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.

The Americas

United States: Personal Shopping Services Subject to Sales Tax in Virginia

The Virginia Department of Taxation recently issued a policy document addressing the taxability of charges associated with a grocery store chain's proposed "personal shopping services" (PSS). Under the proposed PSS program, a customer could order and pay for groceries via the Internet or portable app. The taxpayer's employees would then shop for the items on the customer's list and transfer them to the customer's vehicle curbside. The taxpayer planned to charge customers both a "flat fee service charge" and a "fee per item surcharge." The flat-fee service charge would appear as a separate line item on the customer's receipt. The taxpayer was considering two pricing models for the "fee per item surcharge." This surcharge would either be included in the price of each individual item purchased (10 percent per item, capped at $2.00 per item) or would be a flat per-item fee (e.g., $.25 per item) appearing as an itemized line item on the receipt.

Under Virginia law, sales tax is imposed on the "sales price" of retail sales. "Sales price" means the total amount for which tangible personal property is sold, "including any services that are a part of the sale." In the policy document, the Department explained that transactions involving both the sale of tangible personal property and the provision of services are generally either taxable or exempt on the full amount charged, regardless of whether the charges for the service and property components are separately stated. The taxability of such a bundled sale depends on the "true object" of the transaction. The Department concluded that the true object of the PSS program was for the customer to obtain his/her groceries (tangible personal property) in a convenient manner. The Department reasoned that the service fee would never be charged absent the procurement of groceries. Therefore, the flat fee service charge would be subject to tax, even if separately stated. Moreover, the fee per item surcharge would also be taxable, regardless of whether it was separately stated or embedded in the price of the item sold. The Department caveated that if a separately stated fee applied entirely to food items that qualified for a reduced sales tax rate, the fee would likewise be subject to the reduced rate; and if the fee applied entirely to nontaxable items (e.g., prescription drugs), then the fee would likewise be nontaxable. However, a separately stated fee on sales that contained a mix of items would be subject to tax at the full rate. Similarly, a surcharge embedded in the price of an item would be taxable based on the taxability of the respective item.

Brazil: ICMS Withholding Guidance in Sao Paulo State

On May 21, 2018, the State of São Paulo published CAT Ordinance No. 42 of 2018, which clarifies rules pertaining to the state value added tax under the anticipation regime (ICMS-ST) and the system available for certain ICMS-ST refunds. ICMS is due on the import of products and on the physical movement of goods, including electricity. ICMS also applies on interstate and inter-municipal transportation services and communications services. In addition, ICMS applies on the resale of products in the domestic market and when products are physically removed from a manufacturing facility. The ICMS-ST regime is an ICMS collection mechanism under which a taxpayer (referred to as a substitute taxpayer) is responsible for collecting the tax that would be due on the entire supply chain (e.g., a manufacturer is responsible for collecting all the ICMS amounts which would be due from the goods leaving the manufacturing plant until arriving to the final consumer).

According to the Ordinance, the information required by the new system will be presented monthly by means of a digital archive, being a single file for the entire reference period, covering all traded goods subject to ICMS-ST (passive replacement with advance withholding of the tax or in advance). A substitute taxpayer located in another state who carries out operations destined for the state of São Paulo, with the purpose of subsequent commercialization, should also use the new system of calculation to identify the ICMS-ST computation basis, informing in the note (fields: "vBCSTRet" and "vICMSSTRet"): value of goods and ICMS withheld or anticipated. The digital file will be subject to two validation phases, called "pre-validation" (to analyze the logical structure of the information transmitted) and "post-validation" (in which several verifications will be carried out by SEFAZ/SP to attest to the consistency of values, data and information contained in the file). To read a report (in Portuguese) prepared by the KPMG International member firm in Brazil, please click here.

Canada: Credit Card Services Not GST Exempt

On June 22, 2018, the Tax Court of Canada published its judgment in *CIBC v. The Queen*, 2018 TCC 109, regarding the application of the goods and services tax and the harmonized sales tax (GST/HST) to services provided by Visa to CIBC. In the case at hand, CIBC, a Canadian bank, issued Visa credit cards and utilized a credit card payment system that was operated and managed by Visa Canada. Visa Canada was the intermediary between the card issuer (CIBC), who provided the funds for the purchases and the credit card holder, who used the funds to make purchases. Visa Canada, in billing CIBC for its services, added CAD 18 million ($13.7 million) in GST/HST to its charges. CIBC then made a rebate claim for the GST/HST, arguing that the services were exempt financial services, which was denied by the Canada Revenue Authority.

The Tax Court of Canada found that the services provided by Visa to CIBC fell outside the "financial service" definition in the Excise Tax Act and therefore did not qualify as an exempt service. Visa had correctly charged tax on its services fees. The Tax Court of Canada held that Visa provided CIBC with payment processing and facilitation services as well as the ability to instantly authorize a transaction attempted by a CIBC customer using a Visa card at a participating merchant. In effect, the court said the overriding goal of the Visa payment network was to provide trust so that a merchant knows it will get paid when presented with an authorized credit card. In essence, Visa was not providing financial services, but administrative and processing services, which are excluded from the exemption for financial services.

Source: J.P. Finet, No GST Exemption for Visa Card Services, Canadian Court Says, Tax Analysts (Jun. 27, 2018); Canada – Tax Court of Canada finds GST/HST applicable to credit card services, as service is administrative in nature and not an exempt financial service (July 3, 2018), News IBFD.

Colombia: Draft Guidance on Nonresident Registration Requirement

On June 8, 2018, the tax authority of Colombia (DIAN) published Resolution 000000 08-06-2018, which proposes additional guidance on value added tax (VAT) withholding mechanisms established in the 2016 Colombian tax reform law, as well as guidance on the application of the new "simplified registration and compliance system" to non-resident cross-border service providers. Recall, in December 2016, Colombia passed a tax reform that made digital services provided by nonresidents subject to VAT effective July 1, 2018.

The Resolution primarily addresses a new simplified registration and compliance system under which a non-resident service provider must register for VAT and must also comply with other information requirements. The Resolution provides guidance on applying the VAT withholding mechanisms to non-resident service providers. The Resolution, however, does not provide guidance identifying whether a service is provided within Colombia (and subject to VAT) or not provided within Colombia (and thus not subject to VAT). Rather, the Resolution simply reiterates the "recipient's location rule" as provided by law, under which a service is subject to VAT in Colombia if the recipient or user has its tax residence, domicile, permanent establishment, or site of economic activity in Colombia.

The 2016 tax reform included two VAT withholding mechanisms. Under the "common regime," Colombian entities that are registered for VAT purposes (e.g., because they provide services subject to VAT) must withhold VAT from non-resident service providers. The second withholding mechanism is administered through financial institutions issuing electronic means of payment (for example, credit or debit cards and prepaid cards) and applies only to certain digital services (e.g., audiovisual services and online publicity). This withholding mechanism is not addressed in the Resolution. Taxpayers subject to one of the withholding mechanisms are exempt from the new registration system requirement.

The simplified registration system would apply to all nonresidents providing services in Colombia, regardless of the value of such services. Under the simplified registration and compliance system, nonresident service providers would register online with the DIAN and would receive a taxpayer identification number (TIN). Once registered, nonresident service providers would submit bi-monthly VAT returns if they conduct any transactions subject to VAT during a two-month period. The first bi-monthly period is July-August 2018. Taxpayers would have access to VAT forms online, and the DIAN will provide filing numbers and dates for purposes of submitting the return. VAT payments are to be submitted to an international bank account of the Colombian Treasury; however, the resolution does not provide specific guidance on how to execute or register payments. Additionally, nonresident taxpayers would be required to provide customers with supporting documentation that includes the following information: name of the service provider and the TIN of the jurisdiction of residence; name and identification of the recipient or user of the service in Colombia; specific description of the service provided; total value of the transaction (in Colombian pesos); and the amount VAT paid (in Colombian pesos). To read a report prepared by the KPMG International member firm in Colombia, please click here.

