KPMG

Inside Indirect Tax

June 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.

The Americas

United States: Physical Presence Sales and Use Tax Nexus Rule Overturned by U.S. Supreme Court

On June 21, 2018, the U.S. Supreme Court held in favor of the state in *South Dakota v. Wayfair, Inc.*—a sweeping decision in which the Court concluded that the physical presence sales and use tax nexus rule last articulated by the U.S. Supreme Court in *Quill* is "unsound and incorrect." In 2016, South Dakota became the first state to enact a pure economic nexus statute for sales and use tax collection purposes. Specifically, effective May 1, 2016, all entities with annual sales in South Dakota exceeding $100,000 or with more than 200 separate transactions in the state were required to collect and remit South Dakota sales and use tax. The economic nexus law was quickly challenged, and the South Dakota Supreme Court held that the state was bound to follow established U.S. Supreme Court precedent. The state high court determined that a law imposing economic nexus standards on remote retailers was not valid in light of the *Quill* physical presence standard.

The U.S. Supreme Court's opinion can be characterized as a complete repudiation of the physical presence rule. After walking through the history that lead to the 1992 *Quill* decision, the opinion noted that "the physical presence rule has 'been the target of criticism over many years from many quarters." Further, the Court explained that "[e]ach year, the physical presence rule becomes further removed from economic reality and results in significant revenue losses to the States." In the Court's view, the physical presence rule "is not a necessary interpretation of the requirement that a state tax must be 'applied to an activity with a substantial nexus with the taxing State.'" Second, "Quill creates rather than resolves market distortions." And finally, "Quill imposes the sort of arbitrary, formalistic distinction that the Court's modern Commerce Clause precedents disavow."

After overturning the *Quill* physical presence rule and declaring it "unsound and incorrect," the Court looked at whether South Dakota's law comports with the "substantial nexus" prong of what is known as the *Complete Auto* test for determining whether a state tax is constitutional. Observing that the law applies only to retailers that sell more than $100,000 of goods or services into South Dakota or engage in 200 or more separate transactions for the delivery of goods and services into the state, the Court found that that nexus "is clearly sufficient based on both the economic and virtual contacts" the sellers had with South Dakota. In the Court's view, this "quantity of business" could not have occurred unless a seller "availed itself of the substantial privilege of carrying on business in South Dakota." Because the taxpayers at issue are national companies that "undoubtedly maintain an extensive virtual presence," the Court concluded that the substantial nexus requirement of Complete Auto was satisfied.

Although the Court recognized that the following issues were not before it, the Court observed that "South Dakota's tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce." First, the South Dakota law "applies a safe harbor to those who transact only limited business in South Dakota." Second, the law "ensures that no obligation to remit the sales tax may be applied retroactively." Third, "South Dakota is one of more than 20 States that have adopted the Streamlined Sales and Use Tax Agreement," which "standardizes taxes to reduce administrative and compliance costs." The Agreement requires "a single, state level tax administration, uniform definitions of products and services, simplified tax rate structures, and other uniform rules." It also provides sellers "access to sales tax administration software paid for by the State." Sellers who choose to use such software are immune from audit liability. The Court acknowledged that these issues were not briefed or litigated, but suggested that any remaining claims should be addressed on remand by the Supreme Court of South Dakota. Because the decision has been remanded, the timing on the resolution in South Dakota is somewhat uncertain. However, what is very clear is that physical presence is no longer the prevailing standard that states are bound by and that taxpayers can rely on. For more information please click on the Wayfair case, please click here.

Argentina: Digital Services Provided by Nonresidents Subject to VAT

On April 24, 2018, Argentina published in the official gazette Executive Branch Decree 354/2018 (the Decree), regulating Law 27,430, which was approved late last year and broadened the scope of the country's VAT to digital services provided by foreign companies to consumers established in Argentina.

(For KPMG’s previous discussion on Law 27,430, click here.) According to the Decree, for users of digital services registered as new VAT taxpayers as per Law 27,430, the obligation to register will be considered fulfilled upon payment of the tax due either by themselves or by the intermediary obliged to determine and pay the tax. If an intermediary resident in Argentina is part of the transaction, the intermediary is required to act as withholding agent and will be responsible for collecting and paying the VAT. If there is no intermediary in the transaction or if they are not obliged to act as withholding agents, the tax must be paid by the digital services user. Digital services providers are not considered non-resident if they are VAT taxpayers included in VAT Law and are defined as residents in Argentina by Income Tax Law. If those services providers are included in the VAT Law, but are not considered residents in Argentina under the Income Tax Law, they will not be treated as non-residents for VAT purposes if they have a fixed place of business within Argentine territory. The same rules are applicable to intermediaries to determine their country of residence. Moreover, when digital services users are directly taxed, transactions valued in a foreign currency will be converted to Argentine pesos at the exchange rate established by the national bank of Argentina at the end of the day previous to the invoice deadline. If the tax is determined and paid by an intermediary acting as a withholding agent, transactions valued in a foreign currency will be converted to Argentine pesos at the exchange rate established by the national bank (on the day previous to the issuing of the credit card (or other intermediary) invoice.

On May 14, 2018, the tax authority of Argentina (AFIP) issued General Resolution 4240/2018 (the Resolution) clarifying the provisions of the Decree effective June 27, 2018. According to the Resolution, the burden of the tax is on the final consumer. However, the tax will be paid through collection agents, which are the credit card issuers or other resident companies providing payment services. When no resident intermediary participates in the payment of the service, the final consumer is required to pay the tax directly. The Resolution includes an approved list of non-resident digital service providers (Annex 2 a) for credit card companies or other payment agents for charging VAT if the user of the services is not a registered VAT taxpayer. When the payment of the digital service is made by means of a credit card, the tax will be charged in the respective monthly statement and must be shown as a segregated item. If the service is paid by means of a debit card, the tax must be charged at the time the bank account (associated with the debit card) is debited. When the digital service is paid by means of another type of payment, the tax must be charged at the time the intermediary collects the payment from the customer. The tax collected through different intermediaries must be transferred to the tax authority in accordance with standing procedures and time frames applicable to VAT collection agents in general. Intermediaries are also required to collect the tax on payments made to companies listed in Annex 2 b when the charge by the non-resident vendor does not exceed $10. In all cases, the collection system allows for a right to rebuttal if the charged service is outside the scope of the new taxable event or if the provider is resident or has a permanent establishment in the country. AFIP will update the above lists on a monthly basis and publish them on AFIP's website.

Source: Argentina – Digital services – VAT regulation published (May 1, 2018), News IBFD; Argentina – Digital services – details on VAT regulation (May 3, 2018), News IBFD; Argentina – General resolution on VAT amendments for digital services published (May 23, 2018), News IBFD; Argentina – General resolution on VAT amendments for digital services published – details on payment of tax (May 28, 2018), News IBFD.

Uruguay: Digital Services Provided by Nonresidents Subject to VAT

On May 24, 2018, Uruguay issued a decree implementing rules introduced by Law 19.535 on the tax treatment of foreign companies doing business in Uruguay by means of transactions conducted via the internet, IT platforms, or software applications (among others). Law 19.535 expanded the scope of Uruguay's territorial system for the following services, effectively making them subject to income tax and VAT in Uruguay even if the services are provided from a foreign jurisdiction: mediation or intermediation services conducted through electronic means when one or both parties providing the "core" service (e.g., transportation, accommodation, etc.) are located in Uruguay (the tax base is 50 percent of the transaction if only one of the parties is based in Uruguay); digital services (as defined above) directly provided to Uruguayan customers.

