KPMG

Inside Indirect Tax

October 2018

About this Newsletter

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

The Americas

United States: Presence of Clothing in State for Try-On Period Creates Substantial Nexus in Texas

In a recent private letter ruling, the Texas Comptroller addressed whether an online clothing retailer had nexus with Texas for the audit period at issue. This ruling was issued before the *Wayfair* decision, meaning the physical presence standard was applied. The taxpayer at issue selected clothing for clients based on their preferences and shipped clothes to clients on a monthly basis. Clients were not charged for the clothing before shipment, but the taxpayer verified that there were sufficient funds on the client's credit card to pay for the goods if the client wished to keep them. Clients were allowed a seven-day, so-called "try-on" period to determine whether or not to keep the clothing. After the seven-day period, which was measured from the date the clothing was delivered by a common carrier, the taxpayer charged clients for the clothing. Title and risk of loss associated with the items passed to the customers, per the taxpayer's terms and conditions, once the goods were handed over to a common carrier.

The Comptroller ruled that the taxpayer had an obligation to collect Texas sales and use taxes because the presence of its clothing in the state created substantial nexus. In the Comptroller's view, the taxpayer continued to own the clothing during the seven-day period because it had the right to charge the customer for clothing that he or she decided to keep and did not recognize the revenue from the sale of the clothing until after the seven-day period expired. Although the taxpayer's terms and conditions stated that risk of loss and title to the property transferred to the customer upon delivery of the clothes to a common carrier, the Comptroller noted that it is "well settled that the Comptroller is not bound by a private contract to which the Comptroller is not a party."

Europe, Middle East, Africa (EMA)

European Union: Travel Agent Mechanism Applies to Resale of Accommodations According to Advocate General

On September 5, 2018, the Court of Justice of the European Union (ECJ) published the Opinion of its Advocate General (AG) in *Alpenchalets Resorts GmbH*, Case C-552/17, regarding whether the simplification mechanism for travel agents applies if only one service is resold and whether travel agents reselling accommodations can apply the reduced rate applicable to such services. Under the EU VAT Directive, EU businesses that buy and resell travel, accommodation and certain other services as a principal or undisclosed agent (that is, acting in their own name) must account for VAT under the Tour Operator Margin Scheme (TOMS). This simplification mechanism enables VAT to be accounted for on travel sales on a margin basis without businesses being required to register and account for tax in each Member State where the services and goods are enjoyed. In the case at hand, the taxpayer rents houses from the owners and then rents them for holiday purposes to its customers. On arrival, the owners or their agents provide further services to the individual customers, such as cleaning of the accommodation and, in some cases, a laundry and "bread roll" service. The referring court asked the ECJ whether the service in question can be classified as a service provided by a travel agent, and if it can, whether the reduced rate of taxation should apply on the taxable amount (the margin) regarding the accommodation component of the service provided.

The AG examined whether the established case law relating to the TOMS mechanism requires the travel agent to provide a multiplicity of services within a single sale for the TOMS mechanism to apply. According to the AG, there are two conditions for the TOMS mechanism to apply. The first requires the trader to act in its own name and not as an intermediary. The second requires the trader to use the provision of goods and services from third parties (as opposed to the travel agent's own goods and services). According to the AG, there are arguments as to why one bought-in service, provided that it relates to either accommodation or transport and provided, of course, that the travel agent acts in its own name and not just as an intermediary, should suffice for a sale to fall under the special scheme for travel agents. First, the ECJ has never interpreted or applied the mechanism as being limited to sales composed of at least two bought-in sales. On the contrary, the ECJ's approach has been rather generous, interpreting that scheme broadly. That is true not only regarding the substantive multiplicity (of services), but also as regards the geographical multiplicity (that the travel agent buys supplies in different Member States). Second, in view of the diversity of services in the travel industry, requiring at least two bought-in sales for the mechanism to apply would likely exclude from the scope of that mechanism those traders who have developed travel businesses based on "mixed" (bought-in and in-house) sales. Furthermore, especially if connected with the applicability of the ancillary/principal logic to that assessment, which in cases of requirement of multiplicity could not really be excluded, the definition of what would fall under the TOMS mechanism would run the risk of being excessively narrow. The AG thus concluded that the TOMS mechanism applies to a sale of a service which consists in the provision of one bought-in service, provided that that bought-in service is accommodation or transport.

As to the question of the applicable VAT rate, the AG recalled that the scope of application of reduced rates must be interpreted strictly. On the systemic level, travel services are not included in the specific provision of the EU VAT Directive, which lists services subject to a reduced rate, among which, is "accommodation provided in hotels and similar establishment, including the provision of holiday accommodation and the letting of places on camping or caravan sites." As a consequence, applying the reduced rate of taxation to travel agents for providing accommodation would conflict with the VAT Directive and the objective of simplification pursued by the special scheme for travel agents.

