarding HMRC's policy on the VAT accounting treatment of promotions where payments are said to be made by motor dealers to finance companies on behalf of the end customer. These are often but not exclusively referred to as dealer deposit contributions (DDC) in the motor retail trade. According to the Brief, for DDC-type arrangements, normally, when a vehicle is sold on finance the purchase price is agreed between the customer and the dealer. The dealer completes all the documentation on behalf of the finance company. There is a sale by the dealer to the finance company and an immediate onward sale by the finance company to the customer. The customer knows and agrees the final selling price, including the amount of any deposit and the finance terms, when the agreement with the dealer is made and the documentation is completed. In marketing materials, DDCs are described as a financial contribution by the dealer toward the deposit required from the customer by the finance company. According to HMRC, DDCs are a discount on the headline price charged by the dealer. The DDC is shown on the finance and sales documentation and is agreed by all the parties to the transactions before these take place. There is no retrospective adjustment to either the amount the customer will pay or the amount the finance company will pay the dealer. VAT is therefore due on the discounted amount actually charged to the finance company and the customer. According to HMRC, any VAT that has been miscalculated must be corrected. Corrections must be made by either by making a section 80 claim for overpaid VAT or by adjusting VAT returns following the normal error correction process explained in VAT Notice 700/45.

Source: CCH, Global VAT News & Features, HMRC Issues VAT Briefs On Car Finance Deals, Bicarb Of Soda (July 19, 2018).

United Kingdom: Making Tax Digital Guidance

On July 13, 2018, HMRC published VAT Notice 700/22 explaining the rules for Making Tax Digital for VAT and about the digital information taxpayers must keep. Recall, in February the UK introduced new requirements for businesses to keep digital records and submit returns using functionally compatible software, effective April 1, 2019. The Notice confirms that the new rules will apply to VAT return periods starting on or after April 1, 2019. It goes on to provide guidance on digital record keeping requirements and on the submission of returns using functionally compatible software including examples in which a digital link is required.

One initial concern of Making Tax Digital for VAT surrounded the requirement to record digitally the amount of deductible input tax for every purchase. For example, a partly exempt business would not know this figure at the time of making the purchase. This has been resolved by a simplification in the Notice which will allow a business to digitally record all the VAT, no VAT, or an estimated percentage. The actual VAT deductible will then be an adjustment that can be performed outside of the functionally compatible software and the total of each type of adjustment recorded digitally. The Notice also confirms that when errors are corrected and notified to HMRC there is no need to amend the underlying digital records. There are other simplifications involving recording mixed-rate sales with a single price, invoices for multiple sales, as well as employee expenses. However, transactions in which the purchaser is required to self-assess VAT under the reverse charge mechanism may have to be recorded twice, as a sale and purchase, depending on the software used.

The Notice further explains that data transfer or exchange within and between software programs, applications or products that make up functionally compatible software must be digital where the information continues to form part of the digital records. Once data has been entered into software used to keep and maintain digital records, any further transfer, recapture or modification of that data must be done using digital links. Each piece of software must be digitally linked to other pieces of software to create the digital journey. The Notice confirms that simply "cutting and pasting" is not a digital link but "linked cells" in spreadsheets are. The Notice also confirms that the scope of the one-year soft landing period means that before April 1, 2020 businesses will not have to have digital links between their various functional compatible software programs. However, the transfer of the VAT return data to bridging software that submits the return to HMRC must be digital. The Notice goes on to provide examples in which a digital link will be required. To read a report prepared by the KPMG International member firm in the UK, please click here.

United Kingdom: Brexit Update

In July 2018, the UK Government published a White Paper on the proposal for a principled and practical Brexit and the future relationship with the EU. The paper follows the statement issued earlier in July that provided a more general position/proposal on the future economic relationship. According to the White Paper, the proposed agreement aims to preserve frictionless trade at the border for goods. In addition, the proposal would end free movement of people, take the UK out of the Common Agricultural Policy and the Common Fisheries Policy, and support regeneration through the Shared Prosperity Fund, while preserving vital cooperation to tackle crime and terrorism. Moreover, the proposal would avoid the need for any hard border between Northern Ireland and Ireland and end the jurisdiction of the ECJ in the UK.

On July 16, 2018, the UK House of Commons passed the Taxation (Cross-Border Trade) Bill, including an amendment blocking the UK's participation in the EU VAT area. The Bill is now under consideration before the UK's House of Lords.

On July 19, 2018, the European Commission published a Communication on preparing for the withdrawal of the United Kingdom from the EU together with a fact sheet on seven things businesses in the remaining 27 EU Member States need to know to prepare for Brexit, including the application of potential transitional rules; responsibilities in the supply chain; certificates, licenses, and authorizations; customs, VAT, and excise; rules of origin; prohibitions and restrictions for import and export of goods; and transfer of personal data.