According to the decree, the location of the parties must be determined based on the following factors: the internet protocol of the device used for "hiring" or purchasing the service and the invoicing address of the client. If either of these factors cannot be verified, the service will be considered to have been rendered in Uruguay if paid via electronic means in Uruguay (e.g., by credit card, bank account transfers, etc.). The decree further defines "mediation" services as those that given their nature, are "automatized," require minimum human intervention, and are not feasible without information technologies. Moreover, "intermediation" services are defined as those that imply an intervention, direct or indirect, between the sale and the demand of the service being provided ("core" service). The decree further addresses the inclusion of audiovisual services. Specifically, the decree clarifies that those services provided directly by electronic means will include only audiovisual services (that is, content produced on the basis of sounds, images or moving images (video), separately or in combination, whether synchronized or not). Under the decree, the rules for withholding agents for audiovisual services clarify that the recipients of the services will be responsible to act as a withholding agent. In relation to mediation or intermediation services provided from a foreign jurisdiction, the requirement to withhold is suspended.

Finally, the decree sets out simplified procedures for tax registration. When the foreign taxpayer is responsible for taxes and must be registered locally (e.g., when the applicable laws and regulations have not established who is the withholding agent), the decree authorizes the tax authority to establish certain simplified procedures. These may include items such as not requiring the appointment of a local representative or measures about not having to declare a fiscal domicile in Uruguay. The tax authority may also establish exceptions from formal requirements that generally apply for tax purposes for commercial documents. To read a report prepared by the KPMG International member firm in Uruguay, please click here.

Europe, Middle East, Africa (EMA)

European Union: Cash Pooling Services Qualify as VAT Exempt Activity According to VAT Committee

On May 1, 2018, the European Commission published an updated version of the nonbinding guidelines of the European Union (EU) VAT Committee, which was set up to promote the uniform application of the provisions of the EU VAT Directive. The Committee almost unanimously (i.e., between 24 and 27 Member States) agreed that in the case of a cash pooling agreement involving transfers of funds between its participants, a cash pooling participant in a credit position transferring funds to the consolidated account and receiving remuneration in the form of interest should be regarded as carrying out an economic activity for VAT purposes (i.e., a provision of service). Further, it unanimously agreed that the following activities typically performed by the pool leader are also activities falling in the scope of VAT: managing the financial liquidity of the group, maintaining the consolidated account, monitoring, and analyzing the status of participants' liabilities and receivables, and representing participants before the bank, assuming participants' receivables to the bank, and the bank's receivables to participants, as well as accruing interest and transferring it to other participants or charging them interest. Finally, the Committee unanimously agreed that, where the pool leader, in return for those activities, receives remuneration in the form of an administrative fee or a commission, such activities should qualify as VAT exempt services concerning deposit and current accounts.

European Union: European Union Proposes Definitive VAT System and Updates on Other Proposals

On May 22, 2018, the Council of the European Union published a document for the May 2018 ECOFIN meeting regarding the proposals to apply a reduced VAT rate to e-publications and the generalized application of the VAT self-assessment under the reverse charge mechanism. The VAT treatment of e-publications has been subject to much debate and most notably led to two Court of Justice of the European Union (ECJ) cases in *Commission v France*, Case C-479/13 (March 5, 2015), and *Commission v Luxembourg*, Case C-502/13 (March 5, 2015) in which the ECJ held that the application of a reduced rate to e-books was not compatible with the EU VAT Directive. Following the 2016 Action Plan on VAT, in December 2016 the Commission put forward proposed amendments to the EU VAT Directive to allow Member States the option of applying lower rates of VAT to e-books. There were some concerns regarding Member States that have a super-reduced rate and zero rate. As a result, the only significant change from the original proposal is that the lower rate can only be applied where a Member State had such a lower rate for physical publications effective January 1, 2017. In addition, the Council has been discussing since 2016 a proposal to allow Member States to implement a general reverse charge for domestic transactions for goods or services greater than EUR 10 000 ($11,570) as a measure seeking to tackle fraud and the VAT gap. The Council now proposes to limit the availability of the GRCM until the effective date of the definitive VAT system or June 30, 2022, whichever comes earlier.

In addition, the EU VAT Committee recently suggested that the EU should establish a VAT dispute resolution mechanism between Member States based on the current EU VAT cross-border ruling pilot project within the EU VAT Forum and operate it alongside national mechanisms for internal VAT tax disputes between taxpayers and their national tax authority. The EU VAT Committee has called on the EU to set up an automated notification mechanism for taxpayers, which would inform them of changes to VAT rates in member states. Both systems should be launched on June 1, 2020 alongside the definitive VAT regime.

On May 25, 2018, the European Commission published the Proposal for a Council Directive to introduce the definitive VAT system for intra-EU sales of goods. Recall, the definitive VAT system overhaul as the treatment of business-to-business (B2B) intra-EU transactions involving goods. Back in the EC's Action Plan in April 2016, this was one of the medium term measures aimed at tackling the VAT gap. Under the new system, the cross-border trade of goods will be treated as a "single taxable sales," which will ensure that goods are taxed in the Member State where the shipment of the goods ends. The seller will charge VAT at the rate of VAT in the Member State of destination, unless the recipient is a certified taxpayer, in which case the later will be required to self-assess VAT under the reverse-charge mechanism. The reverse-charge mechanism may also apply in certain cases currently regulated in article 199a (optional reverse-charge mechanism) and article 199b (quick reaction mechanism) of the EU VAT Directive after the introduction of the definitive VAT system. The lifespan of the optional reverse-charge scenarios will be extended until December 31, 2028; however, scenarios relating to the sales of goods (e.g., mobile phones, laptops) will be excluded from its scope because the definitive system will prevent fraud regarding these transactions. The Proposal would introduce a harmonized tax point date for intra-EU sales of goods, which is the invoice date, or in absence of such, the 15th day of the month following the performance of the chargeable event. The changes would also see the introduction of an online Portal or "One Stop Shop" for all businesses to avoid registering in every Member State. As a consequence of the definitive system, recapitulative statements will no longer contain information regarding intra-EU sales of goods even if the recipient is a certified taxpayer, but will remain applicable to services. Moreover, the scope of the current Mini One Stop Shop for electronically supplied services will be extended to B2B transactions. To read a report prepared by the KPMG International member firm in the UK, please click here.

Source: European Union – European Commission proposal on detailed rules of definitive VAT system – published (28 May 2018), News IBFD; European Union – Council of European Union proposes general reverse-charge mechanism to be applicable until introduction of definitive VAT system (28 May 2018), News IBFD; CCH, Global VAT News & Features, EU Committee Proposes Adding To 2020 VAT Reform Plans,(May 10, 2018).

European Union: Municipality Should be Allowed to Recover VAT on Capital Goods Used for Non-Economic Use that are Subsequently Changed to Taxable, according to AG

On April 19, 2018, the ECJ published the Opinion of its Advocate General (AG) in *Gmina Ryjewo*, case C-140/17, regarding the recoverability of VAT by a municipality in relation to an investment expenditure. In the case at hand, a municipality in Poland built a local community center as the facility was used initially for statutory governmental purposes (non-economic activity), no VAT was claimed on the basis that it was used for "non-business" purposes. Four years later, the center's use changed, and it was also used for taxable transactions. In the municipality's view, it is entitled, with effect from the start of the rental of the cultural center for a fee, to deduct part of the VAT arising from the invoices documenting the expenditure incurred in the center's construction by means of the multi-annual adjustment provided for in the Polish Law on VAT.

