KPMG

Inside Indirect Tax

November 2018

About this Newsletter

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

Global Rate Changes

New Caledonia:[i] On October 1, 2018, New Caledonia fully implemented the new general consumption tax (*taxe générale à la consommation*, TGC). The TGC had been applied at reduced rates since April 1, 2017. Effective October 1, 2018, the standard rate is increased to 11 percent. The reduced rate of 6 percent applies to new home permits, hairdressers, plumbers and cleaners, while the super reduced rate of 3 percent applies to ham, honey, wool, books, drugs, film theatre tickets and photovoltaic panels. The following transactions are exempt: butter, bottled water, acquisitions of building land for first-time buyers, services provided for school education purposes, and retirement homes. Finally, the following transactions are subject to an increased rate of 22 percent: pet food, cosmetics, cars, computers and toys.

Romania:[ii] Effective November 1, 2018, Romania applies the reduced VAT rate of 5 percent to accommodations provided by hotels and similar establishments, including the letting of camping sites; restaurant and catering services, with the exception of alcoholic beverages other than beer; admission to amusement and recreational parks; and the right to use sporting facilities for sporting events.

Thailand: On October 10, 2018, Thailand published Decree No. 30/2018 in the official gazette. The Decree extends the reduction of the VAT rate to 7 percent (instead of 10 percent) until September 30, 2019.[iii]

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The Americas

United States: Online Educational Courses not Subject to Sales Tax in Texas

The Texas Comptroller recently determined that a taxpayer's charges for access to online educational courses were not subject to sales and use tax. The taxpayer at issue offered an online education platform that provided instruction by streaming pre-recorded lectures taught by professors from accredited universities. The courses included access to syllabi, quizzes, modules, online discussion forums that enabled enrolled students to discuss the course. Access to these courses was usually free, but the taxpayer charged for access to certain "Signature Track" courses for which a student could obtain credit at a partner university.

Under Texas law, sales tax is imposed on sales of enumerated taxable services, including cable television services and information services. The Comptroller first examined whether the taxpayer's courses were taxable as cable television services. Cable television services are services that "distribute video programming with or without the use of wires . . . to paying customers," and, by Comptroller rule, include "streaming video programming provided via the Internet … video on demand services or subscription services that allow the purchaser to choose from a library of available content." The Comptroller determined that, although the definition of cable television services was broad enough to include the taxpayer's online courses, because the taxpayer's courses were primarily instructional in nature, they were not taxable cable television services. In other words, the taxpayer was providing nontaxable educational services, not taxable cable television services. Second, the Comptroller examined whether the taxpayer's services were taxable information services. Information services are services that "furnish general or specialized news or other current information" or "electronic data retrieval or research." Examples of information services include newsletters, real estate listings, and mailing lists. The Comptroller concluded that the taxpayer's services were not information services, as the taxpayer did not compile information for customers, but provided instruction and verified that enrolled students were competent in the subject matter taught in a course. For more information, click here.

Argentina: Application Decree to Previously Enacted VAT Amendments Published

On September 11, 2018, Argentina published Decree 813/2018 (the Decree) in the official gazette. The Decree implements, effective September 12, 2018, the taxation of services and works of construction rendered within Argentina by nonresidents, which was introduced into the VAT Law by Law 27,346 at the end of 2017 but had not yet been implemented. The Argentinean residency status of nonresident providers of such services should be determined based on the income tax rules. Service providers that are not resident in Argentina under those rules will not be considered nonresidents

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for VAT purposes if they are active in Argentina through a fixed place of business. In such a case, they will be subject to tax obligations. If service providers are considered nonresidents with no fixed place in Argentina, the user of the service or work of construction or the intermediaries with residence in Argentina should be liable to self-assess VAT under the reverse charge mechanism. The tax due must be paid within 10 working days after the service is completed, and the tax paid will be creditable in the same month as that in which the tax is paid.

The Decree further clarifies the VAT refund resulting from the purchase of capital goods (with the exception of vehicles) and the VAT refund requested by utility companies where the VAT incurred on expenditures cannot be offset against the VAT collected on sales. The Decree establishes that the refunded VAT will be considered definitive if the VAT collected on sales for the following month less the VAT incurred on purchases is equal or exceeds the amount reimbursed. If the amount reimbursed exceeds that difference, the refund will be considered definitive up to that difference and the remaining amount is considered provisional. The comparison between the reimbursed amount and the amount resulting from the VAT collected on sales less the VAT incurred on purchases will be made during a 60-month period. If, in the final month of that period, a provisional refund amount exists, the taxpayer is required to pay such amount plus interest to the tax authority. However, this amount may be credited against VAT collected on sales in the month in which it is paid.

Source: Argentina – General resolution on VAT – amendments published (October 16, 2018), News IBFD.

Brazil: Taxpayer Compliance Program in Sao Paulo Implemented

On September 27, 2018, the tax authority of the state of São Paulo published Resolution SF No. 105 regarding the taxpayer compliance program that was introduced in April 2018. (For KPMG's previous discussion the taxpayer compliance program, please click here.) The initiative is intended to increase tax receipts without increasing the burden on taxpayers by strengthening relationships between taxpayers and the tax authority. The taxpayer compliance program is known as "*Nos Conformes*" and offers certain incentives and benefits for taxpayers. The Resolution implements the first testing phase of the program from October 17, 2018 to February 27, 2019. During this first phase, the tax authority will evaluate only timely compliance with the primary filing obligation and adherence to any requirements for other information to be transmitted by the taxpayer. Taxpayers will be assigned a grade, in descending order from "A+" to "E." Some taxpayers may be classified as "NC" (unclassified) in certain situations if the taxpayer does not have business operations for a specific period based on information in the state value added tax (ICMS) taxpayer registry of the state of São Paulo. In assigning taxpayers a grade, the tax authority will take into account information such as the taxpayer's history of timely filing of tax documents (for instance, to receive a grade of A+, the taxpayer's compliance must be 98 percent). During the testing phase of the program, there will be no public disclosure of a taxpayer's classification. To read a report (in Portuguese) prepared by the KPMG international member firm in Brazil, please click here.

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Brazil: Definition of Export of Services for Federal Taxes Clarified

On October 16, 2018, the federal tax authority of Brazil published Normative Ruling 176/2018 clarifying the concept of an export of services for federal tax purposes. The definition of an export of services for federal tax purposes is particularly relevant in determining when the closing of foreign exchange transactions by Brazilian service exporters may be eligible for the zero rate under the financial transactions tax (IOF), and for determining when revenues earned by Brazilian companies from the export of services may be exempt from social contributions taxes (PIS and COFINS). According to the Normative Ruling, an export of services occurs if the service provider operates from the domestic market using his own means available in Brazil for providing a service to a recipient operating in a foreign market and if the benefit of the service is received in a foreign market. The service provider will be considered operating from the domestic market if he initiates the provision of the service in Brazil by undertaking preparatory acts prior to the material rendering of the service, such as planning, identification of the indispensable expertise or the mobilization of the material and intellectual resources necessary for the service. The service recipient will be considered operating in the foreign market if a request for the service occurs abroad and if it must be satisfied outside the national territory.

Finally, the Normative Ruling clarifies when the benefit of a service is received in Brazil or in a foreign market. If the service recipient operates in a foreign market and the services relate to real property or an asset that has been incorporated into real property, the benefit of the service is deemed to be received in the territory where the property is located. If the service recipient operates in a foreign market and the services relate to a movable asset for which it has been demonstrated that the movable asset will be used only abroad, the benefit of the service is deemed to be in the territory where the asset is to be used. If the service recipient operates in a foreign market and the services relate to a movable asset that does not necessarily have a connection with a certain territory or the services do not relate to any physical asset, the benefit of the service will be deemed to be received (1) where a relevant part of the service must necessarily be carried out with the physical presence of the provider; (2) where the indirect presence (by subcontracting) or virtual presence (by compulsory access to local electronic services without which its direct or indirect physical presence would become obligatory) of the provider is indispensable in cases where the physical presence of the provider is not required; and (3) where the service recipient is domiciled if no element of territorial connection is related to the result of the service.

Source: Brazil – Export of services defined by tax authorities (October 22, 2018), News IBFD.

Colombia: VAT Registration Guidance for Nonresident Service Providers Published

On October 19, 2018, the tax authority of Colombia (DIAN) published Resolution No. 51, which establishes the procedure through which foreign digital service providers should comply with their VAT obligations. The Resolution follows the publication on August 3, 2018 of Decree 1415,

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which requires nonresidents to register for VAT when providing services to final consumers in Colombia. (For KPMG's previous discussion on the draft Decree, please click here.) The resolution states that nonresident service providers must register for VAT online, providing the following details: (1) the type of service provided; (2) the country from which the service is provided; (3) the web page from which the services are provided, if applicable; (4) the address of the service provider; (5) the email address of the service provider; (6) a contact telephone number and email address for the provider; (7) name of the company's legal representative as well as an identification document of the legal representative (e.g., passport); (8) a written statement by the legal representative of the company that the company wants to be registered for VAT purposes; and (9) a written statement that the company will comply with Colombia's electronic signature mechanism (IFE).

The nonresident service provider will receive a Colombian tax identification number and electronic signature right. Nonresidents registered for VAT purposes are required to submit VAT returns every two months, although that requirement will be waived if a nonresident has not undertaken any taxable transactions with Colombian customers during the period at issue. The value of relevant transactions and the corresponding VAT amounts (other than those denominated in US dollars) should be included in the VAT return in Colombian pesos based on the exchange rate applicable on the date of submission of the VAT return. Nonresident service providers will be allowed to settle their VAT obligations through a foreign bank account.

Nonresident service providers are temporarily allowed to use the invoice systems and documents applicable in their country of residence until the DIAN releases specific invoicing requirements. However, they should maintain an auxiliary register for their operations in Colombia. The Resolution further establishes that the following circumstances are indicative of a customer's Colombian tax residency: (1) the place of issuance of the customer's credit or debit card and (2) the place where the bank account used for the payment is located. As a consequence, the Resolution requires nonresident service providers to request that payment be made using a Colombian credit or debit card or a Colombian bank account if the internet protocol address of the device used by the customer is in Colombia or the subscriber identification module card used for the customer's mobile service is Colombian. Nonresident vendors must advertise or state that prices are inclusive of VAT.

