# Inside Indirect Tax

**January 2018**

## About this Newsletter

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

## Announcement

### KPMG Publishes Asia Pacific Indirect Tax Guide, Cross Border Services, and Trade Survey

KPMG International's Global Indirect Tax Services (GITS) recently released its Asia Pacific Indirect Tax Guide for 2017. The Guide provides an overview of key aspects of the indirect tax systems compliance administrative issues in the following countries: Australia, Cambodia, China, Fiji, India, Indonesia, Japan, Korea, Laos, Malaysia, Mongolia, Myanmar, New Zealand, Papua New Guinea, Philippines, Singapore, Sri Lanka, Taiwan, Thailand, and Vietnam.

KPMG's GITS further published a survey on the value added tax (VAT) and goods and services tax (GST) treatment of cross-border services, which looks at how 54 countries around the world have either implemented, or are considering implementing, changes to their VAT and GST systems to recover the tax. The challenges for service providers in implementing these changes is immense, with potentially multijurisdictional tax obligations arising merely by virtue of where their customers are situated around the world.

KPMG's Global Trade & Customs practice recently launched in collaboration with Thomson Reuters the 2017 Global Trade Management Survey, which takes the pulse of global trade and uncovers what matters most to global trade practitioners. The survey is a result of over 30 interviews with trade executives from large multinational organizations and explores a range of topics, including: regulatory change challenges, organizational relevance, centralization, free trade agreements and classification.

## Global Rate Changes

— **Belgium**:[i] Effective January 1, 2018, Belgium applies the 6 percent reduced VAT rate to feminine hygiene products, intimate tissues for hygiene protection of genital body zones of persons other than babies, and external defibrillators.

- **Greece**:[ii] Effective January 1, 2018, Greece applies the reduced rate of 13 percent to services provided by nursing homes and elderly care units that function as private housing and hosting companies. In addition, Greece extended until June 30, 2018 the 30 percent VAT rate reduction applicable on the islands of Lesbos, Chios, Samos, Kos, and Leros.
- **Hungary**:[iii] Effective January 1, 2018, Hungary applies a reduced VAT rate of 5 percent to internet access services.
- **Latvia**:[iv] Effective January 1, 2018, Latvia reduced the VAT rate on certain locally fresh fruit, berries, and vegetables not processed thermally from 21 percent to 5 percent.
- **Lithuania**:[v] Effective January 1, 2018, Lithuania extended the application of the reduced VAT rate of 9 percent to accommodation services. The extension runs through December 31, 2022.
- **Netherlands**:[vi] Effective January 1, 2018, the Netherlands applies stricter rules with respect to eligibility of certain medicines for the reduced VAT rate of 6 percent. Products not recognized as medicines will be subject to the standard rate of VAT of 21 percent. This includes items such as toothpaste, shampoo, and sunscreen, which were previously recognized by the Dutch supreme court as falling under the reduced rate. (For KPMG's previous discussion on the Dutch supreme court ruling, please click here.)
- **Tunisia:** Effective January 1, 2018, Tunisia increased the standard VAT from 18 percent to 19 percent, the reduced rate from 12 percent to 13 percent, and the super-reduced rate from 6 percent to 7 percent.

## The Americas

### United States: Competitive Pricing Reports Not Considered Taxable Information Services in New York

The New York Supreme Court, Appellate Division recently held that a taxpayer's purchase of competitive pricing reports was not a taxable information service. In reaching this conclusion, the court overruled decisions by the Division of Tax Appeals and the Tax Appeals Tribunal holding in favor of the state. The taxpayer at issue was a supermarket chain. To ensure it was pricing goods competitively, the taxpayer monitored prices charged by its competitors by purchasing competitive price audits or price checks from another company. Specifically, the price-check company collected raw data on how much the taxpayer's competitors charged for certain products in specified locations and compiled the data into a report designed to the taxpayer's specifications. Under New York law, sales tax is imposed upon receipts from the service of furnishing information, "including the services of collecting, compiling or analyzing information and furnishing reports."

However, there is a carve-out for receipts from furnishing "information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons."

There was no dispute that the competitive price reports qualified as information services. However, the issue before the court on appeal was whether the reports were personal or individual in nature. The Commissioner argued (and the ALJ and the Tribunal had agreed) that because the raw data forming the basis of the reports was derived from a singular preexisting public source—the prices listed at supermarkets—the reports were not personal or individual in nature. The court disagreed with this characterization. Although the information collected was available to the public, it was not, in the court's view, derived from a singular, widely available common source or database, as was the case in earlier disputes involving the scope of the exclusion. Rather, the taxpayer provided the price-check company with its specific and unique collection criteria, and the company physically sent data collectors to each individual competitor location to manually record the requested pricing information. Because this information regularly fluctuated, there was no singular preexisting public source from which the price-check company could obtain the information. Furthermore, once the raw data was collected, it was maintained as a separate and distinct work component or database for the company's sole use in preparing the taxpayer's reports. It was not maintained in a general database that was viewable by other clients, and the contract between the taxpayer and the company specifically prohibited sharing the information with third parties. The court concluded that the services were personal and individual in nature and were excluded from tax.

**Canada: Quebec Phase to Phase-Out Input Tax Refund Restrictions**

Effective January 1, 2018, the province of Quebec started phasing out (over the next three years) input tax refund (ITR) restrictions under the Quebec Sales Tax (QST). Currently, a "large business" that incurs QST on a specified property or a service cannot deduct any QST incurred or receive an ITR on these expenses. In general, a large business is defined as a business with more than CAD10 million ($8.03 million) in annual revenues, including revenues from associated entities, as well as most financial institutions. A specified property or service includes: (1) electricity, gas, combustible or steam, unless used in production of goods intended for sale; (2) telecommunications, except for internet access services and toll-free numbers (e.g., "1-800" and "1-888" numbers); (3) meals and entertainment expenses subject to the 50 percent deductibility restrictions for income tax purposes; (3) road vehicles under 3,000 kilograms that must be registered to travel on public roads; and (4) fuel used in such road vehicles, other than diesel fuel. Quebec is scheduled to phase out its ITR restrictions over three years, which will increase the ITR claim rate as follows:

— January 1, 2018 to December 31, 2018 – 25 percent claim rate;

— January 1, 2019 to December 31, 2019 – 50 percent claim rate;

— January 1, 2020 to December 31, 2020 – 75 percent claim rate; and

— January 1, 2021 and beyond – 100 percent claim rate.

As a result of this change, large businesses that qualify to claim ITRs should become eligible to claim 25 percent of the QST that becomes payable on specified goods and services effective January 1, 2018. Affected businesses may need to adjust certain accounts and calculations related to the specified property and services subject to the ITR restrictions, including common area maintenance charges and employee expense accounts. To read a report prepared by the KPMG International member firm in Canada, please click here.

## Europe, Middle East, Africa (EMA)

### European Union: Insolvent Purchaser Must Adjust VAT Originally Deducted When Agreeing With Vendor on Reduction of Bad Debt According to Advocate General

On October 12, 2017, the Court of Justice of the European Union (ECJ) published the Opinion of its Advocate General (AG) in *T-2*, Case C-396/16, regarding whether an insolvent company is required to adjust VAT originally deducted following agreement with creditors that it would pay them less for purchases than it had originally been charged. In the case at hand, an insolvent company, had agreed to pay only part of the value of unpaid invoices it had received from them. The tax authority of Slovenia wanted it to reduce the VAT it had claimed on these transactions so that it only claimed VAT based on the amount it had agreed to pay for the goods/services and not on the full amount that the vendors had originally charged. The EU VAT Directive requires taxpayers to adjust the amount of VAT deducted when some change occurs to the factors that determined deduction originally (e.g., when purchases are cancelled or prices are reduced). When items are stolen, or partially or totally unpaid, a Member State has the option to require taxpayers to adjust VAT deducted. Slovenia has a bad debt relief for a vendor where the customer is insolvent. However, Slovenian law does not specifically say that VAT originally deducted must be adjusted when items are wholly or partly unpaid. It does, however, require an adjustment where some change occurs to the factors that determine the deductible amount.