The AG began by noting that where a non-taxpayer incurs VAT used for its private purposes it has previously been found that there can be no subsequent right of deduction, case C-97/90 *Lennartz* (Jul. 11, 1991). The AG also noted that where goods are acquired for taxable transactions, but subsequently are not used for such purposes and are appropriated to other use, there is legislation to adjust VAT incurred or tax the appropriation. The AG pointed out the potential tension when this happens in reverse such as in the current case. Preventing a VAT adjustment could infringe fiscal neutrality, giving different treatment to transactions that are identical except for the chronological sequence in which the goods are used for non-economic and taxable purposes. According to the AG, the reference to "used in the first time" in the specific provision in the EU VAT Directive (i.e., art 187(2)) supports the subsequent deduction when the use of the sports center changed, (so it was used for taxable purposes for the first time then) subject to relevant time limits. This interpretation is supported by fiscal neutrality and the avoidance of double taxation.

If wrong on this point, the AG turned to a number of points that may influence whether the local authority acquired the goods and services as a taxpayer. The AG noted that for immediate deduction of VAT, this requires an intention to carry out an economic and taxable activity, confirmed by objective evidence. In the current case, it was not possible for the municipality to know the extent to which it would use the center for economic purposes. Allowing a later deduction would link that deduction of VAT with the collection of VAT on the taxable economic activity. Preventing VAT recovery would be akin to double taxation. The AG further analyzed when a public body is to be regarded as a taxpayer under the EU VAT Directive. Finally, the AG noted that in previous cases where subsequent VAT adjustment was denied the taxpayer was a non-taxpayer at the time the VAT was incurred. The AG distinguishes the current case on the basis that the local authority was a taxpayer at the time and did not make an express decision at the time to use the asset only for non-economic purposes. With no initial deduction, allowing deduction when the use changes within the adjustment period avoids any unjustified advantages or disadvantages for a taxpayer based only on the order of taxable and non-economic use. The ECJ must now decide whether to follow the nonbinding Opinion of its AG.

European Union: VAT Applies to Loan under Hire Purchase Agreement According to Advocate General

On May 3, 2018, the ECJ published the Opinion of its AG in *Volkswagen Financial Services (UK) Ltd*, case C-153/17, regarding whether the VAT exemption for the provision of credit applies to hire purchase transactions. In the case at hand, the taxpayer offers customers a hire purchase agreement, which are broken down into (1) the sale of a car and (2) the provision of a loan. The sale of the car is treated as taxable. The price for the sale of the car equals the price that the taxpayer pays to a dealer buy the car. The provision of the loan is treated as exempt. The taxpayer's profits are derived from the provision of loans. Under this method, each contract was treated as one taxable transaction and one exempt transaction, meaning that residual VAT incurred was apportioned 50 percent to taxable sales. The UK tax authority challenged the taxpayer's proposed method arguing that because the vehicle is required for non-VAT reasons to be sold on at cost, all overheads are cost components of the exempt sale of credit.

Before addressing the question referred to the ECJ, the AG observed that the first question to be addressed concerns the qualification for tax purposes of hire purchase agreements. The AG believes that these should qualify as a single sale and therefore the full remuneration for that sale, including the interest elements, should be treated as subject to VAT. The AG supported this on the basis that the sales were an indivisible economic sale when taking into account the economic objectives and the interests of the recipient of sales. The AG added that the fact that separate prices are charged is not decisive. The AG finds further support for his conclusion in the purpose of the exemption for sales of credit. Referring to literature, the AG adds that it is generally acknowledged that the financial services exemption exists because it is too difficult to determine the taxable amount in such transactions. This was not the case in such arrangements where the amount of the credit charge is known and disclosed.

Turning to the current case, the AG has no issue with the recovery of the VAT on the vehicles or, in theory, any overheads incorporated into the sale of the vehicles. However, as the overheads in the current case are incorporated into the exempt sales of credit, the right to deduct is incompatible with the "principle of the general application of the tax." Turning specifically to cost component, the AG noted that the ECJ has not specifically imposed the condition that the cost of goods must be a cost component of the sales. However, the AG adds this requirement stems from the very logic of the VAT system. The AG accepts prices do not always cover costs. By way of an example, the AG notes that the ECJ accepts VAT recovery where goods are sold at a loss in the event of liquidation or by a local authority. The AG contrasted this with the current case where a taxpayer finances the cost of its taxable activity with the revenue from an exempt activity on a consistent and regular basis. The AG notes that for past situations the taxpayer would have been able to benefit from national legislation which permits exemption on the loans. In that case, no VAT recovery would be allowed on general overhead costs. This is on the basis that, while some of these costs are used for the purposes of taxable transactions, all are a component of the price of the exempt transactions. Alternatively, the taxpayer would be able to directly rely on the EU VAT Directive and treat the hire purchase agreements as taxable. It is up to the referring court to ascertain whether that is possible. The ECJ must now decide whether to follow the nonbinding Opinion of its AG. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

European Union: VAT Incurred on Strategic Acquisition Costs Should be Deductible According to Advocate General

On May 3, 2018, the ECJ published the Opinion of its AG in *Ryanair Ltd*, case C-249/17, regarding whether VAT incurred on strategic acquisition costs is deductible if the acquisition is not completed. In the case at hand, the taxpayer, an airline, incurred a significant amount of VAT on its intended acquisition of another airline. Had the acquisition gone ahead, taxable strategic management sales would have been made by the taxpayer. However, the deal was aborted because of competition law difficulties and ultimately only a minority interest was acquired. The question was whether the VAT incurred on costs incurred in relation to the intended acquisition was still deductible as no management sales had actually been or would be made.

The argument presented in favor of no recovery centered on the fact that the mere acquisition and holding of shares, even by an operating company like the taxpayer, is not an economic activity and gives no right to deduct VAT. The AG did not consider the pure holding company rules to be particularly relevant here as the intended acquisition would have been a direct permanent and necessary extension of the taxpayer's taxable airline business. It was similar to a transfer of a going concern (TOGC) and the acquisition of the business. The AG added, however, that applying the holding company rules would still give a right of deduction because at the time the VAT was incurred there was an intention to make taxable management charges and the costs of preparing for a taxable economic activity are deductible. Moreover, the AG did not agree with the argument that VAT deduction on a share acquisition should be proportionate to the level of management charge. Finally, the AG added that the taxpayer did not want to buy the other airline to hold the shares passively and increase dividend income. This was to be a strategic takeover to expand its airline business. Therefore, to base any right of deduction on the level of intended future management services actually seemed artificial. The AG considered the correct link was between the acquisition and the intended airline turnover, and again the fact the takeover did not take place was irrelevant. The costs would be factored into airfares somehow in any case. As a consequence, the AG concluded that under such circumstances, the acquisition of a company's entire share capital with the intention of thereby bringing about a direct, permanent and necessary extension of the taxable activity of the acquiring company constitutes an economic activity within the meaning of the EU VAT Directive. The ECJ must now decide whether to follow the nonbinding Opinion of its AG. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