Source: Orbitax, UK White Paper Published on the Future Relationship with the European Union (July 17, 2018); CCH, Global VAT News & Features, UK Must Leave EU VAT Area, UK's Lower House Votes (July 18, 2018);

United Kingdom: Proposal to Prevent Abuse of Financial Services Loophole

On July 19, 2018, the UK government published draft legislation that addresses VAT avoidance through offshore looping by providers in the financial services sector. Providers of financial services generally cannot reclaim the VAT they incur on their costs because their services are VAT exempt. According to the proposal, an offshore loop is a cross-border structure that enables these VAT costs to be recovered by routing services primarily carried out in the UK via a body located in a non-VAT territory. Those services are then used to provide insurance and other financial services back into the UK market. This is contrary to the intention of the VAT system and distorts competition to the disadvantage of domestic UK vendors. The draft legislation addresses a particular version of offshore looping that is currently found almost exclusively in the insurance sector and involves looping sales via non-VAT territories. UK providers of these financial services will no longer be able to gain a VAT advantage by acting as an agent for an overseas associate when the services are in fact being provided to their UK customers. The UK government is also examining further legislative options for closing other versions of avoidance schemes involving such arrangements.

Source: Orbitax, The UK Publishes Draft Legislation to Prevent VAT Avoidance through Off-shore Looping and Clarify the Framework for Charging Interest on Unpaid Tax.

Asia Pacific (ASPAC)

India: Proposed Amendments to GST

The India Department of Revenue has recently published proposed amendments to the Central Goods and Services Tax (CGST) Act 2017, the Integrated Goods and Services Tax (IGST) Act 2017, and the GST (Compensation to States) Act 2017. One of the main amendments is a new section to enable the new, more simplified, return filing procedure approved recently by the GST Council. (For KPMG's previous discussion on the GST Council's proposal, click here.) The Department of Revenue has unveiled draft GST return forms seeking feedback and suggestions from various stakeholders. The new returns will be introduced effective January 2019, while the submission of the simplified GST return (Form GSTR-3B) and the return on Outward Supplies (Form GSTR-1) will continue until the new procedure is implemented. Other amendments include clarifications of registration requirements, amendments to the definition of sale of goods and services subject to GST, rationalization of GST credits between CGST, State GST and IGST), as well as introducing provisions to prevent double taxation and new provisions regarding GST reverse charge for procurements from unregistered vendors.

On July 21, 2018, the GST Council held its 28th meeting and approved certain changes to the GST regime, including substantially reducing the number of goods and services subject to the top 28 percent rate and approving plans to overhaul GST return filing rules. The reform to filing rules proposes to replace the monthly filing requirement for most businesses with an optional quarterly filing frequency for businesses with annual gross receipts below INR 50 million ($728,500). In addition, the GST Council proposes to introduce a simplified form with two main tables. One will be used for reporting tax collected on sales and one for claiming GST credits by providing summary of purchases. An online system will be used for uploading invoices. Nil return filers will be allowed to declare nil amounts via SMS text. There will be separate forms for those businesses only making sales to consumers, as opposed to both businesses and consumers, provided such businesses have an annual gross receipts below INR 50 million ($728,500).

The GST Council also proposes to restructure the GST rate applicable to various sales, notably reducing the number of items subject to the 28 percent rate. The following items are proposed to be subject to the 18 percent rate: paints and varnishes (including enamels and lacquers); glaziers' putty, grafting putty, and resin cements; refrigerators, freezers, and other refrigerating or freezing equipment, including water coolers, milk coolers, and refrigerating equipment for the leather industry; washing machines; lithium-ion batteries; vacuum cleaners; domestic electrical appliances; storage water heaters and immersion heaters, hair dryers, hand dryers, electric smoothing irons; up to 26.7-inch televisions; special purpose motor vehicles – for example, crane lorries, fire fighting vehicles, concrete mixer lorries, and spraying lorries; works trucks that are self-propelled and not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas, or airports for the shipping of goods; trailers and semi-trailers; and miscellaneous articles, such as scent sprays and similar toilet sprays, powder-puffs; pads for the application of cosmetics; and footwear sold for above INR 1,000 ($14.50). The following items are proposed to be subject to the 12 percent rate: electrically powered vehicles and various products made by artisans. The following items would be subject to the 5 percent rate: ethanol for sale to oil marketing companies to be blended with fuel; solid biofuel pellets; footwear sold for up to INR 1,000; handmade carpets and other handmade textile floor coverings, handmade lace, hand-woven tapestries, hand-made braids, and toran (decorative door hangings); treated and untreated tamarind kernel powder; beet and cane sugar; marine engines; and e-books. The following items would be exempt from GST: milk enriched with vitamins or minerals salt will be exempt from GST, as well water sold for public purposes (other than in sealed containers).

