KPMG

Inside Indirect Tax

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About this Newsletter

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

Global Rate Changes

— **Malaysia:** Effective June 1, 2018, Malaysia will reduce the standard GST rate from 6 percent to 0 percent.

The Americas

United States: Use Tax Notice and Reporting Bill Passed by Georgia Legislature

Recently, the Georgia legislature passed House Bill 61, which would require certain retailers to either collect and remit sales and use tax or comply with specified notice and reporting obligations. Per the bill, a so-called "delivery retailer" is a retailer that does not collect and remit the state's sales and use tax and that, in the previous or current calendar year, (1) had gross revenue exceeding $250,000 from retail sales delivered within Georgia or (2) conducted 200 or more retail transactions for delivery within Georgia. Effective for sales made on or after January 1, 2019, a delivery retailer (who by definition is not collecting and remitting sales and use tax) must comply with three notice and reporting requirements. The first is a time-of-sale notice to each potential purchaser that sales or use tax may be due. The second is to send (by January 31 of each year) an annual statement to customers with purchases totaling $500 or more indicating the volume of purchases made and that tax may be due. Finally, the delivery retailer must file a copy of the annual statement with the Department by January 31 of each year. There are penalties ($5 for the transactional notices and $10 for the annual statements) for each such failure to provide the required notices or statements. The bill also redefines the term "dealer" to include persons that meet the $250,000 or 200 transactions requirement. Per the bill, the Department may bring a declaratory judgment action in state court against any person the Department believes meets the new dealer definition. If the Department does so, the court must (upon motion), enjoin enforcement if the constitutionality of the definitions are at issue, and the court must act "in an expeditious manner." This provision may be moot pending the outcome of the *Wayfair* case currently pending before the U.S. Supreme Court. (For KPMG's previous discussion on the *Wayfair* case, click here.)

Brazil: Tax Compliance Program Introduced in State of São Paulo

On April 7, 2018, the state of São Paulo published in the official gazette Complimentary Law No. 1,320, which establishes a tax compliance program between taxpayers and the São Paulo state tax authority. The law is intended to foster an environment of mutual trust between taxpayers and the tax authority that, in turn, will encourage self-regulation, reduce tax compliance costs, and improve communications. Under the new measure, taxpayers will be classified into seven tax compliance categories (i.e., "A +", "A", "B", "C", "D", "E" and "NC" (Unclassified)) based on the following criteria: (1) state value added tax (ICMS)tax liabilities due and unpaid; (2) the comparison of information included in the books of record or tax declaration and the tax documents issued or received by the taxpayer; and (3) the profile of the taxpayer's vendors, according to the same categories and the same classification criteria as set out in the Complimentary Law. The taxpayer will be informed in advance of the classification assigned to him, which will be available for public review on the tax authority's website. The taxpayers' classification will be reviewed periodically.

Depending on the category to which one is assigned, the taxpayer will be granted various benefits, including: (1) access to the previous tax analysis procedure; (2) authorization for the accrual of accumulated credit; (3) effectiveness of the refund referred to according to Article 66-B of Law No. 6,374 dated March 1, 1989; (4) authorization to pay ICMS under the tax substitution regime for certain products originating from another state by offsetting debits to credits upon the month end closing procedures; (5) authorization to pay ICMS on the importation of merchandise from abroad by offsetting debits to credits upon the month end closing procedures; (6) use of a simplified procedure as authorized under Article 71 of Law No. 6,374, dated March 1, 1989; (7) simplifying procedures for registering business locations; and (8) transfer of accumulated credits to a non-interdependent company, observing simplified procedures. Taxpayers classified as "Non-Conforming" will be considered to be "Constant Debtors" and be subject to a special regime for the fulfillment of tax obligations that will consist, individually or cumulatively, of several measures established in the text of the law. To read a report (in Portguese) prepared by the KPMG International member firm in Brazil, please click here.

Canada: Quebec Proposes Requirement for Nonresident Vendors to Register for QST

On March 27, 2018, the province of Quebec published its 2018-2019 Budget in which it proposes to require vendors established outside Quebec (i.e., both Canadian businesses located outside of Quebec and non-resident businesses located outside of Canada) that make taxable sales of intangibles, services, and goods to customers established in Quebec, which are not registered for Quebec sales tax (QST) purposes (i.e., "Specified Quebec Consumers") to register for and collect QST if their sales are above the registration threshold of CAD 30,000 ($23,500).

Non-resident businesses located outside of Canada that are not registered for QST and that sell taxable intangibles or services to Specified Quebec Consumers would be required to register for QST purposes effective January 1, 2019. Note that although the new QST rules may not require vendors located outside of Canada that sell goods to Specified Quebec Consumers to register, Quebec has indicated that it intends to work with the Canadian federal government to improve the collection of QST on goods at the border. Canadian businesses located outside of Quebec that are not registered for QST that sell taxable goods, intangibles or services to Specified Quebec Consumers in Quebec would be required to register for QST purposes effective September 1, 2019.

Moreover, digital property and services distribution platforms (i.e., digital platforms) would also be required to register if they control key elements of transactions between vendors outside Quebec and Specified Quebec Consumers. This may affect platforms that control such transaction elements as billing, transaction terms and conditions, and delivery terms. However, Quebec has indicated that some digital platforms would not be required to register, if they provide only a shipping service; provide only access to a payment system; or provide only advertising services for vendors outside Quebec and link customers to the vendor's website. While the CAD 30,000 threshold would also apply for digital platforms, its calculation would be slightly different. For a digital platform that controls the key elements of transactions with Specified Quebec Consumers, the threshold would include the consideration for taxable sales facilitated by the digital platform made in Quebec of vendors outside Quebec. Quebec would further provide different rules to calculate the CAD 30,000 threshold for vendors outside Quebec that make taxable sales through a digital platform, or through both a digital platform and other means. The effective date of the new QST rules for digital platforms may vary based on whether the vendors that use the digital platforms are located in Canada or outside Canada. To read a report prepared by the KPMG International member firm in Canada, please click here.

Canada: Insurance Providers Required To Refund PST in Saskatchewan by June 30, 2018

In February 2018, the province of Saskatchewan announced the introduction of a new provincial sales tax (PST) exemption for individual and group life insurance, as well as individual and group health, disability, accident and sickness insurance effective retroactively to August 1, 2017. The new exemption further applies to certain crop and livestock insurance, hail insurance, and margin/income insurance. On April 6, the province of Saskatchewan published guidance requiring insurance providers to issue refunds or credits for PST collected on certain life and health insurance products since August 1, 2017. These refunds or credits are expected to be issued by June 30, 2018 in most cases. The guidance further clarifies aspects of the retroactive exemption and provides details on the types of life and health insurance products that are covered under the exemption. In addition, the guidance provides that if an insurance contract includes both a taxable component and an exempt component, and the value of each coverage is not identified separately, the entire insurance contract is taxable for PST purposes. While the guidance includes examples of certain taxable and exempt insurance premiums, it may still be difficult to determine the tax status of certain insurance contracts. Based on the guidance, it appears that insurance providers will have to bear the cost of the PST refunds to their policyholders until they request a refund of those PST amounts from the province. To read a report prepared by the KPMG International member firm in Canada, please click here.

Canada: PST Applies to Delivery Charges in British Columbia

On March 31, 2018, British Columbia published PST Bulletin 302 in which it held that if a vendor in British Columbia sells taxable goods to be delivered to a buyer located in British Columbia and delivery charges are incurred at the time the sale of the goods is contracted, PST will apply to those delivery charges effective April 1, 2018. Previously, British Columbia's policy was that PST did not apply to delivery charges where title to the goods passed to the purchaser at the vendor's premises in British Columbia. According to PST Bulletin 302, PST generally applies to delivery charges incurred at or before the time the title of the goods is passed to the buyer. British Columbia considers delivery charges to be incurred at the time the contract for delivery is entered into, which would normally be at the time the contract to purchase the goods is entered into. The Bulletin further clarifies that delivery charges are "incurred" at the time the buyer agrees to pay for the services and do not need to be invoiced or paid to be considered "incurred." For example, if a vendor in British Columbia enter into a contract that identifies both the price of taxable goods and a charge for the delivery of the goods in British Columbia, PST will apply to both the price of the goods and the delivery charge. While the Bulletin states that previous versions of the Bulletin erroneously stated that PST did not apply to delivery charges, it clarifies that taxpayers who did not collect PST on delivery charges before April 1, 2018 will not be subject to any penalty. To read a report prepared by the KPMG International member firm in Canada, please click here.

Ecuador: VAT Refund Procedures Introduced

On March 16, 2018, the Internal Revenue Service of Ecuador published Resolution NAC-DGERCGC18-00000070 in the official gazette. The Resolution establishes the procedure to request a refund of a VAT credit resulting from withheld VAT which could not be offset on a taxpayers' return. According to the new procedure, a request should be submitted to the tax authority covering monthly periods which can accumulate up to 12 months during the same fiscal year. As a general requirement, the application must contain an explanation that the VAT credit may not be compensated within the following 6 months. All the supporting documentation, including a list of related withholding receipts, must be attached to the request.

On April 3. 2018, the Internal Revenue Service of Ecuador published Resolution No. NAC-DGERCGC18-00000155 in the official gazette. It establishes the procedure allowing direct vendors or exporters of goods to request a VAT refund. According to the Resolution, taxpayers registered in the VAT Refund System who have already signed the agreement for automatic reimbursement are required to submit the request to the tax authority. Requests corresponding to cumulative periods must be submitted in chronological order. The Resolution establishes two mechanisms for requesting a VAT refund: the provisional automatic refund and the exceptional refund. Under the provisional automatic refund, the taxpayer files a refund claim through the tax authority's website and receives a refund no later than 20 days after the refund request has been filed. The refund amount will depend on the information registered in the SRI's databases. The exceptional refund applies in the following situations: (1) the first time requesting a VAT refund; (2) exported goods produced or manufactured in cyclical periods; (3) a request filed more than 1 year following the previous request; (4) requests relating to acquisitions of goods produced in past periods for which requests had been made previously; and (5) requests relating to successor rights obtained by private entities as a result of a merger or acquisition processes, or heritages. Finally, the Resolution establishes the conditions, documentation and additional requirements applicable to each mechanism, which must be fulfilled by the direct vendors of exporters requesting a VAT refund. All the supportive documentation, including a list of invoices and receipts that support the transactions, accounting records and information of customs of the related exports, must be attached to the application.

Source: Ecuador – Procedure to request VAT credit from withheld amounts – published (Mar. 29, 2018), News IBFD; Ecuador – Procedure for requesting VAT refund – published (Apr. 16, 2018), News IBFD.