European Union: VAT Incurred On Future Sale Paid in Advance Is Recoverable

On May 31, 2018, the ECJ published its judgment in the joint cases *Kollroß* and *Wirtl,* cases C-660/16 and C-661/16, regarding whether a taxpayer can deduct the VAT due on a future sale for which a payment on account was made at the time of payment. In the first case, Mr. Kollroß ordered a combined heat and power unit from G-Gmbh (GA) in 2010. After GA confirmed the order, it requested an advance payment from Mr Kollroß. Mr Kollroß did so, and GA issued another invoice for an advance payment. There was not yet set a delivery date for the sale, but in the end the sale never took place. After insolvency proceedings, which were closed on the basis of a lack of assets, the persons acting for GA were convicted of fraudulent trading practices, of conspiracy to defraud and of intentional bankruptcy to the detriment of the recipients. However, there was no case of tax evasion. Mr Kollroß deducted the VAT already paid to GA related to the future sale of the combined heat and power unit in his VAT return. The German tax authority did not allow Mr Kollroß's VAT deduction in his 2010 VAT return. In the second case, Mr Wirtl ordered a combined heat and power unit from the Gesellschaft zur Förderung erneuerbarer Energien mbH (GB) that requested anadvance payment from him. The combined heat and power unit was scheduled to be delivered 14 weeks after the payment, but was never delivered. After insolvency proceedings, the persons acting for GB were convicted of fraudulent trading practices and of conspiracy to defraud. As Mr Wirtl paid the amount, including the VAT due, to GB for the future sale of the combined heat and power unit, he subsequently deducted that VAT. However, the German tax authority rejected Mr. Wirtl's input VAT deduction.

The ECJ emphasized that the right to deduct VAT arises at the time that VAT becomes chargeable. As regards advance payments, VAT becomes chargeable at the time of that payment, but only insofar the goods and services of the future sale are precisely identified. Therefore, if it is uncertain whether a sale will take place, the VAT does not become chargeable at the time of the advance payment. However, in the cases at hand, the goods to be sold were clearly identified, in particular their features and their price. Therefore, the VAT had become chargeable and the recipients were allowed to deduct the VAT. The fact that the delivery dates were not certain did not change the ECJ's conclusion. Although the sales in the end did not take place, the acts relating to the non-performance seemed to be known only after the payments had taken place, but this is eventually for the referring court to determine. However, the ECJ further held that the right to deduct input VAT can be denied when it is established that the taxpayer making the advance payment knew or should reasonably have known that it was likely that that sale would not take place.

Regarding whether the taxpayers were required to adjust VAT originally deducted, the ECJ held that based on established case law the use to which the goods or services are put, or are intended to be put, determines the extent of the initial deduction to which the taxpayer is entitled and the extent of any adjustments in the course of the following periods. In the present case, the goods at issue in the main proceedings were never delivered and the moment when it became clear that the sale of those goods would not take place was after the date on which the payments on account and the subsequent VAT returns were made. However, in view of the vendors' insolvency, the vendors will not repay those payments on account, the VAT payable by those vendors to the Treasury in respect of the receipt of those payments on account will not have to be adjusted. Accordingly, the exercise by the buyers of the right to deduct VAT in respect of those same payments on account does not entail any risk of a loss of tax revenue for the State Treasury.

Source: DE: ECJ, May 31, 2018, Case C-660/16, *Finanzamt Dachau v. Achim Kollroß*, ECJ Case Law IBFD.

Italy: Overview of Recently Published VAT Guidance

On April 30, 2018, the ITA issued Circular No. 8/E providing clarifications on electronic invoicing for sales of fuel and gasoline intended to be used as motor fuel. The Circular will be effective July 1, 2018. The Circular provides clarifications on the content of the invoice which, with reference to fuel and gasoline, must specifically include elements that identify the relevant vehicle and the means of payment to be used to obtain the deduction of the VAT paid on qualifying purchases for VAT purposes. On June 28, 2018, Italy published in the official gazette Decree Law No. 79, which postpones until January 1, 2019 the e-invoicing requirements for sales of automotive fuel carried on at gas stations.

On April 30, 2018, the ITA issued Protocol No. 89757/2018 providing implementing rules for the issuance and receipt of electronic invoices. Recall, effective January 1, 2019, invoices and related corrections for sales of goods and services between parties resident, established, or VAT-registered in Italy must be issued electronically. The Protocol defines an electronic invoice as a file in XML (eXtensible Markup Language) format that does not contain any commands or executable codes. It must contain all information required by the Italian VAT Act, as well as any other data required by the technical specifications contained in Annex A of the Protocol. Additionally, a specific seven-digit code (*codice destinatario*) and the purchaser's certified email address must be included. The ITA has also made available software and applications to prepare such electronic invoices. Electronic invoices must be issued and received through the ITA SdI system (*sistema di interscambio*), currently used to transmit electronic invoices to public bodies. The transmission can be performed by an intermediary, and ITA may directly check and collect details of electronic invoices. These rules will also apply to electronic invoices issued in connection with sales of fuel and gasoline discussed above. Qualifying taxpayers will also be required to communicate certain data on cross-border transactions. With respect to sales of goods and services provided or received from persons established abroad, the data must include the parties involved in the transaction, the date and number of the related document, the taxable amount, the applied VAT rate and VAT amount or the nature of the transaction when VAT is not due. The communication is optional in the case of sales for which a custom bill or qualifying electronic invoice has been issued. Finally, effective June 15, 2018, the related services for registration of electronic addresses and generation of QR codes are available on the ITA’s website. Qualifying taxpayers may pre-register the electronic address where to receive all electronic invoices, and they may generate a personal QR code to be used by the vendor to automatically acquire relevant customer's data when drafting the electronic invoice.

On May 7, 2018, the Italian Tax Authorities (ITA) issued Circular No. 9/E on the revised split payment system effective January 1, 2018. The Circular provides clarifications regarding the identification of the new taxpayers subject to the revised split payment, due to the extension of its scope, including public economic bodies providing services to individuals and foundations in whose endowment fund public administrations hold equity interests of 70 percent or more. The ITA also analyses a number of specific cases and clarifies the legal value of the lists of entities qualifying for the split payment system and the application of related penalties.

Source: Italy – Split payment system – clarifications issued (May 29, 2018), News IBFD; Italy – Electronic invoicing for supplies of fuel – clarifications issued (May 29, 2018), News IBFD; Italy – Electronic invoicing – implementing rules issued (May 30, 2018), News IBFD; Italy – Electronic invoicing - services available (June 18, 2018), News IBFD.

Russia: Overview of Recently Published VAT Guidance

On April 4, 2018, the Ministry of Finance of Russia (MOF) published Guidance Letter 03-07-07/21719 in which it held that pharmaceutical substances and medicines that are not registered in the state registry of medicines or the list of registered medicines of the Eurasian Economic Union are subject to the standard VAT rate (currently 18 percent) and not the reduced VAT rate of 10 percent.

On April 19, 2018, the MOF published Guidance Letter 03-07-08/26423 in which it held that the transfer of exclusive rights to a trademark by a resident or nonresident legal entity as a contribution to the capital of another resident legal entity is not subject to VAT in Russia.

On April 20, 2018, the MOF published Guidance Letter 03-07-08/26658 in which it stated that the Russian Supreme Arbitration Court recently held that if a contract between a buyer and seller does not specifically state that the price stipulated does not include the VAT due and the circumstances preceding the conclusion of the contract or other stipulations of the contract do not provide otherwise, the contract price should be deemed to include the VAT due on the transaction.