Source: IBFD, Summary, C-552/17 Alpenchalets Resorts.

European Union: VAT Fraud Committed by Customer Does Not Automatically Affect Import VAT Exemption According to AG

On September 6, 2018, the ECJ published the Opinion of its AG in *Vetsch Int. Transporte GmbH*, Case C-531/17, regarding whether the VAT exemption on imports relating to imports of goods followed by intra-EU transfers of goods can be denied if the customer for the goods participated in VAT fraud. Under the EU VAT Directive, the importation of goods in one Member State can be exempt if the imported goods are immediately transferred to another Member State where they are subsequently subject to VAT. In the case at hand, two companies (B and K) established in Bulgaria for VAT purposes purchased goods from a company established in Switzerland. For these purchases, B and K requested the taxpayer to import the goods into Austria. The goods were subsequently shipped by a freight forwarder to B and K in Bulgaria. When importing the goods, the taxpayer, as an indirect representative for B and K, filed customs declarations in Austria for releasing them into free circulation, also requesting the VAT exemption for the import of goods that are subsequently transferred to another EU Member State for which the zero rate for intra-EU sales is applied. B and K subsequently correctly accounted for and paid the VAT due on the intra-EU transfer of the goods from Austria to Bulgaria in both EU Member States. During the shipment, the right to dispose of the goods as owner was with B and K. After arrival of the goods in Bulgaria, B and K resold the goods, charging Bulgarian VAT; however, they did not account for and did not pay the VAT due on these sales. B and K accounted for these sales as zero-rated intra-Community sales to the taxpayer. However, such sales had never taken place. With these transactions, B and K apparently committed tax fraud in Bulgaria without the knowledge of the taxpayer. Nevertheless, the Austrian tax authorities imposed a VAT assessment to the taxpayer charging the VAT due upon import.

The AG highlighted that at the time of import in Austria and the subsequent transfer of goods to Bulgaria, there was no intention to commit tax fraud. Because all conditions for applying the zero-rating were met, the application of the VAT exemption upon import could only be rejected in two instances: (1) a direct rejection if the taxpayer knew or could have known about the subsequent tax fraud (the abstract method), or (2) an indirect rejection where this VAT exemption is connected to the zero rate, so that rejection of the latter had consequences for the application of the first, even where the taxpayer did not know about the subsequent tax fraud (the concrete method). Moreover, a taxpayer should take every step which could reasonably be required of it to satisfy itself that the transaction does not result in its participation in tax evasion. In the case at hand, the AG held that the application of the VAT exemption could not be denied on the basis of the abstract method, because it could not be held against the taxpayer that it knew or should have known about the tax fraud subsequently committed by B and K. Furthermore, the AG held that, the application of the VAT exemption could not be denied on the basis of the concrete method because B and K did not have an intention to commit tax fraud at the time of the intra-EU transfer of the goods. As such, at that time, they did not commit tax fraud nor did they consciously take part in tax fraud. Therefore, according to the AG, the question that arose was whether a change in the intention of B and K in a later stage could be taken into account retroactively. The AG held that this was not the case, because subsequent changes in the intention of a taxpayer do not have a retroactive effect. Moreover, for a taxpayer to be involved in tax fraud, this has to be the case at the time of the relevant transaction, which was not the case here. Finally, the AG observed that the VAT loss occurred in Bulgaria, which was also imposed by means of a VAT assessment, and not in Austria. The AG therefore concluded that refusing the importer the VAT exemption upon importation is not allowed if only the customer of the goods knew, or should have known, that it, with the intra-EU transfer, was participating in VAT fraud.

Source: European Union; Austria – ECJ Advocate General's opinion (VAT): Vetsch Int. Transporte (Case C-531/17) – exemption upon import; zero rate; intra-Community transactions; fraud – details (September 11, 2018), News IBFD.