Finally, the GST Council proposed changes to the GST legislation, which must be approved by the Indian parliament. The GST Council proposes to limit the requirement for purchasers to self-assess GST under the reverse charge mechanism on sales from unregistered persons (currently on hold until September 30, 2018) to specific goods in respect of notified classes of registered persons. In addition, the GST Council proposes to introduce a mandatory GST registration for e-commerce operators who are required to collect tax at source. Moreover, taxpayers would be allowed to opt for multiple registrations within a state/union territory when they have multiple places of business located within the same state or union territory. The GST Council further proposes that registered persons should be allowed to issue consolidated credit/debit notes for multiple invoices issued in a financial year. Finally, the GST credit would be broadened to include more goods and services on which credit can be claimed, including certain services provided for employees' consumption. To read a report prepared by the KPMG International member firm in India, please click here.

Source: Orbitax, India Publishes Proposed Amendments to GST Regime (July 16, 2018); CCH, Global VAT News & Features, India's GST Council Approves Rate, GST Return Changes (July 24, 2018); Orbitax, India GST Council Approves Simplified Return Filing Requirements and Rate Changes (July 27, 2018).

India: Reimbursements by Foreign Head Office to Indian Liaison Office Not Liable to GST

The Rajasthan Authority for Advance Rulings (AAR) recently published a ruling on whether the reimbursement of expenses and salary received by an Indian Liaison Office (LO) from its foreign Head Office (HO) is subject to GST. Under Indian Law, a LO can undertake only channel communication between the HO abroad and parties in India. It is not allowed to undertake any business activities in India. The expenses for running the LO must entirely be covered by the HO. Alternatively, foreign businesses can establish a branch in India, which is authorized to undertake commercial activities and earn income from such activities. In the case at hand, the taxpayer had established an LO in India and the HO transferred funds to the LO to cover all expenses incurred by the LO, including salaries, rent, security, electricity, and travel.

According to the AAR, HO and LO cannot be treated as separate persons for GST purposes because (1) the LO is strictly prohibited from undertaking any activity in trading, commercial, or industrial nature or entering into any business contracts in its own name; (2) the LO does not charge a separate commission for carrying on its liaison service; (3) the LO does not have any other source of income; (4) and the LO is solely dependent on the HO for all expenses incurred. As a consequence, there is no flow of services between HO and LO, and the reimbursement of expenses is thus outside the scope of GST. To read a report prepared by the KPMG International member firm in India, please click here.

Malaysia: Sales and Services Tax to be Implemented Effective September 1, 2018

On July 19, 2018, the Royal Malaysian Customs Department (RMCD) presented the key characteristics of the proposed Sales Tax and Service Tax which will replace the current GST system effective September 1, 2018. (For KPMG's previous discussion on Malaysia replacing the GST with a Sales and Service Tax, click here.) Sales and Service Tax are intended to be single stage taxes, however, in particular for Service Tax, it may be possible that services are taxed at multiple stages of the supply chain, leading to a cascading of tax. This is problematic because, unlike the current GST system, Sales and Service Tax are not creditable taxes. The Sales Tax would apply to taxable goods manufactured in Malaysia by a taxpayer and sold, used or, disposed by the taxpayer as well as taxable goods imported into Malaysia. The tax would be imposed at a rate of 5 percent, 10 percent, or a specific rate for petroleum products. Taxpayers would be required to register for Sales Tax if their sales exceed the registration threshold MYR 500,000 ($122,500), but some GST-registered businesses will be registered automatically for Sales Tax. According to the RMCD, the following would be exempt from Sales Tax: live animals, vegetables, fruits; federal or state governments; registered manufactures on acquisition of raw materials; tailors; jewelers; designated areas (e.g., Labuan, Langkawi, and Tioman); and special areas (e.g., free zones, licensed warehouse, licensed manufacturing warehouse and Joint Development Area).

The Service Tax would apply on a prescribed list of taxable services made in the course or furtherance of any business by a taxpayer in Malaysia (e.g., hotel, insurance, accounting, parking, and domestic flights except Rural Air Services) at a rate of six percent or specific amount of RM25 for credit card/charge card. The registration threshold would generally be same as for Sales Tax, with some exceptions such as restaurants and credit card/charge card providers. The following would be exempt from Service Tax: the import and export of services, though there are no further details on the conditions (if any) to qualify as exported services; designated areas (e.g., Labuan, Langkawi, and Tioman); and special areas (e.g., free zones, licensed warehouse, licensed manufacturing warehouse and Joint Development Area).