Europe, Middle East, Africa (EMA)

Bulgaria: Overview of Supreme Administrative Court Cases

On March 13, 2018, the Supreme Administrative Court of Bulgaria (SAC) held that a Bulgarian vendor may regard a foreign customer as a taxpayer if the customer communicated his VAT number to the vendor or informed the vendor that he applied for such number. As a consequence, if a foreign customer does not provide a VAT identification number (VAT ID) to its Bulgarian vendor, the vendor must consider its recipient a final consumer and apply the sourcing rules applicable to business-to-consumer (B2C) services rather than those applicable to business-to-business (B2B) services.

On March 14, 2018, the SAC held that the Bulgarian tax authority may disallow the deduction of VAT incurred on services received by a taxpayer if there is no direct link between the service received and the subsequent sales made by the taxpayer. In the case at hand, the SAC observed that the deliverables provided by the service provider contained only general information that is not specific to the livestock farm of the taxpayer, and the deliverables mentioned in the agreement between the parties were not provided. More specifically, the service provider did not deliver to its recipient a business plan, specific data and indicators for the farm, argumentation for the expected economic benefits, technical requirements for buildings and equipment, breeding and feeding technology, personnel, premises, etc.

On March 20, 2018, the SAC held that the preparation and printing of advertising materials that are delivered within Bulgaria should not be considered sales of goods that are taxable where the goods are delivered, but rather as advertising services which are taxable where the customer is established. As a consequence, if a Bulgarian vendor sells such services to a foreign customer, the Bulgarian vendor should not charge Bulgarian VAT on these services even though the materials are delivered in Bulgaria.

On March 27, 2018, the SAC held that the fact that the parties to a transaction are related should not be considered as an argument that the transaction is fictitious. It is for the tax authority to prove that a transaction is fictitious based on all the documents relating to the sale.

On March 28, 2018, the SAC held that a company selling products far below the purchase price of the goods performs a sale for no consideration pursuant to the Bulgarian VAT Act. As a consequence, the tax authority is allowed to reassess the taxable base of the sale to be equal to the purchase price.

Source: Bulgaria – Supreme Administrative Court issues decision on place of supply of services rendered to foreign company not registered for VAT purposes (Mar. 26, 2018), News IBFD; Bulgaria – Supreme Administrative Court decides on right to VAT credit for services not directly related to activity of recipient (Mar. 26, 2018), News IBFD; Bulgaria – Supreme Administrative Court decides on EU cross-border VAT refund for advertising products (Apr. 6, 2018), News IBFD; Bulgaria – Supreme Administrative Court decides on VAT aspects of supplies between related parties (Apr. 11, 2018), News IBFD; Bulgaria – Supreme Administrative Court issues decision on VAT aspects of sale of goods below their purchase price (Apr. 11, 2018), News IBFD.

Czech Republic: Proposed Amendments to VAT Law

The Ministry of Finance of the Czech Republic recently published draft amendments to the VAT Act which, if approved, would be effective January 1, 2019. According to the proposal, executives and board members providing services for consideration would generally be considered as taxpayers and thus required to register for VAT purposes. The proposal would further clarify that the transfer by the lessor to a lessee of goods for use under a finance lease agreement qualifies as a sale of goods and the obligation to account for VAT arises as soon as the leased property is transferred to the lessee.

In addition, the Czech Republic would implement the European Union (EU) VAT voucher directive. (For KPMG's previous discussion on this directive, click here.). As a consequence, a voucher would be defined as an instrument which must be accepted as consideration or part of the consideration for the sale of goods or services and on which (or in the related documentation) the following information should be specified: (1) the goods to be delivered or the service to be provided; and (2) the person who is delivering the goods or providing the service. To correctly determine the applicable tax regime, vouchers will be divided into single-purpose vouchers, for which the issuance and each subsequent transfer of the voucher will be subject to VAT, and multipurpose vouchers, for which only the sale of goods or services will be subject to VAT.

In addition, the proposal would clarify that a taxable sale of external services related to leasing immovable property that are provided to the lessee takes place only at the moment when the landlord actually discovers the actual amount charged to the tenants. The proposal would further introduce a new provision for the correction of the originally applied VAT deduction on repair services related to the immovable property which were completed less than 10 years before the transfer of the immovable property and the value of which exceeds CZK 200,000 ($9,370).

Further, the proposal would clarify that taxpayers should issue the invoice but also make the necessary effort to deliver this invoice to the beneficiary within the time limit provided for issuing the invoice. If the tax authority identifies facts from which it can be assumed that the taxpayer did not make the necessary efforts to deliver the tax invoice, the tax administrator will impose an obligation on the taxpayer to keep evidence about delivering the invoices. In the case of breaching the imposed recording obligation, the tax administrator applies a sanction. Finally, the proposal would shorten the deadline for submitting corrective VAT returns to the 15th day of the month following that in which the taxpayer identifies the error resulting in a higher or lower VAT amount due.

Source: Czech Republic – Proposed VAT amendments – published (Mar.28, 2018), News IBFD.

Czech Republic: Proposed Amendments to the Electronic Reporting of Sales

The Ministry of Finance of the Czech Republic recently released for external comments a draft amendment to the Act on Electronic Reporting of Sales (ERS) and the VAT Act, which, if approved, would be effective January 1, 2019 unless otherwise specified. The Ministry of Finance is mainly responding to the Czech constitutional court judgement that excluded payments by debit or credit cards from the ERS. However, the rationale of the judgment does not indicate that the constitutional court also meant to abolish the reporting of similar payments. As a consequence, while payments by credit or debit cards are no longer subject to the ERS, payments by electronic purses, chip cards, coupons, vouchers or similar instruments will remain subject to the ERS. Another change resulting from the judgment is the collapsing of the start of the third and fourth phase of ERS. Businesses falling under these two phases must comply with the ERS from the third month after the effective date of the proposed amendment (i.e., March 1, 2019). The proposal would further limit the ERS reporting requirement to sales made in the Czech Republic.

In addition, the proposal would include the following in the list of sales that are not subject to the ERS: (1) sales whose reporting has proved unfeasible or unsubstantiated, such as sales of telecommunication and other services effected through a public mobile network by charging against a prepaid card; (2) sales from gambling and air transportation; and (3) sales generated by severely visually impaired persons. Moreover, the proposal would introduce an off-line paper reporting option for small businesses with a maximum of one employee. Finally, the Ministry of Finance proposes to apply the reduced VAT rate of 10 percent to catering services, specific crafts and professional services, water and sewerage fees, and cut flowers effective March 1, 2019. To read a report prepared by the KPMG international member firm in the Czech Republic, please click here.

European Union: Customer VAT Identification Number Not A Substantial Requirement for Exempt Import of Goods According to Advocate General

On March 22, 2018, the Court of Justice of the European Union (ECJ) published the Opinion of its Advocate General (AG) 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-EU sale of goods is a substantial requirement or only a formal requirement. 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 of the goods. 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 AG first observed that the requirements for applying the exemption in question (i.e., the provision of the customer's VAT ID and proof that the imported goods are destined for an intra-EU sale) at first instance seem to be substantive, meaning that if they are not met, the VAT exemption cannot be applied. However, that view would not take into account the specific circumstances of this case and that the exemption is directly linked to the subsequent zero-rating for intra-EU sales of goods. In this respect, the AG observed that the three substantive conditions for the intra-EU sale of goods to be zero-rated are: (1) the transfer of the right to dispose of the goods as an owner should have taken place; (2) the vendor must show that the goods are shipped or dispatched to another EU Member State; and (3) the vendor must prove that, as a result of this shipment, the goods have physically left the EU Member State of dispatch. As a consequence, the provision of the VAT ID of the customer is only a formal condition. Not obtaining a customer VAT ID should thus not lead to the refusal of the zero-rating for intra-EU sales of goods, as long as the vendor is not involved in VAT fraud and it can be shown that the substantive conditions for that zero rate are met.

In the case at hand, the taxpayer provided sufficient proof that the substantive conditions were met without it acting negligently or inaccurately. Therefore, the taxpayer's provision of incorrect VAT IDs of its customers did not hinder the Lithuanian tax authorities' inspection. Taking this into account, the AG held the view that, although the requirement of providing the customer's VAT ID in the import declaration is referred to in the EU VAT Directive, this is only a formal condition for the application of the VAT exemption. This VAT exemption is, as it happens, completely dependent on the subsequent intra-EU sale of goods.

The AG further pointed out that, to apply the VAT exemption, it is up to the importer of the goods to prove that the goods are destined for an intra-EU sale of goods (i.e., to prove the substantive conditions set out above). Taking this concept into account, whether or not an intra-EU sale is intended at the time of import should be determined on the basis of objective proof without knowing the importer's exact intention at that time. It is, however, for the referring court to assess to whom a sale was made. The AG nevertheless provided some guidance, in the sense that special attention should be given to the manner in which the taxpayer and the Lithuanian authorities acted. In that regard, the electronic communication between the taxpayer and its customers is not proof that the taxpayer did not act in good faith or negligently.

Furthermore, the principle of legal certainty prevents the refusal of the VAT exemption after the taxpayer provided documents that were approved by the tax authority, even if it was found later that there was fraud in the supply chain of which that person did not have and could not have any knowledge t. Lastly, as it was the taxpayer's task to prove it met the substantive conditions, it cannot force the national tax authorities to request information from another Member State's authorities.

Finally, the AG opined that the EU VAT Directive does not clearly state the proof to be provided for applying the VAT exemption. Therefore, this is up to the EU Member States, subject among other things, to the principles of legal certainty and proportionality. As regards the proof for the intention of an intra-EU sale of goods, the AG stated that an e-ROR declaration is not sufficient, as that document only confirms the actual shipment of excise goods. However, a CMR or an e-administrative document (e-AD) should be sufficient to prove that, at the time of import, the goods are destined for a subsequent intra-EU sale of goods. It is, however, up to the referring court to determine whether these documents are available and whether they include sufficient details, taking into account the way in which the national authorities have processed these documents. The e-ROR statement and e-AD to prove that the shipment actually took place. It is not necessary to prove the shipment to the customer, only that the goods have physically left the Member State of sale to the Member State of destination.

Source: European Union; Lithuania – ECJ Advocate General's opinion (VAT): Enteco Baltic (Case C-108/17) – Imports followed by intra-Community supplies; VAT ID number in import declaration; proof of transport – details (Apr. 4, 2018), News IBFD.

European Union: Obligation to Repay VAT Originally Deducted Following Requalification of a Sale

On December 20, 2017, the ECJ published its judgment in *AB SEB bankas*, Case C-532/16, regarding whether a tax authority may request a payment of VAT originally deducted following a reclassification of a sale by the seller. Recall, in the case at hand, the taxpayer purchased plots of land. At the time of the sale, the seller and the taxpayer considered the land at issue to be "building land" subject to VAT, and the taxpayer deducted the VAT charged. Three years later, the seller took the view that the sale should actually have been exempt from VAT and thus sent the taxpayer a credit note for the original amount invoiced. The seller also issued a new invoice for the same amount which did not include any VAT. On this basis, the Lithuanian tax authority required the taxpayer to reimburse the amount corresponding to the deduction initially granted. It also required payment of a part of the accrued default interest and imposed a fine.