European Union: Advocate General Opinion on VAT Recovery on Professional Fees Related to Unrealized Sales of Shares

On September 6, 2018, the ECJ published the Opinion of its AG in *C&D Foods Acquisition ApS*, Case C-502/17, regarding the recovery of VAT on professional expenses for a proposed, but ultimately unrealized, sale of shares. In the case at hand, the taxpayer was a legal entity established for VAT purposes in Denmark; it was part of the international group Arovit. The taxpayer held all of the shares in Arovit Holding, which in turn had all of the shares in Arovit Petfood, the latter having the shares in 13 other companies established in several EU Member States. Beginning in 2007, the taxpayer provided several services subject to VAT, such as IT and administrative services, to Arovit Petfood on the basis of a management agreement. For these services, the taxpayer received remuneration in the form of wage costs, increased by a 10 percent markup. The taxpayer did not provide such services to other companies within the Arovit group. In 2009, an Iceland financial Institution (Kaupthing Bank) acquired the Arovit group and ordered consultancy and legal services to investigate the possibility of a restructuring of the Arovit group. Although the Kaupthing Bank entered into agreements, the fees were paid by the taxpayer. Ultimately, an agreement was drafted to transfer the shares of the taxpayer in Arovit Holding and Arovit Petfood. The fees were charged to the taxpayer, but in the end the shares in Arovit Holding and Arovit Petfood were not sold because of lack of a buyer. The taxpayer nevertheless deducted the VAT incurred on the legal fees; the deduction was denied by the Danish tax authority (SKAT).

The AG first pointed out that she would only take into account the legal fees because the taxpayer was the recipient of only these services, not for the consultancy costs charged by accountants. The AG subsequently reiterated the ECJ's case law on when holding companies are regarded to carry out economic activities within the meaning of EU VAT Directive. The AG emphasized that this case law also applies where there is intermediate holding and, therefore, it is decisive that the taxpayer carried out taxable activities with respect to Arovit Petfood. Although the case law referred to cases in which shares were bought, this case law also applies, according to the AG, if shares are sold and the involvement of a holding company, in the management of its subsidiary is therefore ended. The fact that the revenue generated by the sales would be issued to repay a debt to the Kaupthing Bank did not change this conclusion. Therefore, an intended sale by a holding company of shares of its subsidiary in which its management was involved must be regarded as an economic activity for EU VAT purposes.

The AG further considered whether the costs had a direct and immediate link with a specific (taxable or exempt) output transaction, emphasizing that a taxpayer does not have the right to deduct VAT if there is such a link between the costs and VAT exempt output. This is the case for selling shares in which a taxpayer was involved in the management. Therefore, in the case at hand, the assessment to be made was whether the incurred costs had a direct and immediate link with the intended sale of the shares in Arovit Petfood. The AG emphasized that for establishing a link when transferring shares, the costs must be included in the sales price of the shares. However, according to the AG, this does not entail that the sales price of the shares actually must be increased by these costs, but that the costs influence the profit on a specific transaction. The fact that, in the end, the sale did not take place does not break the required direct and immediate link. In the case at hand, the AG held that the costs seemed to have this link with the intended sale of shares because the legal advice related to this intended sale. However, it was up to the referring court to make a final assessment in this regard.

Finally, the AG observed that if there is not a direct and immediate link with the VAT-exempt sale of the shares, the assessment that subsequently must be made is whether there is such a link with the taxpayer's economic activities as a whole. The AG pointed out that, for the large part, the same principles as set out in the previous paragraph apply, provided that the link is established with the economic activities as a whole. Therefore, the requirement is that there is an economic connection (i.e., that the profits are influenced by it). As such, the costs could be regarded as directly and immediately linked to the taxpayer's economic activities as a whole. Nonetheless, the AG emphasized that the taxpayer was not carrying out economic activities for Arovit Holding. As such, a pre-VAT deduction apportionment calculation may have to be applied. However, the questions referred did not go in this direction. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

Source: European Union; Denmark – ECJ Advocate General's opinion (VAT): C&D Foods Acquisition (Case C-502/17) – right to deduct; holding company; due diligence costs – details (September 11, 2018), News IBFD.

European Union: VAT on Margin Due When Travel Agents Receives Advance Payments

On September 5, 2018, the ECJ published the Opinion of its AG in *Skarpa Travel sp. z o.o. w Krakowie*, Case C-422/17, regarding whether, under the TOMS mechanism, VAT on advance payments received by travel agents is due at the time the advance payment is received or when the margin is known. In the case at hand, the taxpayer was a travel agent providing services that fell within the TOMS mechanism. For its services, it received prepayments from its customers. Under the TOMS mechanism, the taxpayer was unsure when the VAT on its output became due in the case of prepayments. Accordingly, it asked the Minister of Finance for an individual interpretation on this point. The taxpayer held the view that the VAT on the services for which the prepayments were made only became due when it could determine the final margin, the margin being the taxable amount for the application of the mechanism. This was the case, according to the taxpayer, because the exact costs were only known after the travel had taken place. The Minister of Finance, on the other hand, held the view that the VAT became due at the time the prepayments occurred.