According to the AG, a national law should not create a mismatch between the adjustment of VAT collected and the adjustment of VAT deducted. Reaching an agreement with creditors could be a change to the factors that determined the original deduction, but only if that agreement also permits the seller to adjust the amount of VAT collected. The use to which the items would be put by the taxpayer had not changed. The AG went on to say that a reduction in the amounts owed by the taxpayer to the creditors gave rise to transactions remaining totally or partly unpaid. Slovenian law does not specifically require an adjustment to the VAT deducted for failure to pay. But, failure to pay in full or part is not listed as a factor that does not require adjustment either. As a consequence, it is possible to imply the intention was that an adjustment should be made in that case. On that basis, the national law complied with the EU VAT Directive. If the vendor could adjust the amount of VAT collected as a result of entering into the agreement, thus creating the necessary change in the factors, the authorities could compel the taxpayer to adjust the VAT amount originally deducted. The ECJ must now decide whether to follow the nonbinding Opinion of its AG.

Source: European Union; Slovenia – ECJ Advocate General's opinion (VAT): T – 2 (Case C-396/16) – Adjustment of deduction; bad-debt relief – details (02 Nov. 2017), News IBFD.

### European Union: Member States Cannot Deny VAT Deduction on Purchases Made From Vendors Listed as Inactive

On October 19, 2017, the ECJ published its judgment in *SC Paper Consult SRL*, Case C-101/16, regarding whether a Member State may deny a customer's right to deduct VAT because the vendor is deemed inactive. In the case at hand, the Romanian tax authority denied a taxpayer's VAT deduction for VAT paid on services provided by a domestic vendor because the vendor had been declared an inactive taxpayer because it failed to file its tax returns. The information stating that the vendor was an inactive taxpayer was not communicated to the taxpayer, but the company was included in the list of registered, but inactive, taxpayers displayed at the headquarters of the tax authority and published on its website. Recall, the AG previously held that Member States cannot deny VAT deduction on purchases made from vendors listed as inactive.

The ECJ first stated that the right to deduct VAT is subject to compliance with both substantive and formal requirements. With regard to the substantive requirements, to have a right to deduct VAT, it is necessary that the interested party be a taxpayer for VAT purposes and that the goods or services relied on to confer entitlement to that right be used by the taxpayer for the purposes of his own taxable transactions. As to the formal requirements, the taxpayer must hold a valid VAT invoice. Member States must allow the VAT deduction if the substantive requirements are satisfied, even if the taxpayer has failed to comply with some of the formal requirements. However, if non-compliance with such formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been satisfied, the right to deduct VAT may be denied. Moreover, the right to deduct may be denied when it is established, in the light of objective evidence, that that right is being invoked fraudulently or abusively.

The national rules at issue have the objective of combating VAT evasion. However, the measures adopted by the Member States must not go beyond what is necessary to achieve the objectives pursued. Therefore, they cannot be used in such a way that they would have the effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT. By requiring the taxpayers to consult the list of taxpayers declared inactive, the national legislation pursues an objective that is legitimate and even imposed by EU law, namely that of ensuring the proper collection of VAT and the prevention of VAT evasion, and that such a verification can reasonably be required of an economic operator. However, in the case at hand, it was impossible, for the taxpayer, to demonstrate that the transactions concluded with the trader that had been declared inactive had actually been paid into the public purse by that other party. As a consequence, the measure goes beyond what is necessary to attain the legitimate objective pursued by the EU VAT Directive. As a consequence, the ECJ held that a Member State may not impose obligations such as those at issue in the main proceedings, under which the right to deduct VAT is refused to a taxpayer on the ground that the trader which provided a service to that taxpayer and issued a corresponding invoice, on which the expenditure and the VAT are indicated separately, has been declared inactive by the tax authorities and the VAT deductibility denial is systematic and final.

Source: RO: ECJ, 19 Oct. 2017, Case C-101/16, *SC Paper Consult SRL v. Direcţia Regională a Finanţelor Publice Cluj-Napoca, Administraţia Judeţeană a Finanţelor Publice Bistriţa-Năsăud*, ECJ Case Law IBFD.

**European Union: Time Limit for VAT Refund of Non-Established Taxpayers Should Start When VAT is Paid According to Advocate General**

On October 26, 2017, the ECJ published the Opinion of its AG in *Volkswagen AG*, Case C-533/16, regarding whether a non-established taxpayer may claim a refund of VAT on invoices corrected after the VAT deductibility period expired. In the case at hand, a number of Slovakian companies sold the taxpayer, a German company, and molds for car lights. During the period 2004 to 2010, the vendors did not charge and invoice VAT because they considered the transactions in question as financial compensation not subject to VAT. However, the transactions should have been subject to VAT. When the mistake was realized, the vendors invoiced the VAT on the sales, collected the VAT from the taxpayer, and paid this over to the tax authority. The taxpayer was neither established nor VAT-registered in Slovakia, and thus submitted a nonresident VAT refund claim. The tax authority allowed 5 years of recovery, but denied the claim for older periods.

The AG opines that it is the payment of the tax to the vendor by the taxpayer that lies at the heart of the right to deduct and it is not possible to separate "deduction" from "payment." If the taxpayer has not paid the tax, which generally appears on the invoice, there is no legal or financial basis on which to exercise the right of deduction. In normal circumstances, this happens at the same time. However, the situation is different in the case at hand. At the time of the sale, the taxpayer did not pay any VAT or receive an invoice with VAT and could thus not recover any VAT. The AG concludes that the correct approach is to link chargeability and the subsequent right of deduction with the actual payment of the tax. What happened in reality was a late payment of VAT, and it was at this point that the calculation of the time limit for exercising it should have started. This conclusion is further supported by the principle of fiscal neutrality. The AG states that if the tax authority is prepared to accept the underpaid output tax over the 5 year limitation period, it should also allow the recipient to claim all the VAT incurred. The ECJ must now decide whether to follow the nonbinding Opinion of its AG. The Opinion is supportive of the time limit starting from when the VAT is paid and the invoice received. If followed by the court, this will be helpful in similar situations where a vendor has not charged VAT. Customers will be more likely to pay over the VAT, knowing that they will be able to recover that VAT from the tax authorities.

Source: European Union; Slovak Republic – ECJ Advocate General's opinion (VAT): Volkswagen (Case C-533/16) – VAT refund for non-established; limitation period – details (15 Nov. 2017), News IBFD.