The EU VAT Directive provides that "the initial (VAT) deduction shall be adjusted where it is higher or lower than that to which the taxpayer was entitled." The ECJ held that this general provision should be applied as broadly as possible. The wording does not exclude, *a priori*, any foreseeable situation of undue deductions. As a consequence, the provision must be interpreted as meaning that the obligation to adjust undue VAT deductions also applies in cases in which the initial deduction could not be made lawfully, as is the case when the transaction which has given rise to that deduction has proved to be among those which are exempt from VAT. However, the adjustment mechanism applicable to capital goods should not be applicable in such cases. The adjustment laid out in the EU VAT Directive for this situation is made on the basis of the variations in the deduction entitlement, which arise subsequent to the acquisition of those goods, their manufacture or their first use. Thus the detailed rules for the adjustment of VAT described in the EU VAT Directive relate to the particular situation of a change, subsequent to the VAT return, in the factors used to determine the amount to be deducted. They therefore cannot be used to adjust a deduction made in the absence of any initial right of deduction.

As the adjustment of VAT initially deducted should be made based on the general adjustment provision laid out in the EU VAT Directive, it is for the Member States to determine the detailed rules for that adjustment. These rules, however, must comply with EU law, especially the principles of legal certainty and the protection of legitimate expectations. In this respect, the

ECJ observed that legitimate expectations cannot be based on an unlawful practice of the authorities. Moreover, the principle of legal certainty does not preclude an administrative practice in which includes revoking, within a mandatory time limit, a decision in which they acknowledged that the taxpayer had a right to a VAT deduction, by demanding that he pay that tax. However, that principle requires the tax position of the taxpayer not to be open to challenge indefinitely. While this is for the national court to decide, the ECJ stated that in the case at hand there is likely a breach of the principle of certainty because the starting point of the mandatory time limit depends on the fortuitous circumstances in which the unlawfulness of the deduction came to light and because the time limit should be set at the date of receipt by the purchaser of the credit note whereby the vendor unilaterally adjusted the price of the land by including the VAT several years after the sale.

Source: LT: ECJ, Apr. 11, 2018, Case C-32/16, *Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos v. Akcinė bendrovė SEB bankas, ECJ Case Law IBFD*.

European Union: Deduction of Additional VAT Following Tax Assessment Cannot be Barred by Unreasonable Time Limit

On April 12, 2018, the ECJ published its judgment in *Biosafe – Indústria de Reciclagens SA*, Case C-8/17, regarding whether a tax authority may deny a taxpayer the right to deduct VAT incurred following a tax authority's assessment on the ground that the VAT limitation period had expired. In the case at hand, the taxpayer sold rubber granules manufactured from recycled tires; the taxpayer applied VAT at a reduced rate of five percent. Following a tax inspection, the Portuguese tax authorities found that the standard VAT rate of 21 percent should have been applied and issued revised VAT assessments. The taxpayer paid that amount and claimed reimbursement from its customer by sending debit notes. The customer refused to pay that additional VAT on the ground that it could not make a deduction because the period of four years for claiming a VAT deduction provided for in the Portuguese VAT law had expired and that it was not for it to bear the consequences of an error for which the taxpayer was solely responsible. Following that refusal, the taxpayer brought an action seeking an order that the customer reimburse it for the amount that it had paid, together with interest for late payment.

The ECJ recalled that the right to deduct VAT is a fundamental principle of the EU VAT system. The right is generally exercised during the same period as that during which it has arisen, namely, at the time the tax becomes chargeable. However, a taxpayer may be authorized to make a VAT deduction even if he did not exercise his right during the period in which the right arose, subject to compliance with certain conditions and procedures determined by national legislation. The possibility of exercising the right to deduct VAT without any temporal limit would be contrary to the principle of legal certainty, which requires the tax position of the taxpayer not to be open to challenge indefinitely.

The ECJ had held in *Volkswagen*, C-533/16 (Mar. 21, 2018), that a limitation period the expiry of which has the effect of penalizing a taxpayer who has not been sufficiently diligent and has failed to deduct VAT, by making him forfeit his right to deduct VAT, cannot be regarded as incompatible with the regime established by the VAT Directive. The rationale employed by the ECH included: (a) the limitation period applies in the same way to analogous rights in tax matters founded on domestic law and to those founded on EU law; and (b) it does not in practice render impossible or excessively difficult the exercise of the right to deduct VAT. (For KPMG's previous discussion of the *Volkswagen* case, click here.) In the case at hand, it was objectively impossible for the customer to exercise its right to deduct before the VAT adjustment made by the taxpayer, because prior to that adjustment, the taxpayer did not possess the documents rectifying the initial invoices and did not know that additional VAT was due. Indeed, it was only following the adjustment that the substantive and formal conditions giving rise to a right to deduct VAT were met and the customer could actually request to be relieved of the VAT burden. Accordingly, since the customer did not show any lack of diligence before the receipt of the debit notes, and failing any abuse or fraudulent collusion with the taxpayer, a period which started to run from the date of issue of the initial invoices and which, for certain transactions, expired before this adjustment, could not validly be used to deny the customer's exercise of the right to deduct.

Source: PT: ECJ, Apr. 12, 2018, Case C-8/17, *Biosafe – Indústria de Reciclagens SA v. Flexipiso – Pavimentos SA*, ECJ Case Law IBFD.

European Union: Triangular Simplification Can be Applied Where the Intermediary is Established and Registered for VAT Purposes in Member State of Dispatch

On April 19, 2018, the ECJ published its judgment in *Firma Hans Bühler KG*, Case C-580/16, regarding whether the application of the triangulation simplification may be denied based on the fact that the intermediary is registered for VAT purposes in the country of dispatch and the recapitulative statements have been amended to reflect the application of the simplification. Under the EU VAT Directive, two sales of goods between three VAT-registered traders in three different EU Member States may qualify as a "triangular transaction" wherein only the customer in the Member State of arrival of the goods self-accounts for VAT. As a consequence, the intermediary is not required to register for VAT in that Member State. Recall, in the case at hand, the taxpayer was established in Germany and was also registered for VAT purposes in Austria. It planned to set up an establishment in Austria, but that had not taken place when the case was referred. The taxpayer frequently purchased goods from vendors established for VAT purposes in Germany (the German vendors). Those goods were sold on to a client resident and registered for VAT purposes in the Czech Republic (the Czech client). The goods were directly shipped from the German vendors to the Czech client. The taxpayer considered these transactions as triangular transactions and used exclusively its Austrian VAT identification number. The German vendors included their German VAT identification number and the Austrian VAT identification number of the taxpayer in the invoice. The taxpayer included in the invoice for the Czech client its Austrian VAT identification number, the Czech client's VAT identification number, and a statement that the transactions were "triangular transactions." In addition, the taxpayer submitted recapitulative statements to the Austrian tax authorities stating its Austrian VAT identification number and the client's Czech VAT identification number, but not indicating that the transactions fell under the triangular transactions category. The taxpayer subsequently corrected these recapitulative statements. However, according to the Austrian tax authority, the purchases of the taxpayer from the German vendors are subject to VAT in Austria because the taxpayer did not comply with its reporting obligations and did not provide evidence that VAT had been applied on the intra-EU acquisitions in the Czech Republic. In addition, the tax authority considered that the intra-EU acquisitions were carried out in the Czech Republic, but also deemed to have taken place in Austria due to the use of an Austrian VAT identification number.

The ECJ first recalled that for a triangular transaction to be established the following cumulative requirements must be met: (1) the acquisition of goods should be made by an intermediary not established in the EU Member State of destination of the goods, but registered for VAT purposes in another EU Member State, (2) the acquisition must be made for the purposes of a subsequent sale of goods in the EU Member State of destination of the goods by that intermediary, and (3) the goods must be directly shipped from an EU Member State other than that in which that intermediary is registered for VAT purposes to the final customer. According to the ECJ, although the wording of the specific provision of the EU VAT Directive on its own may suggest that the last condition was not met (because the taxpayer had a German VAT ID number), the context and the objectives of the EU VAT Directive indicate that the condition only refers to an EU Member State other than the one in which the customer is identified for VAT purposes for the specific acquisition that it is making. This means that only the VAT ID number under which it makes an intra-EU acquisition is to be taken into account when checking whether that condition is met. This is also in line with the purpose of the simplification measure for intra-EU triangular transactions, which is to avoid requiring the intermediary to register for VAT purposes in the EU Member State of destination of the goods, and as such having to meet the compliance obligations in that Member State.

The ECJ further highlighted that the requirement for the intermediary party to fulfil its obligation to file a recapitulative statement to report the triangular transaction is a formal requirement. Referring to established case law, the ECJ recalled that the failure to meet formal requirements cannot mean that the simplification cannot be applied when the substantive conditions for its application are met. To qualify, the VAT ID used must be valid at the time the transaction takes place, but not necessarily at the time of filing the recapitulative statements. Moreover, the application of the simplification cannot be denied simply on the basis that such a recapitulative statement was not filed timely. There are only two situations in which tax authorities may refuse the application of the simplification: (1) if the taxpayer participated in tax evasion; and (2) if non-compliance with the formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been met. The ECJ nevertheless emphasized that the failure to comply with formal requirements can be penalized by imposing a fine or a financial penalty proportionate to the seriousness of the offence. The case provides a clarification of the triangular simplification rules which have been interpreted differently across Member States.

Source: AT: ECJ, Apr. 19, 2018, Case C-580/16, *Firma Hans Bühler KG v. Finanzamt Graz-Stadt*, ECJ Case Law IBFD.