The resolution authorizes nonresident service providers to elect the withholding tax mechanism. DIAN published a draft resolution proposing a collection mechanism for VAT on electronic digital services rendered by nonresident service providers to Colombian residents. According to the draft resolution, electronic digital services are mainly related to audiovisual services; services provided through mobile app distribution platforms; online publicity services; and online training services. Financial institutions that issue debit, credit and pre-paid cards would act as collection agents and charge the corresponding VAT to the cardholder/recipient of the services. The collection mechanism is not expected to affect the final amount that the service providers receive for providing the electronic digital services. In addition, the draft resolution proposes requesting DIAN to issue a list of

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nonresident service providers that will be subject to this special VAT collection mechanism and introducing an obligation for the nonresident service providers to collect, pay and file the VAT returns while the VAT collection mechanism is implemented.

Source: Slim Gargouri, Colombia Issues Regulations for Nonresident VAT Regime, Tax Analysts (October 31, 2018); Colombia – VAT on electronic digital services provided from abroad – draft resolution issued (October 24, 2018), News IBFD.

Uruguay: Tax Payment Obligations for Nonresident Digital Service Providers Clarified

On October 11, 2018, the Directorate General of Taxation published Resolution No. 9270/2018 on the tax payment obligations of nonresident providers of audio-visual content and mediation and intermediation through digital means. The resolution implements Uruguay's new sourcing rules for digital services. (For KPMG’s previous coverage of these changes, please click here.) According to the Resolution, when the services mentioned above are provided to business customers, a withholding obligation generally applies; when provided to individual customers, the nonresident vendor is required to register for VAT and income taxes in Uruguay.

According to the Resolution, nonresident service providers subject to the new rules may opt to settle their tax obligations in U.S. dollars instead of Uruguayan pesos (election applies for at least three years), provided that all their taxable transactions are documented and denominated in U.S. dollars, and these nonresident taxpayers do not have any other taxable activities in Uruguay or, if they do, these other taxable activities have already been subject to withholding tax. While nonresident taxpayers are required to submit only annual VAT returns, VAT payments are due on a quarterly basis. The Resolution further clarifies that the payment for the period July – September 2018 is due by December 10, 2018, while the second payment for the period October – December 2018 is due in January 2019. Finally, the Resolution clarifies that nonresident taxpayers are not required to notify their customers that the services provided are subject to VAT if the invoice issued states that VAT was applicable. To read a report prepared by the KPMG International member firm in Uruguay, please click here.

Source: Orbitax, Uruguay Publishes Resolution on Tax Payment Obligations of Non-Residents Supplying Digital Services (October 31, 2018).

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Europe, Middle East, Africa (EMA)

Belgium: Optional VAT Regime for Rental of Immovable Property Introduced

On October 25, 2018, Belgium published a law in the official gazette which introduces an optional VAT regime for the lease of immovable property effective January 1, 2019. (For KPMG's previous discussion on the earlier proposal of the law, please click here.) The option to rent with VAT is subject to two cumulative conditions. The first condition is that the rent should relate to a building or part of a building. The application of the option on the rent of a part of a building is important because the option can be applied per individual rental agreement. It will therefore be possible that a part of a building is rented to a tenant without VAT, while another part of the building is rented to another tenant with VAT, provided that the parties have opted for the VAT regime. The second condition is that the building is rented out to a taxpayer who fully uses the building for the purposes of his economic activity. In addition, the landlord and the tenant must explicitly opt for the application of the VAT regime. A specific tax clause in the rental agreement, which confirms the will of the parties to exercise the option, should be sufficient to demonstrate to the tax authority that the option was jointly exercised by the landlord and the tenant.

Except for warehouses, the optional regime will only apply to buildings for which the VAT on the construction or full renovation was not due prior to October 1, 2018. Only the actual material works in the strict sense (construction/renovation works) should be taken into account. As part of the introduction of the optional regime, the scope of the existing mandatory taxation of warehouse rents will be limited. The rental of a warehouse for the storage of goods will only be subject to VAT if the tenant is not a taxpayer. If the tenant is a taxpayer, the optional regime will apply, and the parties will have the choice to subject the rent to VAT. At the same time, a less stringent definition of warehouse is introduced. A warehouse is defined as a building that is primarily (i.e., for more than 50 percent in terms of surface or volume) used for the storage of goods. However, no more than 10 percent of the warehouse, again in terms of surface of volume, may be used for sales activities. In addition, the law extends the VAT deduction adjustment period from 15 years to 25 years for buildings that are rented out with VAT under the optional regime. The law further introduces a minimum tax base that is equal to the normal value for rent payments if the landlord and the tenant are related parties, and the tenant does not have a full right to deduct VAT.

Finally, the law introduces a mandatory taxation for short term rentals (i.e., rentals of less than months) both in a business-to-business and business-to-consumer context. By derogation, the rental of dwellings, of buildings intended for activities of socio-cultural nature, short-term rents to non-profit organizations and to private individuals using the property for purposes

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other than those of their economic activity will fall outside the scope of the mandatory taxation. To read a report prepared by the KPMG International member firm in Belgium, please click here.

European Union: EU-Member States Reach Agreement on Key VAT Proposals

On October 2, 2018, the European Union Economic and Financial Affairs Council (ECOFIN) reached important political agreements on the four significant VAT subjects, two of which have already formally adopted.

The ECOFIN reached an agreement on the proposal to generalize the requirement for the purchaser to self-assess VAT under the reverse charge mechanism on certain domestic sales. The reverse charge mechanism has often been used in specific sectors to tackle VAT fraud (e.g., CO^2 emission rights, cell phones, and laptops). According to the proposal, EU Member States that are most severely affected by VAT fraud will be allowed to apply the reverse charge on all domestic sales of goods and services above a threshold of EUR 17,500 ($20,034) per transaction. Once formally approved by the European Council, the measure would temporarily apply until June 30, 2022 and the Member States wishing to apply it will have to demonstrate among other things that they are heavily affected by VAT fraud and that appropriate and effective electronic reporting requirements are in place.

The ECOFIN further reached an agreement on four "quick fixes" to alleviate the VAT administrative burden in specific situations, while EU is working on a more fundamental change to intra-EU VAT rules. Once approved, the quick fixes will be effective January 1, 2020 and introduce a simplified, uniform treatment for call-off stock arrangements, in which a vendor transfers stock to a warehouse at the disposal of a known purchaser in another Member State. Such treatment aims at preventing the vendor from having to register for VAT in all Member States in which such stocks are held. The quick fixes will also make being in the possession of a valid VAT number of the customer a formal condition for the zero-rating of intra-EU sales of goods. The EU will further introduce a uniform criteria to enhance legal certainty in determining the VAT treatment of chain transactions and establish a common framework for the documentary evidence required to claim a VAT exemption for intra-EU sales.

On October 16, 2018, the EU published Council Regulation (EU) 2018/1541 in the official gazette. The Regulation aims to enhance cross-border cooperation in tackling VAT fraud. The new Regulation makes it more difficult for Member States to refuse administrative enquiries of other Member States and facilitates the active participation of the tax auditors of a Member State to an enquiry performed within another Member State. The regulation also increases and facilitates the automatic exchange of information (e.g., more standard forms, access to national vehicle registrations, etc.) and reinforces the efficiency of international network of tax authorities (Eurofisc). Finally, the Regulation formalizes the cooperation between Member States and the European Anti-Fraud Office (OLAF).

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On November 6, 2018, the European Council adopted a directive allowing alignment of VAT rules for electronic and physical publications. From now on, Member States will be able to apply reduced, super-reduced or zero VAT rates to electronic as well as print publications. To read a report prepared by the KPMG International member firm in Luxembourg please click here, and for a report prepared by the KPMG International member firm in Germany, please click here.

European Union: Branch Must Apply Cross-Border VAT Recovery Apportionment Computation According to Advocate General

On October 3, 2018, the Court of Justice of the European Union (ECJ) published the Opinion of its Advocate General (AG) in *Morgan Stanley & Co International*, Case C-165/17, regarding the VAT recovery of costs incurred by a fixed establishment that are also used for the activities of a foreign head office. In the case at hand, Morgan Stanley has its head office in the United Kingdom (UK head office) and a branch in France (French fixed establishment). The French fixed establishment performs taxable banking and financial services for its French clients as it has opted to tax financial services as permitted under the French VAT law. In addition, the French fixed establishment performs activities for the UK head office, which are not subject to VAT because these take place within the same legal entity. The French fixed establishment fully recovered the VAT on the costs it incurred, including those costs incurred and used for activities of the head office. Morgan Stanley believed that the activities for the UK head office had to be ignored, which meant that for the purposes of calculating the right to VAT recovery, only the French-sourced gross receipts remained, which allowed them to recover VAT incurred on expenditures because they were subject to VAT. The French tax authority argued that the French fixed establishment's VAT recovery on costs must be corrected insofar as these costs also included those used for activities performed by the UK head office. However, the UK head office does not have full VAT recovery entitlement, but applies an apportionment of its VAT recovery right.

The AG assumed that the UK head office and the French fixed establishment constitute a single taxpayer for VAT purposes. According to the AG, the activities (i.e., recharges of cost) by the French fixed establishment to the head office are not relevant for VAT purposes. However, based on established case law, the VAT recovery right for such disregarded activities cannot automatically be refused. The AG further emphasized that it is wrong to determine the recovery right for costs exclusively used by the head office (category 1 costs) and costs used by the head office and the fixed establishment (category 2 costs) solely on the basis of the activities of the French fixed establishment as this does not correspond to the ultimate destination or the use of the expenditure. The AG indicated that an apportionment recovery rate must be determined which takes into account the activities of both the UK head office and the French fixed establishment. This pro rata recovery rate should apply to both categories of costs.