**European Union: Address of Economic Activity of Vendor Not Required on Invoice for VAT Deduction Purposes**

On November 15, 2017, the ECJ published its judgment in the joined cases *Geissel and Butin*, Cases C-374/16 and C-375/16, regarding whether a tax authority can deny a taxpayer the right to deduct VAT because the address of the vendor on the purchase invoice is not the place at which the vendor effectively carries out its economic activity. In the first case, a motor vehicle trader, RGEX, deducted VAT relating to motor vehicles obtained from a vendor, EXTEL. The German tax authority denied the deduction arguing that EXTEL was considered a "ghost company." It did not have any establishment at the address on the invoice, which was merely a "letterbox address." Although a bookkeeping office was situated at the address, none of EXTEL's commercial activities were carried out there. In the second case, Mr. Butin, who runs a car dealership in Germany, relied on invoices to deduct VAT for a number of vehicles acquired for resale from a business, Z. As Z operates exclusively on the internet, the vehicles were delivered to Mr. Butin or his employees sometimes on the street where Z had its corporate seat—even though Z did not run a dealership from that address—and sometimes in public places, such as a railway station. The German tax authority denied the deduction arguing that the vendor address given by Z on those invoices was incorrect. Nothing at that address would indicate the presence of an undertaking. It served as a letterbox address from which Z merely collected the post. In addition, in both cases, questions had arisen concerning the potentially fraudulent nature of the invoices that were issued and of the transactions related to those invoices. In its previous Opinion, the AG concluded that the EU VAT Directive precludes a national law which denies the right to deduct VAT from a vendor declared "inactive" where no tax evasion or loss of tax revenues has been established. (For KPMG's previous discussion on the AG Opinion, please click here.)

The ECJ emphasized that a taxpayer that wants to exercise its right to deduct VAT must hold an invoice that meets the invoicing criteria set out in the EU VAT Directive, including that an invoice should contain the "full name and address" of the vendor and the customer. The wording of the EU VAT Directive does not provide guidance on whether the address on the invoice must be the address at which a taxpayer carries out its economic activity. According to the ECJ, this concept covers any type of address, including a letterbox address, provided that a person can be contacted at that address. The details to be mentioned on an invoice are to be interpreted strictly, and Member States cannot lay down more stringent requirements than those set out in the EU VAT Directive. Moreover, the ECJ pointed out that the detailed rules on the address of the vendor cannot be a decisive condition that must be met to deduct VAT. As a consequence, the ECJ held that the EU VAT Directive must be interpreted as precluding a national legislation that makes the exercise of the right to deduct VAT subject to the condition that the address where the issuer of an invoice carries out its economic activity must be indicated on the invoice.

Source: DE: ECJ, 15 Nov. 2017, Case C-374/16, *RGEX GmbH, in liquidation, represented by Rochus Geissel, liquidator v. Finanzamt Neuss*, ECJ Case Law IBFD.

**European Union: Abuse of Law Principle is Directly Applicable**

On September 7, 2017, the ECJ published its judgment in *Cussens*, Case C-251/16, regarding whether the principle of prohibition of abuse of law is directly applicable. In the case at hand, the taxpayers built 15 holiday homes on a site in Ireland in 2002. The taxpayers granted a lease of 20 years and 1 month on the properties to a related undertaking. Under Irish law, the 20-year lease was treated as a first disposal of immovable property. The taxpayers charged VAT on the capitalized value of the lease. The taxpayers cancelled the agreement a month later and sold the properties to third parties without applying VAT because VAT was only due on the original first disposal, that is on the long-term lease. Subsequently, the Irish tax authority held that the first disposal, the long-term lease, was an artificial construct and abuse of law. As a consequence, the lease should be ignored for VAT purposes, and VAT should be charged on the subsequent sale to third parties, thus resulting in significantly more VAT to be paid. The taxpayers challenged this position, arguing that the concept of abuse of law as established by the ECJ in *Halifax*, Case C-255/02 (Feb. 21, 2006), was not implemented in Irish law and that the case predated the transactions at issue. In its previous Opinion, the AG concluded that the principle of abuse of law is directly applicable in cases where the national legislation has not implemented such a provision even with respect to transactions that have taken place before the *Halifax* case. (For KPMG's previous discussion on the AG Opinion, please click here.)

The ECJ first noted the principle of abuse of law is not one that is established in a directive, but is based on the ECJ's case law. The principle provides that (1) EU law cannot be relied upon in cases of abuse or fraud, and (2) EU law cannot be applied in cases of abusive practices. From the *Halifax* case, the ECJ derived that this principle is also applicable in cases of VAT, and it is not required to have this principle transposed into national law before it can be applied. As a consequence, the principle of abuse of law in the sphere of VAT displays the general, comprehensive character, naturally inherent in general principles of EU law, the application of which is simply the consequence of not meeting the objective conditions for application of a right or advantage, such as an exemption, from EU law in cases of fraud or abuse. Therefore, the refusal of such a right or advantage does not require a legal basis in national law. The ECJ also emphasized that for the principle of abuse of law to be applicable, it is not necessary that there is a case of fraud. Establishing abusive practices is sufficient in this regard. The ECJ also ruled that the principle of abuse of law can be applied in transactions that took place before the Halifax judgment, unless there are truly exceptional circumstances. Such application is consistent with the principles of legal certainty and of the protection of legitimate expectations.

Regarding the existence of an abuse of law in the case at hand, the ECJ recalled that it is not required that the tax advantage is the only objective of the transactions that might constitute abuse. It should, however, constitute the essential aim of the transactions. The transactions at issue consisted of multiple contracts relating to the same properties and entered into among different persons. According to the ECJ, each transaction should normally be regarded as distinct and independent, and the abusiveness of each transaction should thus be assessed. When abusive practices are established, only the transactions which constitute such a practice should be disregarded, whereas the relevant provisions concerning VAT must be applied to the transactions which are not part of the abusive practice. Therefore, to determine whether the leases preceding the sales of immovable property at issue essentially pursued the aim of obtaining a tax advantage, account should be taken, specifically, of the objective of those leases. The national court required to assess the transactions can take into account the purely artificial nature of those transactions and the links of legal, economic, or personal nature among the operators. In this case, it seems that the two leases had no commercial reality and were entered into between the persons and an associated company with the essential aim of reducing the VAT liability of the envisaged subsequent sales. The ECJ further clarifies that the tax advantage obtained should be contrary to the purpose of the EU VAT Directive. With respect to the exemption for sales of immovable property, the purpose is to exempt sales after the property has actually been used by its owner or its tenant. Here, it seems that the properties had not actually been used before the sales to the third parties, because the two lease agreements were entered into on the same day and with an associated company and they were terminated only one month after they were entered into, shortly before the sale agreements were entered into. Therefore, the lease agreements could result in a tax advantage contrary to the purpose of the provisions of the EU VAT Directive. It is, however, for the national court to verify whether this is indeed the case.

Source: IE: ECJ, 22 Nov. 2017, Case C-251/16, *Edward Cussens, John Jennings, Vincent Kingston v. T.G. Brosnan*, ECJ Case Law IBFD.

**European Union: VAT Recovery in Case of Bad Debt Cannot be Subject to Overly Onerous Insolvency Conditions**

On November 23, 2017, the ECJ published its judgment in *Enzo Di Maura*, Case C-246/16, regarding whether a Member State may limit the right to reclaim VAT paid to the tax authority on bad debts to only cases in which insolvency or enforcement proceedings have been successfully concluded. In the case at hand, an Italian vendor sold goods and services in 2004 to an Italian customer who did not pay and was declared insolvent by judgment on November 30, 2004. The vendor thus reduced the taxable amount by that sum, altering the original invoice and subtracting the amounts corresponding to the taxes. The tax authority nonetheless ordered the recovery of VAT as Italian law states that a vendor may demand repayment of VAT only if it is clearly established that there are no sums available and the claim, therefore, is uncollectible. According to the Italian court, the proof that there are no sums available exists only after the assets have been distributed and the period for comments on the distribution plan has expired, or if there is no distribution plan, when the period for appeal against the decision to close the insolvency proceedings has expired. In its previous Opinion, the AG concluded that overly onerous insolvency conditions are not in line with the right to claim VAT on bad debts. (For KPMG's previous discussion on the AG Opinion, please click here.)