Source: Iurie Lungu, Russia Clarifies Cross-Border VAT, Personal Income Tax Matters, Tax Analysts (May 4, 2018); Iurie Lungu, Russian Finance Ministry Issues VAT Guidance Letters, Tax Analysts (May 9, 2018); Orbitax, Russia Clarifies VAT Obligation if VAT Not Included in Contract (May 10, 2018);

United Kingdom: Upper Tribunal Clarifies VAT Treatment of Hotel Loyalty Scheme

On April 30, 2018, the Upper Tribunal of the United Kingdom (UT) published its decision in *Marriott Rewards LLC and Whitbread Group plc*, [2018] UKUT

0129 (TCC), regarding the VAT treatment applicable to hotel customer loyalty schemes based on reward points. The Marriott Group does not typically own Marriot branded hotels. It either manages hotels owned by third parties or grants a franchise to third-party hotel owners. Whitbread owned and operated a number of such hotels in the period relevant to its claim. Under the loyalty scheme, a member of the rewards points scheme stays in a participating hotel. The Marriott Rewards scheme operator, established in the United States, issues the loyalty points. The participating hotel pays Marriott Rewards a participating fee. The member may use his points to stay at a participating hotel. Upon redemption of the points at a participating hotel, Marriott Rewards pays the participating hotel.

HMRC argued that the payments made by Marriott Rewards to the redeeming hotel were third party consideration for the sale of rewards (i.e., accommodation to the members).For UK hotels, this would result in UK VAT being accounted for on the payments and no deduction by Marriott Rewards on these payments. Both taxpayers argued that the payments were made with respect to sales by the redeeming hotel to Marriott Rewards. The UT considered that the key question is whether the payment by Marriott Rewards to the redeemers is a cost component of Marriott Rewards' business (i.e., is it consideration for the acceptance of points by the Redeemer from the Member). Alternatively, the UT considered whether the payment is consideration for the sale of hotel accommodation by the redeemer to the member. The UT found for the taxpayer on this point, noting that this is a compulsory pooling arrangement because sponsors must pay Marriott Rewards to issue points to members and redeemers must accept points and are paid on redemption. The lack of profit was irrelevant, but the payments made were a cost component of the business. The UT therefore concluded that there were two simultaneous sales: (1) by redeemers to members and (2) redeemers to Marriott Rewards.

On the basis that there is a sale by the redeemer to Marriott Rewards, the UT had to analyze the VAT treatment of that sale. On this point, the two taxpayers had different views and it is important to note they cover two distinct time periods. Whitbread, which had historically charged VAT, argued that it sold advertising services to Marriott Rewards and that these were not subject to VAT prior to 2010 as Marriott Rewards belonged in the US. Marriott Rewards' appeal concerned the post 2010 period, and it argued that the sales were UK land related. This meant that the sales were subject to UK VAT, which was reclaimable under the 13th Directive. HMRC argued they were "redemption" services and subject to the basic sourcing rules. This meant the sales were taxable in the UK until 2010, but not after 2010 (when the basic sourcing of business-to-business services rule changed from where the vendor belongs to where the customer belongs). The UT held that the redeemer is being paid to accept points and not provide a specific hotel room. The services were therefore not land related. Although the program as a whole has an advertising objective, this did not mean that the sale on redemption of the points was also advertising. The acceptance of points by redeemers was exclusively the fulfilment of a contractual obligation.

United Kingdom: Missing Trader Fraud Guidance Updated

On April 27, 2018, the UK tax authority (HMRC) updated its guidance on the due diligence businesses must undertake to ensure they do not engage in transactions with fraudsters. The guidance was initially released following the ECJ's ruling in joined cases *Optigen Ltd*, *Fulcrum Electronics Ltd,* and *Bond House Systems Ltd*, cases C-354/03, C-355/03, and C-484/03 (January 12, 2006), The guidance held that in a supply chain, each transaction must be considered on its merits as a separate economic activity. It said the right of a taxpayer to deduct VAT cannot be affected by the fact that, without that person knowing or having any means of knowing, another transaction in the chain is vitiated by fraud. It added that transactions, which are not themselves vitiated by VAT fraud, constitute sales of goods or services effected by a taxpayer acting as such and an economic activity within the meaning of the EU VAT Directive, provided they meet the definitions of those terms. The ECJ held that the right of a taxpayer who carries out such transactions to deduct VAT cannot be affected by the fact that in the chain of sales of which those transactions form part, without that taxpayer knowing or having any means of knowing, another prior or subsequent transaction is vitiated by VAT fraud.

HMRC advises that VAT-registered businesses should read the leaflet, stating that if they do not take reasonable care and HMRC can demonstrate that they knew or should have known that the transactions were connected to missing trader fraud then the businesses may lose their entitlement to claim the VAT deduction linked to those transactions. Among other things, the leaflet, which sets out the checks that should be undertaken by businesses to identify potential fraud, also includes information on the new offense of "Corporate Failure to Prevent the Criminal Facilitation of Tax Evasion," which entered into force on September 30, 2017. Companies that fail to prevent representatives acting on their behalf from facilitating tax evasion can be prosecuted and if found guilty can be subject to an unlimited fine.

Source: Global Daily Tax News, UK Updates Missing Trader VAT Fraud Guidance For Traders (May 3, 2018).

Asia Pacific (ASPAC)

Australia: GST Included in Tax Risk Management and Governance Review Guide

The Australian Tax Office (ATO) recently updated its Tax Risk Management and Governance Review Guide, which now includes a "whole of tax" approach that gives equal importance to indirect taxes such as goods and services tax (GST) and excise. In particular, a key focus for the ATO in relation to indirect tax is on systems or sub-systems that are used in the excise and business activity statement (BAS) return preparation process and their related information technology (IT) controls. To demonstrate "better practice," the

ATO expects that taxpayers will be able to evidence that they have effective IT system and application controls that (1) maintain the integrity and security of indirect tax data; (2) are properly documented; and (3) are regularly and rigorously tested. For many taxpayers, this heightened scrutiny on GST and excise data integrity, IT controls and regular and substantive testing represents a significant change from simply relying on the proforma BAS or excise report from the accounting system or rolling over the previous month's Excel template. In this new world of justified trust, taxpayers should now seriously consider fully automating the BAS and excise return processes or, at a minimum, putting in place greater automated controls and exception testing and having these externally reviewed. Given that the Guide is intended to be used by ATO audit teams, its update is a welcome act of transparency by the ATO, according to KPMG Australia. Taxpayers, especially large corporations, can now confidently predict the approach an ATO audit team will take. This can be used in the design of internal processes and review procedures. Similarly, where companies are considering the future of their internal tax functions, as well as the increasing automation of those functions, the updated Guide provides useful insights into the governance and design processes that will need to be included. To read a report prepared by the KPMG International member firm in Australia, please click here.

India: Simplification of GST Compliance Requirements Announced

On May 4, 2018, during its 27th meeting, the Indian GST Council approved simplifying the Indian GST compliance requirements. According to the GST Council, all taxpayers, with a few exceptions like composition dealer, will be required to file one monthly return rather than multiple returns (e.g., monthly sales, purchases, and summary returns). Return filing dates will be staggered based on the gross receipts. The new compliance system will include a unidirectional flow of invoices uploaded by the seller anytime during the month. This would be the valid document to allow the buyer to obtain the related GST credit. In this respect, the buyer would be able to continuously see the uploaded invoices during the month and the buyer would not be required to upload purchase invoices. For business-to-business (B2B) transactions, invoices must include the Harmonized System Number (HSN) of the underlying sale at four digit level or more to achieve uniformity in the reporting system.