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The AG briefly explained how such an apportionment recovery rate must be determined. According to the AG, the gross receipts of the French fixed establishment must be included in full in the gross receipts that gives a right to recover VAT. The AG appears to use a double test with regard to the gross receipts of the UK head office. In the apportionment recovery computation, the head office's gross receipts are only regarded as gross receipts that give rise to VAT recovery if these gross receipts would give a right to recover VAT under both the UK VAT rules and the French VAT rules. This double test applies to both category 1 and 2 costs. If those purchases are solely used for VAT exempt or non-economic transactions in the UK, then the French fixed establishment is not entitled to deduct the VAT. However, if there is mixed use, the apportionment recovery computation has to be taken into account.

Finally, the AG qualifies the impact of the ECJ judgement in *Le Crédit Lyonnais,* Case C-388/12 (November 14, 2013), in which the ECJ held that a French head office was not allowed to include gross receipts originating from foreign fixed establishments in the apportionment recovery computation. According to the AG, the apportionment recovery computation should not always be geographically constrained. The AG argued that an important difference between *Morgan Stanley* and *Le Crédit Lyonnais* is that in the latter the relationship between the costs of the head office and the gross receipts of a fixed establishment is not certain. This is certain in *Morgan Stanley*. Another difference between the two cases is that *Le Crédit Lyonnais* was specifically rendered in the context of the possibility, as implemented by France, to determine the apportionment recovery right on the basis of sectors. A sector based approach does not appear to apply in *Morgan Stanley*.

Using the aforementioned double test in cross border situations can have a disruptive effect. Based on the AG's Opinion, for the purposes of VAT recovery entitlement it makes a difference in which Member State the costs arise. In this respect, part of a potential VAT recovery limitation can probably be avoided by directly incurring the costs in the country in which the establishment is located. After all, if the costs in the case at hand had arisen directly in the United Kingdom, the VAT recovery entitlement would only have to be assessed on the basis of UK standards. Taxpayers are not always free to choose the location in which costs are reported for VAT purposes, but this can to some extent be managed. The ECJ must now decide whether to follow the AG's nonbinding opinion. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

European Union: General Costs Do Not Need to Be Included in Selling Price for VAT to be Recoverable

On October 18, 2018, the ECJ published its judgement in *Volkswagen Financial Services (UK) Ltd*, case C-153/17, regarding the VAT recovery computation method applicable in hire purchase agreements. Recall, in the case at hand, the taxpayer offers customers a hire purchase agreement, which consists of two parts (1) the sale of a car and (2) the provision of a loan. The sale of the car is treated as taxable. The price for the sale of the car equals the price that the taxpayer pays to a dealer. The provision of the loan is treated as exempt. The taxpayer's profits are derived from the provision

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of loans. Under this method, each contract was treated as one taxable transaction and one exempt transaction, meaning that residual VAT incurred was apportioned 50 percent to taxable sales. The UK tax authority challenged the taxpayer's proposed method, arguing that because the vehicle is required for non-VAT reasons to be sold on at cost, all overheads are cost components of the exempt sale of credit.

The ECJ did not follow the Opinion of its AG, which focused on whether hire purchase agreements should be subject to VAT, but made some preliminary remarks on whether the leasing agreement consisting of the vehicle and the credit had to be regarded as two separate sales or as one single sale for VAT purposes. Based on established case law, all transactions must be regarded as distinct and independent. However, two exceptions to this starting point exist: (1) if one or more elements or acts are so closely linked that, from an economic point of view, they form a single indivisible sale which would be artificial to split; and (2) if one or more elements are in principle regarded as separate sales, but one or more of the elements is the principal sale and the other elements are regarded to be the ancillary sales that follow the VAT treatment of the principal sale. While this point must be assessed by the referring court, the ECJ observed that there was nothing in the case file that showed that the assessment in the case at hand was not made using the above mentioned criteria. Therefore, it seemed that the sale of vehicles and of credit should be regarded as separate sales.

The ECJ then proceeded to the issue of the right to deduct VAT and reiterated its standard positions on this issue, which are: (1) the VAT recovery right is a fundamental principle and integral part of the EU VAT legislation; (2) the right ensures neutrality of taxation of all taxable economic activities; (3) the right can in principle not be limited; and (4) the right is to be exercised immediately, provided that the activities are subject to VAT. The ECJ further observed that a right to deduct VAT exists either when the VAT incurred has a direct and immediate link with VAT collected on sales or when the VAT incurred has a direct and immediate link with the economic activities as a whole, possibly subject to an apportionment computation. The ECJ held that the general costs incurred by the taxpayer had a direct and immediate link with the economic activities as a whole. The fact that the taxpayer did not include those costs in the sales price of the vehicles did not change this conclusion. As regards the computation of the VAT recovery apportionment, the general rule is that it has to be done on the basis of the gross receipts. However, Member States may allow or require a different method, but only insofar as such a method guarantees a more precise (not the most precise) determination of the apportionment than when using the gross receipts method. The ECJ concluded that it was up to the referring court to ascertain whether the method used by the UK tax authority had taken account of the actual and non-negligible allocation of a share of the general costs for the purposes of the transaction giving rise to a right to deduct VAT.

Source: UK: ECJ, October 18, 2018, Case C-153/17, Commissioners for Her Majesty's Revenue and Customs v. Volkswagen Financial Services (UK) Ltd, ECJ Case Law IBFD.

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European Union: VAT Incurred on Strategic Acquisition Costs Are Deductible Even if the Transaction Does Not Take Place

On October 17, 2018, the ECJ published its judgment in *Ryanair Ltd*, case C-249/17, regarding whether VAT incurred on strategic acquisition costs is deductible if the acquisition is not completed. Recall, in the case at hand, the taxpayer, an airline, incurred a significant amount of VAT on its intended acquisition of another airline. Had the acquisition gone ahead, taxable strategic management sales would have been made by the taxpayer. However, the deal was aborted because of anti-competitive concerns and ultimately only a minority interest was acquired. The question was whether the VAT incurred on costs incurred relative to the intended acquisition was still deductible as no management sales had actually been or would be made. The ECJ's AG earlier this year opined that the acquisition of a company's entire share capital with the intention of thereby bringing about a direct, permanent and necessary extension of the taxable activity of the acquiring company constitutes an economic activity within the meaning of the EU VAT Directive.

The ECJ broadly followed the Opinion of its AG. It is apparent from the file before the ECJ that the services at issue were provided to the taxpayer when it intended, by the planned acquisition of shares in the target company, to pursue an economic activity providing management services subject to VAT to the acquired company). Thus, it appears that, first, the taxpayer acted as a taxpayer at the time it incurred the expenditure. By doing so, the taxpayer thus benefits, in principle, from the right to deduct VAT paid on the services at issue immediately, even if, ultimately, that economic activity was not carried out. Second, as regards the conditions for the exercise of the right to deduct and more specifically the scope of that right, the expenditure incurred for the purpose of the acquisition of the shares of the target company must be regarded as being attributable to the performance of that economic activity. On that basis, that expenditure has a direct and immediate link with that economic activity as a whole and, consequently, is part of its general costs. It follows that the corresponding VAT gives rise to the right to deduction in full. As a consequence, the ECJ held that a company intending to buy all of the shares in another company with the intention to provide management services subject to VAT to that company is in principle allowed to deduct the VAT paid on consulting and other services related to that intended acquisition, even if in the end the acquisition does not take place.

Source: IE: ECJ, October 17, 2018, Case C-249/17, Ryanair Ltd v. The Revenue Commissioners, ECJ Case Law IBFD.

European Union: Import VAT Exemption Can Only Be Denied If Taxpayer Knew or Should Have Known about Customer's Fraud

On October 25, 2018, the ECJ published its judgment in *Milan Božičevič Ježovnik*, Case C-528/17, regarding when a tax authority may deny the exemption of imports that are followed by an intra-EU transfer of goods. In the EU, VAT is generally due when goods are imported from outside the EU into an EU Member State. However, the EU VAT Directive exempts such imports in the Member State of custom clearance if the goods are sold and shipped to a VAT registered customer established in another Member State.

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In the case at hand, the taxpayer imported bananas into Slovenia, which were subsequently transferred to customers in Romania. The taxpayer filed customs declarations using customs procedure 42 (i.e., the release of goods for free circulation without any import VAT becoming due on the basis of the VAT exemption for imports with a subsequent zero rate intra-EU sale). For this, the taxpayer provided the Slovenian customs authority with end-use and final destination declarations bearing the stamp of the declared recipients of the goods. The taxpayer verified his customers' customs (EORI) and VAT identification numbers. The taxpayer further requested the customers to draft a declaration stating that they would be responsible for the shipment of the bananas from Slovenia to Romania. After receiving payments, the taxpayer brought the bananas to the port of Koper and, at that time, sold the bananas to the customers who took care of the cross-referencing of the CMR consignment notes.

The Slovenian customs authority discovered that some of the Romanian customers had only been VAT registered shortly before the transactions had taken place and had been deregistered on the same day the transactions took place. The Slovenian customs authority further held the view that the CMR consignment notes were barely legible, incomplete, and contained insufficient information about the date and place of the unloading of the goods. In addition, they considered that the taxpayer's purchase price and the subsequent sales value were either identical or differed only slightly, that the bananas' weight in the invoices differed from the figures provided in the customs declarations and that the registered invoices differed from those submitted to the Slovenian customs authorities. The Slovenian customs authority also contacted the Romanian tax authority, which informed them that (1) some of the Romanian customers were missing traders; (2) that one of the shippers had confirmed that the bananas had been shipped to and unloaded at a wholesale center in Romania; and (3) that other carriers had questioned the authenticity of the signatures on the shipping documents. As a consequence, the Slovenian customs authority held that the taxpayer had incorrectly applied customs procedure 42, and Slovenia customs imposed a VAT assessment on the basis that the taxpayer had not proved that the goods were sold onward in an intra-EU transaction.