The ECJ stated that while the EU VAT Directive provides for a reduction of the taxable amount in cases of total or partial non-payment, Member States are, in principle, allowed to derogate from this rule because in certain circumstances in the jurisdiction concerned, non-payment of consideration may be difficult to establish or may only be of a short-term nature. The ECJ thus accepts that it is relevant for the Member States to counteract the inherent uncertainty of whether or not a non-payment would be definitive or only temporary. However, the ECJ finds that the derogation cannot extend to instances where such an uncertainty is not present. Accordingly, it is not possible for Member States to exclude altogether the reduction of the VAT base in cases on non-payment. The ECJ further states that the mechanism for reduction of the taxable amount needs to respect the principle of proportionality. The objective of the derogation could be achieved not only by granting a VAT base reduction when the receivable is established to be unrecoverable, but also by allowing the reduction where the taxpayer could demonstrate a reasonable probability that the client's debt will not be honored. In the latter case, the ECJ notes that it would be for the national authorities to determine (with due regard to the principle of proportionality and subject to review by the courts) the evidence for a probable extended period of non-payment that would need to be provided by the taxpayer, according to the specific features of the applicable national law. As a consequence, the ECJ held that a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful if such proceedings may last longer than ten years. While the case only addresses the Italian bad debt rules, it could have a broader impact throughout the EU as Member States impose more or less stringent conditions for the recovery of VAT on bad debts. To read a report prepared by the KPMG International member firm in Bulgaria, please click here.

## European Union: Advocate General Clarifies Application of Triangulation Simplification

On November 30, 2017, the ECJ published the Opinion of its AG in *Firma Hans Bühler KG*, Case C-580/16, regarding whether the application of the triangulation simplification may be denied based on the fact that the intermediary is registered for VAT purposes in the country of dispatch and the recapitulative statements have been amended to reflect the application of the simplification. Under the EU VAT Directive, two sales of goods between three VAT-registered traders in three different EU Member States may qualify as a "triangular transaction" whereby only the customer in the Member State of arrival of the goods self-accounts for VAT. As a consequence, the intermediary is not required to register for VAT in that Member State.

In the case at hand, the taxpayer was established in Germany and was also registered for VAT purposes in Austria. It planned to set up an establishment in Austria, but that had not taken place when the case was referred. The taxpayer frequently purchased goods from vendors established for VAT purposes in Germany (the German vendors). Those goods were sold on to a client resident and registered for VAT purposes in the Czech Republic (the Czech client). The goods were directly shipped from the German vendors to the Czech client. The taxpayer considered these transactions as triangular transactions and used exclusively its Austrian VAT identification number. The German vendors included their German VAT identification number and the Austrian VAT identification number of the taxpayer in the invoice. The taxpayer included in the invoice for the Czech client its Austrian VAT identification number, the Czech client's VAT identification number, and a statement that the transactions were "triangular transactions." In addition, the taxpayer submitted recapitulative statements to the Austrian tax authorities stating its Austrian VAT identification number and the client's Czech VAT identification number, but not indicating that the transactions fell under the triangular transactions category. The taxpayer subsequently corrected these recapitulative statements. However, according to the view of the Austrian tax authority the purchases of the taxpayer from the German vendors are subject to VAT in Austria because the taxpayer did not comply with its reporting obligations and did not provide evidence that VAT had been applied on the intra-EU acquisitions in the Czech Republic. In addition, the tax authority considered that the intra-EU acquisitions were carried out in the Czech Republic, but also deemed to have taken place in Austria due to the use of an Austrian VAT identification number.

According to the AG, the only limitation explicitly mentioned in the EU VAT Directive regarding triangular transactions is that the intermediary party is not to be established for VAT purposes in the Member State of the final recipient where the intra-EU acquisition takes place. Therefore, if all other requirements are met, in particular those relating to the final recipient, the use of a VAT identification number issued by a Member State other than the Member State where the goods finally arrive cannot lead to taxation of the intra-EU acquisition in the Member State associated with the VAT number of the intermediary. According to the AG, it cannot be concluded that identification for VAT purposes of the taxpayer in the Member State where the shipment of the goods begins results in the non-application of the provision as the taxpayer is free to choose between different VAT identification numbers available to it. Moreover, according to established case law, a Member State cannot deny the zero-rating of an intra-EU transaction based on administrative requirements, provided that the substantive and formal requirements are met. As a consequence, the AG opined that a Member State should not be allowed to deny the zero-rating solely based on the fact that the recapitulative statement was not submitted in due time or was subsequently amended, if there are no indications of fraud and it has been established that the substantive requirements for the zero-rating are fulfilled. The ECJ must now decide whether to follow the nonbinding Opinion of its AG.

Source: European Union; Austria; Czech Republic – ECJ Advocate General's opinion (VAT): Firma Hans Bühler KG (Case C-580/16) – Triangular transactions; VAT identification in country of dispatch; recapitulative statements – details (14 Dec. 2017), News IBFD.

**European Union: European Commission Amends Proposed Measures to Counter VAT Fraud**

On November 30, 2017, the European Commission published an amendment proposal for a Council Regulation amending Regulation (EU) No. 904/2010 regarding measures to strengthen administrative cooperation in the field of VAT (the Proposal). The Proposal amends the earlier proposal of the Commission introducing the certified taxpayer concept into the VAT system. (For KPMG's previous discussion on the initial proposal, please click here.) Effective from the date of entry into force, the Proposal would allow for the exchange of information between tax authorities without prior request and create joint tax audits between tax offices from two or more Member States to investigate cross-border transactions. The Proposal would further strengthen Eurofisc by requiring Member States to grant access to their VAT Information Exchange System (VIES) data through a specific software (TNA). Eurofisc would also be able to coordinate joint administrative enquiries and forward information on serious cases to Europol and the European Anti-Fraud Office (OLAF). Moreover, the Proposal would lift administrative burdens in cases where a cross-border VAT refund request procedure is carried out parallel to a VAT recovery assistance request. Accordingly, the amount claimed by the Member State of establishment may be retained by the Member State of refund if the tax debtor agrees to the direct transfer.

Effective January 1, 2020, the Commission proposes the sharing of data on customs procedures 42/63 with tax authorities to address the abuse of the VAT scheme for importing goods free of charge. Information would be shared between the Member State of import and the Member State of destination to cross-check whether the goods arrived at their declared destination. A further advantage of the system is that the undervaluation of the goods for customs purposes can be detected. The Proposal also contains rules on the exchange of information with the help of the European Car and Driving License Information System (EUCARIS) to tackle fraud involving second-hand cars. Finally effective July 1, 2021, the Commission's website would include Member State VAT rules relating to rates and measures targeting small enterprises.

Source: European Union – European Commission proposal to strengthen administrative cooperation in field of VAT – published (30 Nov. 2017), News IBFD.

**Hungary: Update on Real Time Reporting to be Introduced in July 2018**

As previously reported, Hungary will introduce an online invoice reporting system effective July 1, 2018. Hungarian taxpayers that issue invoices with a VAT amount of at least HUF 100,000 ($385) to customers with a Hungarian VAT identification number will be required to transfer the invoice information directly to the Hungarian tax authority. The Hungarian tax authority intends to receive the invoice data immediately, rather than via a daily report. According to the tax authority, the data transmission must be automated either directly through the taxpayer's invoicing software or using an intermediate software. The Hungarian Tax Authority plans to develop free invoicing software complying with the online invoice reporting liability. This is intended to be available for any taxpayer that does not wish to buy or develop invoicing software. While the tax authority has yet to publish the technical details, including details of the communication between the tax authority and the taxpayer's software, the tax authority has published an XSD scheme that should be used for reporting purposes.