Moreover, B2B vendors will be required to report the invoice details of the sales made by them in the GST system. Based on this data, the system will automatically calculate tax liability. The GST credit will be calculated automatically by the GST system. The GST Council further announced that there will be no automatic reversal of GST credit from buyer for non-payment of tax by the vendor. In case of default in payment of tax by the vendor, the buyer will be required to recover amounts from the vendor. However, the tax authority will allow certain taxpayers to opt for credit reversal to address exceptional situations like missing dealer, closure of business, or the vendor not having adequate assets.

According to the GST Council, the new compliance system will be introduced in two phases. During the first phase, the initially conceived system of filing multiple returns (GSTR 3B, GSTR 1, GSTR 2, GSTR 3) will remain suspended. This phase will continue for a period not exceeding six months by which time new return software would be ready. During the second phase, the new return will have facility for invoice data upload and also facility for claiming GST credit on a self-declaration basis. The taxpayer will be constantly fed with information about gap between credit available to them as per invoices uploaded by their vendors and the provisional credit being claimed by them. After six months of phase 2, provisional credits will be repealed and GST credits will only be limited to the invoices uploaded by the vendors.

Source: Global Daily Tax News, India Announces Plans To Simplify GST Filing, Overhaul Refund System (May 7, 2018).

New Zealand: Proposal to Apply GST on Imports of Low Value Goods Effective October 2019

On May 1, 2018, the government of New Zealand announced its intention to impose GST on low-value imported goods by implementing an Australian-style offshore vendor registration model. (For KPMG's previous discussion on Australia's rules on low value imports, click here.) The Government is proposing to require offshore vendors to collect GST effective October 1, 2019, when the offshore vendor sells goods to New Zealand consumers if: (1) the value of the goods is NZD 400 ($276) or less and (2) their total sales to New Zealand consumers exceed NZD 60,000 ($41,420) per year. Under the proposal, GST returns and payments will be on a quarterly basis as applies to offshore vendors of services to New Zealand consumers. Goods sold to GST-registered businesses would be excluded, but a business purchaser would have a requirement to self-assess GST under the reverse charge mechanism on any imported goods that are used for non-taxable (e.g. private) purposes. The offshore vendor would be able to zero-rate goods sold to businesses to allow the recovery of any GST they might incur on expenses. Moreover, offshore marketplaces and re-deliverers would be treated as vendors and would have the same GST obligations as direct vendors. Tariffs and cost recovery charges would not be collected on goods with a value below NZD 400. Moreover, foreign tax authorities would be asked, if there is an "Assistance in Collection" provision in agreements with New Zealand, to use their enforcement powers to help collect the GST on New Zealand's behalf. Most of New Zealand's major trading partners are expected to be covered by such provisions. The usual penalties and use-of-money interest rules would apply to offshore vendors that do not comply. The existing penalties would also apply to consumers that falsely represent themselves as a business to avoid GST. The rules would allow Inland Revenue to require the consumer to pay the GST that should have been paid. A joint registration system with other countries, such as Australia, or data matching between tax jurisdictions and Government agencies will be explored. This might include the sharing of information on GST registrations with Australia. Another possibility is the sharing of additional information with NZ Customs. Finally, importers would still be required to provide information to NZ Customs and the Ministry for Primary Industries to support effective risk and biosecurity assessment on low-value imported goods. To read a report prepared by the KPMG International member firm in New Zealand, please click here.

Trade & Customs (T&C)

Canada: Prevention of Transshipment of Steel and Aluminum Products

On May 30, 2018, the Ministry of Finance announced that Canada has aligned its country of origin marking regime for steel and aluminum products with that of the United States. These regulatory changes are intended to expand the scope of steel and aluminum products that need to be marked with their country of origin, and amend the criteria used to determine the country of origin for marked goods. According to the release, aligning with U.S. requirements will help support effective customs enforcement with more consistent and predictable treatment of these goods by Canadian and U.S. authorities. The alignment of the marking regime with that of the United States further builds on efforts to investigate trade-related complaints, including those related to steel and aluminum, and to improve the accuracy and timeliness of published steel import data. This is in addition to recent regulatory changes that allow the Canada Border Services Agency (CBSA) to identify and stop companies that try to avoid duties, and that give the CBSA greater flexibility in responding to situations when prices charged in the exporter's domestic market are distorted. For more information, please click here.

Colombia: Amendments to Free Zone Regime Rules

On April 17, 2018, Colombia published in the official gazette Decree 659 amending Decrees 2685 of 1999 and 2147 of 2016 in order to streamline procedures, simplify the regulations on free zones, and harmonize the provisions in Decrees 390 of 2016 and 2147 of 2016 with the similar infringing conducts that are typified in Decree 2685 of 1999. Some of the changes concern the removal or exit of merchandise from the free zones. Other new measures concern the rules for "urgent shipments," or to facilitate the exit of goods from a free zone to another customs territory for repairs. There are new guidance items concerning the industrial processes that can be conducted in free zones, and the import customs clearance measures for goods that are needed for industrial activities (if they remain in the free zone facilities). The new measures in Decree 659 are effective April 17, 2018 and will continue to apply until such time that the tax and customs authority (DIAN) launches its new customs computing system (expected in November 2019). To read a report (in Spanish) prepared by the KPMG International member firm in Colombia, please click here.

In Brief

— **Australia:** The KPMG International member firm has prepared a report on the new GST withholding requirements for newly constructed residential premises or potential residential land subject to subdivision.

— **Australia:**[i] On May 8, 2018, the Treasurer of Australia presented the 2018-2019 Budget, which, if adopted, would require offshore vendors of Australian hotel accommodations to register for and charge GST if their Australian sales exceed the GST registration threshold of AUD 75,000 ($55,340) effective July 1, 2019.

— **Barbados:** Effective June 1, 2018, all taxpayers will be required to re-register with the tax authority and obtain a new tax identification number to be identified in the new Tax Administration Management Information System ("TAMIS"). To read a report prepared by the KPMG International member firm in Barbados, please click here.

— **Belgium:**[ii] On May 17, 2018, the European Commission announced that it closed the infringement procedure against Belgium regarding the VAT treatment of directors' fees because Belgium had amended its legislation.

— **Chile:**[iii] On May 14, 2018, the tax authority of Chile published Administrative Jurisprudence 963/2018 on its website. The guidance explains that the sale of cryptocurrencies and digital coins is not affected by VAT because they are characterized as intangible assets.

— **China:**[iv] China recently announced that for transactions taking place between January 1, 2018 and December 31, 2020, it will not levy land VAT if an unincorporated business is restructured into a limited liability company or a stock corporation. Real estate developers are excluded from the scope of this temporary exemption.

— **European Union:**[v] On May 30, 2018, the ECJ published the Opinion of its AG in *Vădan*, case C-664/16. Here, the AG concluded that a taxpayer who has not retained invoices attesting to his right to deduct value added tax relative to the sale of goods or the provision of services cannot provide proof of these transactions on the basis of a report established by experts appointed by the referring court to estimate the value of building materials and labor relating to the construction of buildings because a considerable period of time has passed since the buildings at issue were the subject of taxable transactions.