The ECJ observed that the application of the VAT exemption at issue is dependent on the application of the zero rate for intra-EU sales, and thus on compliance with the substantive conditions laid down for this zero rate. According to established case law, if a taxpayer knew or ought to have known that the transaction it carried out was involved in a tax evasion scheme conducted by the purchaser and it did not take all reasonable steps in its power to prevent the evasion, a tax authority can refuse the application of the zero rate for intra-EU sales. According to the ECJ, a vendor's VAT liability is assessed differently from an importer's customs duties liability. Therefore, a taxpayer must be allowed to apply the VAT exemption at issue if it acted in good faith. As such, the national tax authority must take into account the importer's diligence. This is the case regardless of the applicable provisions for customs purposes. The ECJ further pointed out that the principle of legal certainty allows the national tax authority to carry out checks after the

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import of goods to see whether a taxpayer was involved in tax evasion. If the taxpayer was not and could not have been aware of such evasion by its customer, the tax authority cannot charge additional VAT. The referring court must assess whether the importer has taken all reasonable steps in its power to prevent that fraud from being committed.

Source: SI: ECJ, October 25, 2018, Case C-528/17, Milan Božičević Ježovnik v. Republic of Slovenia, ECJ Case Law IBFD.

Germany: Guidance on Zero-Rating of Transactions for Sea Shipping and Aviation

On September 5, 2018, the German federal ministry of finance (BMF) issued a guidance clarifying the zero-rating applicable to sales of services in the area of loading and unloading ships used for the navigation on the high seas. According to the BMF, the zero rating extends to services indirectly provided to seagoing vessels if, at the time of the provision of the services, the final use for the needs of a specific, explicitly identifiable seagoing vessel is by their nature fixed. The final intended use must already be transparent as a result of compliance with the tax accounting and recording obligations (accounting and documentary proof) as well as compliance with storage requirements, and not only through a special control and monitoring mechanism. Ships that avail themselves of the zero rating must be already existing vessels which, on the basis of their construction, are built for the purpose of acquisitions by sea freight or the rescue of shipwrecks; the customs tariff classification is decisive in this respect. A vessel must be considered to be existent from the point of launch or flotation in dry dock. To read a report prepared by the KPMG International member firm in Germany, please click here.

Italy: Amendments to VAT Law

On October 23, 2018, Italy published Decree No. 119 in the official gazette; it amends the country's VAT law effective October 24, 2018, unless otherwise specified. The Italian Parliament has the obligation to set the Decree into law by December 22, 2018, including possible amendments. The Decree introduces a grace period for the first half of 2019 for non-compliance with the new e-invoicing rules that are effective January 1, 2019. There will be no penalties if a compliant e-invoice is issued within the deadline for the VAT settlement of the relevant month, and penalties will be reduced by 80 percent if a compliant e-invoice is issued by the deadline for the VAT settlement of the month after the month in question. The Italian VAT law states that invoices should be issued immediately. The Decree clarifies that invoices should be issued within 10 days of the tax point, and if the invoice is not issued on the tax point date, it should also include a reference to the tax point date. The Decree further clarifies that a sales invoice must be recorded in the output VAT ledger by the 15th day of the month following the one in which the transaction takes place. In addition, the sequential numbering of purchase invoices when they are recorded in the input VAT ledger will no longer be necessary. The Decree further clarifies that the new mandatory e-invoicing rules will apply only to transactions between parties resident or established in Italy. Non-established, but VAT-registered taxpayers are excluded.

The Decree further modifies the time limit for VAT recovery, allowing

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taxpayers to recover VAT in their VAT settlements for the month in which the tax point is triggered, even if the purchase invoice is received and recorded in the VAT ledger by the 15th day of the following month. Moreover, effective July 1, 2019, retailers whose annual gross receipts exceed EUR 400,000 ($454,500) must record and report their receipts to the tax authority. This requirement will be mandatory for all other retailers effective January 1, 2020. The Decree further states that the electronic recoding and transmission of daily receipts requires retailers to use a special electronic cash register (*registratore telematico*) approved by the tax authority and that retailers will be required to issue e-invoices through the tax authority system (Sdl system) if customers request them. In addition, the tax authority will introduce in 2020 a lottery system allowing customers of retailers participate by asking retailers to print their tax codes on receipts. Finally, the Decree extends the scope of the VAT grouping rules to banking groups. In this respect, the Decree clarifies that the VAT grouping condition of having a financial link between VAT group members exists also between taxpayers established in Italy and joining a banking group. In case of banking groups, the representative member must be the controlling member as defined by the Banking Act. A VAT group will become effective for fiscal year 2019 if the option is exercised by December 31, 2018 and on that date the required financial, economic, and organizational links are in place. To read a report prepared by the KPMG International member firm in Italy, please click here.

Italy: Overview of Recently Published VAT Guidance

On September 24, the Italian tax authority published Law Principle No. 2 in which it clarified that a sale of services to a foreign purchaser, comprised of both the granting, under consideration, of the right to use an immovable property for a congress and the provision of other related services during certain sports events, is deemed to be carried on in Italy provided that granting of the right to use the immovable property is essential for the overall sale and the other services are ancillary to the granting of the right to use the immovable property also in light of their economic value.

On September 27, 2018, the Italian tax authority issued Ruling Answer No. 13 clarifying scope of the deduction of VAT paid on qualifying purchases of fuel and gasoline intended to be used as motor fuel and the deduction of related costs for income tax purposes. Effective July 1, 2018, Italy requires taxpayers to pay for fuel and gasoline with adequate means of payment to obtain such VAT deduction. The tax authority clarified that this obligation does not apply in the case of purchases of fuel to be used for agricultural vehicles made by a taxpayer that opted for the special regimes for farmers because these special regimes provide for the computation of deductible costs and deductible VAT on the basis of specific valuation rates and offset percentages.

Effective September 28, 2018, the Italian tax authority issued Ruling Answer No. 15 clarifying the application of the split payment system. According to the tax authority, the split payment system applies, inter alia, to sales of goods and services to qualifying public bodies, provided the sales are made in Italy and that the sales are not VAT zero-rated and exempt. Consequently, the split payment system does not apply to sales of goods and services to offices

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of an Italian Ministry located abroad, because they fall outside the scope of Italian VAT.

The Italian tax authority recently provided clarifications on the VAT rate applicable to certain sales of goods based on their classification under the integrated tariff of the European Community (TARIC). The standard VAT rate of 22 percent applies to sales of frozen or deep-frozen truffles falling under the TARIC code 0710 and to sales of complementary pet food for dogs and cats falling under the TARIC code 230910. The reduced VAT rate of 10 percent applies to sales of truffles preserved in transparent glass jars and subject to thermal sterilization falling under the TARIC code 0709 and sales of truffles preserved in glass jars in olive oil or salted water falling under the TARIC code 2003. Finally, the super-reduced VAT rate of 4 percent applies to sales of datterini tomatoes preserved in sea water falling under the TARIC code 20021090.

Source: Italy – Application of VAT rates – clarifications issued (October 22, 2018), News IBFD; Italy – Split payment system – clarifications issued (October 26, 2018), News IBFD; Italy – Purchases of fuel – clarifications issued (October 26, 2018), News IBFD; Italy – Supplies of services related to immovable property – clarifications issued (October 26, 2018), News IBFD.

Portugal: Proposed Amendments to VAT Law

On October 15, 2018, the Minister of Finance of Portugal presented to the parliament the Draft State Budget Law for 2019, which, if approved, would align the Portuguese VAT rules with the EU directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019. In addition, the Budget would subject to VAT at the reduced rate of five percent the following items: bullfighting artists' services; hairpieces for cancer patients, as well as other prostheses, equipment and goods used by people with disabilities and by cancer patients; the National Medical Emergency Institute's acquisitions of tools and equipment for the relief and life-saving operations; cleaning and cultural intervention services provided for purposes of fire prevention, as well as for agriculture and forest management; and vocal, dance, music, theatre and circus performances. The Budget would further clarify that the transfer of a local company's fixed assets to its municipality following its dissolution does not imply a regularization of the VAT deduction made. Finally, the government would be authorized to legislate throughout 2019 with a view to (1) introduce a reduced VAT rate applicable to the fixed component of providing electricity and gas, up to certain maximum limits; (2) create a simplified VAT regime, which may include a special regime for compensation of the deductible VAT, under a lump-sum regime, for independent cinema rooms and spaces for public exhibition of independent cinematographic and audiovisual works; (3) increasing the scope of the rule allowing for the application of an intermediary VAT rate of 13 percent to the provision of food and beverage services; and (4) broaden the requirement for the purchaser to self-assess VAT under the reverse charge mechanism to include the acquisition of cork, wood, pinecones and pine nuts.

Source: Portugal – Draft State Budget Law for 2019 – changes to VAT rules (October 31, 2018), News IBFD.

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Saudi Arabia: Overview of Recently Published VAT Guidance

In September 2018, the Saudi General Authority of Zakat and Tax (GAZT) published several English-language guidelines for the VAT implemented at the beginning of the year. Each of the guidelines include the general disclaimer that the guidelines represent the GAZT's views on the application of the Unified VAT Agreement, the VAT Law and the Implementing Regulations on the matter covered effective from the date of issue, but are not binding on GAZT or on any taxpayer with respect to any transaction.

In the VAT Economic Activity Guideline, the GAZT provides additional clarification to taxpayers regarding the interpretation and definition of Economic Activity for VAT purposes.

In the Invoicing and Records Guideline, the GAZT provides additional clarification to taxpayers regarding their primary obligations of issuing invoices and record keeping for VAT purposes, and the particular requirements arising from specific transactions or situations;

In the Input Tax Deduction Guideline, the GAZT provides additional clarification to taxpayers on deducting VAT deduction, with a particular focus on the partial deduction method.

In the Imports and Exports Guideline, the GAZT provides additional clarification to taxpayers regarding imports and exports of goods and services from the Kingdom.

Source: Orbitax, Saudi Tax Authority Issues English-Language VAT Guidance on Economic Activity, Input Tax, Imports and Exports, and Invoicing and Records (October 3, 2018).

South Africa: Proposed Amendments to Nonresident Electronic Services Rules

South Africa recently published an amended draft regulation and draft legislation regarding the VAT treatment of electronic services provided by nonresidents to customers in South Africa. If approved, the law and regulation would be effective April 1, 2019. Recall, earlier this year the Ministry of Finance published a draft regulation aiming at broadening the scope of foreign electronic services subject to VAT. It was planned to be effective October 1, 2018. According to the new draft, while nonresidents providing electronic services to businesses in South Africa would remain required to collect VAT on such sales, certain inter-group transactions would be excluded. This would apply if the transactions are between group companies as defined, and the group foreign vendor itself provides those services to the South African group entity. Therefore, typical global contracts in which one group entity enters into an agreement with a third party vendor to provide electronic services (e.g., software) to the multiple members in the group would still require the foreign group company to register for VAT in South Africa.