European Union: VAT Committee Working Papers Published

The European Commission recently published working papers of the VAT Committee, which was established to promote uniform application of the provisions of the EU VAT Directive and is responsible for publishing the nonbinding VAT Committee Guidelines. Working Paper No 941 discusses the VAT treatment of certain services provided in relation to syndicated loans, which are large loans for which several banks work together to provide funds for a borrower. There is usually one lead bank (the "agent" or "arranger") that funds a portion of the loan and syndicates the rest to other banks. There is only one loan agreement (i.e., between the borrower and the syndicated banks). A syndicated loan is thus the opposite of a bilateral loan, which involves just one borrower and one lender. In Working Paper No 942, the VAT Committee addresses a request from the Maltese authorities on the introduction of the VAT grouping scheme into their national legislation. Working Paper No 944 discusses the point of view of the VAT Expert Group (VEG) regarding the meaning of "financial, economic, and organizational links" among VAT group members. The VEG is composed of individuals appointed in a personal capacity with the requisite expertise in the area of VAT and organizations representing businesses and tax practitioners that can assist in the development and implementation of VAT policies. Working Paper No 945 REV discusses the VEG's position on the possible VAT implications of transfer pricing. In Working Paper No 946 the VAT Committee addresses the exemption granted to members of a European Research Infrastructure Consortium (ERIC). Working Paper No 948 REV discusses a consultation request from the Luxemburg authorities on the introduction of the VAT grouping scheme into their national legislation. In addition, the VAT Committee published an information paper on options exercised by Member States under articles 80 (open market value), 167a (cash accounting), 199 (permanent reverse-charge) and 199a (temporary reverse-charge) of the EU VAT Directive. Finally, the VAT Committee published another information paper on recent judgments of the ECJ.

Germany: VAT Treatment of Virtual Currencies Clarified

On February 27, 2018, the federal ministry of finance of Germany (BMF) issued guidance on the VAT treatment of virtual currencies. BMF Schreiben III C 3 – S 7160 – b/13/10001. According to the BMF, the conversion of conventional currencies into bitcoin and vice versa is a VAT-exempt transaction. The use of bitcoin as a mere means of payment is not subject to VAT. Payment to the vendor is generally determined based on the equivalent value in the currency of the Member State in which the transaction takes place and at the point in time at which this sale is carried out. The conversion should take place using the last published selling rate (e.g., in appropriate internet conversion portals). This must be documented by the vendor. These principles also apply to other so-called virtual currencies insofar as these currencies have been accepted by the parties to the transaction as an alternative contractual and direct payment instrument, and do not serve any purpose other than use as a payment instrument. Conversely, these principles do not apply to virtual play money (so-called game currencies or in-game currencies, especially in online gaming), as these do not constitute a payment instrument as laid down in the VAT Directive. In addition, the BMF clarifies that the following transactions are outside the scope of VAT: services of bitcoin miners, the freely paid transaction fees of other users, and the receipt of new bitcoin via the system itself. Insofar as providers request a payment of fees for wallets, a taxable sale which is provided in an electronic manner exists. Finally, if the operator of a trading platform makes their internet site available to market participants as a technical marketplace for purchasing and/or trading bitcoin, the transaction is subject to VAT. In contrast, a VAT exemption comes into question if the operator of the platform carries out the purchase and sale of bitcoin as an intermediary in its own name. To read a report prepared by the KPMG International member firm in Germany, please click here.

Greece: Overview of Recently Published Indirect Tax Guidance

On March 23, 2018, the tax authority of Greece issued Circular No.1059/2018 clarifying that the VAT exemption applicable to short-term leases applies when a host using a digital platform leases the property without providing any additional services to the guest during his stay, except for bed linen at the time of the guest's arrival. On the other hand, the VAT exemption is not applicable if a host provides additional services such as house cleaning, garbage collection, change of bed linen and towels. In such cases, the rentals will be subject to the reduced VAT rate of 13 percent. The Circular further clarifies that when the rental includes electricity and water consumption, telephone and internet, as well as common expenses, these are not considered additional services and therefore the VAT exemption is still applicable.

On March 29, 2018, the tax authority of Greece published a Circular on clarifying the application of the country's new accommodation tax, which is effective January 1, 2018. The accommodation tax applies on the daily use of rooms for tourist accommodations in hotels and other furnished rooms/apartments available for overnight stays, including through sharing platforms. For hotels, the accommodation tax rate depends on the star-rating of the hotel. The tax rate per day is: 1 to 2 stars – EUR 0.5; 3 stars – EUR 1.5; 4 stars – EUR 3.0; and 5 stars – EUR 4.0. For other rooms/apartments, the tax rate per day is EUR 0.5. If the same room is used by more than one resident within a day, accommodation tax is charged for each resident at the full rate. The tax is collected by the accommodation provider from the resident of the room/apartment or from a third party, such as a tourist agent, if included as part of a package and a receipt of the tax paid is to be provided to the resident at the end of the stay (for informational purposes if paid by third party). Taxpayers must file accommodation tax returns on a monthly basis.

The tax authority of Greece recently published Document No. A 1037752 EX 2018 clarifying that when monitoring, reporting and verification of CO2 emissions from ships arriving at, within or departing from ports are provided directly to the ship owner or ship manager, such services are exempt from VAT.

The tax authority of Greece recently published Document No. A 1025807 EX 2018 clarifying that mandatory due diligence services provided by investment brokerage companies are not covered by the VAT exemption applicable to transactions, including negotiations involving shares, interests in companies or associations, debentures and other securities and are thus subject to the standard VAT rate of 24 percent.

Source: Greece – VAT exemption of short-term leases in the context of sharing economy (Mar. 28, 2018), News IBFD; Orbitax, Greece Issues Clarifications on New Accommodation Tax (April 11, 2018); Greece – Carbon dioxide emissions from ships – VAT exemption of relevant services (Apr. 9, 2018), News IBFD; Greece – VAT treatment of due diligence services performed by investment brokerage companies (Apr. 9, 2018), News IBFD.

Italy: Implementing Rules on VAT Amendments Published

On April 4, 2018, the Italian tax authority published Measure no. 73203/2018 (the Implementing Measure) regarding the recovery of VAT on purchases of fuel, oil and other transportation-related services. Further to the adoption of the Budget Law for 2018, Italy will authorize (effective July 1, 2018) the recovery of VAT incurred on fuel, oil, and other transportation-related services if each of the following conditions are met: (1) the vendor issues electronic invoices (XML) through the ITA's electronic platform (SDI); and (2) the customer does not pay in cash. The Implementing Measure lists all the means of payment that will allow taxpayers to recover VAT: bank and postal cheques; bank and postal promissory notes; electronic means of payment such as direct debits, bank and postal transfers, post-office paying-in slips, debit cards, credit cards, prepaid cards, and any other electronic means that enables direct debiting of a bank account. The ITA further includes, among the means of payment, the following methods typically used by companies in the fuel sector: netting agreements, provided that the parties do not pay in cash; cards (rechargeable or not); and vouchers, provided that the parties do not pay in cash. The ITA further reminds taxpayers that effective January 24, 2018, a business customer is jointly liable with the vendor for VAT not remitted on sales of fuel and gasoline intended for use as motor fuel where the price is lower than the open market value.

On March 22, 2018 the Italian customs agency and the ITA issued technical guidelines for the electronic storage and transmission of daily payment details of sales of gasoline or diesel fuel intended for use as motor fuel. The guidance provides technical details regarding the new rules effective July 1, 2018 requiring the mandatory use of e-invoices in business-to-business transactions for sales of gasoline or diesel intended for use as motor fuel and the mandatory storage and transmission of daily payment data for business-to-consumer sales of gasoline or diesel fuel intended for use as motor fuel. As a direct consequence of the above rules, the "schedacarburante" will be abolished effective July 1, 2018.

On April 6, 2018, the ITA published the Implementing Decree for the VAT grouping rules introduced by the Budget Law 2017. (For KPMG's previous discussion on the introduction of VAT grouping in Italy, click here.) According to the Implementing Decree, the financial, economic and organizational links between the taxpayers that join the VAT group should be in place when the option is exercised and, in any case, from July 1 of the year before that in which the VAT group becomes effective (e.g., from July 1, 2018 if the VAT group becomes effective from January 1, 2019). In addition, taxpayers are allowed to opt for a VAT group effective from January 2019 by November 15, 2018 at the latest. (This derogates from the general rule providing that the option should be exercised at the latest by September 30 of the previous year.) The ITA will issue another decree approving the forms to be used to opt for the VAT group. To read a report prepared by the KPMG International member firm in Italy, please click here.

Luxembourg: Proposal to Introduce VAT Grouping Regime

On April 13, 2018, the government of Luxembourg proposed the introduction of a VAT grouping regime effective July 31, 2018. The proposal comes after the ECJ held last year that Luxembourg had to abolish its current legislation on independent groups of persons (IGPs). (For KPMG's previous discussion on this decision, click here.) Luxembourg had to find alternatives for companies active in the financial and insurance sectors to maintain a level playing field with other Member States.

According to the draft legislation, taxpayers would be allowed to form a VAT group between entities established in Luxembourg who, while legally independent, are closely bound to one another by financial, economic, and organizational links. These three conditions (referred to as the "link test") should be seen as cumulative and must be met simultaneously. The financial link would be asserted on the basis of a certain percentage of participation in the capital/voting rights and is based on consolidation for accounting purposes and should guarantee that a company has the actual control over the group members. The economic link refers to the nature of the activities the entities are carrying out. As a consequence, insofar as the members are closely bound to one another by a financial, economic, and organizational link, they should be able to form a VAT group. In Luxembourg, if they opt to form such a group, related companies should become members of the group, the main effect will be that transactions among members will be disregarded for VAT purposes. The fulfilment of the listed conditions and the filing of an election will result in the creation of a new taxpayer (the VAT group). It is, however, worth noting that, contrary to IGPs, the VAT group legislation should not have any cross-border implications, as this regime is limited to the territory of Luxembourg.

Following the introduction of this new regime in Luxembourg, it is necessary for companies that were formerly members of an IGP to first ascertain the possibility of creating a VAT group. In addition, the VAT group regime may also be of benefit for entities that were never members of IGPs. The flow of transactions among members of the group in Luxembourg will have to be thoroughly examined to determine the existence of the financial link and then to assess whether the economic and organizational links exist. Following the

Skandia case, it is advisable to pay attention to the existence of any (foreign) branches of a Luxembourg main establishment wishing to become member of a VAT group. (For KPMG's previous discussion of this case, please click here.) To read a report prepared by the KPMG International member firm in Luxembourg, please click here.

South Africa: Taxpayers to Face Criminal Proceeding for Noncompliance with Return Filing Obligations

The South African Revenue Service (SARS) recently issued a press release stating that taxpayers who fail to submit their tax returns, including VAT and customs returns, may face criminal prosecution to alleviate the negative impact of the non-compliance by taxpayers on revenue collection. In general, SARS levies penalties for non-compliance with the submission of mandatory tax returns. For VAT purposes, taxpayers are required to submit their VAT returns on or before the 25th of the month following the end of the tax period in which transactions took place, or the last business day prior to such 25th day if the 25th day falls on a Saturday, Sunday or public holiday. However, if VAT returns are submitted electronically and full payment is made electronically by the last business day of the month following the end of a tax period, then the VAT return may be submitted on the last business day. With the press release, however, SARS has now taken an assertive stance in enforcing the legislation to address non-compliance by taxpayers who have multiple outstanding tax returns. SARS has not stipulated the maximum number of returns which should be outstanding by the taxpayer, prior to criminal proceedings being instituted against the taxpayer. To read a report prepared by the KPMG International member firm in South Africa, please click here.