Europe, Middle East, Africa (EMA)

Belgium: Proposed Amendments to VAT Law

On June 1, 2018, the government of Belgium submitted to the parliament a draft bill containing various VAT amendments. The bill, if adopted, would clarify that the provision for charitable purposes of foodstuffs intended for human consumption will not be treated as a sale of goods for consideration, with the exception of spirited beverages. This rule would apply if it is no longer possible to sell the foodstuff under normal commercial conditions due to its state. The bill would further expand the VAT exemption for services in the field of social work, welfare and protection of children and young people to common internal services that meet the conditions of the Royal Decree of October 27, 2009 on the establishment of a common internal service for prevention and protection at work. Moreover, the bill would introduce a right to recover VAT incurred on spirited drinks used as trade samples or as part of a tasting. The bill would prohibit exempted small enterprises and farmers subject to the special scheme from providing their VAT identification number to their contractor for construction work on immovable goods. The bill would replace the taxpayer with the trustee in the context of the settlement of a bankruptcy. Finally, a current law obligation requiring owners of new buildings to submit a specified declaration will be replaced by an obligation to submit a simple list of data relating to the building established. No supporting documents (e.g., copies of building plans and specifications) as well as of all relevant invoices and other evidence (e.g. with respect to the taxpayer's own work or work carried out free of charge by family members) would be required.

Source: Belgium – Draft bill on various VAT amendments submitted to parliament (08 June 2018), News IBFD.

Czech Republic: Proposed Amendments to VAT Law

The government of the Czech Republic recently proposed amendments to the country's VAT Act. The proposal would re-introduce the fiction of determining the date of sale for the re-invoicing of services directly related with leases to when the lessor ascertains the actual re-invoiced amount. Such services are not part of a lease contract and represent separate and mutually separable sales (e.g., janitorial, security or gatekeeper's services, etc.). Another proposed amendment relates to VAT deductions claimed on repairs of real property. According to the proposal, taxpayers who carry out real property repairs costing more than CZK 200,000 ($9,000) would be required to monitor whether the real property is sold within a period of ten years of the date the repair is carried out. If the property is sold in a VAT-exempt transaction within ten years, the VAT deduction originally claimed must be corrected.

Moreover, the government proposes to alter the treatment of certain price subsidies toward the results of operations that are not included in the tax base. This may be in effect from the beginning of 2019. Under the proposal, it will generally be necessary to assess whether subsidies received directly relate to sales and whether the subsidies have direct effect on the price charged to customers. If so, such a subsidy would represent a payment for the relevant sale for which VAT must be paid (if this involves a taxable sale). Finally, the proposal would require that taxpayers make all efforts necessary to deliver tax documents within established deadlines. According to the explanatory report, taxpayers must ensure that a tax document is sent to the recipient's contact address no later than on the last day of the time period. This will not be deemed fulfilled if taxpayers send tax documents within the deadline, but at the same time know or could know that the recipient is not staying at the given address, is unknown or uncontactable. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

European Union: Transfer of Immovable Property to Shareholder May be Subject to VAT

On June 13, 2018, the Court of Justice of the European Union (ECJ) published its judgment in *Polfarmex*, Case C-421/17, regarding the VAT treatment applicable to the transfer of immovable property to shareholders. In the case at hand, a Polish taxpayer wanted to restructure its share capital by means of a buy-back of part of its shares. Using a legal redemption method, it would transfer the ownership of land, the buildings thereon and equipment to its shareholder in return for that shareholder's part of the shares (the buy-back transaction). The taxpayer requested a ruling from the Polish tax authority regarding the VAT treatment of the buy-back transaction arguing that the transfers of the shares and of the immovable property were not subject to VAT, because it did not act in the course of its economic activity. However, the Polish tax authority held the view that the transfer of immovable property in return for the redemption of the shares was a sale of goods for consideration subject to VAT.

The ECJ first observed that there is a sale for consideration only if there is a legal relationship between the vendor and the purchaser entailing reciprocal performance, i.e., the price received by the vendor constituting the value actually given in return for the asset sold. In this respect the ECJ had previously held that the transfer of immovable property as payment for tax arrears was not a sale for consideration, because the latter was of a unilateral nature. Case C-36/16, *Posnania Investment* (May 11, 2017). The ECJ concluded that in the case at hand, the parties were involved in the transactions as both vendor and as purchaser and that, therefore, there was a legal relationship of reciprocal performance, the one being the consideration for the other. As such, the ECJ concluded that there were two different sales for consideration, provided that they were carried out as economic activities.

Source: PL: ECJ, June 13, 2018, Case C-421/17, Szef Krajowej Administracji Skarbowej v. Polfarmex Spó ka Akcyjna, ECJ Case Law IBFD.

European Union: Customer VAT Identification Number Not a Substantial Requirement for Exempt Import of Goods

On June 20, 2018, the ECJ published its judgment in *Enteco Baltic*, Case C-108/17, regarding whether the requirement to provide a customer VAT ID for the VAT exemption applicable to imports of goods followed by an intra-European Union (EU) sale of goods is a substantial requirement or only a formal requirement. Recall, in the case at hand, the taxpayer imported fuel from Belarus into Lithuania and applied the VAT exemption for imports of goods that will subsequently be shipped to a customer established in another EU Member State. It included in its import declarations the VAT IDs of the customers to whom the fuel was to be shipped. The fuel was stored in warehouses for excise goods. The customers ordered the fuel via an email in which they stated the details of the representatives that would pick up the goods and the details of the warehouses to which the goods were to be shipped. For the shipping of the fuel, electronic documents for the shipment of excise goods were drawn up, as well as CMRs (shipping documents) that included the places of departure and receipt. After the sale of the fuel, the taxpayer received e-RORs (electronic confirmation of receipt of goods) as a confirmation that the goods had been delivered and the electronic documents had been closed. Normally, it would also receive the CMRs from the warehouses in the EU Member States of destination. However, in some cases, the taxpayer sold goods to taxpayers other than those whose VAT IDs were included in the import declarations. The Lithuanian tax authority challenged the application of the import VAT exemption arguing that the taxpayer did not include the VAT IDs of the actual customers in its import declaration applying the VAT exemption.

The ECJ first pointed out that the application of the VAT exemption is dependent on the application of the zero rate for the subsequent intra-EU sale of goods. Therefore, the substantive conditions for that latter zero rate should be met in order to apply the VAT exemption. According to the ECJ, neither the provision dealing with the zero rate nor the VAT exemption at issue obligate an importer to indicate the customer's VAT number. According to established case-law, Member States cannot refuse the application of the zero rate when all substantive conditions are met but a formal requirement, such as the purchaser's VAT number is not a substantive condition. This should also apply to the VAT exemption at issue. The ECJ further pointed out that, although the current provision in the EU VAT Directive regarding the VAT exemption includes the obligation for the vendor to provide the customer's VAT number at the time of importation, it would be contrary to the general scheme and the context of that provision to refuse its application when the seller eventually sells the goods to another customer. The communication of the customer's VAT number is not a substantive condition and was merely intended to remedy divergences between the Member States' application of the VAT exemption.