The draft further broadens the definition of electronic services to include "services provided by means of any electronic agent, electronic communication or the internet." As a consequence, all services provided by electronic means, unless specifically excluded (i.e., educational,

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telecommunication services and certain inter-group sales) will constitute electronic services. The explanatory memorandum clarifies that the policy intention is to subject services provided with minimal human intervention to VAT. Consultancy or legal advice provided or delivered from abroad "by means of" e-mail would not fall within the definition according to the explanatory memorandum. The concept of limited human intervention and to what extent the intervention would be considered minimal are not included in the regulation, and no further guidance is provided in the explanatory memorandum.

Before the introduction of the electronic service provisions in 2014, a recipient of electronic services would have been liable to account for VAT on such a sale received from a foreign vendor to the extent that those services were not used for taxable purposes. Currently, the legislation does not impose an imported services liability on the recipient of the electronic services if the foreign vendor is required, but fails to register and account for the VAT on such sales. The ministry of Finance and the South African Revenue Service did not amend the legislation in this regard. However, it is stated in the explanatory memorandum that if the vendor is not required to register, or is required to register and levy VAT but fails to do so, the recipient may still be liable to declare VAT on imported services acquired for non-taxable purposes. In addition, the draft would increase the registration threshold for nonresident providers of electronic services from ZAR 50 000 ($3,500) to ZAR 1 million ($70,700) per year.

Finally, the draft would clarify the VAT treatment applicable to sales made via intermediaries, such as online marketplaces. A foreign electronic service provider would not be required to register for VAT if it engages an intermediary to sell the electronic services on its behalf as the intermediary would be deemed to sell the electronic services and thus would be required to collect VAT, According to the draft, an intermediary is a person who facilitates the sale of electronic services provided by the electronic services providers and who is responsible for issuing the invoices and collecting payment for the sale. For the simplification to apply, the following conditions must be met: (1) there must be an agreement between the intermediary and the foreign electronic service provider (the principal) that the intermediary will act on behalf of the principal; (2) the intermediary must be a South African VAT vendor; (3) the principal is not a South African resident and not a VAT registered vendor; and (4) the electronic services are provided or to be provided by the principal to a person in South Africa. The VAT registration threshold of ZAR 1 million per year should apply to the aggregate of sales made by the intermediary. To read a report prepared by the KPMG International member firm in South Africa, please click here.

Spain: Proposed Introduction of Digital Services Tax

On October 23, 2018, the Ministry of Finance of Spain published a draft bill, which, if approved, would introduce a digital services tax (DST) in Spain based on the proposal that is currently being discussed at an EU level. (For KPMG's previous discussion on the DST proposed by the EU, click here.) The proposed DST would be a three percent tax imposed on the sale of the following digital services to users established in Spain: (1) the placing on a digital interface of advertising targeted at users of that interface; (2) the making available to

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users of a multi-sided digital interface, which allow users to interact with other users, to facilitate the provision of underlying sales of goods and services between them, or permits locating other users and interacts with them; and (3) the transmission of data collected about users and generated from users' activities on digital interfaces. The tax base will consist of taxable revenues (revenues net of VAT and other similar taxes) derived from users of the taxable service are located within Spain (determined by reference to the Internet Protocol address (IP) of the device or any other method of geolocation). The tax will apply to entities with total annual worldwide revenues of EUR 750 million ($854 million) and annual revenues of EUR 3 million ($3.4 miillion) derived from taxable digital services provided in Spain. The draft bill establishes certain administrative obligations for taxpayers, including registration in a registry to be set up for the purpose of the DST and appointing a representative if not established within the EU. Penalties will be imposed in the case of falsification or concealment of the IP or other geolocation instruments.

Source: Spain – Draft bill on digital service tax – details (October 26, 2018), News IBFD.

United Arab Emirates: Overview of Recently Published VAT Guidance

In September 2018, the Federal Tax Authority of the UAE (FTA) published guidance on the VAT treatment of insurance services. In general, all insurance and related services are subject to VAT at the standard rate of five percent and the VAT incurred on costs wholly attributable to the standard-rated sales can be recovered in full. However, the sale of life insurance and associated reinsurance is generally exempt, while the sale of insurance and related services to a recipient established outside the Gulf Cooperation Council (GCC) implementing states is zero-rated. Special rules apply if insurance and related services are provided to a recipient within a GCC implementing state. If the recipient is registered or registerable for VAT in a GCC implementing state, then the sale is outside the scope of UAE VAT, and the recipient is required to self-assess VAT under the reverse charge mechanism. If the recipient is not registered or registerable for VAT in the GCC implementing state, then the sale is subject to VAT in the UAE. If insurance and related services are imported in the UAE, the taxpayer importing the services is liable to self-assess VAT under the reverse charge mechanism.

In October 2018, the FTA published guidance on the rules for charities. The guidance clarifies the tests that a charitable organization must satisfy to qualify as a "Designated Charity" for VAT purposes. A Designated Charity is entitled to recover VAT incurred on expenditures under a special regime. It further sets out which activities are considered business activities and non-business activities for VAT purposes and relatedly the extent to which VAT can be recovered on costs associated with engaging in these activities. The guidance is aimed at those organizations that qualify as "designated charities," but also includes guidance on VAT recovery for those that do not receive that designation. It includes an overview of the rules for charities and also special rules that apply only to the not-for-profit sector.

Source: Orbitax, UAE Issues VAT Guide for Insurance (October 5, 2018); CCH, Global VAT News & Features, UAE Tax Agency Issues Charities VAT Guidance (October 23, 2018).

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United Kingdom: Proposed Amendments to VAT Law and Introduction of a Digital Services Tax

On October 29, 2018, the UK Government, in the 2018 Budget, announced several changes to the VAT regime to be included in the 2018-19 Finance Bill. The UK government proposes to require the purchaser of building and construction services to self-assess VAT under the reverse charge mechanism effective October 1, 2019. In addition, the UK government will include related anti-avoidance provisions in the Finance Bill 2018-19 to prevent fraudsters from circumventing the UK's reverse charge rules. The provisions will amend the avoidance provisions contained in primary legislation for the VAT reverse charge measure to specify that purchases of certain transactions will not count as gross receipts for VAT registration purposes. The UK government further plans to restrict the application of the Specified Supplies Order in certain circumstances to prevent a version of VAT avoidance (offshore looping) that involves UK insurers gaining a competitive advantage by setting up associates in non-VAT territories and using these associates to provide services to UK customers. The change would be effective March 29, 2019.

In addition, the UK government announced that the VAT registration and deregistration thresholds will not change for the two-year period from April 1, 2020 until March 31, 2022. The UK government stated that it will pursue consideration of a split-payment model, to be developed in close cooperation with stakeholders in the banking and payments sectors, as a means of reducing fraud. An industry working group will be formed to explore next steps. Under the split payment mechanism, if a taxpayer acquires goods or services from another taxpayer, the VAT portion of the payment is deposited separately and automatically to a dedicated account of the seller to satisfy the VAT required to be remitted to the tax agency. The net amount for the transaction will be received by the seller. The amount deposited in the account may earn interest for the vendor and may be used to satisfy its VAT obligations. On November 7, 2018, the UK tax authority (HMRC) published the outcome on a consultation on this topic.

Effective March 1, 2018, the UK government plans to bring all prepayments for goods and services into the scope of VAT if customers have failed to receive what they purchased and have not received a refund. The UK will further introduce new rules concerning adjustments to VAT following retrospective reductions in the price of goods or services effective September 1, 2019. Businesses will have to adjust their VAT returns within set time limits and send a credit note to their customers. This will ensure that such adjustments are only made in respect of genuine price reductions, the Government said.

In addition, HMRC will revise existing guidance for VAT groups to clarify which overseas services can be classified as bought-in services to ensure that such services are subject to UK VAT. HMRC will share the draft guidance with businesses and provide lead time for implementation, with the changes expected to have effect on or after April 1, 2019. The UK government confirmed that it will publish a call for evidence later in the year on tackling electronic sales suppression, which involves the modification of electronic point of sale systems to hide or reduce the value of individual transactions and corresponding tax liabilities.

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Finally, the UK government plans to introduce a digital services tax of two percent on revenues created from selling online advertising space; from digital intermediary activities which allow users to interact with other users and which can facilitate the sale of goods and services between them; and from the sale of data generated from user-provided information. The tax would become effective April 1, 2020 and apply only to companies with global revenues of at least GBP 500 million ($653 million). In addition, the first GBP 25 million ($32 million) of UK-sourced revenues would not be taxable. On November 8, 2018, HMRC launched a consultation on this proposal that will be open until February 28, 2019.

Source: CCH, Global VAT News & Features, UK VAT Changes Announced In 2018 Budget (October 31, 2018); Tax Analysts, UK Issues Digital Services Tax Brief (October 2018).

Asia Pacific (ASPAC)

India: Advance Ruling Authority Clarifies GST Treatment Applicable to Drugs Sold by Hospitals

The Authority of Advance Ruling (AAR) of the state of Kerala recently published a ruling on the goods and services tax (GST) treatment of sales of drugs and similar items by hospitals. *Emakulam Medicak Centre Pvt. Ltd.* [2018-VIL-179-AAR]. In the case at hand, the taxpayer was a hospital that sold drugs to both in-patients and out-patients under the prescription of doctors through its pharmacy. The taxpayer was of the view that the sale of the drugs were exempt from GST as an extension to the exempt health care services.

According to the AAR, patients admitted to hospitals (in-patients) receive medical services as per scheduled procedures. The drugs and similar items sold to in-patients are indispensable items to the composite provision of health care services and should not be taxable. In the case of out-patients, the prescriptions issued by hospitals are advisory in nature as the patient has the freedom to follow the prescription of not. The patient also has the freedom to procure the prescribed drugs and similar items from the hospital pharmacy or from other drug dispensing outlets. As a consequence, drugs sold to out-patients should be subject to GST. To read a report prepared by the KPMG International member firm in India, please click here.