The AG started its analysis by reiterating the standard rules on when VAT becomes chargeable. For prepayments, the VAT becomes due when such a payment occurs. The AG emphasized that the chargeability only refers to the temporal aspect of VAT collection. According to the AG, the objective of the

TOMS mechanism is twofold. First, it seeks to avoid practical difficulties and, second, it aims to keep the VAT collection in the Member State in which the travel agent is established. The mechanism deals with the sourcing, taxable amount and the right to deduct VAT, but it does not deal with the timing of taxation of the travel agent's services. Therefore, according to the AG, the standard rule of the EU VAT Directive applies for travel agents applying the mechanism.

The AG subsequently assessed how to determine the taxable amount for the travel agent when the VAT becomes due at the time of the prepayment. After reviewing five options in this regard, the AG held that the option of calculating the margin on the basis of projected costs for a given transaction was the best approach. According to the AG, this option struck a reasonable balance between the respective interests of the national tax authorities and the taxpayer. An informed travel agent would have a fairly good idea of the costs to be incurred and, thus, of the margin that will likely apply in a certain transaction. This approach results in neither excessively overpaying nor withholding VAT in determining the margin for a travel service on a transactional basis. Although an adjustment might be necessary after the exact costs are known, the calculations only have to be made twice.

Source: European Union; Poland – ECJ Advocate General's opinion (VAT): Skarpa Travel (Case C-422/17) – travel agents; time of supply; taxable amount – details (September 10, 2018), News IBFD.

European Union: European Council Discusses Digital Services Tax

During an informal meeting of the Economic and Financial Affairs Council (ECOFIN) of the European Union on September 7 and 8, 2018, EU Finance Ministers discussed the recent European Commission proposal on a Digital Services Tax (DST). Taxation of enterprises that use digital technology has been high on the political agenda of international fora in the past months and should be seen in the broader context of the fight against base erosion and profit shifting (BEPS) and the perceived mismatch between taxation and value creation for digital activities. While the OECD Interim Report on the "Tax Challenges Arising from Digitalization", published on March 16, 2018, followed-up on the work delivered in 2015 under Action 1 of the BEPS Project, discussions on the taxation of the digital economy have intensified at the EU level since September 2017.

On March 21, 2018, the European Commission issued several proposals on a Fair and Effective Tax System in the EU for the Digital Single Market, including a Directive proposal on a DST, a Directive proposal on the introduction of a digital permanent establishment concept, and Recommendations to Member States to implement this concept in their double tax treaties. According to the European Commission proposal, the new DST would apply as of January 1, 2020, and would be levied on gross revenues at the single rate of 3 percent. The DST would only apply to businesses that sell certain digital services, including the provision of advertising space, the making available of marketplaces, and the transmission of collected user data. Tax revenues would be collected by the

Member States where the users are located, and will only apply to companies with total annual worldwide revenues above EUR 750 million ($865 million) and EU revenues above EUR 50 million ($57.7 million).

During the press conference after the informal meeting, the Austrian Finance Minister reiterated the intention of the Austrian Presidency of the Council to make the fair taxation of the digital economy a priority during its six-month mandate. Although technical details about, for example, the scope or rate of a future DST were not discussed during the meeting, all Member States agreed on the need to implement a short-term solution based on the initial European Commission's proposal on a DST. In order to reach such broad consensus, it was further agreed, as suggested by France and Germany, that the future tax on turnover would be combined with a "sunset clause", under which the DST would cease to have effect as soon as a permanent long-term solution is found at the international level. The addition of the clause was also supported by the European Commission. The Finance Minister further stressed the need for a clear and unambiguous definition of digital services, although this may lead to a more limited scope for the DST than was initially envisioned by the European Commission. To read a report prepared by KPMG International's EU Tax Center, please click here.

France: Updated Guidelines on Requirement to Use Tax Conform Software and Cash Desk Systems Published

On July 4, 2018, the French tax authority published updated guidelines on the requirement for the tax conformity of software and cash desk systems. Recall, in 2015 France introduced an obligation for the tax conformity of software and cash desk systems. The French tax authority subsequently issued or updated a list of "frequently asked questions" (FAQs) as guidance to refine their position and interpretation of the measures. The FAQs were issued or updated in August 2016 and again in July 2017. The French tax authority further considered comments from companies, software vendors, and other interested parties, and considered the level of diligence undertaken by companies seeking to reach conformity by a certain date to mitigate potential penalties or sanctions. Following last year's Finance Bill and renewed comments by stakeholders, the French tax authority have updated their guidelines to address the scope of these rules and their content.