Spain: Technical Updates to Real Time Reporting System Introduced

The Spanish tax authority recently published Order HPF/417/2017, amending the Immediate Supply of Information on VAT (SII) effective July 1, 2018. Recall, last year Spain introduced the SII requirements requiring large taxpayers to report electronically to the tax authority the content of sales and purchase invoices within four days of receipt or issuance of the invoices. The Order introduces the following technical amendments: (1) two new flags for simplified invoices for which there is the obligation to indicate the customer details (Name and VAT ID) and invoices for which there is no obligation to identify the customer (e.g., distance sales to Spain); (2) new fields for the VAT ID and business registered name in the event of corporate restructuring; (3) a new key for the customs authority's assessments; (4) a new flag for invoices issued related to the energy sector legislation; (5) two new keys to identify invoices issued under the special travel agency regime; (6) a new identifier to mark items with anticipated deadline-missing problems; (7) a new identifier for invoices with a value higher than EUR 100,000 ($118,000); and (8) a new field for any additional information a taxpayer would like to report (such as the "booking account", internal ERP document). Finally, taxpayers will be allowed to report several exemptions on the same invoice. To read a report prepared by the KPMG international member firm in Spain, click here.

Turkey: VAT Registration for Nonresidents Providing Digital Services

Effective January 1, 2018, nonresident vendors selling electronic services to consumers established in Turkey are required to register and collect Turkish VAT under the "VAT Registration Special for Electronic Service Providers." (For KPMG's previous discussion on this new requirement, please click here.) The Turkish tax authority recently launched a website allowing nonresident vendors to comply with their VAT obligation, including registration and filing of VAT returns. Following the VAT registration, the taxpayer will be given a user name and password to be able to use the internet tax office. Taxpayers involved in this registration have no obligation to keep books and to have their tax returns signed by CPAs. Taxpayers must submit the VAT return electronically to the tax office on a monthly basis prior to the 25th day of the month following the taxation period. Taxpayers are not required to submit tax returns for the months in which they do not provide electronic services. In case the amount related to the services is provided is calculated in foreign currency, the amount must be converted into TRY at the foreign exchange rate announced by the Central Bank of Republic of Turkey. Tax remittances of VAT are due prior to the 27th day of the month in which the return is submitted. Payments can be made to tax offices, banks authorized for tax collection, or via the official website of the Turkish Revenue Administration. Finally, taxpayers are allowed to deduct VAT incurred that relates to the services in the scope of special registration. To read a report prepared by the KPMG International member firm in Turkey, please click here.

United Kingdom: Tax Authority Invites Online Marketplaces to Sign VAT Agreement

On April 25, 2018, the UK tax authority (HMRC) published a paper inviting online marketplaces (marketplaces) to enter into an agreement with HMRC. The paper begins by noting the vital role marketplaces play in creating the environment in which UK consumers can buy goods from businesses from all over the world as well as the similar role that marketplaces play for UK businesses to sell worldwide. The paper notes that while marketplaces do not have visibility of whether the businesses on their marketplaces submit and pay their VAT returns, they may, in certain circumstances, be able to identify non-compliance with VAT registration rules and collect data on the trading activities of those businesses. The paper adds that there is now a public and parliamentary expectation on marketplaces to play a greater role in ensuring their users are compliant with the tax rules. According to the paper, this agreement is intended to foster a collaborative relationship between HMRC and marketplaces to promote VAT compliance by users of the marketplaces. The agreement is based on the existing legal obligations on the marketplaces and a set of legal powers of HMRC. The paper notes that the commitments made in the current paper do not create binding legal obligations. By signing the agreement, marketplaces make three commitments: (1) provision of data, (2) education of sellers, and (3) responding to evidence to noncompliance.

First, marketplaces commit to providing HMRC with data about the businesses selling to UK consumers on their platforms – both in bulk form and on an individual business basis. This provision of data will be on request from

HMRC (either voluntarily or in response to the issuing of a legal notice). While the data items available may differ across online marketplaces, at a minimum the data provided will be sufficient to allow HMRC to: (1) identify individual business sellers; (2) calculate the value and volume of UK sales of individual businesses over a prescribed period (e.g., one year); and (3) contact the individual business directly.

In addition, marketplaces agree to ensure that sellers have access to information about their VAT obligations in the UK wherever they are located. Marketplaces can choose to provide their own guidance or assistance themselves or to direct sellers to other information such as HMRC's guidance on GOV.UK.

Finally, marketplaces agree to respond expeditiously when notified by HMRC that sellers are using their marketplace in breach of UK VAT legislation obligations. In addition, each online marketplace will have systems to take appropriate action whenever presented with evidence of potential non-compliance with UK VAT registration obligations. For example: (1) include a request for the VAT registration number from the relevant business within the account opening process; (2) if evidence of potential non-compliance with registration requirements is presented, contact the seller directly to clarify the position within 30 days; and (3) if the concern about non-compliance with UK VAT registration obligations persists, to implement appropriate sanctions up to and including restricting the seller from selling on the UK marketplace or removing it. A marketplace further agrees to inform HMRC when it has restricted the seller from selling on the UK marketplace or removed a particular seller from its marketplace for non-compliance with UK VAT legislation obligations within 30 days of that action.

United Kingdom: Court of Appeals Decision in Offshore Structure Case

On April 17, 2018, the Court of Appeal of the UK published its judgment in *Paul Newey (T/A Ocean Finance)* regarding whether the use of an offshore structure by the taxpayer was abusive for VAT purposes. In the case at hand, Mr. Newey is a UK-established loan broker, who arranged loans by UK lenders to UK borrowers. The dispute concerns a structure involving an offshore company called Alabaster. Alabaster was structured such that the purchase of advertising services for its exempt loan brokering business became VAT free made in Jersey when contractually received by Alabaster, rather than subject to the reverse charge in the UK. The customers of the brokerage business continued to be in the UK and the Jersey company outsourced the loan processing activities to the UK entity that had previously run the brokerage business. HMRC saw this as abusive. The original First Tier Tribunal (FTT) found for the taxpayer. The Upper Tribunal (UT) then dismissed HMRC's appeal on the basis that the UT did not consider that the FTT had erred in law in reaching its conclusions. Before the Court of Appeal the taxpayer argued that the FTT had evaluated the substance of the structure and this had been reviewed by the UT. In between decisions the UT did refer the case to the ECJ, which provided guidance back to the referring court. Case C-653/11 (Jun. 20, 2013). The taxpayer argued that this added nothing of significance and Court of Appeal should not interfere with the earlier decisions.

The CoA admitted it found the taxpayer's argument persuasive, but on further reflection, and given the errors of law of both Tribunals, allowed HMRC's appeal. The Court of Appeal concluded that both the FTT and the UT made errors in law. The Court of Appeal described the UT decision as "somewhat discursive." The Court of Appeal was of the view that the UT concluded that the FTT had considered there was an error of law, but it was immaterial. However, the Court of Appeal was not clear how erroneous the FTT's approach was. In one part it took quite a narrow view on what the FTT meant by saying there were no exempt sales being made in the UK, but later took a broader view. The Court of Appeal disagreed with the UT's reading that the arrangements in Jersey did not involve the making of any exempt sales in the UK. In the Court of Appeal's view, the FTT lost sight of the agreed fact that Alabaster did make exempt sales in the UK. The Court of Appeal also considered the FTT erred in not adopting the approach set out in ECJ judgments in analyzing the facts in this case, although it did not criticize the FTT because it was the UT that made the later reference. Given the length of time since the FTT hearing in 2010, the Court of Appeal noted it would be preferable for the Court to re-make the decision. However, it was decided the case should be referred back to the FTT.

Asia Pacific (ASPAC)

India: E-Waybill Requirement Relaunched

On Aril 1, 2018, India relaunched its e-way bill requirement for interstate movement of goods. Under the e-waybill requirement taxpayers must declare ahead of time 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. The system is intended to enable the removal of non-tariff barriers to trading between states and establish a single market across India. India attempted to launch the requirement in February 2018, but had to suspend it because of initial tech problems.

On April 10, 2018, the Indian Government informed taxpayers that the e-way bill system for intra-state movement of goods would be rolled out in a phased approach effective April 15, 2018 commencing with the following states: Andhra Pradesh, Gujarat, Kerala, Telangana, Uttar Pradesh. On April 23, 2018 statement, the Indian Government clarified that under a drop shipment scenario where one taxpayer ("A") seeks to send goods to his final customer ("C") through a company that arranges delivery ("B") there are two sales and accordingly two invoices must be issued: from B to A, and from A to C. In such a situation either A or B can generate the e-way bill.

Source: CCH, Global VAT News & Features, India Retrials E-Way Bill GST Scheme (Apr. 3, 2018); Global VAT News & Features, India Retrials E-Way Bill GST Scheme (Apr. 3, 2018).

Malaysia: New Government Potentially Replacing GST with Sales and Service Tax

On May 9, 2018, Malaysia elected a new government, and on May 16, 2018, the new Finance Ministry has announced that the GST rate will be reduced from six percent to zero percent effective June 1, 2018. The Finance Ministry has indicated it will aggressively enforce price controls to ensure that reductions to the GST rate will flow through to consumers. Importantly, the new government (as part of its election commitments) had proposed replacing the GST introduced in 2015 with a sales tax and service tax. The announcement issued by the Finance Ministry makes no reference to the reintroduction of the previous service tax and sales tax, or indeed whether the new taxes will have the same scope and rate structure as they had previously. However, the potential for some form of reintroduction of those taxes should be considered a very real likelihood. As such, businesses may be faced with the prospect of managing the exit from the current GST system, followed by the reintroduction of other indirect taxes, at a different point of time. As part of unwinding the current GST system, it is also important to recognize a number of key implications, including: chargeability issues, both from a sales and purchases perspective; the impact on contracts and pricing both upstream and downstream; the impact from an IT systems perspective of unwinding the existing tax and reverting to previous forms of indirect tax; and any outstanding refund claims arising under the GST, or outstanding input tax claims which are yet to be made.

Thailand: Update on E-Commerce Proposal

The Thai Revenue Department (TRD) recently issued its comments addressing key issues raised by potentially affected foreign e-commerce operators in the second public hearing that was conducted in early February 2018 on the second draft of the proposed e-commerce law. (For KPMG's previous discussion on the proposed e-commerce law, click here.) The second draft of the e-commerce legislative amendments was released on January 17, 2018. Under the proposal, a foreign company providing services used in Thailand through electronic media to a non-VAT registered person must register and be subject to seven percent VAT in Thailand if its annual taxable income exceeds THB 1.8 million ($56,000). This second draft raised a number of issues and concerns for many industry operators, mainly in connection with the lack of clarity on the practical application of the proposed law and certain compliance obligations imposed on foreign operators. During the public hearing on the draft, some potential foreign e-commerce operators submitted their comments to the Thai government raising some of these issues for the TRD's consideration.