India: Provision of Complimentary Tickets Subject to GST According to Authority for Advance Ruling

The Authority of Advance Ruling (AAR) of the state of Kerala recently published a ruling on the GST treatment of the provision of complimentary tickets free of charge. M/s K.P.H. Dream Cricket Private Limited [2018-VIL-209AAR]. In the case at hand, the taxpayer is a franchisee of the Board of Control for Cricket in India for the purpose of establishing and operating

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a cricket team to participate in the Indian Premier League T20 cricket tournament. The taxpayer proposes to provide complimentary tickets as part of a promotional activity. According to the taxpayer, for an activity to qualify as sale for GST purposes, the activity must be undertaken for consideration. An activity undertaken without consideration is only subject to GST if it is carried out between related parties. As a consequence, the provision for free of tickets to unrelated parties should not be subject to GST.

According to the AAR, the term consideration includes monetary value of any act of forbearance in respect of sales made. The issue of the complimentary tickets is an act of forbearance and thus would naturally be pegged to the amount of money charged to other persons not receiving the complimentary tickets. Complimentary tickets are akin to tokens or vouchers as both have been defined in the Oxford dictionary as "one given as a gift" or one "that may be exchanged for goods or services." As a consequence, the GST valuation rules for tokens and vouchers should apply in the case at hand. Moreover, by issuing complimentary tickets, the taxpayer agrees to the obligations of tolerating an act of the recipient to enjoy the services provided by the taxpayer free of charge. As a consequence, the activity of the taxpayer is covered within the scope of the sale. Since all the tickets provided, including complimentary tickets, should be taxable, the taxpayer should be eligible to credit GST incurred on expenditures. To read a report prepared by the KPMG International member firm in India, please click here.

New Zealand: Update on Proposal to Apply GST on Imports of Low Value Goods

On October 18, 2018, the New Zealand Inland Revenue Department (IRD) stated that legislation will be introduced in near future to require nonresident vendors to register for and collect GST when the total value of the taxable sales of goods and services to New Zealand exceeds NZD 60,000 ($40,375) in a 12-month period. Recall, in May 2018 the government of New Zealand proposed that New Zealand would require nonresident vendors selling goods with a value not exceeding NZD 400 ($269) to New Zealand consumers, to charge and collect GST if their total sales to New Zealand consumers exceed NZD 60,000 a year. In the new announcement, the IRD has increased the proposed NZD 400 threshold to NZD 1,000 ($672). In addition, the IRD proposes to allow nonresident vendors to elect to charge GST on goods having a value greater than NZD 1,000. The election would be available if five percent or less of a vendor's total New Zealand sales are of goods valued over NZD 1,000. Alternatively, vendors that do not meet this test would be allowed to apply to the IRD to charge GST on goods over the NZD 1,000 limit. The announcement further confirms that double taxation would be avoided so that New Zealand Customs would not collect GST on goods in a consignment over NZD 1,000 in situations in which GST has already been charged by the vendor. Nonresident marketplaces and re-deliverers would remain liable for the GST obligations of the underlying sales. If approved by the parliament, the new regime for taxing low-value imports will be effective October 1, 2019. To read a report prepared by the KPMG International member firm in New Zealand, please click here.

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Trade & Customs (T&C)

Canada: Relief Relating to US Steel and Aluminum Tariffs Announced

Canadian importers of certain steel and aluminum products subject to recent tariffs may benefit from new relief measures. The Canadian Ministry of Finance (MoF) recently announced that certain products imported into Canada will not be subject to tariffs, following its review of remission requests submitted by Canadian businesses. Customs Notice 18-16, released October 11, 2018, provides further details on how to account for the relief, at time of importation or by way of refund, for both commercial and casual (non-commercial) importations. The MoF has granted relief for 110 steel and aluminum products imported from the United States on or after July 1, 2018, as well as temporary relief for an additional 56 steel and aluminum products imported from July 1, 2018 to December 31, 2018.

In addition, the MoF announced an additional 25 percent tariff on the imports of the following steel products if the level of imports from trading partners exceeds historical norms: heavy plate; concrete reinforcing bar; energy tubular products; hot-rolled sheet; pre-painted steel; stainless steel wire; and wire rod. These temporary safeguard measures, which begin October 25, 2018, are intended to protect Canada's steel industry from foreign companies selling surplus steel products into Canada as a means of avoiding U.S. tariffs. Finance has put the new surtax in place for 200 days until the Canadian International Trade Tribunal (CITT) can determine whether these safeguards are warranted. This 200-day period will be segregated into four individual quota periods (50-day periods), and volume limits (for the period, and taking into account a maximum portion for any single country) will apply for each period. Unused quota for one period will carry-forward to the next period. Importers will require shipment-specific permits to claim relief within the quota limits.

While the safeguard measures apply broadly to imports from all countries, based on the country-of-origin marking rules (NAFTA or non-NAFTA rules as the case may be), there are notable exclusions. Specifically, the measures exclude goods originating in, and exported from, the United States, Chile, Israel or another Canada-Israel Free Trade Agreement (CIFTA) beneficiary, Mexico (other than energy tubular products and wire rod), and goods from developing countries that are beneficiaries of the General Preferential Tariff (GPT) other than concrete reinforcing bar originating in and imported from Vietnam. The Duties Relief and Duty Drawback Programs may provide relief from safeguard surtaxes if the specific requirements are met. To read a report prepared by the KPMG International member firm in Canada, please click here.

In Brief

Armenia:[iv] On September 19, 2018, the State Revenue Committee of Armenia released a proposal to amend one of the requirements for applying the simplified procedure for VAT refunds to exporters. Under the simplified procedure, excess VAT paid on expenditures that cannot be offset with VAT collect on sales is refunded within four working days without performing a

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tax audit, provided that the refundable VAT amount does not exceed AMD 20 million ($41,0000). Under the general procedure, VAT is refunded to exporters within a period of 20 days and a tax audit is performed. To apply for the simplified VAT refund procedure, at least 95 percent of the VAT refund amount claimed in the previous application for VAT refund must be substantiated by documents. The State Revenue Committee proposes to decrease this threshold to 90 percent.

Australia:[v] The government of Australia plans to exempt from GST feminine hygiene products effective January 1, 2019.

Australia:[vi] On October 10. 2018, the Australian Taxation Office (ATO) issued Practical Compliance Guideline PCG 2018/6 on the GST treatment of inbound tour operators (ITO), which are Australian entities that enter into agreements with nonresidents to arrange the sale of Australian tour packages. According to the guideline, if an ITO is acting as an agent of the nonresident to arrange an Australian tour package, any commission charged in respect of that package will be exempt from GST. However, if the ITO is acting as the principal, the entire sale (including mark-up or profit margin) may be subject to GST. The guideline sets out the requirements that must be met for an ITO to be considered an agent. If the requirements are met, the ATO will not apply compliance resources to examine whether an ITO acts as an agent for a nonresident for the purposes of the GST law, subject to certain conditions.

Australia:[vii] The ATO recently provided clarification on the new ban on electronic sales suppression tools (ESSTs). It is now illegal to manufacture, distribute, possess, use, or sell ESSTs. Taxpayers can now face financial penalties of up to 5,000 penalty units (over AUD 1 million ($722,350)), depending on the offence and severity of the crime. The ATO will work with businesses that may have inadvertently purchased software with an ESST function. Businesses that acquired an ESST in their software before the legislation was announced on May 9, 2017, will have until April 3, 2019, to notify the ATO and will not face any penalties if they do so. Finally, the ATO will contact businesses it believes may have an ESSTs in their POS system.

Australia: The Australian and New Zealand Governments have recently launched a consultation on managing electronic invoicing arrangements in both countries. The governments intend to establish an independent, fair, and equitable governance structure for the day-to-day operation of e-Invoicing in Australia and New Zealand. The consultation focuses on policy or legal barriers to the implementation of e-Invoicing in Australia or New Zealand; the legal structure best suited to the proposed operational governance body; who should lead the operational governance of trans-Tasman e-Invoicing, and what functions and roles should the operational governance arrangement include; and how to best ensure the long-term sustainability of the operational governance of trans-Tasman e-Invoicing.

Belarus:[viii] On September 29, 2018, the Ministry of Taxes and Levies of Belarus issued Guidance Letter 2-1-10/01819 in which it clarified the VAT treatment applicable to finance lease arrangements. According to the Guidance Letter, operations involving the transfer by a lessor of a leased asset to a lessee are subject to VAT. The VAT base is the sum of the lease

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payments. However, if the lessee subsequently acquires the leased object, the VAT base will increase by the amount of the acquisition price paid by the lessee. The transfer of a leased asset to an individual lessee under a finance lease agreement providing for the subsequent acquisition of the asset by the lessee is exempt from VAT. The income of the lessor under the finance lease agreement also is exempt from VAT. Lease payments representing the contractual acquisition cost of the leased asset are subject to VAT, while investment expenses incurred by the lessor under the lease are exempt, with the exception of investment costs reimbursed in the cost of the leased asset. However, the VAT exemptions do not apply to finance lease agreements concluded with legal entity lessees that provide for the subsequent acquisition of the leased asset.

Belgium:[ix] The government of Belgium recently approved draft legislation that would align Belgian VAT rules with the EU directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019.

Bosnia and Herzegovina:[x] Effective January 1, 2019, the Brčko District will exempt the following persons using cash registers from the obligation to register invoices with the tax authority: farmers not registered for VAT purposes; farmers and craftsman for the sale of own goods; entrepreneurs listed as small companies in accordance with the Law on Personal Income Tax; banks and insurance companies; municipal public companies; postal companies; statutory insurance funds; religious institutions; artists; libraries, museums and archives; households providing tourist services; educational institutions; youth cooperatives; persons providing rehabilitation services for the disabled under prescribed conditions; self-service machine sales and street sales; and gambling and betting.