The ECJ further observed that the person wanting to apply the VAT exemption is the person required to prove that the substantive conditions were met, including that the goods are transported to another Member State. This condition is satisfied when the goods have actually left the Member State of origin. Therefore, the person wanting to apply the VAT exemption must prove that at the time of import, it has the intention to ship the goods to a customer in another Member State and for the subsequent application of the zero rate that the goods have actually been subject to such shipment. However, it is not necessary to show that they are shipped specifically to the address of the customer. In this respect, the ECJ observed that an e-AD consignment note is capable of showing the intention to ship the goods and the report of receipt of the excise goods shows that the goods have actually left the Member State of origin. However, an e-ROR confirmation can only show the intention to ship the goods if it has been drawn up before the importation, and it is capable of showing that the goods have actually left the Member State of origin. A CMR consignment note is capable of showing the intention to ship the goods, provided it has been submitted at the time of importation, and it is capable of showing that the goods have actually left the Member State of origin.

Moreover, the ECJ held that the definition of a sale of goods does not differ for a VAT exemption or the right to deduct VAT. Therefore, if there was no transfer of the right to dispose of the goods as an owner to the shipping companies, the taxpayer could not have sold the goods to the customers. In addition, the ECJ reiterated that taxpayers are required to act in good faith and take every step that could reasonably be asked to satisfy that the transaction does not result in tax evasion. If that person knew or ought to have known about tax evasion in the transaction chain, such a person can be refused the application of a right stemming from EU law. The mere finding of the taxpayer communicating in an electronic way was in itself not to be regarded as a lack of good faith or negligence, nor may this finding lead to the presumption that it knew or ought to have known that it was participating in tax evasion. Finally, the ECJ held that it is the taxpayer that has the burden to prove that the requirements for the application of the VAT exemption were met. The tax authority is not required to request information from the authorities of the Member State of destination.

Source: LT: ECJ, June 20, 2018, Case C-108/17, UAB 'Enteco Baltic' v. Muitin s departamentas prie Lietuvos Respublikos finans ministerijos, ECJ Case Law IBFD.

European Union: Tax Authority May Deny VAT Deduction Based on Absence of Sale

On June 27, 2018, the ECJ published its judgment in *SGI*, Case C-459/17, regarding whether a tax authority may deny the right to deduct VAT if the tax authority establishes that no sale of goods or services has taken place. In the case at hand, two companies established for VAT purposes in Reunion, France, purchased equipment that was intended to be leased to operators established in Reunion. After a tax audit, the French tax authority denied the VAT deduction related to these purchases because the invoices for the purchased equipment did not correspond to any actual sales. The taxpayers did not agree with those assessments, and the cases were brought before the national court. The national court was unclear whether the right to deduct VAT can be denied solely on the basis that no actual sales have taken place or whether it must also be established that the transactions at issue were connected with VAT fraud.

The ECJ first ruled that although the facts had taken place in a part of France that is out of the scope of EU VAT, the relevant provisions had been made applicable there as well by national legislation. Therefore, the question and, as such, the answer to it, were clearly in the interest of the EU. The ECJ subsequently emphasized that the premise in the case at hand was that no actual sales had taken place. Given that the moment to exercise the right to deduct VAT is linked to the moment that the VAT becomes chargeable by the vendor (i.e., when the sales are performed) that right is connected to the actual sales. Consequently, if there are no actual sales, there is no right to deduct VAT. The good or bad faith of a taxpayer wanting to exercise that right does not change that conclusion in such a case. In addition, the principles of legal certainty and of fiscal neutrality also did not change that conclusion. As regards the first principle, the ECJ did not find any reason to assume that the taxpayers in the case at hand could not effectively ascertain their VAT position. Furthermore, with respect to the principle of fiscal neutrality, the ECJ emphasized that a taxpayer that did not receive actual sales is not in the same position as a person that did receive such sales. Those two categories of persons are therefore not in a same position.

Source: FR: ECJ, June 27, 2018, Case C-459/17, SGI v. Ministre de l'Action et des Comptes Publics, ECJ Case Law IBFD.

European Union: New Measures on Strengthening Administrative Cooperation

On June 22, 2018, the European Union adopted new measures to strengthen administrative cooperation in the field of VAT. The VAT measures were proposed by the EC in November 2017, and generally provide for a greater exchange of information and cooperation among national tax authorities and law enforcement authorities. Once in force, EU Member States will be able to exchange more relevant information and to cooperate more closely in the fight against criminal organizations, including terrorists. The new rules will strengthen cooperation between EU Member States, enabling them to address VAT fraud more quickly and more efficiently, including online fraud; allow greater use of IT systems to replace the manual processing of data; allow for systematic sharing of VAT information and intelligence in the most serious cases of VAT fraud; and improve investigative coordination between tax administrations and law enforcement authorities at national and EU levels. The new cooperation rules will be published in the EU's Official Journal. Their application may be deferred until January 1, 2020.

Ireland: Overview of Recently Published VAT Guidance

On April 23, 2018, the Irish Revenue published Revenue eBrief 66/18 on the VAT treatment of staff secondments to companies established in Ireland from related foreign companies. The guidance confirms that staff secondments are subject to VAT at the standard rate. However, Revenue allows an administrative practice in which VAT is not chargeable on payments for seconded staff, provided Irish PAYE and PRSI have been correctly paid on those payments. This treatment only applies where staff are seconded from a company not established in Ireland that is in the same corporate group as the recipient company. In addition, the Irish company to which the employee is seconded must exercise control over the performance of the employee's duties or the employee must effectively have managerial responsibility for the operation of the Irish company. In addition, the PAYE/PRSI liabilities relating to the payments to the seconded employee must be paid to Revenue in a timely manner. If the company sending the employee charges the Irish company an amount in excess of the amounts payable to the employee, this excess will be liable to VAT, and the Irish company will be required to self-assess VAT under the reverse charge mechanism.

On April 23, 2018, the Irish Revenue published Revenue eBriefs 68/18 which updates the VAT Tax and Duty Manual regarding the VAT treatment of personal contract plans (PCP), the VAT deductibility of life insurance, and VAT deductibility in the funds industry. In light of the ECJ's judgment in *Mercedes Benz Financial Services*, Case C-164/16 (October 4, 2017), Revenue has outlined its position regarding the VAT treatment of PCPs. A PCP is a common means of financing assets such as cars, as it generally allows for reduced repayments during the term of the agreement with a larger optional balloon payment due at the end. At the end of the term, the customer has the option to (1) return the car without paying the balloon payment; (2) pay the balloon amount and take full legal ownership of the car; or (3) trade in the car and enter into a PCP on a new car. In *Mercedes Benz*, the ECJ held that a contract of this type should be treated as an upfront sale of goods for VAT purposes by the finance company at the outset of the agreement if the only rational choice for the customer will be to exercise the option to purchase the asset at the end of the agreement. Revenue has indicated it is prepared to accept that the requirement to purchase the asset at the end of a PCP contract can be fulfilled by the exercise of either option (2) or option (3). Therefore, where it is clear at the outset of the agreement that the economically rational choice will be to buy the asset or trade it in against a new asset, it can be treated as a sale of goods for VAT purposes.