The new guidelines add certain clarifications with respect to the definition of "software and cash desk systems". "Software or cash desk systems" are defined as computer systems with a cash register functionality—that is, one for storing and recording extra-accounting payments received in return for a sale of goods or services. Multi-function instruments would also be subject to this rule if they include cash register functionality. Moreover, a new exemption for companies is available when all payments received are channeled through a credit institution located in France or a banking institution located in the EU. Nonetheless, as soon as a company receives part of its payments in cash or by check, it will not be eligible for the exemption. The guidelines further introduce a new tolerance in instances in which all software and cash desk systems used by a legal entity are identical (i.e., basically the same version of the same tool). In this situation, a proof of conformity would now be sufficient to satisfy the obligation.

Given that the French tax authority has been using an "unannounced" audit procedure to verify proof of conformity, compliance with tax conformity of software and cash desk systems should be viewed as a key element of future tax audits in France and tax compliance for companies. Possible penalty assessments (while limited in the short term) may need to take into account the risk that such could eventually lead to a tax audit with a special focus on IT compliance and, therefore, possibly to greater sanctions in the long run. For instance, the user of a fraudulent software or system could be subject to penalty in an amount equal to up to 80 percent while an editor, designer, or distributor of a "fraudulent" software or IT system would be subject to a penalty equal to 15 percent of the turnover generated by such software or cash desk systems. The editor and the user further may be subject to criminal penalties related to the conception and use of fraudulent software or systems, and/or to the preparation and production of a forged proof of conformity. For more information, please click here and here.

Germany: Draft Guidance on Head Office – Branch Transactions Published

The German federal Ministry of Finance (BMF) recently published a draft guide on the VAT treatment of head-office to branch transactions The draft guidelines remind taxpayers that, in general, cross-border sales within a company, (e.g., between head office and a subsidiary) do constitute nontaxable internal transactions. Case C-210/04, *FCE Bank* (March 23, 2006). However, movements of goods as a result of intra-Community movements of goods to the business' own disposal are not included. In *Skandia America*, Case C-7/13 (September 17, 2014), the ECJ held that in accordance with EU law, the provision of services from a head office in a non-EU country in favor of a branch located in a Member State constitute taxable transactions, if the branch belongs to a VAT group.

According to the BMF, the principles of this ruling must only apply for cases in which the facts of the case correspond to those of the ruling; namely, provided that services are exchanged between a head office in a non-EU country and its permanent establishment which belongs to a VAT group in a Member State. Accordingly, the German VAT regulation should be changed and include two sample cases. Services between a head office in a non-EU country and its domestic permanent establishment, which belongs to VAT group in Germany, should not be considered outside the scope internal transactions. The permanent establishments may not form the sole business unit located in Germany. The German VAT regulation dealing with controlling enterprises in Germany should be amended accordingly. According to the BMF, the provisions of this guidance should be applicable in all open cases. However, no objection shall be raised if the VAT regulation, in the version applicable until now is applied for transactions carried out before January 1, 2019. To read a report prepared by the KPMG International member firm in Germany, please click here.

Russia: Overview of Recently Published VAT Guidance

On August 2, 218, the Ministry of Finance of Russia (MOF) issued Guidance Letter 03-07-08/54404 in which it held that international transportation of passengers and luggage provided by foreign airlines that do not operate in Russia through permanent establishments are considered to have been provided abroad and are not subject to VAT in Russia.

On August 6, 2018, the MOF issued Guidance Letter 03-07-11/55293 in which it held that the granting of an option to conclude a commercial real estate rent agreement does not qualify as an exempt sale of a fixed-term financial instrument and is thus subject to VAT. Moreover, the tax base when granting an option to conclude a commercial real estate rent agreement should be the value of the transferred right calculated on the basis of applicable market prices.

Source: Iurie Lungu, Russia Issues 2 VAT Guidance Letters, Tax Analysts (September 4, 2018).

United Kingdom: New Criminal Investigation Policy Announced

On September 4, 2018, the UK tax authority (HMRC) confirmed that it is monitoring and retaining data from social media platforms, news sites, and blogs to identify potential tax non-compliance. According to the new criminal investigation policy, HMRC may observe, monitor, record, and retain internet data that is available to anyone (i.e., open source material), including news reports; Internet sites; companies' house and land registry records; and blogs and social networking sites on which no privacy settings have been applied. The guidance also sets out the following circumstances the agency will consider in commencing a criminal, rather than civil, investigation: (1) in cases of organized criminal gangs attacking the tax system or systematic frauds where losses represent a serious threat to the tax base, including conspiracy; (2) if an individual holds a position of trust or responsibility; (3) if materially false statements are made or materially false documents are provided in the course of a civil investigation; (4) if, pursuing an avoidance scheme, reliance is placed on a false or altered document or such reliance or material facts are misrepresented to enhance the credibility of a scheme; (5) if deliberate concealment, deception, conspiracy, or corruption is suspected; (6) the use of false or forged documents; (7) importation or exportation breaching prohibitions and restrictions; (8) money laundering with particular focus on advisors, accountants, solicitors, and others acting in a "professional" capacity who provide the means to put tainted money out of reach of law enforcement; (9) if the perpetrator has committed previous offences or there is a repeated course of unlawful conduct or previous civil action; (10) cases involving theft, or the misuse or unlawful destruction of HMRC documents; (11) if there is evidence of assault on, threats to, or the impersonation of HMRC officials; (12) if there is a link to suspected wider criminality, whether domestic or international, involving offenses not under the administration of HMRC. HMRC added that one factor in deciding whether to open a criminal investigation is whether the taxpayer has made a complete and unprompted disclosure of the offenses commitment.