### Romania: VAT Split Payment Mechanism Introduced

The parliament of Romania recently approved Government Ordinance No. 23/2017 that will introduce a mandatory VAT split payment system effective March 1, 2018. Significant amendments have been made from the initial proposal that was temporarily suspended before its effective date. (For KPMG's previous discussion on the split payment mechanism proposal, please click here.) According to the Ordinance, the VAT split payment mechanism will be mandatory for VAT-registered entities which have VAT outstanding liabilities as of December 31, 2017 that are greater than: RON 15,000 ($3,900) for large taxpayers; RON 10,000 ($2,600) for medium-sized taxpayers; and RON 5,000 ($1,300) for other taxpayers. Taxpayers that have VAT outstanding liabilities as of December 31, 2017, will be required to apply the mechanism if these liabilities remain outstanding as at January 31, 2018. Moreover, the VAT split payment mechanism will be mandatory for taxpayers that have VAT liabilities that are more than 60 working days overdue and that exceed the thresholds mentioned above. If the VAT payments are not made by this deadline, the taxpayer will enter into the system starting from the first day of the second month following the month in which the 60 working day period elapsed. All other taxpayers that are not required to apply the split payment mechanism may opt to do so. Taxpayers opting to apply the VAT split payment mechanism effective January 1, 2018 will benefit from a 5 percent reduction in corporate income tax during the period in which the mechanism is applied.

The Ordinance allows parties to stipulate in contracts the manner in which VAT amounts on the invoice should be allocated. VAT registered taxpayers, regardless of whether they apply the VAT split payment mechanism, except public institutions, must make the split payment and transfer the VAT amount related to acquisitions of goods/services from vendors that do apply the system into the VAT account of the vendor. Moreover, the Ordinance allows taxpayers that apply the mechanism to transfer the VAT amounts that have not been received in the VAT account to the VAT account no later than 30 working days from the date the payment was made. The VAT split payment is not applicable in the following situations: (1) payments that are not made directly by the beneficiary to the vendor of goods/services; (2) payments in kind; (3) compensation when taxpayers make payments between each other in both directions; and (4) financing provided by credit institutions and financial non-banking institutions. To read a report prepared by the KPMG International member firm in Romania, please click here.

## Russia: Amendments to VAT Law

On November 27, 2017, Russia published federal laws No. 325-FZ and No. 350-FZ, which amend several provisions of the VAT law. Under Russian VAT law, goods imported under the customs regime of the free customs zone and services related to the processing of goods under this regime qualify as zero-rated transactions. Federal Law No. 350-FZ extends, effective January 1, 2018, the application of the zero rate to: processing in the customs territory; free warehouse; and re-exported goods produced using foreign goods under the free customs zone and the free warehouse regime. The law further introduces an option for taxpayers to charge VAT at the standard rate of 18 percent (instead of zero percent) on exports of goods and services related to the shipment of those goods. To apply this option, taxpayers must provide the tax authority at the place of registration with a notification before the tax period in which the taxpayer intends to opt out of the application of the zero rate. A taxpayer may opt out of the zero rate only on the export operations listed in the law for the period of at least one year. This amendment was introduced due to a growing number of court disputes and the controversy when applying the zero rate to services related to international shipments, as well as the liquidity problems for small and medium-sized exporters when refunding VAT for exported goods.

Federal Law No. 325-FZ introduces amendments to the VAT treatment of digital cross-border services. Effective January 1, 2019, foreign vendors of digital services will be liable to register and pay VAT when providing services to individuals in Russia as well as to companies and individual entrepreneurs in Russia. At the same time, businesses receiving digital services from foreign vendors will be able to deduct input VAT that has been previously paid by foreign vendors. Under current law, nonresident vendors are only required to register for VAT in Russia when selling digital services to final consumers. Russian businesses making purchases of digital services are required to self-assess VAT under the reverse charge mechanism. (For KPMG's previous discussion on the VAT rules applicable to digital services in Russia, please click here.)

Source: Russia – Amendments to VAT treatment of digital cross-border supplies – law published (22 Dec. 2017), News IBFD; Russia – VAT amendments – law published (22 Dec. 2017), News IBFD.

## Russia: Overview of Recently Published VAT Guidance

On October 27, 2017, the Ministry of Finance of Russia (MOF) published Guidance Letter 03-07-11/70530, in which it held that the transfer of exclusive rights to use a trademark under a licensing contract does not fall within the VAT exemption regarding transfers of exclusive rights in inventions, utility models, industrial designs, computer programs, databases, integrated circuit topographies, and trade secrets. As a consequence, the exclusive rights to use a trademark is subject to VAT.

On November 2, 2017, the MOF published Guidance Letter 03-07-11/72105, in which it held that if a part of the full or partial payment that a taxpayer received for the forthcoming provision of services under a contract with the buyer is subsequently used to offset the amounts due under a different contract concluded with the same buyer, the taxpayer may deduct the VAT that it calculated on that part of the full or partial payment that was offset against the amounts due under the new contract with the same buyer. The deduction should be done on the date on which the services were provided to the buyer under the new contract.

On November 8, 2017, the MOF published Guidance Letter 03-07-14/73525, in which it held that certain consulting and legal services are not considered to have been provided in Russia and are thus not subject to VAT in Russia. Transactions involved include consulting and legal services related to the execution of transactions involving stakes and shares in Russian legal entities, movable and immovable assets, and property rights that a Russian resident taxpayer provides to a nonresident legal entity.

Source: Iurie Lungu, Russian Finance Ministry Issues VAT Guidance Letters, Tax Analysts (November 28, 2017).

### Turkey: Proposal to Require Nonresident Vendors of Electronic Services to Register for VAT

On December 22, 2017, Turkey published draft General Communiqué No. 17, which proposes that nonresident vendors should register for and collect VAT on sales of radio and television broadcasting services, telecommunication services, and electronic services to final consumers in Turkey. Services falling under the scope of the new rules would include: monitoring or listening to radio and television programs at a user-selected time, depending on a program catalog organized by the media service provider; voice, written and visual telephone services over the Internet; accessing or downloading music, voices outside of music, movies; accessing or downloading electronic books and other electronic publications; accessing games or downloading games, in-game purchases and services for remote play of games; and all kinds of software sales (including remotely accessed and downloaded) and updating. Nonresident vendors would be required to register for VAT under the "VAT Registration Special for Electronic Service Providers" and file electronic monthly VAT returns reporting only the tax collected. Nonresidents would not be allowed to credit VAT incurred in Turkey through this special return and will not be required to keep books and have their returns signed by CPAs. If the amount charged for the service is calculated in foreign currency, the foreign currency amount will be converted into TRY with the foreign exchange buying rate announced by the Central Bank of Republic of Turkey and declaration would be made accordingly. Accrued VAT should be paid until the evening of the 26th day of the month in which the return will be submitted. Payments would be made to tax offices, banks authorized for tax collection, or directly on the tax authority's website. Banks and payment institutions will report payments made by electronic service providers to the tax authority on a quarterly basis. To read a report prepared by the KPMG International member firm in Turkey, please click here.

## Asia Pacific (ASPAC)

### Singapore: Mandatory GST Self-Assessment on Prescribed Goods Effective 2019

Effective January 1, 2019, Singapore will require taxpayers purchasing mobile phones, memory cards, or off-the-shelf software stored on a physical storage medium exceeding SGD 10,000 ($7,522) to self-assess the GST. As a consequence, the vendor will no longer charge and collect the GST on these transactions. If the purchase is incurred for taxable activities, the self-assessed GST will be fully recoverable. However, the following transactions will be excluded from the self-assessment requirement: sales subject to the GST Gross Margin Scheme, sales made under the Approved Third Party Logistics Company Scheme or Approved Refiner and Consolidator Scheme to an approved or specified person, and deemed sales arising from the transfer of goods for no consideration. Taxpayers making occasional purchases of prescribed goods exceeding SGD 10,000 may seek prior approval from the Inland Revenue Authority of Singapore to be exempted from the self-assessment requirement, subject to conditions such as the purchaser is allowed to fully recover GST incurred and has a good tax compliance record. To read a report prepared by the KPMG International member firm in Singapore, please click here.