In its comments, the TRD provided some additional guidance to clarify the precise scope of the digital services that should be captured under the proposed law. Among other services, the comments specifically identified hotel booking services (it appears that the TRD is limiting these to commission and other services income generated by the online travel agencies), e-books, movies, music, advertising, online gaming services (although not explicitly confirmed, this may cover all subscription-based media), use of program and information via the internet (while it is not clear what is included in this category, it may include all electronic data management services such as website hosting, online data warehousing, file-sharing and cloud storage services in our view), and services related to downloadable music, stickers, programs (this should potentially extend to services related to all downloadable digital content). The TRD further clarified that online sales of tangible and intangible goods as well as e-vouchers are excluded from the scope of the proposed law. The TRD clarified that the sale of software, applications or digital music, will not be considered a sale of intangible goods if there is no transfer of the intrinsic ownership right.

Moreover, the TRD has provided further clarification on the meaning of "used in Thailand" under the draft proposal. A sale of digital services by a foreign operator will be considered used in Thailand if performed outside of Thailand but the services are consumed in Thailand, regardless of the tax residency status of the consumer. To identify the location of the customer, the TRD appears to allow foreign operators to rely on the following proxy indicators: residency proxy (by using the address of the service recipient, the address given by the service recipient for the purpose of collecting the respective service fee, and/or telephone number); payment proxy (i.e., bank account details or credit card information of the service recipient); and access proxy (i.e., IP address of the service recipient). In addition, foreign operators will be required to ascertain whether the customers are VAT-registered as transactions with VAT-registered customers will continue to be subject to the standard self-assessment rules under the reverse charge mechanism.

In addition, the TRD appears to not allow foreign operators to elect between simplified registration for VAT and registration under the standard rules for VAT. Use of the latter approach would allow the foreign operators to issue regular VAT invoices to their customers and claim credits for input VAT. The TRD commented that foreign operators can only choose the standard full VAT registration if they have a business established in Thailand, which will trigger a corporate taxable presence and potential regulatory issues. The TRD further confirmed that while legally not allowed to charge the tax to consumers, foreign operators may still be able to pass the economic burden of the imposed seven percent VAT on to the customer by increasing the price of their services.

The TRD has further clarified that under the proposal a platform is "an intermediary which is an electronic channel which enables the service provider to provide electronic services to service recipients." For example, this includes websites, applications, and online marketplaces. The TRD confirmed that closed platforms which only allow their business partners "to write programs for obtaining data or linking to other systems" are included in the definition of platform. However, payment processing systems are not captured under the proposed tax. According to the TRD, an overseas platform will not be required to consider each foreign operator's individual turnover separately but the total turnover derived by all foreign operators utilizing such platform to provide services to Thai customers to assess whether the VAT threshold is reached and whether the platform will be required to register for and pay VAT. Finally, the TRD confirmed that the new rules will be effective 180 days after the law is published in the Royal Gazette. Following the publication of these comments, it is expected that the draft law will be submitted for approval in near future. To read a report prepared by the KPMG International member firm in Thailand, please click here.

Trade & Customs (T&C)

European Union: Report on IT Strategy for Customs

On April 11, 2018, the European Commission published a report on the IT strategy for customs. In the report, the Commission recalls that one of the fundamental objectives of the Union Customs Code (UCC) was to create seamless and efficient customs processes in the European Union, harnessing the power of digital tools and aiming for a fully paperless customs system. The IT ecosystem of the UCC would comprise two components, a Union component (funded by the Customs 2020 program) and a non-Union component (funded by the member states). The report lists the following challenges regarding the IT system: standardization of data elements and processes; clear and accepted overall architecture; maintaining the central role of the Commission in running central systems and coordinating the work of member states; multiplication of costs on a member state level when developing the non-Union components, while member states face different volumes of traffic (80% of all import declarations are made in three member states); and as developing all the required systems is likely to take until 2025, an evolutionary approach is needed.

The ultimate goal of the European Union would be a single environment for customs purposes, which requires a high degree of data, information and intelligence sharing and also the use of advanced data analytics. The Commission also reviewed three options available regarding the development and operation of IT systems. Under the shared IT provider option, a single provider would develop, operate and maintain both Union and non-Union components. This scenario has the advantage of lower costs. The second option would be transferring the EU structure to an existing EU agency already having large scale IT systems. This option does not seem viable for the Commission due to the complexity of customs systems. The last option would be the collaboration of member states in developing and operating the non-Union components, which would have the benefit of being more open and less centralized. However, such an approach would need to be tested in a real-life situation.

Source: European Union – European Commission publishes report on IT strategy for customs (12 Apr. 2018), News IBFD.

European Union: New Trade Agreement with Mexico

On April 21, 2018, the European Union and Mexico reached an agreement in principle as part of a broader, modernized EU-Mexico Global Agreement. Since the previous EU-Mexico trade agreement came into force in 2000, trade between the EU and Mexico has risen at a rate of around eight percent per year, resulting in an overall increase of 148 percent in trade in goods over the period. Under the new agreement, agricultural exports, such as poultry, cheese, chocolate, pasta, and pork, from the EU are set to benefit the most. The agreement will, in particular, provide preferential access for many cheeses such as Gorgonzola and Roquefort, which currently are subject to tariffs of up to 20 percent, and gain significant new access for many others within annual quotas; secure a considerable volume for milk powder exports in one of the largest markets, starting with 30,000 tons from entry into force, rising to 50,000 tons after five years; allow the EU to substantially increase its pork exports to Mexico, with duty-free trade for virtually all pork products; eliminate tariffs for products like chocolate (currently up to 30 percent) and pasta (currently up to 20 percent); and ensure the protection from imitation for 340 distinctive European foods and drink products in Mexico, so-called geographical indications.

The agreement further includes a comprehensive trade and sustainable development chapter, which sets the standards of labor, safety, environmental and consumer protection; introduces a new dialogue with civil society in all areas of the agreement, strengthens the EU and Mexico's actions on sustainable development and climate change, notably the obligations both sides undertook under the Paris Agreement on climate change; and maintains and fully safeguards Member States' right to organize public services the way they choose.

In addition, the agreement would give companies mutual access to government contracts in both the EU and Mexico public procurement markets. EU and Mexican companies will be placed on an equal footing, irrespective of whether they present a bid in Mexico or in the EU. The new agreement would open up trade in services, such as financial services, shipping, e-commerce, and telecommunications. The agreement will also help develop a favorable environment for a knowledge-based economy, with a new chapter on digital trade. This will remove unnecessary barriers to online trade, like charging customs duties when downloading an app, and will put in place clear rules to protect consumers online.

Finally, the new agreement improves investment conditions and includes the EU's new Investment Court System, ensuring transparency and the right of governments to regulate in the public interest, and will also ensure that Mexico and the EU work toward establishing a Multilateral Investment Court. Based on the agreement in principle, negotiators from both sides will continue work to resolve the remaining technical issues and finalize the full legal text by the end of the year. The Commission will then proceed with the legal verification and translation of the agreement into all official EU languages, and will subsequently submit it for approval by the European Parliament and Council of the European Union.

In Brief

Australia:[i] On March 29, 2018, Australia passed a legislation requiring that goods and services tax (GST) be withheld on sales of new residential buildings. Recall, under the new legislation, purchasers of new residential premises and new residential subdivisions are required to withhold the GST on the purchase price at settlement and remit the tax directly to the Australian Taxation Office effective July 1, 2018.

Belarus:[ii] On March 26, 2018, the Ministry of Taxes and Duties of Belarus published in the official gazette Letter No. 2-1-9/00537/5-2-8/3762. The letter clarifies the application of the VAT exemption to sales of unregistered pharmaceuticals. According to the Letter, a special license issued by the

Ministry of Antimonopoly Affairs and Trade is required for pharmaceuticals containing narcotics and psychoactive substances. These documents, as well as the permit and license, are required for the VAT exemption on sales of such unregistered drugs. Additionally, the Letter covers situations in which sales of pharmaceuticals were included in the state register of pharmaceuticals, but their registration expired before the entire quantity of pharmaceuticals were sold in the wholesale or retail trade. Sales of such pharmaceuticals, and the respective application of VAT exemption to such sales, are permitted within their shelf life, provided there is (1) a protocol of tests of the pharmaceutical run by a specialized lab, and (2) the manufacturer's document attesting to the quality of the pharmaceutical product is available.

Belgium:[iii] On March 22, 2018, the Constitutional Court of Belgium held that the legislation applying VAT to the sale of online gaming and gambling services to customers in Belgium is unconstitutional. The tax had been in place effective August 1, 2016. Joined cases 6564, 6567, 6576, 6577, 6579 and 6584.

Belgium:[iv] On March 30, 2018, the federal government of Belgium approved a preliminary draft law containing a reform of the VAT rules on leasing or renting immovable property. If approved, it would be effective October 1, 2018. In accordance with the EU VAT Directive, the rental of immovable property is exempt from VAT. An option to apply VAT on the rental of commercially used immovable property will be available in the future, provided that the following criteria are met: both parties (landlord and tenant) must agree to opt for the application of VAT; and the optional VAT system will only apply to new buildings or existing buildings that will be extensively renovated (renewal construction). If the VAT option is chosen, a VAT recovery adjustment period of 25 years applies. In addition, it will be compulsory to charge VAT on short-term (not more than 6 months) rental of immovable property, with the exception of immovable property used for habitation and for activities of a socio-cultural nature.

Bulgaria:[v] On March 16, 2018, Bulgaria published amendments to the VAT Act in the official gazette. According to the amendments, producers and distributors of sales management software (related to the issuance of cash receipts) will be required to declare information on the software products to the Bulgarian tax authority who will maintain a public register with the declared software products. The persons using such software will be required to use only products that are included in the register of the tax authority. Companies that use a software product that is not included in the tax authority's list could be subject to a penalty of BGN 5,000 ($3,016) to BGN 10,000 ($6,033) as well as sealing of the commercial premises for a period of up to 30 days. The new requirements are not applicable for integrated automated business management systems and electronic fiscal memory systems. Finally, the amendments explicitly provide that producers/distributors of sales management software (related to the issuance of cash receipts) can only be persons established in the European Union.