Source: Global VAT News & Features, HMRC Scanning The Internet For Tax Non-Compliance (September 12, 2018).

United Kingdom: Making Tax Digital Guidance Published

On September 17, 2018, HMRC published new Making Tax Digital (MTD) guidance aimed directly at affected businesses. This includes those for whom MTD will be mandatory when it is implemented in April 2019 and any that may wish to volunteer for it. Although the title refers rather confusingly to VAT businesses and other VAT entities, the language of the actual document is both simple and clear. It sets out what will need to be done to be ready for MTD in April 2019. The guidance is very much focused on obtaining the MTD compatible software that will be needed, including "bridging software" which it is expected many businesses will use to submit VAT returns.

Many businesses currently maintain digital records (either an accounting package or spreadsheets) and use a spreadsheet to perform the final calculations for their VAT returns. Currently those final VAT numbers are then keyed in manually to the "9 box return" on the HMRC portal. When MTD is introduced, this manual process will be replaced by a digital link. The simplest solution for many businesses in this position will be to use "bridging software" to provide the final digital link from the 9 box return numbers on the taxpayer's spreadsheet to HMRC systems. Digital submission of the VAT return will be required immediately once MTD is live as no soft landing period will apply, unlike the MTD requirement for digital links between different parts of the accounting records where HMRC are allowing an extra year for businesses to be fully compliant. To read a report prepared by the KPMG International member firm in the United Kingdom, please click here.

Asia Pacific (ASPAC)

India: Amendments to GST Rules

The Central Board of Indirect Taxes and Customs of India (CBIC) recently issued various notifications amending various goods and services tax (GST) rules. On September 4, 2018, the CBIC published Notification No. 39/2018-Central Tax, which prescribes the procedure for cancelling a GST registration in situations which a tax officer has reason to believe that the registration of a taxpayer should be cancelled. The officer must issue a show cause notice (SCN) seeking reason as to why the registration should not be cancelled. Taxpayers under the composition scheme who have not filed returns for three consecutive tax periods and all other taxpayers who have not filed returns for a continuous period of more than six months have the option to file all pending returns and pay applicable taxes along with interest and late fees instead of replying to the SCN. Notification 39/2018 further clarifies the documentary requirements and conditions for claiming GST credit. According to the Notification, taxpayers are now allowed to claim ST credits even if the documents do not contain all the specified invoicing requirements. However, invoices must contain at least the following elements to allow taxpayers to claim GST credits: (1) amount of tax charged; (2) description of goods and services; (3) total value of the sale of goods or services; (4) GSTIN of the vendor; (5) GSTIN of the purchaser; and sourcing in case of inter-state sales. Moreover, the Notification extends the relaxation for the shipment of goods in case of semi-knocked down (i.e., partially assembled) or completely knocked down condition without an invoice to goods shipped in batches and lots. Taxpayers will now have to issue a complete invoice before shipping the first consignment and issue delivery challans for each consignment shipped thereafter, referring to the original invoice. In addition, the Notification amends the e-waybill provisions to place additional responsibility on the person in charge of import to carry a copy of the bill of entry filled by the importer and indicate the number and date of the bill of entry in Part A of Form GSTEWB-01. Notification No. 39/2018 further amends the computation methodology to determine the GST refund amount in case of zero-rated sales; replaces forms GST REG-20 and GST ITC-04; and includes the annual return under Form GSTR-9. Finally, on September 4, 2018, the CBIC published Notification No. 41/2018-Central Tax, which waives late fees for filing forms GSTR-3B, GSTR-4, and GSTR-6 for the period October 2017 – January 23, 2018. To read a report prepared by the KPMG International member firm in India, please click here.