The RMCD also provided some proposed transition rules stating that it would allow taxpayers to claim GST credits within 120 days after the effective date of Sales Tax and Service Tax. In addition, GST registered persons must account for GST at 0% for goods held on hand before the effective date of Sales Tax and Service Tax in the final GST-03 Return. Finally, the RMCD clarified that where an invoice is issued and/or payment is received before the effective date of Sales Tax/Service Tax, but goods are removed or services are rendered after, Sales Tax/Service Tax is applicable.

On July 31, 2018, the parliament of Malaysia tabled the following bills relating to the repeal of the GST and reintroduction of the Sales and Service Tax: the GST (Repeal) Bill 2018; the Sales Tax Bill 2018; the Service Tax Bill 2018; the Customs (Amendment) Bill 2018; and the Free Zones (Amendment) Bill 2018. The bills give the finance minister power to fix and amend the rate for both taxes. Tax rates must be approved by lower house within 120 days. The sales and services tax would be refundable, pending conditions, if the rate set isn't approved by the lower house within that time frame. The minister will have the power to exempt goods from sales tax, and any person from paying sales and services tax. The lower house must approve any exemption order. To read a report prepared by the KPMG International member firm in Malaysia, please click here.

Source: Bloomberg Tax, Malaysia Sales and Services Tax Bill Moves Ahead in Parliament (August 1, 2018). Malaysia – GST repeal and SST implementation bills tabled in parliament (July 31, 2018), News IBFD.

Trade & Customs (T&C)

European Union: Tariff Measures to Address Trade Diversion of Steel Imports

Effective July 19, 2018, the European Commission introduced provisional safeguard measures concerning imports of a number of steel products. According to the Commission, the U.S. tariffs on steel products are causing trade diversion that may harm EU steelmakers. The safeguard measures are part of the three-pronged response to import duties applied by the United States under section 232 of the Trade Expansion Act of 1962. Because exporting steel to the United States has become less attractive, there are indications that certain steel sellers have diverted some of their exports from the United States to the EU. To avoid a sudden increase of imports that would cause further economic problems for EU steel producers, the Commission has found that provisional safeguard measures are necessary. The safeguard measures are intended to protect the domestic EU industry against a surge of imports.

The provisional measures concern 23 steel product categories and will take the form of a "tariff rate quota" (TRQ). For each of the 23 categories, tariffs of 25 percent will only be imposed once imports exceed the average of imports over the last three years. The quota is allocated on a first-come first-serve basis (thus at this stage not allocated by the individual exporting country). The measures are imposed against all countries, except certain developing countries with limited exports to the EU as well as the European Economic Area (EEA) countries, Norway, Iceland, and Liechtenstein. There are 12 steel product categories covered by the provisional safeguard measures (including imports from China, Russia, and Ukraine) currently subject to anti-dumping and countervailing duties. To avoid the imposition of "double remedies" whenever the tariff quota is exceeded, the EC will consider the suspension or the reduction of the level of these duties so that the combined effect of these measures does not exceed the highest level of the safeguard or anti-dumping/anti-subsidy duties in place. The provisional safeguard measures are to remain in place for a maximum of 200 days. All interested parties will now have the opportunity to comment, and the EC will consider these comments in reaching its final conclusion, at the latest by early 2019. If all conditions are met, definitive safeguard measures may be imposed as a result. For more information, please click here.

South Africa: Government Approves Six Special Economic Zones

On July 6, 2018, the South African Minister of Finance approved the following six SEZs for preferential tax treatment status: Coega SEZ (Eastern Cape); Dube Tradeport SEZ (KZN); East London SEZ (Eastern Cape); Maluti-A-Phofung SEZ (Free State); Richards Bay SEZ (Western Cape); Saldanha Bay SEZ (Western Cape). While a company may operate within a SEZ, the Income Tax Act sets out additional criteria that must be met before a qualifying company may benefit from tax-related incentives provided to SEZs including the following: (1) the company must be incorporated in South Africa or be a South African tax resident, and carry on business in a SEZ; (2) the company operates from a fixed base situated within that SEZ and no less than 90 percent of the income of that company is derived from the business carried on within that SEZ; (3) the company does not engage in certain manufacturing activities, including those related to the production of alcohol, tobacco products, weapons and ammunition or bio-fuels whose process of manufacture negatively impacts on food security in South Africa; and (4) no more than 20 percent of the deductible expenditure incurred or 20 percent of the income received by the entity may be derived from transactions between connected persons who are residents. Qualifying companies can benefit from the following incentives: a reduced corporate tax rate of 15 percent; an accelerated 10 year tax allowance on buildings; VAT & customs relief if located within a Customs-Controlled Area; and the Employment Tax Incentive for employers employing low-salaried employees. To read a report prepared by the KPMG International member firm in South Africa, please click here.