Brazil:[xi] On October 23, 2018, the federal tax authority of Brazil published Private Ruling 13/2018, which clarifies the criteria and procedures to be observed for the purpose of the exclusion of the state VAT (ICMS) from the taxable base of the federal social contributions (PIS and COFINS). Recall, on April 10, 2018, the Federal Supreme Court of Brazil reiterated the decision given on March 15, 2017 in the Extraordinary Appeal 574,706 that ICMS is not part of the taxable base for PIS/COFINS. The ruling establishes that the amount to be excluded monthly is the monthly amount of ICMS due by the legal entity relating to the same taxable period for the contributions. The monthly amount of ICMS due must be allocated to the different monthly taxable bases of the contributions. For the purpose of determining the amount of ICMS due, the amounts registered in the digital tax records of ICMS and of the federal tax on industrialized products (IPI) should preferably be used. The ruling further clarifies the procedures to be carried out by the tax authorities so as to comply with the judicial decisions on the subject.

Brazil:[xii] On October 25, 2018, Brazil published Decree 9,537/2018 in the official gazette. The Decree regulates the special regime for the industrial goods used for the exploration, production and exploitation of oil, natural gas and other fluid hydrocarbons (*Repetro-Industrialização*). The regime applies to companies importing, or purchasing in the internal market, raw materials, intermediary products and packaging materials to be used in the

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industrialization process of goods used for the exploration, production and exploitation of oil, natural gas and other fluid hydrocarbons. Under this regime, the levy of the following taxes and contributions is suspended for a period of one year (to be extended to up to five years): IPI, PIS and COFINS. After the full use of the good for its intended purpose, the suspension is converted into exemption or zero rating.

Bulgaria:[xiii] On October 24, 2018, the government of Bulgaria submitted a proposal to the parliament to align the Bulgarian VAT rules with the EU directive on the VAT treatment of vouchers effective January 1, 2019.

Chile:[xiv] On October 12, 2018, the Internal Revenue Service issued Ruling 2,128, which clarifies the VAT treatment of immovable property transferred as a capital contribution to a company. According to the Ruling, a capital contribution paid through the transfer of immovable property is, in principle, equivalent to a sale and is therefore within the definition of "sale" in the VAT Act. However, for such an operation to be subject to VAT, the transfer must be carried out by a person who can be qualified as a "seller". Generally, the term seller is defined in the VAT Act as those individuals or companies who sell movable or immovable property in a habitual manner. Although the law presumes the habitual character of the seller in such circumstances, the tax authority clarified that this assumption can be challenged if it is otherwise demonstrated through evidence submitted by the taxpayer. Moreover, regarding the tax base, the law indicates that, in the case of immovable property, such tax base is the total amount of the transfer less the acquisition value of the land. However, there is a special rule regarding used immovable property, in which case the taxable base is determined differently. The tax authorities clarified that the qualification of immovable property as "used" depends essentially on the seller habitually concluding sales of immovable property. In other words, the deemed character of "habitual seller" based on the period between the acquisition and the sale (a year or less) would drive the conclusion that the seller is not a person who habitually concludes sales of immovable property. Finally, the fact that the acquisition of the property was not subject to VAT is also essential when determining whether the immovable property qualifies as "used."

Colombia:[xv] The National Tax Authority of Colombia (DIAN) recently published Ruling 13584, which clarifies the VAT exemption of real estate units. The VAT law provides that the first sale of new real estate units, whether directly or through the transfer of rights of a trust where the underlying asset is new real estate units, that exceed 26,800 of adjusted value units (UVTs) is subject to VAT at a reduced rate of five percent. However, if the promise to the sales contract was signed before a notary before December 31, 2017, the sale of the real estate is VAT exempt. According to DIAN, as long as the promise to the sales contract has been signed before 2018, regardless of other criteria such as the parties to the contract, the type of property or whether the transfer of the property is to be made through the transfer of trust´s rights, the VAT exemption will be applicable.

Denmark:[xvi] On October 16, 2018, the tax authority of Denmark published guidance SKM2018.521.SKTST in which it states that for the holding of shares performed by a holding company to be regarded as economic activity two

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conditions must be met: (1) the holding company must be involved in the management of the subsidiary; and (2) the transactions made are subject to VAT.

Egypt:[xvii] Effective October 1, 2018, Egypt requires businesses to file tax forms electronically, including income tax and VAT returns.

Estonia:[xviii] Effective October 1, 2018, Estonia amended its VAT law to subject to VAT the sales of building land. Building land is defined as land that is planned for construction or is intended for residential or commercial use. Prior to the amendments, sales of land were generally only subject to VAT if building rights were granted. With the amendments, VAT is due regardless of any building rights being granted for the land. To read a report prepared by the KPMG International member firm in Estonia, please click here.

European Union:[xix] On October 3, 2018, the ECJ published the Opinion of its AG in *A & G Fahrschul-Akademie*, Case C-449/17, in which the AG opined that driving courses to acquire category B and category C1 driving licenses should not be covered by the concept of school or university education within the EU VAT exemption for education services.

France:[xx] On September 24, 2018, the government of France presented to the parliament the Finance Bill for 2019. If approved, it would align French VAT rules with the EU directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019. In addition, the VAT rate applicable to certain waste collection and treatment services provided by local authorities would be reduced from 10 percent to 5.5 percent effective January 1, 2021.

France:[xxi] On October 9, 2018, France published in the official gazette Decree No. 2018-865, which introduces a time limit for VAT refund claims submitted by taxpayers established in an EU country other than France. Recall, on December 4, 2017, the French Administrative Supreme Court held that the French regulation did not contain any time limit restriction for EU companies to claim a refund of VAT incurred in France. According to the Decree, requests for a refund filed by taxpayers established in other Member States must be sent (to their local tax authorities) before September 30 of the calendar year following the refund period.

Greece:[xxii] On September 25, 2018, the Public Revenue Authority of Greece published the Tax Registration Number and VAT Handbook. The handbook provides useful information concerning tax registration numbers and VAT registration procedures and the filing of VAT returns for taxable entities in other EU Member States and in third countries. The handbook also provides English language information concerning the registration of taxable entities in Greece and the appointment of their tax representative in Greece. It also provides an overview of the circulars issued on this topic.

Ireland:[xxiii] On October 9, 2018, the government of Ireland presented the Budget for 2019 to the parliament. If approved, the Budget would increase the VAT rate for tourism activities from 9 percent to 13.5 percent and reduce the VAT rate for e-books and electronic newspapers from 23 percent to 9 percent, effective January 1, 2019.

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Malaysia:[xxiv] On September 29, 2018, the Royal Malaysian Customs Department published separate guides on Sales Tax Return & Payment and Service Tax Return & Payment. The guides cover the return and payment obligations of taxpayers under the Sales and Service Tax (SST) regime, which formally replaced the Goods and Services Tax (GST) effective September 1, 2018. Under the new regime, a standard two-month tax period is followed with SST returns and payment due by the last day of the month following the period. However, the initial period may be one month or two months. Assuming a September 1, 2018 date of registration, the length of the first tax period is one month if the month of the taxpayer's financial year-end is odd (January, March, May, July, September, November) and the length of the first tax period is two months if the month of the taxpayer's financial year-end is even (February, April, June, August, October, December). In either case, the subsequent tax periods are two months. Both Sales Tax and Service Tax returns are made using the same form: Form SST-02. Returns may be submitted electronically through the MySST Portal or in paper form via post.

Malta:[xxv] On October 22, 2018, the government of Malta presented the Budget for 2019 which, if approved, would reduce the VAT rate on e-books and other digital publications to five percent.

Moldova:[xxvi] On October 4, 2018, the State Tax Service of Moldova (STS) clarified that if a company makes charity and sponsorship contributions, in accordance with applicable law, such charity and sponsorship contributions are not considered goods and services sold in the context of business activities and thus the VAT related to corresponding sales may not be deducted.

Moldova:[xxvii] On October 5, 2018, the STS clarified that legal consulting services provided by a nonresident of Moldova to a resident of a free economic zone are zero rated.

Netherlands: On June 7, 2018, the Dutch Ministry of Finance announced that it will endeavor to keep the cost sharing exemption in place for financial institutions and insurers as this may have a significant financial impact for the users of this exemption. This follows the ECJ judgement in *DNB Banka*, Case C-326/15 (September 21, 2017), and *Aviva*, Case C-605/15 (September 21, 2017), in which the ECJ held that the VAT exemption for cost-sharing groups does not apply to the financial and insurance sector. The Dutch Ministry of Finance intends to work with other EU Member States to make this possible at the EU level. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

Norway:[xxviii] On October 8, 2018, Norway presented the Budget for 2019 which, if approved, would zero-rate the sale of electronic publications effective July 1, 2019, subject to the approval of the European Free Trade Association (EFTA) authority. The government of Norway also indicated that it is considering applying VAT on non-life insurance policies. Finally, the government of Norway reversed the 2018 hikes to the taxes on sugary products, including certain non-alcoholic beverages, to allow time for a review of the system, after concerns were raised by businesses of an influx of imported goods not subject to tax.

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Panama:[xxix] On October 24, 2018, the parliament of Panama approved Bill No. 570 that will introduce a new tax of eight percent on sugary soft drinks.

Russia:[xxx] On September 17, 2018, the Ministry of Industry and Trade published Decree No. 2558, which amends the requirements for applying the VAT-free regime for retail businesses selling to foreign citizens. According to the Decree, businesses must meet the following criteria to apply the VAT-free regime: they must be subject to VAT; they must be included in the list approved by the Ministry of Industry and Trade; they must have carried out business operations for at least 2 years; and they must not have any unpaid taxes, social security contributions, interest and penalties. This must be confirmed by a letter of verification issued by the State Tax Service no later than 30 days prior to the application. In addition, the Ministry approved a new application form for the VAT-free regime, which includes the trade name of the retail business.