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## Trade & Customs (T&C)

### European Union: Free Trade Agreement With Japan

On December 8, 2017, the EU and Japan announced the successful conclusion of the negotiations regarding the Economic Partnership Agreement (EPA). Upon the agreement's entry into force, tariffs on more than 90 percent of exports from the EU to Japan will be eliminated. After full implementation, customs duties on 97 percent of imported goods from the EU will be eliminated. In total, the elimination and reduction of tariffs will save EU exporters approximately EUR1 billion ($1.2 billion) in customs duties each year. The goods for which the customs duties have been eliminated or reduced include major export products such as pork, beef, wine, and cheeses. In addition to measures addressing customs duties, the agreement also provides for protection on the Japanese market of more than 200 "geographical indications" of EU products. The EU and Japan have further committed to aligning themselves to the same or similar international standards on product safety and quality regarding products including motor vehicles, medical devices, pharmaceuticals, and cosmetics. The agreement also addresses sanitary and phytosanitary measures for products exported to Japan. The EU and Japan have agreed to simplify approval and clearance processes, but without lowering safety standards. The European Commission will submit the agreement for the approval of the European Parliament and

EU Member States, with a goal of having the agreement enter into force in early 2019. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

### Ghana: Customs Valuation Clarified

On October 19, 2017, the Ghana Revenue Authority (GRA) issued a Public Notice clarifying the methods, procedures and processes to be used in valuing goods for customs duty purposes. The Public Notice specifies that the primary basis for determining the customs value of a good is the "transaction value" which consists of the actual price paid or payable for the goods, freight, loading, unloading and handling costs, insurance and any other adjustment/addition. If the customs value cannot be determined on the basis of the transaction value, the following methods of valuation may be adopted in hierarchical order: transaction value of identical goods; transaction value of similar goods; deductive value; computed value; and fallback. The Public Notice further clarifies that importers must provide genuine trade documents such as commercial invoices and bills of lading to support the declared transaction value of the goods. The GRA may request additional information to verify the transaction value declared for duty purposes. If an importer or its agent complies with the procedures, the declared transaction value is accepted, and a Customs Classification and Valuation Report is issued within 48 hours.

Source: Ghana – Customs valuation – clarification issued (19 Oct. 2017), News IBFD.

### Switzerland: Electronic Filing of Customs Documents

Effective March 1, 2018, the Swiss Federal Customs Administration is introducing the Electronic Assessment Decision (EAD in English, eVV in German). After this date, the customs administration will no longer mail the assessment decisions to the holder of the customs account. The electronic tax assessment decisions (eVV) will be obtained only via the following websites:

— **Receipt-/Bordereau Service:** This service is intended for companies that need to download large numbers of orders. The companies can program their systems so the eVV can be obtained automatically. Documents will be available on the system for 30 days.

— **Web GUI:** This service is aimed at companies that do not have their own system for the download of eVVs. Such companies can obtain the eVV via the Swiss Federal Customs Administration. Large numbers of queries are only possible via the web service and e-mail. The web GUI provides the requested information in PDF and XML forms for the Company. If the Company wishes to choose this option, the Company must register with its VAT ID number or use their tax number.

— **Collection of the eVV with access code:** Every customs declaration is issued with a unique access code. Companies using this method can obtain the eVV via the website without registering for this at the Swiss Federal Customs Administration. The collection of the eVV with an access code is only possible for single queries. This webpage provides the requested information in XML forms for the company.

To read a report prepared by the KPMG International member firm in Switzerland, please click here.

## In Brief

- **Albania:** Effective April 1, 2018, Albania will reduce the VAT registration threshold from ALL 5 million ($45,000) to ALL 2 million ($18,000). To read a report prepared by the KPMG International member firm in Albania, please click here.
- **Argentina:** On December 29, 2017, Argentina published Decree 1112/2017, which includes in the scope of VAT digital services provided by foreign companies. The decree broadens the scope of VAT to include services such as access to or downloading of videos, music, games, or similar products that are used in Argentina. Credit card companies will effectively act as collection and paying agents. The Decree further reduces the timeline to apply for a VAT refund related to the purchase or importation of fixed assets. Within a period of 60 months, the taxpayer must (1) apply such funds to pay VAT on domestic sales, or (2) demonstrate that it would have had the right to reimbursement pursuant to the exporters' regime. If the taxpayer fails to comply with these requirements, it will have to repay the amounts in question to the tax administration, plus interest. To read a report prepared by the KPMG International member firm in Argentina, please click here.
- **Azerbaijan:**[vii] On December 13, 2017, Azerbaijan published Law No. 856-VQD in the official gazette. The new law requires the tax authority to pay interest of 0.1 percent per day on the amount of VAT refunded to the taxpayer, if overpaid VAT is not refunded to the taxpayer within 20 days (instead of previously applicable 45 days) of the submission of a refund application.
- **Azerbaijan:**[viii] Effective January 1, 2018, Azerbaijan exempts from VAT the import of civil use aircrafts and their spare parts as well as their power engines and motors.
- **Bahrain:**[ix] Effective December 30, 2017, Bahrain started levying an excise tax on carbonated drinks at a rate of 50 percent, as well as a 100 percent excise tax on energy drinks and tobacco products. Failure to pay the excise tax will result in penalties of 5 percent to 25 percent of the tax due, which may be doubled in the case of repeated violations.
- **Belgium:**[x] On October 12, 2017, the Belgian VAT authority published Circular 2017/C/64 regarding the importance of a valid VAT invoice as a condition for the exercise of the right to deduct VAT. Until now, the VAT authority denied a taxpayer the right to deduct VAT when the invoice did not contain all elements required by law (e.g., the invoice date, the VAT number, the full name and address of the taxpayer and his customer, or the VAT rate).In the Circular, the VAT authority clarifies that based on recent ECJ cases it may no longer deny a taxpayer the right to deduct input VAT if the taxpayer fails to comply with the formal conditions.

Therefore, the "substance over form"-principle implies that the VAT authority may not deny the right to deduct VAT if the taxpayer provides the VAT authority before the end of the tax audit a corrected invoice and/or if additional information is provided by the taxpayer, to the extent that the proof is provided that the material conditions for the exercise of the right to deduct VAT are fulfilled and the taxpayer has not become guilty of tax fraud, abuse or knew or should have known that his actions are part of tax abuse or fraud. Obviously, as a taxpayer, it is still recommended to dispose over the invoices including all the legally required conditions.

— **Bulgaria:**[xi] On December 5, 2017, Bulgaria published a bill amending certain VAT rules effective January 1, 2018 in the official gazette. The bill shortens the VAT registration period from 14 to 7 days. Taxpayers must file for a mandatory registration when their taxable gross receipts is at least BGN 50,000 ($ 31,385) for a period not exceeding two consecutive months, including the current one. In this case, the application is to be submitted within 7 days from exceeding the threshold. Moreover, VAT returns, purchase and sales ledgers, as well as recapitulative statements must be filed electronically. The bill further repeals the requirement to provide collateral in the case of an intra-EU acquisition of liquid fuels or the acquisition of such fuels that have been released for consumption from a tax warehouse if the fuels are intended for own consumption. In addition, taxpayers are no longer required to submit a list of assets to obtain a VAT refund for assets purchased prior to the VAT registration and available at the time of a VAT registration. Finally, the bill introduces a penalty in the form of the sealing of premises for up to 30 days in cases involving the use of unapproved or unlawfully modified fiscal cash registers. Penalties varying from BGN 1,000 ($614) to BGN 5,000 ($3,070) are introduced for unlawful servicing, entry into exploitation, and registration of fiscal cash registers, deleting fiscal data, or damaging the integrity of the seals of the fiscal data. In the case of a repeat violation, the penalties are doubled.