Brazil:[vi] On April 10, 2018, the Federal Supreme Court of Brazil (Supremo Tribunal Federal, STF) reiterated the decision given on March 15, 2017 in the Extraordinary Appeal 574,706 that ICMS is not part of the taxable base for the federal social contributions (PIS/COFINS). At the same time the STF held that the case would set precedent as the topic under analysis was considered to be of high legal, political, social and economic relevance by the STF. The National Treasury filed an appeal requesting the suspension of the application of the decision, due to an expected decrease in tax revenue of BRL 250 billion ($67.5 billion) resulting from the initial STF's decision. In its April decision, the STF considered that the appeal was solely aimed at postponing the application of the STF's decision and consequently, a pecuniary fine was imposed on the National Treasury.

Cambodia:[vii] On April 3, 2018, Cambodia issued Prakas No. 361 MEF.PrK providing a VAT exemption on basic food products sold domestically by Cambodian taxpayers registered under the self-assessment regime until December 31, 2019. The VAT exempt products include amongst other: pickled/fresh eggs; cooked/uncooked/dried meats (e.g., beef and chicken); cooked/uncooked/dried seafood (e.g., shrimps and prawns); salt; sugar; and condiments (e.g., soy and fish sauces). Food served at restaurants is not covered under this exemption.

Canada: On April 10, 2018, the Finance Minister of Saskatchewan presented the 2018 Budget, which proposes amendments to the Provincial Sales Tax (PST). The Budget eliminates the PST exemption for used light vehicles effective April 11, 2018. However, the Budget restores trade-in allowances so that when trading a vehicle purchasers pay PST only on the difference in price between the value of the trade-in and the total sales price of the vehicle being purchased. The Budget further introduces a CAD 5,000 ($3,880) exemption for individuals that privately purchase a used vehicle and register the vehicle for personal or farm use. Finally the Budget repeals the PST exemption for Energy Star certified appliances effective April 11, 2018. To read a report prepared by the KPMG International member firm in Canada, please click here.

Canada: The KPMG International member firm in Canada prepared a report on upcoming GST/HST and QST final returns that selected listed financial institutions (SLFIs) must prepare. Although SLFIs with a December 31 year-end have until June 30, 2018 to file their GST/HST and QST final return, these returns are complicated and require the reporting of information that may be difficult to extract from financial data systems. By starting to prepare this return early, SLFIs will have time to obtain the required information, and perform a review to identify compliance issues and potential reductions of tax costs.

Colombia:[viii] On March 1, 2018, the tax court of Colombia published Decision 21762 of 2018 regarding the proof that must be provided by taxpayers when applying the zero-rating to exported marketing and intermediary services. According to the tax court, to show that a sale or service has occurred and is zero-rated, the certificate issued by the vendor is required. However, the certificate may be contradicted with other proof that is not prohibited by law. Consequently, even if the taxpayer provides the certificate, if the tax administration submits other proof that contradicts the certificate, the zero-rating cannot be applied. In the tax court's opinion, the economic reality of the operation must be strongly supported to justify the application of the zero-rating. If necessary, the taxpayer must submit proof in addition to certificates that demonstrate the eligibility for zero-rating.

Congo:[ix] On January 3, 2018, Congo published in the official gazette the Finance Law 2018, which, among other matters, includes amendments to the country's VAT law effective January 1, 2018. The Finance Law introduces a VAT exemption on imports of equipment by newly created businesses subject to conditions to be determined in yet-to-be-released regulations. Moreover, the Finance Law suspends the application of VAT on local purchases of goods and services by exporting mining companies, oil companies, and companies that have made large investments during the start-up phase, provided the company presents to the vendor a suspension certificate issued by the tax authority. The Finance Law limits the VAT deduction of fuel to 50 percent if the fuel is not used for generating power or for resale. Finally, mining companies are required to withhold VAT on behalf of public institutions and public companies in which the state holds the entire share capital.

Costa Rica:[x] Costa Rica's Legislative Assembly is currently considering a tax reform proposal, which would replace the country's sales tax with a VAT with an expected standard rate of 13 percent and a reduced rate of 4 percent covering specific goods and services, including healthcare and education services. Basic commodities would be VAT exempt. Taxpayers would be allowed to deduct VAT incurred on goods and services destined for use in the performance of taxable transactions if the deduction is supported by relevant evidence, e.g., corresponding invoices, proof of payment of VAT in customs, and documents issued by the taxpayer showing discounts granted to customers. Under the proposal, domestic public or private entities that process credit or debit card payments would act as VAT withholding agents in specific circumstance, e.g., with respect to payments made by Costa Rican consumers to nonresident vendors.

Czech Republic:[xi] The Czech Financial Administration recently reminded taxpayers who rent a property through a website, as well as those who provide passenger transportation services via a ridesharing platform, are required to account for and pay VAT on any fees paid to platforms for the listing of services. If such taxpayers are currently unregistered for VAT, they are now required to register.

European Union:[xii] On March 27, 2018, the ECJ published the Opinion of its AG in *SIA 'E LATS'*, Case C-154/17, regarding the notion of second hand goods and the notion of precious metals or precious stones in the EU VAT Directive. According to the AG, the EU VAT Directive must be interpreted as meaning that the notion of second-hand goods does not cover used goods acquired by a trader that contain precious metals or precious stones which are resold principally for the extraction of those precious metals or precious stones.

European Union:[xiii] On April 19, 2018, the EU launched a new version of its Mini One-Stop Shop (MOSS) portal providing comprehensive and easily accessible information on VAT for telecom, broadcasting and e-services providers and explaining how the MOSS can be used to declare and pay VAT on these services.

Hungary:[xiv] On March 19, 2018, the EU authorized Hungary to continue requiring purchasers to self-assess VAT under reverse charge mechanism for sales of staff by employment agencies to help combat value-added tax avoidance until December 31, 2020. The decision states that a number of temporary employment agencies have been found to be engaging in fraudulent activities by providing services without paying the applicable VAT to the tax authorities. Hungary has reported a reduction in the number of employment agencies since the introduction of the reverse charge mechanism suggesting a cleansing of the market.

Ireland:[xv] On April 23, 2018, the tax authority of Ireland announced it had updated three VAT guides. The guide relating to the VAT treatment of education and vocational training has been amended to reflect changes made to legislation in Finance Act 2017. These were to ensure exemption for such services. The VAT and solicitors guide has been amended to remove obsolete and duplicate material. The guide on the VAT treatment of medical sales has also been updated to remove duplicate material. In addition, the tax authority published a new guidance on the VAT treatment of staff secondments to companies established in Ireland from related foreign companies that was separately set out in Revenue eBrief No. 14/2007.

Isle of Man:[xvi] On March 28, 2018, the Treasury of the Isle of Man announced the entry into operation of the Value Added Tax Act 1996 (Fulfilment Businesses) Order 2018. The Order introduces the Fulfilment House Due Diligence Scheme. In particular, third country goods fulfilment businesses are required to be registered by the Treasury if: the goods are imported from a country outside the EU; the goods are owned by, or stored on behalf of, someone established outside the EU; and the goods are being offered for sale and have not been sold in Isle of Man before. Taxpayers must register by: June 30, 2018, if the business starts trading before April 1, 2018; September 30, 2018, if the business starts trading between April 1, 2018 and June 30, 2018; and October 1, 2018 or before the day on which the trade starts (whichever is later), if the business starts trading after July 1, 2018.

Kazakhstan:[xvii] On April 5, 2018, the tax authority of Kazakhstan clarified that taxpayers will have the possibility of opting for the alternative method of obtaining VAT refunds by using separate VAT bank accounts (control VAT accounts) effective January 1, 2019. Taxpayers who opt for the alternative method and open the control VAT accounts will be entitled to a refund of excess VAT (previously confirmed by a tax audit) within 15 days. However, this alternative method is available only for certain categories of taxpayers who are also members of the e-invoicing system. According to the tax authority, control VAT accounts opened in Kazakhstani banks may also be used in the following situations: for VAT payments to the state budget, including VAT on imports; for VAT payments to vendors of goods; and for VAT amounts paid by beneficiaries of taxable transactions. However, control VAT accounts cannot be used for a VAT refund by taxpayers applying the simplified tax regime.

Kenya: On April 10, 2018, Kenya published in the official gazette the Tax Laws (Amendment) Bill 2018 which proposes moving the following items from a zero rate to exempt status: taxable imports or purchases by a licensed special economic zone (SEZ) operator, developer or enterprise for use in the construction of a minimum of 5,000 housing units or of a hotel or conference facilities; the transfer of a business as a going concern by a VAT-registered person to another registered person; the sale of natural water, excluding bottled water, by the government, any political subdivision of the government or a person approved by the Cabinet Secretary responsible for water development; protective apparel, clothing accessories and equipment for use in registered hospitals and clinics; fire-fighting apparel, clothing accessories and equipment for use by local authorities; taxable goods sold to marine fisheries and fish processors upon recommendation of the relevant state department; inputs or raw materials (either produced locally or imported) sold to pharmaceutical manufacturers in Kenya for manufacturing medications, subject to approval by the Cabinet Secretary to the National Treasury in consultation with the Cabinet Secretary for Health; liquefied petroleum gas; milk and cream, not concentrated and not containing added sugar or other sweeteners; maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour; agricultural pest-control products; goods imported by passengers arriving from places outside Kenya, including returning residents, subject to the specified limitations and conditions; taxable goods for emergency relief purposes sold to or imported by the government or its approved agent, a non-governmental organization or a relief agency authorized by the Cabinet Secretary responsible for disaster management; and medications of prescribed tariff numbers. To read a report prepared by the KPMG International member firm in Kenya, please click here.

New Zealand: The New Zealand Inland Revenue Department recently updated its guide on how GST works and how the majority of businesses manage their GST obligations.

Pakistan: The KPMG International member firm in Pakistan has prepared a report on Pakistan's Finance Bill 2018, which includes proposed amendments to the country's sales tax.

Poland:[xviii] On April 5, 2018, the Supreme Administrative Court of Poland held that eat-in meals in fast-food restaurants are subject to the reduced VAT rate of eight percent and not the reduced rate of five percent because the restaurant provides a service and does not sell a good.

Romania:[xix] Effective April 1, 2018, Romania increased its VAT registration threshold from EUR 65,000 ($76,500) to EUR 88,500 ($104,000).

Russia:[xx] On April 4, 2018, the State Tax Service of Russia (STS) clarified that if a taxpayer receives an economically justified benefit for his company, derived from the repairing or construction of public communal (state-owned) facilities (e.g., roads), that taxpayer may claim the VAT deduction for the costs incurred.

Russia:[xxi] On April 9, 2018, the Ministry of Finance of Russia (MOF) published draft Regulation No. 02/07/04-18/00079802 which proposes to reduce the VAT and customs duties exemption thresholds for online purchases of low-value imported goods for personal use from EUR 1,000 ($1,193) to EUR 500 ($596) effective July 1, 2018 and from EUR 500 to EUR 200 ($238) effective January 1, 2019. The draft Regulation implements a decision of the Eurasian Economic Council which is binding for all member states of the Eurasian Economic Union (i.e., Armenia, Belarus, Kazakhstan, and Kyrgyzstan, and Russia).