India: Overview of Recently Published GST Circulars

On September 4, 2018, the CBIC published Circular No. 57/31/2018-GST in which it clarified the scope of the principal-agent relationship when determining whether an activity qualifies as a sale even if made under no consideration (Schedule I of the GST Act.). According to the Circular, if the invoice for further sale is issued by an agent in his own name, then such sale will fall within the scope of Schedule I of the GST Act. However, if the invoice for further sale is issued in the name of the principal, then such sale does not fall within the scope of Schedule I of the GST Act.

On September 4, 2018, the CBIC published Circular No. 58/31/2018-GST in which it provides an alternative method for taxpayers to reverse wrongly used credits. Such credits can now be reversed by disclosing the credit under table 4(b)(2) of Form GSTR-3B. The applicable interest and penalty must be reported in column 9 of table 6.1 of Form GSTR-3B.

On September 4, 2018, the CBIC published Circular No. 59/31/018-GST in which it clarified the requirement to submit invoices for processing of refund claims. Historically, for claiming GST credits where goods or services are exported without payment of integrated tax, taxpayers were required to submit physical copies of invoices relating to these credits. To mitigate the cumbersome process of submission of invoices, the Circular allows taxpayers to submit a printout of Form GSTR-2A as an evidence. However, if Form GSTR-2A does not contain details of all invoices, copies of the missing invoices may be submitted. The Circular further provides the following order for debiting the electronic credit ledger: first the Integrated GST to the extent of balance available followed by the Central tax and State tax equally to the extent of balance available. Moreover, the Circular prescribes the procedure to be adopted to re-credit the electronic credit ledger, in case of rejection of the credits and the disbursal of a refund amount after a sanction order has been passed.

On September 4, 2018, the CBIC issued Circular No. 61/31/2018-GST in which it clarifies that in cases in which goods are stored in the warehouse of the shipper by a consignee or recipient taxpayer, such warehouse must be declared as an additional place of business by the recipient taxpayer. Further, declaration by the recipient taxpayer in concurrence with the shipper should be considered as sufficient compliance. To read a report prepared by the KPMG International member firm in India, please click here.

India: E-Commerce Platforms Required to Withhold GST on Third Party Sales Made Through their Platforms

Effective October 1, 2018, India introduced the tax collection at source (TCS) provisions of Section 52 of the CGST/SGST Act, which were suspended until now. The Tax Collection at the Source mechanism applies to e-commerce platforms doing business in India that (a) facilitate the online sale of goods and services to consumers in India and (b) collect the sales proceeds from the customer for these online sellers. The e-commerce platforms are required to withhold one percent tax from the collected sales proceeds and remit it to the Indian tax authority. In addition, e-commerce platforms subject to the tax collection at the source mechanism are required to file separate monthly and annual returns reporting transactions subject to this requirement. The tax withheld by the e-commerce platform can be credited to the cash ledger of the online vendor selling goods and services through the platform. The tax collection at the source mechanism is intended to ensure that all online vendors register for and comply with the Indian goods and services tax rules. Since India introduced its new goods and services tax system, the implementation of the TCS mechanism has been controversial and the Indian authorities have postponed its implementation multiple times. While the Indian tax authorities will issue detailed guidance on the tax collection at the Source mechanism in the upcoming days, e-commerce platforms and online sellers doing business in India should review the impact the new TCS mechanism will have on their operations in the country. To read a report prepared by the KPMG International member firm in India, please click here.

South Korea: Proposed Amendments to VAT Law

In late August 2018, the Cabinet Council of South Korea approved proposed amendments to the country's tax law, including the VAT. The amendments, if approved by the parliament, would be effective January 1, 2019, unless otherwise specified. Under current VAT law, certain deemed sales of goods (e.g., consumption of goods in VAT exempt business, etc.) are subject to VAT if the taxpayer originally deducted VAT for such goods. According to the proposal, in addition to the existing conditions, if the goods are purchased at zero-rate VAT in order to be exported, but are used in VAT exempt business, such sale of goods would also be considered as deemed sale of goods subject to VAT at 10 percent. Moreover, under current VAT law, the provision of certain electronic services by foreign service providers to individuals, including games, music, video, electronic documents, software, and other intellectual property are subject to VAT in Korea. The proposed amendment would expand the scope of the taxable electronic services to include cloud computing (including cloud storage) effective July 1, 2019. Under current VAT law, even though a comprehensive business transfer is exempt from VAT, if the transferee makes proxy VAT payment by the 10th day of the following month after the business transfer, such comprehensive business transfer is treated as being subject to VAT. According to the proposed amendment, the proxy VAT payment due date would be extended to the 25th day of the following month after settlement.