— **European Union:** On May 3, 2018, the ECJ published the Opinion of its AG in *TGE Gas Engineering*, case C-16/17, Here, the AG argued that in the absence of a sale of goods or of services subject to VAT, there is no right to deduction of the input tax when an economic interest group bears the general costs of its commercial activity incurred by a foreign company which is a member of the group, even if the VAT has been wrongly paid and the amount has been invoiced to the national branch member of the group.

— **European Union:**[vi] On May 8, 2018, the European Commission proposed that the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano would be included in the customs territory of the European Union effective January 1, 2019. Moreover, the Commission proposed that these two territories would be brought within the scope of the Excise Directive, but would still remain outside the territorial scope of the EU VAT Directive.

- **European Union:**[vii] On May 17, 2018, the ECJ published its judgment in *Dávid Vámos*, case C-566/16, in which it held that EU Member States can exclude the application of a VAT exemption for small businesses if the business has not opted for that scheme when it declared the commencement of its economic activities to the national tax authorities, even if it met all material conditions for the application of such mechanism.
- **Ghana:**[viii] On May 17, 2018, the Ghana Revenue Authority (GRA) announced the appointment of VAT withholding agents which are responsible for withholding 7 percent of the 17.5 percent VAT and the National Health Insurance Levy (NHIL) charged on payments made to registered VAT vendors. Hence, only the remaining portion (i.e., 10.5 percent) of the VAT and NHIL due will be payable to the registered VAT vendors. In addition, withholding agents are required to issue withholding VAT credit certificates that are used as the basis for claiming VAT credits. Finally, withholding agents are required to submit withholding VAT returns as well as remitting the VAT withheld to the GRA.
- **Greece:**[ix] On May 22, 2018, Greece published in the official gazette a bill introducing a fee on smartphones and amendments to the requirements for the imposition of the fee on other electronic devices effective July 20, 2017. The smartphone fee corresponds to the "equitable remuneration" for private use of computers, laptops and tablets. For smartphones, the fee is set at two percent of value, For audio and/or video recorders and storage media above 4 GB (previously 1 TB) is set at six percent of value.
- **Hungary:**[x] On May 25, 2018, the EU published in the official gazette Council Implementing Decision (EU) 2018/789 authorizing Hungary to require until December 31, 2021 the customer to self-assess VAT under the reverse charge mechanism on sales of capital goods by a taxpayer subject to liquidation or any other proceedings legally establishing its insolvency and sales of other goods and services with an open market value exceeding HUF 100,000 (approximately EUR 357) by a taxpayer subject to liquidation or any other proceedings legally establishing its insolvency.
- **Iceland:**[xi] On June 8, 2018, the Icelandic parliament adopted a bill amending the VAT Act. Under the bill, all sales of cross-border services will be taxable where the services are considered to be utilized and therefore taxable where the buyer of the services is domiciled or located. It is effective January 1, 2019. Moreover, effective July 1, 2018, the electronic sale and subscriptions to magazines and newspapers will be subject to the reduced VAT rate of 11 percent. Effective July 1, 2018, licensed travel agents will be authorized to recover VAT on the acquisition and operation of passenger cars in Iceland for commercial purposes. Finally, foreign companies selling subscriptions to physical papers and magazines in Iceland will be required to collect VAT effective January 1, 2019, if they exceed the VAT registration threshold of ISK 2 million ($18,500).
- **Ireland:**[xii] On May 1, 2018, Ireland launched a new sugar-sweetened drink tax. The tax operates as an excise duty and will be administered on a self-assessment basis on the first sale of sugar-sweetened drinks in Ireland, with the vendor making the first sale liable for accounting for

and paying the tax. The tax applies to non-alcoholic, water-based, and juice-based drinks with an added sugar content of five or more grams per 100 milliliters. Drinks with between five and eight grams of added sugar per liter attract a tax of 20 percent. Drinks with a sugar content of eight grams or more per liter will be taxed at 30 percent. The vendor must register with the tax authority prior to making a first sale of sugar-sweetened drinks in Ireland. They must file returns within one month after the end of the accounting period during which the sales were made. A relief will be available where sugar-sweetened drinks sourced in Ireland are sold outside Ireland on a commercial basis.

— **Kuwait:**[xiii] Kuwait recently announced that it will postpone the implementation of VAT to 2021.

— **Liberia:**[xiv] On May 26, 2018, the Ministry of Finance and Development Planning (MFDP) of Liberia published the Budget Framework Paper 2018/19, which proposes, among others, the replacement of the current Goods and Services Tax regime with a broad-based VAT in 2019. The government anticipates that the use of VAT will increase the scope of revenue generation, through increased efficiency and performance, and fulfil the ECOWAS Regional Agreement. The MFDP is collaborating with the Liberia Revenue Authority (LRA) to develop a VAT White Policy Paper, an implementation road map and a draft VAT Act. The government will continue to initiate stakeholder's engagements and will submit the VAT bill for ratification to Parliament by 2019, while building the LRA's capacity to implement the project effectively.

— **Luxembourg:**[xv] On May 17, 2018, the European Commission announced that it has closed the infringement procedure against Luxembourg regarding the VAT exemption for independent group of persons.

— **Malawi:**[xvi] On May 18, 2018, the Minister of Finance, Economic Planning and Development of Malawi presented the Budget for 2018/19. If approved, it would introduce a provision allowing for registration of VAT withholding agents that will be able to withhold the VAT at source and remit it to the Malawi Revenue Authority (MRA). Moreover, the Budget would introduce a requirement for submitting VAT returns on imported services rendered by non-residents not registered for VAT purposes. Finally, the Budget would allow mining companies in the exploration phase to register for VAT purposes.

— **Malta:** Effective June 1, 2018, two or more legal persons, at least one of which operates within the financial or gaming sectors, may opt to be treated as a single taxpayer for VAT purposes in Malta. (For KPMG's previous discussion on Malta's VAT grouping regime, please click here.) To read a report prepared by the KPMG International member firm in Malta, please click here.

— **Mozambique:**[xvii] On May 11, 2018, the tax authority of Mozambique announced that purchases of goods and services related projects for the development of the country, with emphasis on the construction of public infrastructure and socio-economic activities, are VAT exempt provided that the project has a specific certificate issued by the tax authority.