With respect to the deductibility of life insurance, Revenue acknowledges that a life insurance company typically also generates income from savings and investment products which are written as a life insurance policy, but are similar to, and in competition with, other financial products offered by banks, fund managers etc. The guidance confirms that VAT recovery on costs incurred by a life insurance company relating to these type of products should typically be based on the non-EU financial investments made by the life insurance company in respect of the products. Consequently, VAT should be recoverable on costs that are directly attributable to dealing in non-EU securities, while VAT recovery should be disallowed on costs directly attributable to dealing in EU securities. Where the life insurance company has costs that relate to both its insurance and investment activities, a VAT recovery rate methodology must be formulated using a methodology that correctly reflects how costs are consumed and has due regard for the total sales of the business.

Finally, in the guidance on VAT deductibility for the funds industry, Revenue clarifies that a fund is entitled to VAT recovery on its costs to the extent it is engaged in the sale of financial services to non-EU counterparties. However, given that a fund's level of trading can be very substantial, Revenue set out two methods for calculating the proportion of non-EU activity of a fund. The first is based on the proportion of non-EU investments included in the fund's Net Asset Value (NAV). Revenue consider this to be generally the most reliable method to correctly reflect the use that the costs incurred are put to. The second method based on the quantum of non-EU investors in the fund may be only used if it is a more accurate reflection than the method based on the NAV. According to Revenue, whichever method is adopted must be applied consistently and any change in methodology should be submitted to Revenue for approval. To read a report prepared by the KPMG International member firm in Ireland, please click here.

Germany: Proposal to Make Online Marketplaces Joint and Severally Liable

On June 21, 2018, the German government proposed several amendments to the country's tax laws, including the VAT Act. According to the proposal, operators of electronic marketplaces should be required to keep records of transactions taxable in Germany performed by third party vendors through the platform (e.g., name and address of the vendor, VAT identification number of the vendor, validity of certificate, ship from and ship to, time and value of the sale). According to the motives of the bill, the tax authority should be given the opportunity to check whether the vendor or user fulfills their tax obligations. At the request of the third party vendor, the competent tax office should issue a certificate allowing the vendor to prove to the operator that he is registered for VAT purposes. The electronic marketplace operator must also keep this certificate. The certificate is valid for a maximum of three years. In addition, in the future, the Federal Central Tax Office would provide the operator of an electronic marketplace with an electronic query to access the certificate stored there. The operator would be required to provide the above-mentioned data to be recorded by him electronically on request to the responsible tax office. The start of the electronic inquiry and the determination of the calendar year from which the data to be recorded are to be transmitted upon request will be notified by the Federal Ministry of Finance by a letter to be published in the Federal Tax Gazette.

In addition, the German government proposes to hold the operator of an electronic marketplace liable for the unpaid VAT resulting from a delivery made by a third party vendor selling through the marketplace effective January 1, 2019. This liability would be limited to the extent that the operator proves to the tax authority that he was not aware nor could have been expected, in terms of the due care and diligence expected of a prudent businessperson, to have had knowledge that the third party vendor does not fulfill his tax obligations in full or in part. Knowledge would be assumed if the operator has not obtained a certificate or electronic confirmation. Finally, if the third party vendor fails to fulfill his tax obligations or does not do so to a significant extent, the tax office responsible for him should be entitled to inform the operator if other measures do not promise immediate success. After receipt of this communication, the operator would be held liable for unpaid VAT, unless the operator proves to the tax office that the third party vendor can no longer offer goods through the marketplace.

Hungary: Proposed Amendments to VAT Law

On June 19, 2018, the government of Hungary submitted proposed amendments to the VAT Act to the parliament. The draft proposes to introduce new provisions consistent with the EU VAT Voucher Directive effective January 1, 2019. The VAT Act defines vouchers, distinguishing between single-purpose and multi-purpose vouchers. The purpose of the regulation is to bring the tax point closer to the issuance of a voucher. For that, it is necessary to know the applicable tax rate, sourcing, and tax base. For single-purpose vouchers these parameters are known, so the tax payment obligation can be determined when issuing the voucher, while for multi-purpose vouchers the tax point is when vouchers are used. Specific rules apply for agent and commission resale and for handling other services connected to voucher and promotional schemes.

In addition, the draft would implement the EU VAT E-Commerce Directive amending rules relating to electronic supplied services, especially regarding the EU-wide registration for vendors of such services under the mini one-stop shop system (MOSS). The draft provides that only those service providers seated in one EU Member State can take advantage of additional simplification measures. If business-to-consumer sales of such services do not exceed the threshold of EUR 10,000 ($11,800), the vendor is not required to charge the VAT of the Member State of the consumer and can thus charge

VAT of the Member State of in which the vendor is established. In addition, the draft would clarify that for such services the invoice requirements of the country in which the vendor is registered under MOSS apply.

The proposal would further clarify that services related to export and other similar zero-rated transactions would only be zero-rated if they are provided directly to a partner who performs the zero-rated transactions. Moreover, according to previous tax legislation modifications, the threshold for reporting an invoice decreased to HUF 100,000 ($362) of VAT effective July 1, 2018 and an online invoice reporting mechanism replaced the domestic sales list report. The draft provides guidance for reporting invoice data above the threshold on a transitional basis. According to the transitional measures, the addressee of the invoice would not be obliged to prepare a domestic purchase list regarding those invoices that are also reportable before July 1 based on the rules effective on June 30.

The draft would allow foreign taxpayers registered for Hungarian VAT to deduct VAT regarding their purchases prior to the date of registration through their VAT return submitted for the period of registration. Moreover, the draft would repeal the requirement for the purchaser to self-assess VAT on purchases of secondment services or rendering available personnel as well as for school cooperatives and pensioner cooperatives effective January 1, 2021. The reverse charge for the sale of certain cereal and steel products remains effective until June 30, 2022. Finally effective January 1, 2019, the VAT rate for certain milk would decrease to five percent. To read a report prepared by the KPMG International member firm in Hungary, please click here.

Luxembourg: Guidance on VAT Recoverability for Mixed Taxpayers

On June 11, 2018, the Luxembourg VAT authority published Circular No. 765-1 on the deduction of VAT for goods and services used for mixed purposes. This document is aimed at making the application of Circular 765 more precise regarding the computation method of VAT recovery right for taxpayers simultaneously carrying out taxable and exempt economic activities. In determining the right to deduct VAT, the ECJ case-law makes a distinction between passive and active holding companies. The primary issues involve the allocation of overhead costs and to which activity these are related. In *Polysar*, Case C-60/90 (June 20, 1991), the ECJ stated that a holding company whose sole purpose is to acquire holdings in other undertakings, without involving itself directly or indirectly in the management of those undertakings, does not have the status of a taxpayer for VAT purposes. Therefore, the latter has no right to VAT recovery on the costs incurred in the acquisition. However, according to ECJ case-law, the involvement of a holding company in the management of companies in which it has acquired a shareholding, should constitute an economic activity. The management activities can refer to the sale of administrative, financial or commercial and technical services. In *Larentia+Minerva*, Cases C-108/14 and C-109/14 (July 16, 2015), the ECJ further specified the VAT treatment of the following situations that could potentially arise. If a holding company is involved in the management of its subsidiaries in a fully active manner, it should be entitled to a VAT deduction on the costs incurred on the acquisitions of the subsidiaries.

If a company is involved in the management of only a few of the subsidiaries acquired, there should be a distinction between the economic activity of the company (active management) and non-economic activity (passive holding of shares). Only the VAT incurred on the costs related to the economic activity should benefit from the VAT deduction. In addition, the ECJ indicates that the qualification of "active involvement" as an economic activity implies a separate remuneration for the services rendered.