— **Colombia:**[xii] The National Tax Authority of Colombia (DIAN) recently published Ruling 15172 of 2017 regarding the application of tax on plastic bags and VAT on sales of goods. According to the ruling, shopkeepers responsible for collecting VAT under the ordinary regime (and providing plastic bags to their customers for carrying the goods purchased) are obliged to state in the invoice the VAT charged on the sale of the goods as well as the tax on the plastic bags. If shopkeepers sell plastic bags to their customers so that they can carry the goods purchased, such sales are also subject to VAT. If shopkeepers sell plastic bags to their customers for a purpose different than carrying goods purchased in the store, such sales of plastic bags are subject to VAT, but not subject to tax on plastic bags.

— **Croatia:**[xiii] Effective January 1, 2018, Croatia reduced the VAT registration threshold from EUR 230,000 ($275,000) to EUR 300,000 ($358,000).

— **European Union:**[xiv] On November 15, 2017, the ECJ published its judgment in *Entertainment Bulgaria System EOOD*, Case C-507/16, in which it held that Member States are not allowed to establish a rule that prevents a taxpayer from exercising its right to deduct VAT on the basis that the taxpayer is registered for VAT purposes allowing it to purchase and carry out intra-EU services. However, if such a taxpayer is subject to the special mechanism for small businesses, Member States can prevent it from exercising its right to deduct VAT.

— **European Union:**[(xv)] On November 16, 2017, the ECJ published its judgment in *Kozuba Premium Selection sp. z o.o*, Case C-308/16, in which it held that Member States cannot establish a rule that makes the application of the VAT exemption for immovable property subject to the condition that its first occupation arises in the context of a taxable transaction. However, Member States can set a rule allowing them to regard an upgrade of a building to have taken place if the cost of the upgrade is at least 30 percent of the building's initial value, provided that the building has been subject to substantial modifications intended to modify the use or alter considerably the conditions of occupation.

— **European Union:**[(xvi)] On November 23, 2017, the ECJ published the Opinion of its AG in *Vámos*, Case C-566/16, in which the AG argued that a Member State should be allowed to deny the retroactive application of a special tax scheme for small businesses when the taxpayer has fulfilled all the material conditions, but failed to declare the commencement of its activities to the tax authorities, and did not opt for the application of that scheme.

— **European Union:** On November 30, 2017, the ECJ published the Opinion of its AG in *Biosafe – Indústria de Reciclagens SA*, Case C-8/17, in which the AG argued that right to deduct a payable VAT amount included on an invoice arises only when such an invoice is received. An increase (correction) of this payable VAT amount in a subsequent corrected invoice does not entail a right to deduct input VAT retroactively. As a consequence, the EU VAT Directive precludes any provisions in which the limitation period for deducting the additional VAT starts at the moment of the issuance of the initial invoice.

— **European Union:**[(xvii)] On December 13, 2017, the European Commission published a study on the VAT special scheme for travel agents and options for reform. The study analyzes how VAT affects the five business models identified in the industry and evaluates the functioning of the current rules. It identifies certain inconsistencies in the interpretation of the EU VAT Directive and the relevant case law of the ECJ among Member States. These differences may cause distortion in competition. Furthermore, the inability of a travel agent to deduct input tax on travel services in respect of business-to-business services is a significant drawback of the special scheme. However, the travel industry prefers to retain the special scheme, but with certain reforms, such as bringing non-EU travel agents within the scope of EU VAT and possibly providing a one-stop-shop arrangement.

— **Georgia:**[(xviii)] On December 23, 2017, the parliament of Georgia adopted amendments to the Tax Code that introduces a nonresident VAT refund claim for EU businesses that incurred VAT on goods and services purchased in Georgia.

- **Hungary:**(xix) Hungary is proposing to increase its VAT registration threshold to HUF 12 million ($46,500) in annual gross receipts. Subject to approval from the European Commission, the increased exemption threshold is to apply from January 1, 2019.
- **India:**(xx) Effective February 1, 2018, India will introduce a new system, the so-called e-waybill, that will enable goods to be sent to other Indian states without border checks under the country's new GST regime. An e-waybill is an electronic waybill for movement of goods of more than INR 50,000 ($787). The e-waybill can be generated on the GST portal. The system is intended to enable the removal of non-tariff barriers to trading between states and establish a single market across India. It will require pre-registration of goods prior to shipment, to eliminate the need for examinations at border checkpoints between states. Indian states may choose their own implementation dates for e-way bill for intra-state movement of goods on any date before June 1, 2018.
- **Ireland:** On November 6, 2017, the Irish tax authority published eBrief No. 100/2017, which outlines the guiding principles for the VAT treatment of payment services. The conditions for applying VAT exemption to payment processing services are drawn largely from the decided case-law. In addition, the guidance clarifies that the status of the vendor and the means by which the service is provided (i.e., electronically or manually) are not determinative of the VAT treatment of the service. To read a report prepared by the KPMG International member firm in Ireland, please click here.
- **Latvia:**(xxi) Effective January 1, 2018, Latvia reduced the country's VAT registration threshold from EUR 50,000 ($59,850) to EUR 40,000 ($47,850).
- **Liechtenstein:**(xxii) On December 22, 2017, Liechtenstein published in the official gazette the VAT Amendment Law, which adopts previously passed VAT amendments adopted by Switzerland. The amendments include: modifying the computation of the VAT registration threshold; expanding exempt transactions; introducing a margin scheme for works of art, antiques and collectors' items; and extending the reduced VAT rate to electronic periodicals and books. The law further clarifies the start and termination of the VAT liability; the deduction of input VAT; and the rights and obligations of the tax administration.
- **Malaysia:**(xxiii) On December 1, 2017, the Royal Malaysian Customs Department (RMCD) issued Public Ruling 03/2017 on the GST treatment of gifts. According to the Public Ruling, no GST will be account for on the provision of goods to the same recipient within a year that cost MYR 500 or less. However, gifts to any person, including employees or clients, that cost more than MYR 500 ($125) are subject to GST. For gifts with no proof of purchase, the value of the gifts will be determined based on the open market value. Finally, industrial or commercial samples of goods are not subject to GST, provided that the goods are marked "not for sale" or "sample" or carry any other sign that conveys the same meaning, and the package of the sample is smaller than the retail good, or they are machine replicas which may have the same limited functions as the actual retail specification.