In Brief

- **Aruba:**[vi] On June 27, 2018, Aruba's Tax Department issued an official notification on the recent introduction of a crisis levy that became effective July 1, 2018 and is charged in addition to the business turnover tax (BBO) and the health tax (BAZV). The crisis levy, known as the PPP projects additional funding tax (*Belasting additionele voorzieningen PPS-projecten – BAVP*), is charged on a tax base similar to the BBO and BAZV at a rate of 1.5 percent, resulting in total turnover taxes of 6 percent. Turnover tax is payable by the business selling the goods or services. In practice, this can cause complications for foreign businesses, given their limited presence in Aruba. For foreign business with a limited presence in Aruba, the Tax Department also notes that to partially eliminate complications in paying turnover taxes, the possibility has been introduced for the Minister in charge of finance to determine that in some cases BBO/BAZV/BAVP will not be payable by the foreign business, but by the domestic client via reverse-charge. Lastly, it is noted that the exemptions for particular services provided by banks and for forming and performing insurance contracts have been revoked. This does not extend to pension or life insurance contracts.
- **Australia:**[vii] The Australian Taxation Office (ATO) recently published guidance for purchasers and sellers of residential properties on the

application of new GST withholding rules. Recall, effective July 1, 2018, purchasers of new residential premises and new residential subdivisions are required to withhold GST on the purchase price at settlement and then to pay it directly to the ATO. In its guidance, the ATO said that a seller of residential premises or potential residential land may be required to notify their purchaser in writing as to whether or not they have a withholding obligation. If the purchaser does have a withholding obligation, the seller must provide additional information, in writing, to the purchaser. A seller can incur penalties if it fails to provide the purchaser with the required notice. A purchaser can incur penalties if it fails to pay the required withholding amount to the ATO.

— **Australia:**[viii] On July 20, 2018, the Australian Treasury published the Treasury Laws Amendment (2018 4 Measures No. 5) Bill 2018: Online hotel bookings for public consultation. Currently, GST-registered businesses in Australia are required to include sales of Australian hotel accommodations in their GST gross receipts, while offshore sellers are exempt. The draft Bill amends the GST Act to require offshore sellers of rights or options to use commercial accommodations in Australia to include these sales in working out their GST gross receipts effective July 1, 2019. Where the total GST gross receipts meets or exceeds the registration threshold of AUD 75,000 ($55,500), the nonresident sellers must register for GST purposes and remit GST for their taxable sales.

— **Australia:** On July 12, 2018, the Federal Court of Australia published its judgment in *Travelex Limited v Commissioner of Taxation*, [2018] FCA 1051, regarding when the entitlement to interest on a delayed GST refund arises. The Federal Court held that the relevant date in calculating the interest owing was when the entitlement to a refund arose. This was a date earlier than when the taxpayer gave notice of the overpayment of GST. To read a report prepared by the KPMG International member firm in Australia, please click here.

— **Belgium:**[ix] On July 19, 2018, the Belgian Parliament passed a bill to amend various VAT provisions effective January 1, 2019. The bill introduces a VAT exemption for certain provisions of food as well as a VAT exemption for social work services. In addition, the Bill allows taxpayers to deduct VAT levied from the purchase of specific alcoholic beverages and amends the flat-rate regime applicable to certain companies.

— **Bulgaria:**[x] On July 19, 2018, the Ministry of Finance of Bulgaria launched a public consultation on proposed amendments to Ordinance N-18 dated December 13, 2006 regarding the registration and reporting of sales on commercial sites through fiscal devices. The Ministry of Finance proposes to introduce new requirements for cash receipts and information to be submitted to the tax authority on the sale or refueling of liquid fuels. Moreover, the proposal would allow taxpayers to adjust cash receipts in limited cases such as return of goods, mistake by the operator, or a reduction of the taxable base. Currently, such adjustments are performed via cancelling cash receipts on paper. The proposal would further introduce new requirements for sales management software on commercial sites as well as for producers, distributors, and users of such software. Finally, the Ministry of Finance proposes to introduce a new requirement for persons performing sales through e-shops to submit information to the tax authority on the owner of the shop, goods and services sold, hosting and maintenance of the website, and software used.

— **Colombia:**[xi] On June 28, 2018, the government of Colombia issued Regulatory Decree 1096 of 2018 (the Decree) providing rules for the application of VAT on the sale of real estate units, including defining "real estate unit" for VAT purposes; providing limits to VAT deduction related to the sale of real estate units.; and defining a control mechanism and requirements with which a seller must comply to be able to apply for input VAT deductions.