Circular 765-1 distinguishes between taxpayers carrying out an economic activity partially exempt for VAT purposes and partial taxpayers carrying out both economic and non-economic activities for VAT purposes. Circular 765 only referred to the case of taxpayers carrying out an economic activity partially exempt, by establishing more accurate methods for determining the amount of input VAT they were entitled to deduct. Circular 765-1 clarifies the situation for partial taxpayers who do not have a full VAT recovery because they are involved simultaneously in economic and non-economic activities for VAT purposes. The principles applicable in Circular 765 are extended to the latter category of taxpayers who should allocate part of their costs to their non-economic activity. Circular 765-1 further establishes that to the extent such persons qualify as taxpayer, they are entitled to VAT deduction right with regard to their (non-exempt) economic activity.

As a consequence of the new Circular, if a holding company would carry out an activity falling within the scope of VAT, but which is exempt (e.g., financing to companies established within the EU), a taxable activity (e.g., provision of taxable services) and would in parallel passively hold participations (out of scope of Luxembourg VAT), both Circular 765 and 765-1 should apply. The VAT incurred on the costs linked to the taxable services should be deductible, while the VAT related to other services (non-economic/exempt activity) should not. The recoverable VAT relating to general overheads should rely on an objective allocation method. To read a report prepared by the KPMG International member firm in Luxembourg, please click here.

United Kingdom: Brexit Update

On June 19, 2018, the European Union and the United Kingdom published a joint statement on the progress of the United Kingdom's orderly withdrawal from European Union. According to the joint statement, the parties have reached an agreement on a number of topics, including that the EU VAT Directive will apply to cross-border sales of goods where the shipment starts before the end of the transition period but ends thereafter. The Brexit transition period will run from March 29, 2019, to December 31, 2020. The rights and obligations relating to cross-border sales performed before the end of the transition period or where the shipment started before the end of this period are subject to the provisions of the EU VAT Directive for 5 years calculated from the end of the transition period, Moreover, cross-border VAT refund claims subject to the Directive 2008/9 must be submitted not later than March 31, 2021. The joint statement also outlines the administrative cooperation provisions for matters related to indirect taxes. It explains that Council Regulation (EU) No. 904/2010 on administrative cooperation and combating fraud in the field of VAT will apply until four years after the end of the transition period for competent authorities responsible for applying VAT in the member states and United Kingdom for transactions that took place before the end of the transition period.

On June 26, 2018, the UK Department for Exiting the European Union announced that the EU (Withdrawal) Bill received Royal Assent on the same date. The European Union (Withdrawal) Act 2018 is enacted. Finally, on July 6, 2018, the UK government published a statement of the government's position on the future economic relationship with the EU. According to the statement, the UK proposes that the UK and the EU would maintain a common rulebook for all goods including agri-food, with the UK making an upfront choice to commit by treaty to ongoing harmonization with EU rules on goods, covering only those necessary to provide for frictionless trade at the border. For services, the UK proposes to strike different arrangements. Moreover, the UK proposes that the UK and the EU would incorporate strong reciprocal commitments related to open and fair trade into the legal agreements that define the future relationship. In addition, the UK proposes that the UK and the EU would establish a joint institutional framework to provide for the consistent interpretation and application of UK-EU agreements by both parties. Finally, the UK proposes that the UK and the EU would work together on the phased introduction of a new Facilitated Customs Arrangement that would remove the need for customs checks and controls between the UK and the EU as if a combined customs territory.

Source: European Union; United Kingdom – Brexit: agreement between European Union and United Kingdom regarding indirect taxes and administrative cooperation procedures (June 21, 2018), News IBFD; Orbitax, UK Government Issues Statement on Economic Relationship with EU post-Brexit (July 10, 2018).

Asia Pacific (ASPAC)

Singapore: Consultation Feedback on Proposal to Apply GST on Imported Services

The Inland Revenue Authority of Singapore (IRAS) recently published consultation feedback on draft guidelines it released earlier in the year explaining budget proposals to charge GST on imported services from January 1, 2020. (For KPMG's previous discussion on this proposal, click here.) In the first guide, GST: Taxing imported services by way of reverse charge, IRAS explains the 2018 Budget proposal to impose a GST self-assessment requirement under the reverse charge regime for business-to-business sales of imported services. This will require Singaporean businesses to account for GST on all imported services except certain specifically excluded services) as if they are the sellers. A credit for GST paid under the reverse charge regime will be available, subject to normal GST recovery rules. In response to feedback on this guide, IRAS has rejected requests to exempt specific classes of persons and business sectors, narrow the scope of imported services subject to the reverse charge, and exempt inter-branch and intra-GST group transactions. IRAS has also refused to exempt one-off imports by businesses that are not registered for GST, and to change the taxing point from the date imported services are posted in business accounts to the time of payment.

In the second guide, GST: Taxing imported services by way of an overseas vendor registration regime, IRAS explains the 2018 Budget proposal to implement an overseas vendor registration regime for business-to-consumer sales of digital services. This will require vendors outside Singapore to register for and charge GST in Singapore if they have annual global gross receipts exceeding SGD 1 million ($750,000) and make business-to-consumer sales of digital services to consumers in Singapore exceeding SGD100,000 ($75,000). In response to feedback on this guide, IRAS has agreed to calculate the annual global gross receipts of overseas vendors in a similar way to the taxable gross receipts of Singaporean businesses for GST purposes. IRAS has also agreed to show flexibility when reviewing evidence required from overseas vendors to establish where they belong, and to provide further guidance on the application of the regime to electronic marketplace operators. Requests to exclude vendors of certain services, such as advertising services, from the overseas vendor registration regime have been rejected by IRAS. IRAS says it will now publish revised guides on December 31, 2018, taking into account the feedback received where possible.

Source: CCH, Global Daily Tax News, Singapore To Tweak Budget 2018 GST Plans (June 6, 2018).

Trade & Customs (T&C)

China: Most Favored Nation Customs Duty Rate Reductions

Effective July 1, 2018, China reduced customs duties under the "most favored nation" (MFN) rates for 1,449 items. These items are daily consumer goods, and the average tariff rate is reduced from 15.7 percent to 6.9 percent. Examples of items subject to the reduced rates include: clothing, shoes and hats, kitchenware, and sports and fitness sales that are now subject to a reduced rate of customs duty of 7.1 percent (previously 15.9 percent) and home appliances such as washing machines and refrigerators that are now subject to a reduced rate of customs duty of 8 percent (previously 20.5 percent). As the newly reduced MFN rates are lower than most of the earlier published interim duty rates, another list outlines some 210 items of which interim duty rates are be repealed. The MFN rates apply for all countries that are members of the World Trade Organization (WTO), including the United States. For more information, please click here.

European Union: Customs Program to Foster Cooperation Among Customs Authorities

On June 8, 2018, the European Commission announced a program proposal aimed at improving the efficiency of tax and customs cooperation among the EU Member States. The new customs program would enhance the single customs union by (1) increasing information and data exchange among national customs administrations; (2) improving the ability of customs authorities to collect correct amounts of customs duties, import VAT, and excise taxes; (3) devising better risk management strategies to protect the EU's financial interests; and (4) continuing to facilitate growing levels of trade. (EU customs authorities handled 331 million declarations last year.) Moreover, the new program would support cooperation among Member States' tax administrations and better contribute to the fight against tax fraud, tax evasion and tax avoidance, by: (1) putting in place better and more connected IT systems, which each Member State would otherwise have to develop individually; (2) sharing good practices and training to boost efficiency; (3) putting in place joint actions in risk management and audits; and (4) fostering Union competitiveness, boosting innovation and facilitating the implementation of new economic models.