- **Poland:**[xvii] On May 17, 2018, the European Commission announced that it has closed the infringement procedure against Poland regarding the reduced VAT rate on medical equipment.
- **Poland:**[xix] Effective July 1, 2018, Poland will introduce a VAT split payment system provided it receives the required pre-approval from the European Commission. Under this system, the business customer deposits the VAT amount directly into a restricted VAT account supervised by the tax authority, while the net amount is deposited in the vendor's normal bank account. The split payment system will first be voluntary, with certain benefits for taking part. Effective 2019, Poland intends to make the system mandatory for certain industries that are more susceptible to fraud.
- **Serbia:**[xx] On April 20, 2018, Serbia published amendments to the VAT Law in the official gazette. They are effective July 1, 2018, unless stated otherwise. According to the amendments, the sale of goods into a free trade zone (FTZ) to a foreign entity to then be installed in goods which will be exported by a FTZ-registered user, is zero-rated. The new zero-rating further applies to the sales of services which are directly related to the above mentioned sales of goods. Moreover, the amendment clarifies that for sales of goods directly related to sales of intellectual property rights VAT becomes due on the day on which the invoice is issued. Finally, effective January 1, 2019, foreign entities will be entitled to a VAT refund for the sale of goods and services with respect to which the Serbian recipient, and not the foreign vendor, is required to self-assess VAT under the reverse charge mechanism.
- **Sweden:**[xxi] On May 18, 2018, the tax authority of Sweden published guidance clarifying the zero-rating commercial shipping activities. According to the tax authority, vessels are only zero-rated if they are mostly used in open sea to carry passengers for payment or for commercial, industrial or fishing activities. The zero-rating does not apply to vessels only running on lines between different countries without crossing the open sea (e.g., the Åland Islands and Öresund). Determining whether the vessels are mostly used in open sea will be based on the number of voyages. According to the guidance, a journey begins in the port where the goods are loaded and the passengers go on board, and ends in the port where the goods are unloaded or the passengers go off board. If a vessel then travels to a new port, this will count as a new journey. If a vessel only enters a port for refueling or loading foodstuff for own use, it is not taken into account for determining the number of trips. If vessels are used for other activities, e.g. industrial activities, the number of miles travelled by the vessel in open sea is used for determining the use of the vessel.
- **Sweden:**[xxii] On May 23, 2018, the tax authority of Sweden updated its guidance on the deductibility of VAT on false invoices following a decision of the administrative court of appeal. The case in question dealt with a seller, who stated on its invoice that it did not carry out its own business but acted as an invoicing company. No sales took place between the seller and the buyer specified on the invoice. The administrative court of appeal ruled that the right to deduct VAT may only be denied if the buyer knew or should have known that the underlying transactions in question were

part of a VAT evasion scheme (i.e., the buyer was acting in bad faith). The administrative court of appeal further held that the tax authority has the burden of proving whether a buyer is acting in bad faith regarding a particular acquisition. However, the duty imposed on a buyer to investigate may not be disproportionate. In the case at hand, it was not reasonable to require the buyer to investigate further than to check that the vendor was holding an F-tax certificate and was registered for VAT.

— **Taiwan:** Effective January 1, 2019, foreign taxpayers selling e-services to final consumers in Taiwan that are registered for VAT purposes will be required to issue e-invoices. The tax authority of Taiwan has prepared a guide on the new requirement.

— **United Arab Emirates:**[xxiii] On May 1, 2018, the United Arab Emirates (UAE) announced that wholesale trading in gold and diamonds will be exempt from VAT.

— **United Arab Emirates:** On May 13, 2018, the UAE published Cabinet Decision No 26 which grants facilities involved in organizing exhibitions and conferences the right to refund the amounts of VAT levied on providing such services. According to the resolution, any exhibition authorized by the competent local authority that is held for seven days or less, or any meeting between people sharing the same interest and authorized by the competent local authority for seven days or less should be eligible for the refund, provided that the service recipient has no established base or a permanent facility in the UAE. The resolution also stipulates that the service recipient must not be registered or required to be registered in the UAE.

— **Ukraine:**[xxiv] On March 29, 2018, the State Fiscal Service of Ukraine (SFS) published Letter No. 1283/6/99-99-15-03-02-15/in which it clarified that taxpayers must adjust the VAT originally deducted based on an accounting document if the statute of limitation of 1,095 days (calculated from the date the VAT invoice was issued) has expired.

— **Ukraine:**[xxv] On March 22, 2018, the SFS published Letter No.1175/6/99-99-15-03-02-15/in which it clarified that a taxpayer must amend the VAT deducted based on the adjustments made to the customs declaration if the value of the imported goods has changed due to a court or tax authority's decision. If the overpaid amount of the VAT liabilities is refunded to the taxpayer without the above adjustment having been made, the taxpayer must reflect such transaction in the VAT return based on an accounting certificate.

— **Ukraine:**xxvi The SFS recently published Letter No. 1231/6/99-99-15-03-02-15/and Letter No. 1384/6/99-99-15-03-02-15/in which it clarified that the sale of software is not VAT exempt if a taxpayer is only granted the right to use the online services (e.g., online document management systems, access to online search tools).

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.

---

i. **Australia** – 2018/19 Budget – indirect taxation and other taxes (May 11, 2018), News IBFD.

ii. **European** Union; Belgium – European Commission closes infringement procedure against Belgium regarding VAT treatment of directors' fees (May 23, 2018), News IBFD.

iii. **Chile** – Tax treatment applicable to cryptocurrencies and digital coins – clarified (May 22, 2018), News IBFD.

iv. **Global** Daily Tax News, China To Waive Land VAT For Certain Corporate Restructurings (May 30, 2018).

v. **RO:** Opinion of Advocate General Tanchev, May 30, 2018, Case C-664/16, *Lucretiu Hadrian Vadan v. Agentia Nationala de Administrare Fiscala – Directia Generala de Solutionare a Contestatiilor and Directia Generala Regionala a Finantelor Publice Brasov – Administratia Judeteana a Finantelor Publice Alba*, ECJ Case Law IBFD.

vi. **European** Union; Italy – European Commission proposes including two territories of Italy to customs territory of European Union (May 9, 2018), News IBFD.

vii. **HU:** ECJ, May 17, 2018, Case C-566/16, *Dávid Vámos v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság*, ECJ Case Law IBFD.

viii. **Ghana** – VAT withholding agents appointed (May 29, 2018), News IBFD.

ix. **Greece** – Introduction of smartphone fee and amendments to fee on other electronic devices – addition to draft bill adopted (May 18, 2018), News IBFD.

x. **European** Union; Hungary – Council Implementing Decision authorizing Hungary to apply reverse charge mechanism to supplies during insolvency proceedings – published (May 31, 2018), News IBFD.

xi. **Iceland** – Bill amending VAT Act adopted by parliament (June 11, 2018), News IBFD.

xii. **Global** Daily Tax News, Ireland Introduces New Sugary Drinks Tax (May 2, 2018).

xiii. **Kuwait** – VAT implementation to be postponed to 2021 (May 22, 2018), News IBFD.

xiv. **Liberia;** Economic Community of West African States – Value Added Tax system proposed (May 31, 2018), News IBFD.

xv. **European** Union; Luxembourg – European Commission closes infringement procedure against Luxembourg regarding VAT exemption for independent groups of persons (May 23, 2018), News IBFD.

xvi. **Malawi** – Budget for 2018/19 – presented to parliament (May 23, 2018), News IBFD.

xvii. **Mozambique** – VAT exemption for projects included in government's 5-year plan (May 28, 2018), News IBFD.

xviii. **European** Union; Poland – European Commission closes infringement procedure against Poland regarding reduced VAT rate on medical equipment (May23, 2018), News IBFD.

xix. **Orbitax,** Poland Introducing VAT Split Payment System from July 2018 (May 31, 2018).

xx. **Serbia** – VAT Law amended (May 24, 2018), News IBFD.

xxi. **Sweden** – Guidance on VAT exemption for commercial shipping activities released (May 24, 2018), News IBFD.

xxii. **Sweden** – Guidance on deductibility of input VAT on false invoices published (May 2018), News IBFD.

xxiii. **CCH,** Global VAT News & Features, UAE Waives VAT On Precious Metals Trading (May 4, 2018).

xxiv. **Ukraine** – Taxable persons to decrease input VAT after expiry of statute of limitation under certain circumstances – SFS clarifications (May 7, 2018), News IBFD.

xxv. **Ukraine** – Input VAT adjustment if value of imported goods changes – SFS clarifications (May 11, 2018), News IBFD.

xxvi. **Ukraine** – VAT treatment of online services – SFS clarifications (May 16, 2018), News IBFD.