— **Colombia:**[xii] The National Tax Authority of Colombia (DIAN) recently announced that a free web service is available to taxpayers that are required to submit invoices electronically. DIAN's free web service provides the following tools for facilitating the interoperability of electronic invoicing among the participants in the value chain: (1) a standard form for invoicing electronically and other standard forms related to invoicing procedures (e.g., credit and debit notes for amending invoices issued); (2) electronic or digital signature; and (3) a mechanism for recording a graphical image of an electronic invoice for customers that do not receive the electronic standard form. According to DIAN, this service allows taxpayers to have an efficient and effective invoicing system through which invoices will be submitted electronically to the recipient, issuer, and DIAN, reducing costs and improving productivity as a result.

— **Egypt:**[xiii] On June 10, 2018, the Egyptian Tax Authority (ETA) issued a statement clarifying that ride-sharing services used in Egypt and provided by a nonresident person through electronic applications are subject to VAT. The ETA made the distinction between, on the one hand, passenger transport services provided by drivers and, on the other, the service of facilitating the connection with registered passengers that is provided by the nonresident person. The ETA highlighted that, while the passenger transport services are exempt from VAT, the service of facilitating the connection between drivers and passengers is subject to VAT at the standard rate of 14 percent. The ETA further specified that the consideration for this service would be the remuneration received by the nonresident person for providing the service which is a percentage of the overall remuneration for the passenger transport service. As a consequence, all drivers using the electronic application provided by the nonresident seller must collect and remit the VAT due on the facilitation service to the ETA.

- **European Union:**[xiv] The European Commission recently launched a consultation on proposed changes to VAT invoicing rules in the EU. The scope of the consultation is to collect data and evidence needed to evaluate the effectiveness of the invoicing rules introduced by the Second Invoicing Directive and consider potential improvements. The Commission hopes the data gathered from the consultation will allow identification and quantification of the regulatory costs, benefits, savings, as well as burden reduction and simplification potential for businesses. Special focus will be on e-invoicing, and data gathered through the consultation should allow the Commission to measure and better understand the uptake of electronic invoicing in the EU.

- **European Union:**[xv] On July 11, 2018, the ECJ published its judgment in *SIA 'E LATS*, Case C-154/17, in which it held that for an object composed of precious metals or precious stones to be a second-hand good, it must have a functionality other than that which is inherent in the materials of which it is composed, have retained that functionality and be suitable for further use as it is or after repair.

- **European Union:**[xvi] On July 25, 2018, the ECJ published its judgment in *Gmina Ryjewo*, Case C-140/17, in which it held that a public body is allowed to adjust the deduction of VAT paid on immovable property acquired as capital goods where, at the time of the acquisition of those goods: (1) the property could, by its very nature, be used both for taxable activities and non-taxable activities but were initially used for non-taxable activities, and (2) that public body had not expressly stated its intention to use those goods for a taxable activity but had also not excluded that possibility, so long as it follows from an assessment of all the factual circumstances.

- **Ireland:**[xvii] On July 9, 2018, the Irish Revenue published eBrief No. 142/18, on the sourcing of services connected with immovable property to bring them in line with the EU rules pertaining to these sourcing rules. The guide clarifies the sourcing rules; the definition of immovable property for VAT purposes; when a service is considered connected to an immovable property; the VAT treatment of specific services detailed in the EU VAT Regulations, as well as certain services not explicitly covered by the EU VAT Regulations; the applicable VAT rate; and the VAT treatment of construction- related services. In general, if the service is connected with immovable property or is the grant of a right to use the property, the service is sourced to where the property is located. Services are considered connected with immovable property in two main cases: (1) if they are derived from an immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services, or (2) if they are provided to, or directed toward, an immovable property, having as their object the legal or physical alteration of that property. If the service is sourced in Ireland, the standard VAT rate (currently 23 percent) generally applies for professional services, the reduced rate of 13.5 percent applies for services consisting of the development of immovable goods, subject to the two-thirds rule, and the reduced rate of 9 percent applies for hotel accommodation and other accommodation. To read a report prepared by the KPMG International member firm in Ireland, please click here.