Japan: Update on Status of Trans-Pacific Partnership Trade Agreement

On July 6, 2018, Japan ratified the Comprehensive Progressive Agreement for the Trans-Pacific Partnership (TPP). The TPP agreement will be a free trade agreement involving 11 countries in the Asia-Pacific region, including New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and Viet Nam. To complete ratification of the TPP agreement, Japan also needs to enact certain legislation that includes measures to support the domestic agricultural sector and to reinforce the protection of intellectual property rights. The TPP agreement legislation will enter into force 60 days after the date on which at least six of the signatory countries of the TPP agreement complete their ratification processes. To date, Mexico has completed its ratification, with approval by other TPP signatories under way.

As one of the largest multilateral economic partnership agreements to be ratified, the TPP agreement will afford business in Japan the opportunity to re-evaluate their supply chains, as well as their sourcing and manufacturing processes, for increased market access and reduced customs duties. Japanese businesses could also benefit from the participation of Canada and New Zealand in the TPP (with respect to which there is currently no economic partnership agreement). The agreement also would provide an integrated set of "rules of origin" that will apply to goods traded between the 11 member countries. Goods wholly obtained or produced in the 11 member countries thus could potentially qualify for preferential tariff treatment. This could offer businesses a range of possibilities for determining where to source and manufacture products. The TPP also allows for self-certification by either an exporter, importer or manufacturer—thus reducing time, cost, administrative burdens, and missed opportunities compared to other agreements that require government authority certification. To read a report prepared by the KPMG International member firm in Japan, please click here.

In Brief

- **Aruba:**[i] Effective July 1, 2018, Aruba increased its combined sales tax rate (i.e., turnover and health tax) from 3.5 percent to 6 percent.
- **Bahamas:**[ii] Effective July 1, 2018, the Bahamas increased its standard VAT rate from 7.5 percent to 12 percent. In addition, the following items are now VAT exempt: edible commodities, except for sugar; medicines; residential property insurance; utilities (providing taxpayers' bills fall under certain thresholds); and charitable organizations' fund-raising activities.
- **China:**[iii] The Ministry of Finance of China recently announced that VAT incurred on books, newspapers, periodicals, audiovisual products, and electronic publications published by China's Communist Party and affiliated bodies, including labor unions, Communist Youth Leagues, women's federations, disabled persons' associations, and scientific associations, as well as newspapers and periodicals published specifically for children and teenagers, primary and secondary school textbooks, newspapers and periodicals published specifically for the elderly, ethnic minority publications, braille books and braille journals, and certain other publications should be refunded between January 1, 2018 through December 31, 2020. VAT incurred on all other books, periodicals, audiovisual products, and electronic publications, and certain specified newspapers should be 50 percent refundable.
- **Angola:**[iv] The government of Angola is planning a gradual implementation of VAT with a standard rate of 14 percent to replace its current two-tier consumption tax, which taxes goods at 10 percent and services at 5 percent. Effective January 1, 2019, VAT would be applicable to large companies with annual revenues above AOA 50 million ($200,000) and would be optional for other businesses. Effective January 1, 2021, VAT would be applicable to all companies in Angola. The government of Angola is currently working on the draft VAT bill, which will be submitted to the parliament in near future.
- **Bahamas:**[v] Effective August 1, 2018, the Bahamas will introduce new VAT exemptions on breadbasket items, such as butter, cooking oil, mayonnaise, cheese, milk, margarine, rice, flour, bread, tomato paste, baby food, cereals and formula, soups, broths, condensed milk, mustard, soaps and powdered detergents; medicines; residential property insurance; and residential electricity and water bills that total a certain amount. In addition, the Bahamas introduced various fixed penalties of up to a maximum of BSD 150,000 (e.g., for failure to provide documents requested pursuant to regulations). Finally, the Ministry of Finance and the Department of Inland Revenue issued an updated general VAT guide with Q&As on topics such as transfer of a going concern, record keeping and accounts, imports, exports, filing of VAT returns, refunds, VAT rates and VAT registration.
- **Bangladesh:**[vi] On June 7, 2018, the Finance Minister of Bangladesh presented the Budget for 2018.If approved, the Budget would simplify the current 9-rate VAT regime with a 5-rate regime (2 percent, 4.5 percent, 5 percent, 7 percent and 10 percent). In addition, the Budget includes plans to pilot mandatory electronic submission of VAT returns

and online tax payments for large taxpayers. The Budget further proposes making the use of "electronic fiscal devices", rather than electronic cash registers and point of sale systems, mandatory for hotels, restaurants, resorts, and shops nationwide. Moreover, the Budget would introduce new VAT exemptions on the following goods and services: the sale of agricultural land; cancer and kidney disease medications; certain foodstuffs typically purchased by lower-income taxpayers; sandals made of plastic or rubber; certain animal feed; services provided by the state to aircraft providing international air shipping services, and commissions earned by insurance agents. Finally, the Budget would introduce digital permanent establishment rules.

— **Barbados:**[vii] The government of Barbados recently issued the Budget for 2018-2019. If approved, the Budget would subject all online sales of goods and services to consumers established in Barbados to VAT effective October 1, 2018. In addition, the Budget would increase the VAT rate applicable to hotel accommodations to 15 percent effective January 1, 2020 with a per night hotel room levy applying in the interim. The daily levy will range from $2.50 to $10 per night. In addition, a 2.5 percent product levy will be imposed on all direct tourism services. In addition, the Budget would introduce a 10 percent levy on all "sharing economy" (e.g., accommodations platforms) transactions related to tourism effective August 1, 2018. Finally, the Budget would introduce an airline travel and tourism development fee will be introduced from October 1, 2018. Passengers flying to destinations outside the Caribbean Community will pay $70, while those flying to destinations within the Caribbean Community will pay $35. This fee will be in addition to the departure tax.

— **Canada:** Effective June 27, 2018, purchasers of taxable carbon emission allowances are required to self-assess GST/HST. Under Canadian GST/HST rules, initial sales of carbon emission allowances from Canadian government entities are exempt. However, sales of carbon emission allowances on the secondary market are taxable. For self-assessment to apply, a carbon emission allowance must meet three tests: (1) be an allowance, credit or similar instrument that is issued or created by a government, a board or other specific government entity; (2) capable of being be used to satisfy a requirement to regulate greenhouse gas emissions; and (3) represent a specific quantity of greenhouse gas emission expressed as carbon dioxide equivalent. To read a report prepared by the KPMG International member firm in Canada, please click here.

— **Chile:**[viii] On June 21, 2018, the Finance Minister of Chile said that the government plans to apply VAT on sales made by overseas sellers of digital services and goods to consumers in Chile.

— **Croatia:**[ix] The Prime Minister of Croatia recently announced that the government plans to reduce the country's standard VAT rate from 25 percent to 24 percent in the near future.

— **European Union:**[x] On June 13, 2018, the ECJ published its judgment in *Gmina Wroclaw*, Case C-665/16, in which it held that if a municipality, following a decision from a public authority, transfers immovable property to a public treasury for compensation, such a transfer should be subject to VAT even if both the seller and the recipient are represented by the same person and there is no transfer of the right to dispose of the property as owner.