Russia:[xxxi] On September 17, 2018, the Ministry of Finance of Russia issue Guidance Letter No. 03-07-11/64045 in which it clarified that the new standard rate of 20 percent will apply to goods shipped effective January 1, 2019, even if the underlying contract is concluded in 2018. (For KPMG's previous discussion on Russia's standard VAT rate increase, click here.) If the goods are shipped or the services performed in 2018, but payment will be made in 2019, the VAT due in 2018 will be calculated based on the 18 percent VAT rate. Once the payment is made in 2019, the VAT amount due will not be recalculated. In addition, if an advance VAT payment is made in 2018 relating to the goods to be shipped in 2019, the VAT due in 2018 will be charged at the 18/118 rate. This amount may be claimed as a VAT credit in 2019 once the goods have been shipped. The shipped goods will be subject to a VAT rate of 20 percent.

Russia:[xxxii] Effective October 1, 2018, Russia implemented Federal Law No. 302-FZ, which amends the procedure for calculating VAT on advance payments for the transfer of property titles. According to the amendment, when an advance payment is made in relation to the future transfer of a title (to residential property, garage units, etc.), the taxable base for VAT purposes is calculated as the amount of the advance payment less the expenses incurred for the acquisition of the title. The allowed expenses will be proportionate to the amount of the advance payment. The VAT due on the advance payment may be deducted upon the transfer of the title.

Singapore:[xxxiii] Further to a public consultation on proposed changes to its goods and services tax (GST), Singapore's Ministry of Finance has accepted 47 proposed changes. Recall, earlier this year Singapore proposed the introduction of GST on business-to-business imported services effective January 1, 2020, with GST to be accounted under a reverse charge by the domestic business. In addition, effective January 1, 2020, if the total value of a taxpayer's imported services for a 12-month period exceeds SGD 1 million ($733,000), that taxpayer may become liable for GST registration under proposed new GST registration rules. The Ministry has now released a summary of the comments it received during the consultation and its responses. It has agreed that the government should simplify the record

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keeping requirements for those registered under the Overseas Vendor Registration regime, specifically to require only the maintenance of records relating to the sale of digital services to consumers in Singapore, rather than all sales made to consumers both in and outside Singapore. Further, the Ministry committed to releasing guidance on the proposed amendments to enhance the tax agency's ability to investigate tax crimes and guidance on the circumstances in which the proposed penalties of unauthorized GST collection by GST-registered businesses will apply.

Slovakia:[xxxiv] The parliament of Slovakia is currently discussing a draft law introducing a quarterly tax of 2.5 percent on the gross receipts (net of any discounts, as defined by the Accounting Act) of retail chains effective January 1, 2019. Retail chains subject to the new tax would consist of entities that fulfil the following conditions: (1) they are classified as food business operators in accordance with article 2 paragraph 3 of EU Regulation No. 178/2002 of January 25, 2002; (2) they operate in at least two Slovak Republic districts; (3) they derive at least 10 percent of their gross receipts from the sale of food to final consumers; and (4) they have a unified design, and common communication and marketing activities.

Slovenia:[xxxv] On September 28, 2018, the government of Slovenia presented proposed amendments to the VAT law. If approved, the amendments would align Slovene VAT rules with the EU directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019.

Sweden:[xxxvi] On October 25 2018, the tax authority of Sweden published its views (Guidance Letter No. 202 398355-18/111) regarding VAT liability related to providing staff for the healthcare sector. According to the Letter, the provision of staff is an arrangement under which the vendor provides staff to a buyer that is a taxpayer. The tax authority takes the view that providing staff, as such, is not healthcare or dental care, even if the staff provides services to a buyer engaged in the healthcare sector. Hence, such a service is not generally covered by the VAT exemption applicable to healthcare services. However, an exception may apply if the provision of healthcare staff is "closely related" to healthcare or dental care. By referring to the case law of the ECJ, the tax authority takes the view that, for staff to be closely related to healthcare or dental care, the following criteria must be met: (1) both staff and buyer provide healthcare services that mainly concern medical or dental care; (2) the service is absolutely necessary for the exempt healthcare service; and (3) the basic purpose of the service is not to gain additional income by carrying out a transaction which is in direct competition with commercial enterprises liable for VAT.

Turkey:[xxxvii] On October 10, 2018, Turkey published General Communiqué No. 21 in the official gazette, amending the General Communiqué on the Implementation of VAT. According to General Communiqué No. 21, if the VAT amount has not been declared by the purchaser under the VAT withholding mechanism and declared by the vendor of the good or service, the VAT amount will not be collected from the vendor. However, the vendor is still responsible for paying the late payment penalty and any unpaid VAT amount which has been declared previously by the purchaser. In addition, in the case

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of donations (regarding building activities) to universities, the competent body of the university will approve the list of services or goods provided that qualify for the VAT exemption.

Ukraine:[xxxviii] On October 2, 2018, the Tax Committee of the Ukrainian parliament issued Letter No. 04-27/10-614 in which it clarified that VAT invoices registered after July 1, 2017 should be the only documents entitling taxpayers to deduct VAT on expenditures. The Tax Committee highlighted that, currently, any manipulation of VAT deducted is avoided due to the blocking procedure of the VAT invoice registration. However, the State Fiscal Service of Ukraine (SFS) issues letters to taxpayers clarifying that additional documents must be submitted to be entitled to a deduction of input VAT. The Tax Committee recommended that the Ministry of Finance issue a General Tax Consultation to avoid any misinterpretations by the SFS.

United Kingdom:[xxxix] On October 16, 2018, the UK tax authority (HMRC) announced the launch of a pilot program ahead of the Making Tax Digital (MTD) rollout and published guidance regarding service availability and issues. (For KPMG's previous discussion on the UK's MTD that will be effective April 1, 2019, click here.) HMRC announced that in response to concerns, it will allow the following taxpayers to defer compliance with MTD to October 2019: trusts, nonprofit organizations other than companies, VAT groups and divisions, public sector entities required to give additional information on the VAT return, local authorities, public corporations, traders based overseas, those required to make payments on account, and annual accounting scheme users.

United Kingdom:[xl] On October 17, 2018, HMRC published VAT Notice 701/21, which updates its guidance for firms that acquire, import, or invest in gold. The new notice adds guidance on how to correctly record the amount of VAT due under the special accounting scheme for gold. Those taxpayers making a sale of gold under the special accounting scheme for gold must issue a VAT invoice to the buyer. The amount of VAT due under the special accounting scheme for gold must be clearly stated on the seller's invoice, but should not be included in the amount shown as total VAT charged. The guidance further sets out the information that must be included on the seller's invoice or self-billed VAT invoices.

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ii. **Romania** – VAT rate for tourism and connected activities reduced (October 8, 2018), News IBFD.

iii. **Orbitax,** Thailand Publishes Decree Extending 7% VAT Rate an Additional Year (October 19, 2018).

iv. **Armenia** – Proposed amendments to simplified procedure for VAT refunds to exporters announced (October 5, 2018), News IBFD.

v. **Orbitax,** Australia Exempts Feminine Hygiene Products from GST (October 9, 2018).

vi. **Orbitax,** Australia Issues Practical Compliance Guideline on GST for Inbound Tour Operators and Agency (October 12, 2018).

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vii. **CCH,** Global VAT News & Features, Australia Explains New Rules On Sales Suppression Tools (October 12, 2018).

viii. **Iurie Lungu**, Belarus Clarifies VAT Regime of Finance Lease, Tax Analysts (October 2018).

ix. **CC,** Global VAT News & Features, Belgium Legislates For EU VAT Law Changes (October 4, 2018).

x. **Bosnia and Herzegovina** – VAT: law on cash registers (October 24, 2018), News IBFD.

xi. **Brazil** – Exclusion of ICMS from taxable base of PIS and COFINS – clarified (October 30, 2018), News IBFD.

xii. **Brazil** – Special regime for oil, natural gas and other fluid hydrocarbons industry – regulated (October 30, 2018), News IBFD.

xiii. **Bulgaria** – Proposal to amend VAT Act submitted to parliament (October 30, 2018), News IBFD.

xiv. **Chile** – VAT treatment of immovable property transferred as capital contribution to company (October 22, 2018), News IBFD.

xv. **Colombia** – National Tax Authority pronounces on VAT exemption on sale of real estate units (October 5, 2018), News IBFD.

xvi. **Denmark** – Tax authorities change VAT treatment for holding companies in response to Marle Participations (Case C-320/17) (October 19, 2018), News IBFD.

xvii. **Global** VAT News & Features, Online Filing Now Mandatory For Egyptian Businesses (October 9, 2018).

xviii. **Orbitax,** Estonia Introduces New VAT Requirements for Building Land (October 5, 2018).

xix. **European Union**; Germany – ECJ Advocate General's opinion (VAT): A & G Fahrschul-Akademie (Case C-449/17) – exemption for education; driving school tuition (October 3, 2018), News IBFD.

xx. **France** – Finance Bill for 2019 – VAT and other measures (October 2, 2018), News IBFD.

xxi. **France** – VAT refund procedure – time limit introduced for EU residents (October 19, 2018), News IBFD.

xxii. **Greece** – Tax Registration Number and VAT Handbook published by Public Revenue Authority (October 2, 2018), News IBFD.

xxiii. **Ireland** – Budget for 2019 – VAT and other tax measures (October 10, 2018), News IBFD.

xxiv. **Orbitax,** Malaysia Issues Sales and Service Tax Return and Payment Guidance (October 9, 2018).

xxv. **Malta** – 2019 Budget speech – details (October 24, 2018), News IBFD.

xxvi. **Moldova** – Input VAT included in value of charity and sponsoring contributions – STS clarifications (October 9, 2018), News IBFD.

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xxviii. **CCH,** Global VAT News & Features, Norway Proposes To Lift VAT On E-Books (October 12, 2018).

xxix. **Panama** – Tax on sugary soft drinks – bill proposed (October 25, 2018), News IBFD.

xxx. **Russia** – Requirements for applying VAT-free regime amended (October 8, 2018), News IBFD.

xxxi. **Russia** – Application of new VAT rate – MoF clarifications (October 12, 2018), News IBFD.

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xxxviii. **Ukraine** – Right of taxable persons to deduction of input VAT – Tax Committee clarifications (October 24, 2018), News IBFD.

xxxix. **United Kingdom** – Making Tax Digital: VAT – pilot and guidance (October 17, 2018), News IBFD; CCH, Global VAT News & Features, UAE Tax Agency Issues Charities VAT Guidance (October 23, 2018).

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