- **Italy:**[xviii] On July 10, 2018, the Italian Tax Authorities (ITA) issued Resolution No. 54/E, providing instructions on the ruling procedure necessary to ascertain the existence of the economic or organizational link required by the VAT grouping regime introduced by the Budget Law for 2017. (For KPMG's previous discussion on the new VAT grouping regime in Italy, click here.) Qualifying taxpayers may opt for the VAT grouping regime, provided they are closely bound to one another from a financial, economic, and organizational perspective. Under certain circumstances, taxpayers are required to submit to the ITA a ruling request to either exclude or include a specific entity as participant in a VAT group. Such request can also be filed where the option for the VAT grouping regime has not been elected yet and there is no obligation to opt for the regime after its submission. Indeed, it is possible that, due to the reply received, entities deem it not convenient or opportune to proceed. The request must be signed by the representative of the VAT group and the specific entity for which the non-existence or existence of the given link should be ascertained. Taxpayers may file a single ruling request for several entities related to the same VAT group. Ruling requests not compliant with these rules and filed before the issuance of the Resolution are in any case deemed valid.
- **Moldova:**[xix] On June 21, 2018, the State Tax Service of Moldova (STS) clarified the obligation of an educational institution to register as a VAT taxpayer. The STS pointed out that, training services are exempt from VAT. Goods and services provided by educational institutions, which relate to the direct development of the educational process according to the Education Code, are considered goods and services provided as a result of the educational process. The "educational process" means the total training activities carried on in accordance with an educational plan elaborated and approved under the framework plan approved by the Ministry of Education, Culture and Research. A public or private educational institution is required to register for VAT purposes if, during any period of 12 consecutive months, the amount of goods and services goods which are not VAT exempt exceeds MDL 1.2 million ($72,500).
- **Russia:**[xx] On June 8, 2018, the Ministry of Finance of Russia published Guidance Letter 03-03-07/39607 in which it held that a Russian individual entrepreneur who acquires services that involve the rental of immovable property in Russia from a nonresident legal entity must act as a tax agent, determining and remitting the VAT due on the rental transactions.
- **Saudi Arabia:**[xxi] The General Authority for Zakat and Tax of Saudi Arabia (Zakat) recently signed a memorandum of understanding with the Saudi Arabian Monetary Agency (SAMA) to encourage firms to adopt electronic invoicing through SAMA's "ESAL" electronic invoice processing platform.

The Government is hoping that firms will increasingly adopt electronic invoicing through the platform. By using the platform, firms can benefit from: a reduction in administrative burdens and streamlining of their compliance processes, reduced disagreements between buyers and sellers; having invoices from previous years archived; and a reduction in associated business risks.

— **Singapore:**[xxii] On July 26, 2018, the Inland Revenue Authority of Singapore published an updated e-Tax Guide on the GST Approved Contract Manufacturer and Trader (ACMT) Scheme. Under normal GST rules, a GST-registered contract manufacturer must charge and account for GST on sales of value-added activities performed on its client's goods that remain in Singapore. If the client is an overseas person who is not GST-registered, it is not possible to recover the GST costs incurred. Under the ACMT scheme, a qualifying contract manufacturer can disregard the provision of value-added activities (i.e., not subject them to GST) to overseas non-GST registered clients where the sale comprises a process being applied to or carried out on goods under a contract with and directly benefitting the overseas client. A qualifying contract manufacturer can also enjoy import GST suspension and GST credit privileges on behalf of an overseas client, subject to certain conditions being met. Similar benefits are also available for qualifying logistics companies acting as a distributing agent for overseas non-GST registered clients.

— **South Africa:**[xxiii] The South African Revenue Service recently published an update to its Frequently Asked Questions document regarding the April 1, 2018 VAT rate increase.

— **Switzerland:**[xxiv] The Swiss Federal Tax Administration (FTA) recently updated its electronic VAT system. A new online portal, ESTV SuisseTax, has been created that enables taxpayers to submit, among other things, VAT and withholding tax forms electronically. As part of the online VAT process, it is now possible to upload data directly from a company's accounting systems. Company and registration certificates can be issued electronically via the portal.

— **Switzerland:**[xxv] On July 21, 2018, the Ministry of Finance of Switzerland published a draft guide on the VAT treatment of virtual currency. The draft guide, among other things, addresses the following: acceptance of virtual currency as a payment method; calculation of the taxable amount in virtual currency based on the fair market price; currency exchanges; the transfer of coins or tokens; the mining of virtual currency; the initial coin and token offering; conversion of virtual currency amounts received in CHF; VAT deductions in the case of invoices in cryptocurrency; conversion of virtual currency amounts stated in an invoice to CHF or a foreign currency; and bookkeeping obligations for invoices received in virtual currency.

— **Taiwan:** On July 16, 2018, the Ministry of Finance of Taiwan announced that overseas e-commerce companies registered for VAT purposes in Taiwan will be required to issue electronic VAT invoices (e-GUI) effective January 1, 2019. However, penalties for failure to comply with this requirement will not be enforced before December 31, 2019.

- **Ukraine:**[xxvi] On April 20, 2018, the State Fiscal Service of Ukraine (SFS) issued Guidance Letter 1737/6/99-99-15-03-02-15/IPK in which it held that commodity loans are subject to VAT in Ukraine. A "commodity loan" refers to the temporary transfer of ownership of goods, works, or services by a resident or nonresident to legal entities or individuals under a loan contract that provides for the postponement of final settlement payments for a specific period, subject to the payment of pre-established interest.