- **Finland:**[xi] Finland's Supreme Administrative Court recently rule that depository and custodian services offered to a mutual fund should be subject to VAT. Although mutual fund activities are typically VAT exempt, the Court said the depository and custodian services offered by the taxpayer in the proceedings did not constitute an essential part of the mutual fund's investment services offering.
- **Iceland:**[xii] On June 11, 2018, the Icelandic parliament approved Bill No. 561, which introduces, effective July 1, 2018, an optional simplified VAT registration procedure for foreign residents or permanent establishments that provide electronic supplied services to consumers established in Iceland. Moreover, effective January 1, 2019, nonresident providers of telecommunications, radio, and television services to consumers established in Iceland will be required to register for and collect Icelandic VAT.
- **India:**[xiii] Effective June 16, 2018, all Indian states are now operating the GST e-way bill system. Recall, The system is part of the recently implemented GST and is intended to enable goods to be sent to other Indian states without border checks. The regime provides that taxpayers must declare in advance consignments worth at least INR 50,000 ($780) and obtain and furnish on request an "e-way bill," to eliminate the need for checks at border checkpoints between states. Few states have a different threshold than INR 50,000 (e.g. Tamil Nadu where the threshold is higher at INR 100,000 ($1,560). The system is intended to remove non-tariff barriers to interstate trading aid establishment of a single market across India.
- **India:** On June 19, 2018, India's Central Board of Indirect Taxes and Customs published the consolidated Central Goods and Services Tax (CGST) Rules, 2017. It comprises 19 chapters covering several aspects of India's CGST regime, including registration, value of sales, CGST credits, invoices, accounts and records, returns, and payments.
- **India:** On June 29, 2018, India announced that implementation of the tax deduction at source (TDS) and tax collection at source (TCS) regimes will be delayed until October 1, 2018. Under the TDS regime, public bodies would be required to deduct two percent on payments made to the seller of taxable goods and/or services, where the total value of an individual contract, exceeds 250,000 INR ($3,650). No deduction of GST is required when the location of seller sourcing is different from the state of the registration of the recipient. Under the TCS regime, e-commerce aggregators are made responsible for deducting and depositing tax at the rate of 2 percent from each of transaction prior to remitting the remaining proceeds to the seller.
- **Israel:**[xiv] On May 17, 2018, the tax authority of Israel published a decision regarding VAT reporting obligations for the import of services and intangibles. Israeli VAT-registered entrepreneurs importing recurring services (including research and development, headquarter services, legal services, etc.) or large amounts of intangibles are allowed to issue a single

consolidated monthly self-tax invoice, as opposed to individual invoices for each transaction as previously required. Consolidated invoices must include reference to the various payments made to foreign vendors, as well as other aspects detailed in the tax decision.

— **Greece:**[xv] On June 14, 2018, Greece published Law 4549/2018 in the official gazette. The Law allows the tax authority to adjust a taxpayer's VAT base if a related-party transaction, as determined for income tax purposes, does not comply with the arm's-length principle and the seller or recipient do not have the full right to deduct VAT.

— **Kenya:**[xiv] On June 14, 2018, Kenya published the Finance Bill 2018 amending the country's VAT law. If adopted, the taxable value for mobile cellular services would include levied excise duty. In addition, shipping cargos to destinations outside Kenya would no longer be VAT exempt. Finally, the Finance Bill would exempt from VAT the following: (1) cereals from durum seeds and barley seeds; (2) materials, waste, residues and by-products and preparations of a kind used in animal feeding; (3) specialized equipment for the generation of solar and wind energy, including deep cycle batteries which use or store solar power; (4) parts imported or purchased locally for the assembly of computers, subject to obtaining necessary approvals; (5) material and equipment for the construction of grain storage, upon recommendation by the Cabinet Secretary responsible for agriculture; (6) alcoholic or non-alcoholic beverages sold to the Kenya Defense Forces Canteen Organization; (7) goods and services imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the government; (8) postal services provided through the sale of postage stamps, including rental of post boxes or mail bags and any subsidiary services; and (9) asset transfers and other transactions related to the transfer of assets into real estate investment trusts and asset backed securities. To read a report prepared by the KPMG International member firm in Kenya, please click here.

— **Kosovo:**[xvii] On June 7, 2018, the tax authority of Kosovo introduced a new version of the electronic tax refund system. The new system facilitates VAT refunds, individual income tax refunds and corporate income tax refunds. Through the new system, taxpayers can obtain information on the date of claim, value, claim status (pending/completed/declined), and approved value.

— **Liberia:**[xviii] The government of Liberia recently announced its plan to introduce a VAT system effective 2019. The tax authority and Ministry of Finance are currently developing a VAT White Policy Paper, an implementation roadmap, and a draft VAT Act.

— **Lithuania:**[xix] On June 11, 2018, the tax authority of Lithuania issued guidelines for the taxation of the production and use of virtual currency. According to the guidelines, virtual currencies are treated for VAT purposes the same as any other form of monetary currency.

— **Luxembourg:**[xx] On June 11, 2018, the Luxembourg VAT authority published Circular No. 787 on the VAT treatment of digital currency. According to the Circular, the only purpose of digital currencies, such as bitcoins, is to be used as a method of payment. Therefore, virtual currency must be treated as currency and exempt from VAT.

— **Malaysia:**[xxi] According to news reports, the Malaysian government is planning to implement a new sales and services tax (SST) to replace the GST, effective September 2018. The GST rate was reduced from 6 percent to zero percent effective June 1, 2018. (For KPMG's previous discussion on Malaysia potentially replacing its GST regime, click here.) The new SST would be similar to the prior SST, which the GST replaced in 2015, and is expected to be levied at a rate of 10 percent.

— **Malawi:**[xxii] On May 18, 2018, the Finance Minister of Malawi presented to the parliament the Budget for 2018-2019. If approved, the Budget would allow the registration of VAT withholding agents who will be able to withhold VAT at source and remit it to the Malawi Revenue Authority. The Budget would further introduce a requirement for the submission of VAT returns on imported services covering services delivered by nonresidents who are not registered for VAT purposes. Finally, to encourage mineral exploration in Malawi, the Budget would allow mining companies in the exploration phase to register for VAT purposes, thus allowing them to recover VAT incurred.

— **Mauritius:**[xxiii] The government of Mauritius recently presented to the parliament the Budget for 2018-2019. If approved, the Budget would allow the tax authority to claw back VAT refunds on capital goods (other than buildings) exceeding MUR 100,000 ($2,900) if taxpayers have voluntarily registered for VAT purposes and subsequently de-registered. In addition, taxpayers would no longer be required to pay VAT on imports of capital goods if the amount payable exceeds MUR 150,000 ($4,350). The Budget would further require taxpayers to report a list of taxable sales by serially numbered invoices instead of by purchaser. Moreover, taxpayers operating in the hospitality sector whose main activities are the sale of accommodation, catering, entertainment, or rental of motor vehicles would be allowed to claim VAT credits in respect of these sales. In addition, the following transactions would be VAT exempt: the sale of manual labor by an individual to a VAT-registered person operating in the agricultural or construction sector; vehicle frames for buses to be built onto imported chassis and used for public transport under a license granted by the National Transport Authority; and anti-smoking tablets. Finally the following transactions would be zero-rated: services for the improvement, repair or maintenance, monitoring, or rental of burglar alarm systems and related patrol services; fees payable for the examination of vehicles under the Road Traffic Act up to June 30, 2020; all components forming an integral part of a photovoltaic system; and watch straps, watch bands, and watch bracelets, and parts thereof. To read a report prepared by the KPMG International member firm in Mauritius, please click here.

— **Moldova:**[xxiv] On June 5, 2018, the State Tax Service of Moldova (STS) clarified that factoring transactions qualify as a financial activity exempt from VAT.