- **Malaysia:**[xxiv] On December 12, 2017, the RMCD issued Public Ruling 04/2017 on the GST treatment of the issuance and holding of securities. According to the Public Ruling, the holding of shares for investment purposes and the issuance of shares and any other financial instruments or securities other than a unit trust by a taxpayer for the purpose of raising capital are not considered a sale for GST purposes. However, the holding of debt securities (e.g., bonds) is treated as an exempt sale. As a consequence, GST incurred on the cost of issuance of shares, debt securities for the purpose of raising capital and share/debt buyback is deductible; but GST incurred on the cost attributed to the holding of bonds, debentures, notes and similar financial instruments is not deductible.
- **Maldives:**[xxv] On October 9, 2017, the Maldives Inland Revenue Authority (MIRA) issued tax ruling TR-2017/G43 clarifying the GST treatment of goods and services provided free of charge. According to the tax ruling, a taxpayer is not required to charge GST on a complimentary sale made (for the promotion of business or for other business purposes) to an employee or a person related to an employee, a director or a person related to a director, or to another person related to the registered person.
- **Malta:**[xxvi] On December 6, 2017, the Minister for Finance of Malta introduced the Value Added Tax Act (Amendments of Fourteenth Schedule) Regulations, 2017, which implement the provisions of the EU VAT Directive regarding the treatment of vouchers. (For KPMG's previous discussion on the adoption of the EU voucher Directive, please click here.) The regulation defines what instruments qualify as vouchers and divides them into two categories: single-purpose vouchers and multi-purpose vouchers. It further clarifies the VAT treatment of sales of goods and services made using these instruments.
- **Netherlands:**[xxvii] On October 19, 2017, the Netherlands published in the official gazette Decree No. BLKB2017/7366, which amends Decree No. BLKB 2014-704M on administrative, invoicing, and other VAT obligations. According to the new Decree, one invoice may be issued for sales provided by various taxpayers. Such an invoice must contain all of the data that would have been included in the invoices if they would have been issued by the several taxpayers separately. The taxpayer issuing the invoice does so on behalf of the other taxpayers. Moreover; the Decree acknowledges that the right to deduct VAT may not be refused merely because an invoice does not meet all formal requirements.
- **New Zealand:** On December 5, 2017, New Zealand's Inland Revenue released a guide on zero-rated treatment under the GST. The guide explains what goods and services should be subject to a zero rate, how to account for and report such transactions, and special rules. All zero-rated transactions must be included in Box 5 on the GST return along with a taxpayer's total taxable sales, and these zero-rated sales must be detailed in Box 6. The guide provides the list along with examples of transactions that are zero-rated in New Zealand.

— **New Zealand:**[xxviii] New Zealand's Revenue Minister recently said that the country will reduce or eliminate the GST exemption for low-value imports applicable to goods worth no more than either NZD 226 ($160) or NZD 400 ($283), depending if they are subject to customs duty. The measure would follow Australia's repeal of the low value import exemption that becomes effective July 1, 2018. (For KPMG's previous discussion on Australia's GST rule changes related to low value imports, please click here.)

— **Philippines:**[xxix] Effective January 1, 2018, the Philippines increased the country's VAT registration threshold from PHP 1.9 million ($37,900) to PHP 3 million ($60,000).

— **Serbia:** On October 6, 2017, Serbia published a rulebook on recordkeeping for VAT purposes and VAT calculations that is effective January 1, 2018. The rulebook specifies the method for keeping VAT records and a requirement for submitting an overview of VAT calculations on a form (POPDV form). The POPDV form is to be filed starting with the first VAT return of 2018. If the POPDV form is not filed along with the VAT return, it will be deemed that the VAT return was not filed. To read a report prepared by the KPMG International member firm in Serbia, please click here.

— **Sierra Leone:**[xxx] On December 6, 2017, the parliament of Sierra Leone adopted the Finance Bill for 2018, amending the country's GST law. The Finance Bill repeals the GST exemption applicable to the sale of printed books and newspapers, funeral services and coffins, and civil engineering of public works. The Finance Bill further modifies the GST exemption in respect of baby foods, exercise books, and raw fish to include baby food given to infants aged between 1 to 5 years, exercise books used in primary and secondary schools, and raw fish caught in Sierra Leone's territorial waters. Finally, the Finance Bill requires taxpayers to install prescribed devices or software in the taxable premises or facilities of taxpayers to monitor transactions for goods and services tax purposes.

— **Turkey:**[xxxi] On December 31, 2017, Turkey published in the official gazette General Communiqué No. 16 on the Value Added Tax Law. It clarifies the following issues: VAT refunds for transactions that are subject to VAT; VAT exemption for the sales of fertilizers upon registration by the Ministry of Food, Agriculture and Livestock; VAT refunds for construction expenses incurred within the scope of the investment incentive certificate; VAT exemption for the delivery of goods and services under the FATIH Project; VAT exemption for the alienation of immovable property and shares held for at least 2 years; VAT exemption for roaming services provided from abroad; computation of the tax base for prepaid communication services; and the VAT refund limit set for transactions subject to the reduced VAT rate (TRY 11,400 ($3,000)).

— **United Kingdom:** On December 7, 2017, the UK published the Indirect Taxes (Notifiable Arrangements) Regulations, SI 2017/1216, which prescribe the tests to determine notifiable arrangements for indirect taxes. Notifiable arrangements in relation to VAT include: retail sales – splitting and value shifting; offshore sales of insurance and finance;

offshore sales to relevant business persons outside EU; and options to tax – land. Notifiable arrangements in relation to any indirect tax (including VAT) include: confidentiality involving promoters; confidentiality involving other persons; premium fees; and standardized tax products. The UK further published the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations, SI 2017/1215, which prescribes the information promoters must disclose to the tax authority under the new rules. Promoters must report the notifiable arrangements to HMRC on a specific form within 31 days beginning with the earliest date (1) make a firm approach to another person in relation to the proposal; (2) make the proposed arrangements available for implementation by another person; and (3) first become aware of a transaction forming part of the arrangements implementing the proposal.

— **United Kingdom:**[xxxii] On December 14, 2017, the ECJ publishes its judgment in *Avon Cosmetics Ltd*, Case C-305/16, in which it held that the UK VAT legislation can include a derogation measure, authorized by the European Commission, in which the taxable amount for VAT purposes of demonstration items in cases of direct selling models is set at the open-market value, regardless of whether this rule takes into account the input VAT on those demonstration items of the unregistered resellers. When asking for the derogation measure, the United Kingdom was not obliged to inform the EC on the aforementioned non-recoverable input VAT.

— **Zimbabwe:**[xxxiii] On December 7, 2017, the Minister of Finance and Economic Development presented the 2018 National Budget. If adopted, the Budget would amend the country's VAT law to exempt from VAT goat and sheep meat and goods imported by development partners under an aid or technical cooperation agreement. Moreover, the VAT withholding rate would be reduced from 10 percent to 5 percent, and transactions between compliant taxpayers would no longer be subject to VAT withholding. The Budget would further extend the VAT refund facility on goods locally purchased for use in approved projects by all development partners.

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## About *Inside Indirect Tax*

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

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i. **Belgium** – Reduced VAT rates for feminine hygiene products and external defibrillators (December 27, 2017), News IBFD.

ii. **Greece** – Reduced VAT rates to five islands and other amendments – addition submitted (December 22, 2017), News IBFD.

iii. **CCH,** Global Daily Tax News, Hungary Introduces Cut-Rate VAT For Internet Access (January 2, 2018).

iv. **CCH,** Global Daily Tax News, Latvia Introduces Reduced VAT For Fruit, Vegetables (January 2, 2018).

v. **Lithuania** – Budget 2018 and amendments to tax laws – adopted (December 20, 2017, 2017), News IBFD.

vi. **CCH,** Global VAT News & Features, Dutch VAT Changes To Take Effect From January 1, 2018 (December 29, 2017).

vii. **Azerbaijan** – New rules concerning interest receivable on overpaid VAT (December 14, 2017), News IBFD.

viii. **Azerbaijan** – New VAT exemption gazetted (January 4, 2018), News IBFD.

ix. **Orbitax,** Bahrain Implements Excise Tax on Harmful Products (December 29, 2017).

x. **Marc** Quaghebeur, Belgian VAT Authorities Take Careful Step Toward Substance Over Form, Tax Analysts (October 31, 2017).

xi. **Bulgaria** – VAT changes gazetted – further details (December 13, 2017), News IBFD.

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