Saudi Arabia:[xxii] On April 26, 2018, the General Authority of Zakat and Tax of Saudi Arabia (GAZT) recently released new guidance on the VAT treatment of imported and exported goods and services under the Gulf Cooperation Council's (GCC) harmonized VAT framework. Recall, last year the GCC member states (Bahrain, Qatar, Kuwait, Oman, Saudi Arabia, and the United Arab Emirates) agreed to introduce a harmonized VAT. However, as of January 1, 2018 only the United Arab Emirates and Saudi Arabia have introduced VAT. The new guide clarifies, among other things, the transitional provisions imposed on the importation of goods and services between GCC countries, as well as how to deduct VAT incurred, and the taxable obligations.

Singapore: The Inland Revenue Authority of Singapore (IRAS) has recently updated the following GST e-Tax guides: Guide for Property Developer (Third Edition) and Assisted Compliance Assurance Programme (ACAP) (Ninth Edition). The ACAP was introduced to fassist GST-registered businesses to better manage their GST risks. ACAP provides guidance for GST-registered businesses to undertake a holistic review of the effectiveness of their internal control systems as it relates to GST compliance in collaboration with IRAS. Participation in an ACAP review provides taxpayers with certain benefits.

South Africa: The KPMG International member firm has prepared a report on the consequences of the recent VAT rate changes in South Africa on retention payments that are often included in agreements within the construction industry.

Surinam: On April 15, 2018, the Ministry of Finance of Surinam announced that the introduction of VAT, which was scheduled for July 1, 2018, has been deferred to a later to be determined date.

Swaziland:[xxiii] On March 1, 2018, the Minister of Finance of Swaziland presented to the parliament the Budget for 2018/19 which, if approved, would amend the country's VAT law. The Budget proposes to increase the standard VAT rate from 14 percent to 15 percent to align it with the increased VAT rate announced by South Africa and to maintain the "Sekulula VAT Easy" refund system. Moreover, the Budget would impose VAT at the standard rate on the sale of electricity to encourage domestic electricity generation.

Swaziland:[xxiv] On 5 April 2018, the Swaziland Revenue Authority (SRA) announced the imposition of a SZL 50 ($4) administration fee for processing the one percent refund due to importers that use the Sekulula VAT Easy System (the System). The one percent difference which is to be refunded to importers is due to the increase in the standard VAT rate of South Africa to 15 percent while the standard VAT rate of Swaziland remains at 14 percent. The System is a VAT refund administration system that was introduced in 2015 to operationalize a Memorandum of Understanding between the SRA and SARS. It is aimed at easing the cash burden faced by importers bringing goods into Swaziland. Under the System, importers allow the SRA to make claims on their behalf for VAT refunds due on commodities purchased in

South Africa and exported from that country; the SRA then utilizes these refunds to clear any import tax that would have been due upon importation of those commodities into Swaziland.

Sweden:[xxv] The Swedish Government recently proposed a new licensing and tax regime for the gambling sector. It is intended to regulate the activities of remote gambling firms providing services in Sweden from other jurisdictions. If approved, the new regime would be effective January 1, 2019. According to the proposal, online gambling firms would need to apply for a license to provide services in Sweden and submit to new regulations on consumer protection. Licensed firms would also pay an 18 percent tax on gross gaming revenue.

Turkey:[xxvi] On March 28, 2018, Turkey published in the official gazette Omnibus Law No. 7103 which amends the country's VAT law. The Law introduces a temporary VAT exemption applicable until December 31 2019 for new machinery and equipment deliveries made to taxpayers that (1) hold an industry registry certificate exclusively in the manufacturing industry; (2) engage in R&D, innovation and design activities in technology development zones and specialized technology development zones; (3) engage in such activities in R&D and design centers; and (4) operate research laboratories under the scope of Law No. 6550 exclusively for such activities. In addition, the Law clarifies that transactions involving the leasing of areas designated as cafeterias in schools established by the Ministry of National Education by parent-teacher associations are exempt from VAT. Finally, goods and services sold in connection with water and sewage treatment, natural gas, electricity and communication installations, road constructions for organized industrial zones and small industrial estates, and the construction of establishments in small industrial estates are exempt from VAT.

Uganda:[xxvii] On April 3, 2018, the Minister of Finance, Planning and Economic Development of Uganda presented the VAT (Amendment) Bill 2018 which, if approved, would amend the country's VAT law. The Bill would specify on which sales made to government ministries, departments or agencies VAT is due. In addition, the Bill would amend the definition of electronic services to include websites, web-hosting or remote maintenance of programs and equipment, software, images, texts and information, access to databases, self-education packages, music, films, games of chance, political, cultural, artistic, sporting, scientific, and other broadcasts. The definition of educational services would be amended to mean locally produced materials which are suitable for use in public libraries or for educational services prescribed by the Minister by regulation. In addition, the Bill proposes to impose filing requirements on any person, whether or not that person is a taxable person, on his own behalf or as an agent or trustee of another person, subject to the discretion of the Commissioner General of the Uganda Revenue Authority (URA). Moreover, taxes due would remain payable regardless of whether an objection has been filed against an assessment. The Bill would further introduce the concept of VAT withholding agents who would be required to withhold 50 percent of the VAT due before making a payment for a taxable sale and to remit the VAT so withheld to the URA. In addition, the Bill would cap the interest due and payable on overpayments and late refunds to the principal tax. Finally, the Bill would exempt several transactions including the provision of movie productions.

Ukraine:[xxviii] On April 5, 2018, the Ukrainian State Fiscal Service (SFS) issued Guidance Letter 1436/6/99-99-15-03-02-15/IPK in which it clarified that if a Ukrainian resident acquires services from a nonresident that involve the leasing of immovable property located in Ukraine, the resident recipient of those services must self-assess VAT on those services. The resident must determine the amount of VAT due on the transaction on the earlier of the date payments for the leasing services are made and the date that a document confirming the provision of the services is executed.

United Kingdom: On March 27, 2018, HMRC provided an update to the Public Accounts Committee on efforts to tackle online VAT fraud and errors in which HMRC responded to the five recommendations set out by the Committee in December 2017.

Uzbekistan:[xxix] On March 28, 2018, Uzbekistan launched consultations on the tax reform package, which, if approved, would amend the country's VAT law. According to the proposal, the standard VAT rate would be reduced from 20 percent to 12 percent. However, the obligation to pay VAT would be extended to all categories of taxpayers, including individual entrepreneurs with turnover of over UZS 1 billion (about $124,500). The proposal would further create an efficient VAT offsetting system; clarify the VAT base; introduce a VAT exemption for sales of agricultural products and some foodstuffs produced in Uzbekistan; revise or abolish ineffective VAT benefits, including those applicable to imports; and introduce an electronic VAT administration system including electronic VAT invoices.

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. CCH, Global VAT News & Features, Australia Passes Property GST Compliance Reforms (Mar. 30, 2018).

ii. **Belarus** – VAT exemption for sales of unregistered pharmaceuticals – clarifications issued (Apr. 10, 2018), News IBFD.

iii. CCH, Global VAT News & Features, Belgian Court Annuls Online Gaming VAT (Mar. 29, 2018).

iv. **Belgium** – Option to charge VAT on letting of immovable property (Apr. 12, 2018), News IBFD.

v. **Bulgaria** – Amendments to VAT Act gazetted (Mar. 27, 2018), News IBFD.

vi. **Brazil** – PIS and COFINS taxable base – ICMS exclusion confirmed and National Treasury's appeal rejected (Apr. 17, 2018), News IBFD.

vii. **Cambodia** – VAT exemption on basic food products (Apr. 30, 2018), News IBFD.

viii. **Colombia** – Tax Court rules on proof required to support application of zero VAT rate (Apr. 13, 2018), News IBFD.

ix. **Congo (Dem. Rep.)** – Finance Law 2018 published (Mar.29, 2018), News IBFD.

x. Slim Gargouri, Costa Rica Fast-Tracks Tax Bill, Tax Analysts (Mar. 30, 2018).

xi. CCH, Global VAT News & Features, Czech Republic Confirms Sharing Economy Tax Obligations (Apr. 11, 2018).

xii. **European Union**; Latvia – ECJ Advocate General's opinion (VAT): E LATS (Case C-154/17) – second-hand goods; precious metals or stones to be extracted from sold articles (Apr. 10, 2018), News IBFD.

xiii. **European Union** – European Union launches new website for Mini One-Stop Shop (Apr. 20, 2018), News IBFD.

xiv. CCH, Global VAT News & Features, Hungary Authorized to Apply Reverse Charge On Supplies Of Staff (Mar. 29, 2018).

xv. CCH, Global VAT News & Features, Irish Revenue Updates And Issues New VAT Guidance (Apr. 24, 2018).

xvi. **Isle of Man** – Fulfilment House Due Diligence Scheme – Order made (Apr. 3, 2018), News IBFD.

xvii. **Kazakhstan** – Alternative method for VAT refund – clarifications (Apr. 26, 2018), News IBFD.

xviii. BNA, McDonald's VAT Stance in Poland Quashed in Court Decision (Apr. 9, 2018).

xix. **Romania** – Higher VAT exemption threshold for small businesses enacted (Mar. 28, 2018), News IBFD.

xx. **Russia** – VAT deduction for costs incurred for repairing public communal facilities – STS clarifications (Apr. 18, 2018), News IBFD.

xxi. **Russia** – Draft amendments to lower VAT and customs duties exemption thresholds for online purchases (18 Apr. 2018), News IBFD.

xxii. CCH, Global VAT News & Features, Saudi Arabia Issues VAT Guidance For Cross-Border Traders (Apr. 30, 2018).

xxiii. **Swaziland;** Southern African Customs Union – Budget for 2018/19 – presented to parliament (Apr. 16, 2018), News IBFD.

xxiv. **Swaziland** – Sekulala VAT Easy System – processing fee introduced (Apr. 16, 2018), News IBFD.

xxv. CCH, Global Daily Tax News, Sweden Proposes Gaming Revenue Tax (Apr. 10, 2018).

xxvi. **Turkey** – Omnibus Law No. 7103 gazetted – VAT measures (Apr.6, 2018), News IBFD.

xxvii. **Uganda** – Tax Bills for 2018 – presented to Parliament (Apr. 30, 2018), News IBFD.

xxviii. Iurie Lungu, Ukraine Clarifies Taxation of Nonresident's Leasing Services, Tax Analysts (Apr. 17, 2018).

xxix. Iurie Lungu, Uzbek Government Committee Releases Draft Tax Reform (Apr. 17, 2018)