- **Ukraine:**[xxvii] On July 19, 2018, the Ukrainian State Fiscal Service clarified that the sale of goods and services, even services provided free of charge, are subject to VAT. It further explained that when a lessor improves rental property for free, upon return of the leased property the cost of the improvement is subject to VAT at the standard rate of 20 percent. In addition, if a separate agreement for consideration is executed for the improvement of the rental property by the lessor, then the negotiated amount is subject to VAT at 20 percent.

- **United Kingdom:**[xxviii] On July 13, 2018, HMRC published Revenue and Customs Brief 8 (2018), which sets out HMRC's position following the decision of the FTT in *Phoenix Foods Ltd* regarding whether bicarbonate of soda sold in small tubs to supermarkets qualified as zero-rated food or was subject to the standard rate of VAT. In the case, HMRC argued that bicarbonate of soda should be standard-rated as it is a product with multiple uses, and that it was only added to food for "technological purposes" as a leavening agent, not for its nutritional value. The FTT decided that the sale of bicarbonate of soda in this case qualified as a zero-rated food ingredient. The FTT accepted that bicarbonate of soda has many uses, but in this case it was appropriate to consider how the bicarbonate of soda would be used. As a consequence, HMRC accepts that the product in question is zero-rated. However, sales of bicarbonate of soda that are sold in larger, industrial-sized quantities, or which are held out for non-culinary purposes, remain standard-rated.

- **United Kingdom:**[xxix] On July 6, 2018, the UK government presented Finance Bill 2018-19, which, if approved, would allow a non-corporate entity (a partnership or individual) to join a VAT group with its corporate subsidiaries if it controls all of the members in a VAT group. Under the proposal, the non-corporate entity must demonstrate that it controls all of its corporate subsidiaries. In addition, the Finance Bill would transpose the EU Voucher Directive into UK law. As a consequence, if the VAT treatment attributable to the underlying sale of goods or services can be determined with certainty on issue of a single-purpose voucher, VAT should be charged on each transfer, including on the issue of the single-purpose voucher. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher should not be regarded as an independent transaction. Meanwhile, for multi-purpose vouchers, VAT should be charged when the goods or services to which the voucher relates are applied. Against this background, any prior transfer of multi-purpose vouchers should not be subject to VAT.

— **Uruguay:**[xxx] On July 17, 2018, the tax authority of Uruguay (DGI) issued Resolution No. 6,409 which regulates recently introduced taxation of nonresident companies providing services or intermediation activities rendered through Internet, technological platforms, computer applications or similar means. The Resolution clarifies that formal requirements of invoices, documents issued by nonresident companies whose exclusive activity is to provide the covered services or intermediation activities, will be considered valid for the Uruguayan tax authorities as long as they include the identification of the user and the amount charged. Moreover, when registering with the DGI, nonresident companies that provide the covered services or intermediation activities are waived from appointing an Uruguayan-resident representative, as long as they register an Uruguayan domicile. Finally, taxes generated between January and June 2018 must be paid before May 2019 and taxes generated between July and September 2018 must be paid before October 2018.

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i. Greece – Application of reduced VAT rates to five islands (July 2, 2018), News IBFD.

ii. BNA, Moldova Parliament Passes Bills to Amend Income Tax, VAT Regimes (July 31, 2018).

iii. Russia – Standard VAT rate increased – law adopted by parliament (July 30, 2018), News IBFD.

iv. Spain – Budget 2018 – indirect taxation (July 10, 2018), News IBFD.

v. Swaziland – VAT (Rates) (Amendment) Regulations 2018 published (July 12, 2018), News IBFD.

vi. Aruba – Guidance in English on amended indirect taxes effective as from 1 July 2018 (July 5, 2018), News IBFD.

vii. CCH, Global VAT News & Features, Australia Issues Guide On New Real Estate GST Withholding Rules (July 16, 2018).

viii. Orbitax, Australia Consulting on Legislation to Extend GST to Offshore Hotel Bookings (July 26, 2018).

ix. BNA, Belgium Parliament Passes Bill to Amend VAT Provisions (July 31, 2018).

x. Bulgaria – Amendments to legislation on fiscal devices – consultation launched (July 23, 2018), News IBFD.

xi. Colombia – Decree on real estate units subject to VAT issued (July 11, 2018), News IBFD.

xii. Colombia – DIAN announces free web service for facilitating electronic invoicing (July 11, 2018), News IBFD.

xiii. Egypt – Ride-sharing services provided by non-resident suppliers through electronic applications subject to VAT (July 19, 2018), News IBFD.

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xviii. Italy – VAT grouping regime – resolution issued (July 16, 2018), News IBFD.

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