— **Portugal:**[xxv] On June 14, 2018, the tax authority of Portugal released binding information No. 13475 regarding the exclusion of the right to deduct VAT incurred on the acquisition of hybrid vehicles for tourism, maintenance costs, and gasoline consumption. According to the tax authority, VAT costs related to the acquisition, manufacture or importation, leasing and transformation of hybrid vehicles for tourism purposes, as well as any subsequent maintenance costs, are not deductible, unless these hybrid vehicles are electric or plug-in hybrid vehicles. VAT incurred in relation to the acquisition of vehicles is not deductible, if those vehicles, although classified as merchandise, have more than three seats. This is the case even if the merchandise comprises goods or services that are necessary or essential for the exercise of the business activity, except if they refer to goods whose sale or exploitation is the taxpayer's business activity. Finally, the tax authority confirmed that the VAT incurred in the acquisition of gasoline is not deductible.

— **Portugal:**[xxvi] On June 14, 2018, the tax authority of Portugal released binding information no. 13315 regarding the right to deduct VAT incurred on real estate operations carried out under a financial lease and the corresponding regularizations. The tax authority held that leasing, being an exempt activity, does not give rise to the right to deduct the VAT incurred on the subsequent transfer or construction of the immovable property subject to the lease, unless the lessor has opted to waive the exemption. As a consequence, the lessor is required to pay VAT on the rent if he wishes to deduct the VAT borne on the subsequent transfer or construction.

— **Russia:**[xxvii] On June 14, 2018, the government of Russia published a draft law that if approved by the parliament would increase the standard VAT rate from 18 percent to 20 percent effective January 1, 2019.

— **Sweden:** The Swedish parliament recently approved the Swedish Gambling Act and Swedish Gambling Tax Act, which will be effective January 1, 2019. The new gambling rules are designed as a licensing system, whereby all those who provide games on the Swedish gambling market must be licensed. The law will apply to all gambling in Sweden, including online gambling. Applications for license may be submitted to the newly renamed Swedish gambling authority (*Spelmyndigheten*) effective August 1, 2018. The new rules also include a new gambling tax on licensed games of 18 percent. Games for public/social purposes continue to be tax exempt. To read a report prepared by the KPMG International member firm in Sweden, please click here.

— **Sweden:**[xxviii] On June 19, 2018, the Swedish Supreme Administrative Court (*Högsta Förvaltningdomstolen*) gave its decision in *Skandinaviska Enskilda Banken AB*, Case No. 1003-18, on whether services which a Swedish company has obtained from a Danish permanent establishment (PE) which is part of a VAT group in Denmark are subject to VAT in Sweden. In the case at hand, a Swedish company had a PE in Denmark. The PE was part of a Danish VAT group and provided administrative services to its Swedish parent company. The Supreme Administrative Court considered that the PE in Denmark must be regarded as an entity which is separate from the Swedish parent company because it was part of a Danish VAT group. The activities of the PE in Denmark should therefore be regarded as part of the VAT group, meaning that the services performed by the PE in Denmark are deemed to be provided by the VAT group. As a consequence, the services provided by the Danish PE to its Swedish parent company are taxable in Sweden as these services are sourced where the customer is established and cannot be disregarded for VAT purposes.

— **Tanzania:**[xxix] On July 1, 2018, Tanzania adopted the Finance Act of 2018 amending the country's VAT Act. The Finance Act exempts from VAT the following transactions: labelled packaging materials produced specifically for use by the local manufacturers of pharmaceutical products; imported animal and poultry feed additives; and sanitary towels. In addition, the Finance Act allows the Minister of Finance to grant VAT exemption on government projects funded by non-concession loans and on government projects financed by financial institutions or by another government through financial institutions. To read a report prepared by the KPMG International member firm in Tanzania, please click here.

— **Turkey:**[xxx] On June 5, 2018, Turkey published VAT Communiqué No. 18 in the official gazette. According to the Communiqué, there are two sales in the construction agreement in return for land share: one to the landholder and one to the constructor. To determine the price, the amount should be computed based on the cost value method under the Tax Procedural Law, which provides that the present sale is equal to the cost price plus 5 percent for wholesale sales and 10 percent for retail sales. The Communiqué further clarifies the scope, application, and compliance obligations relating to the VAT exemption for the construction of organized industrial zones and small industrial zones; the VAT exemption for the sale of new machinery and equipment for research and development and design stages; and the VAT exemption for the sale of machinery and equipment for the manufacturing industry.

— **Uganda:** The government of Uganda recently presented to the parliament the Budget 2018-2019 which, if approved, would amend the country's VAT Act. The Budget would allow the Minister of Finance to designate taxpayers that would be required to withhold 50 percent of the VAT charged to them by certain vendors. It would also clarify that VAT returns must be submitted by the 15th day of the month following the end of the tax period. The Budget would further subject to VAT entertainment expenses, passenger automobiles, and repair and maintenance of automobiles. In addition, the Budget would exempt from VAT the following: bibles and Qurans, services and construction materials for strategic investment projects, and movie productions. Finally, the Budget would clarify the definition of educational materials that are zero-rated. To read a report prepared by the KPMG International member firm in Uganda, please click here.

- **United Arab Emirates:** On June 25, 2018, the Federal Tax Authority (FTA) of the United Arab Emirates (UAE) published its first Public Clarifications on the VAT treatment of compensation-type payments (VATRP001) and on goods eligible for the profit margin scheme (VATP002). In VATP001, the FTA states that where a payment made between businesses to compensate each other for losses, omissions or other wrongdoings is not in consideration for a sale, no VAT is due on the payment. According to the clarification, the key factor to determine is whether the recipient of the payment has provided anything in return. The Clarification provides various scenarios and indicates where the FTA may draw the line regarding what constitutes genuine compensation. In VATP002, the FTA details the goods which are considered eligible for the application of the profit margin scheme for VAT purposes. The profit margin scheme allows VAT to be recognized for second-hand goods dealers on the profit made on the sale only, rather than the full transaction value, provided that certain conditions are met.

- **United Kingdom:** On June 7, 2018, the UK published for consultation a draft statutory instrument that would introduce a domestic VAT self-assessment requirement under the reverse charge mechanism for construction services, effective October 1, 2019. The proposal would make sales of standard-or reduced-rated construction services between construction or building businesses subject to the reverse charge mechanism, thus requiring the purchaser to self-assess VAT instead of the vendor charging VAT. HMRC said the legislation will not apply to specified sales made to consumers, or to those that use specified sales, such as those selling new houses. In addition, HMRC released a draft tax information and impact note, which sets out the potential impact of the proposals on the economy, businesses, and individuals. The UK aims to publish a final version of the order and guidance before October 2018.

- **United Kingdom:** On June 18, 2018, HMRC published Revenue and Customs Brief 5(2018) on the VAT liability on goods sold on approval. According to the Brief, goods are considered sold on approval where there is no contract of sale unless and until the recipient concerned agreed or was deemed to have agreed to purchase the goods. The Guide further clarifies that where goods are sold on approval, the delivery service is not considered ancillary to the sale of goods because the purpose of the service is to facilitate the customer inspecting the goods to decide whether or not they wish to purchase them. As a consequence, the delivery service is subject to VAT at the standard rate.

- **United Kingdom:** The KPMG International member firm in the UK has prepared a report on the new digital recordkeeping requirements for VAT that will be effective April 1, 2019 under the new Making Tax Digital (MTD) policy. (For KPMG's previous discussion on MTD, click here.)

About Inside Indirect Tax

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