Finally, under current VAT law, taxpayers have an obligation to report all tax invoices electronically to the tax authority by the next business day. Delayed filing penalties are imposed at 0.5 percent of the sales value if the filing is made within the 11th day of the following month or at 1 percent of the sales value if the filing is not made within the 11th day of the following month. Moreover, if a taxpayer files amended VAT returns to claim additional VAT deduction pertaining to purchases made using credit cards, if the credit card purchase receipt was filed within the original filing due date, a penalty for late submission of credit card purchase receipts at 1 percent of the purchase price is imposed. To provide some relief on these penalties, the proposed amendments reduce the penalty for delayed filing of electric tax invoices from 0.5 percent to 0.3 percent and the penalty for non-filing of electric tax invoices from 1 percent to 0.5 percent. The proposed amendments further extend the cut-off date for delayed filing from the 11th day of the following month after the end of taxable period to the statutory due date of final VAT returns (i.e., 25th of the following month after the end of every second quarter). For non-filing of credit card purchase receipts by the original due date, the proposed amendments reduce the penalty from 1 percent to 0.5 percent. To read a report prepared by the KPMG International member firm in South Korea, please click here.

Trade & Customs (T&C)

United States: Overview of United States-Mexico-Canada Trade Agreement

On October 1, 2018, the Office of the U.S. Trade Representative (USTR) announced that representatives of the United States, Mexico, and Canada have reached an agreement to modernize the 24-year-old NAFTA (North American Free Trade Agreement). The USTR released four "fact sheets" about the outcomes of the United States-Mexico-Canada trade agreement.

The first USTR fact sheet concerns intellectual property rights, digital trade, financial services, labor, and environmental protections including the following items: Protections for U.S. innovators; increased de minimis shipment value level; core obligations to prevent discrimination against U.S. financial services suppliers; provision against local data storage requirements; measures supporting financial services; labor rights; and enforceable environmental obligations

The second USTR fact sheet notes "key achievements" with respect to the agricultural sector, as follows: expanded market access for U.S. food and agricultural products; elimination of Canada's milk classes 6 and 7; standards for agricultural biotechnology; commitments to reduce "trade distorting" policies, improve transparency, and provide for non-discriminatory treatment for agricultural products; "fair treatment" for quality requirements for wheat and other agricultural products; enhanced rules for science-based sanitary and phytosanitary measures; agreement on geographic indication standards; market access for certain cheese names; agreement to prohibit barriers for alcohol beverages; and new protections for proprietary food formulas.

The third USTR fact sheet addresses: rules of origin and origin procedures; a new labor value content rule to support auto industry workers, by requiring that a significant portion of vehicle content be made with "high-wage" labor; enhanced and stronger "rules of origin" that exceed those of both NAFTA 1.0 and the Trans-Pacific Partnership (TPP); a new "market access" chapter that maintains duty-free treatment for originating goods; updated provisions for duty-free temporary admission of goods to cover shipping containers or other substantial holders used in the shipment of goods; new provisions on textiles with incentives for North American production in textiles and apparel trade, and new provisions covering trade in specific manufacturing sectors.

The fourth USTR fact sheet examines in greater detail the effects of the trade agreement on the U.S. dairy sector. For more information, please click here.

Argentina: Temporary Export Tax Introduced

On September 4, 2018, Argentina published Decree No. 793/2018 in the official gazette. The Decree introduces a new temporary 12 percent export tax effective January 1, 2019 through December 31, 2020. The 12 percent export tax will be imposed on the FOB export price of "primary product" goods (including agricultural goods), subject to a cap of ARS 4 per U.S. dollar of the corresponding tax value or official FOB price for primary product goods (i.e., the export duties cannot exceed four pesos per U.S. dollar of the corresponding tax value or official FOB price). For all other products, the cap amount will be fixed at ARS 3 per U.S. dollar of the corresponding tax value or official FOB price. In addition, the Minister of Economy announced an intention to submit new legislation incorporating a new tax on service exports for congressional approval. This new service tax would be imposed at a rate of 12 percent and also subject to the ARS 4 per U.S. dollar cap. If enacted, the service tax on exports would be effective January 1, 2019. To read a report prepared by the KPMG International member firm in Argentina, please click here.

Panama: Customs Transit, Customs Warehouse, Temporary Customs Warehouse Regimes Introduced

On June 27, 2018, the customs authority of Panama published Resolution No. RA-014-DGT18 to provide rules for unlimited, duty-free imports of raw materials, components, equipment and products into Panama when such imports generally are used in an "improvement" process involving the imported merchandise. The new customs transit regime suspends customs tariffs and taxes on the imports, provided that the eventual product has a destination that is outside of Panama. In general, this type of regime is a widely used customs procedure to facilitate the movement of goods between two points of a customs territory or between two or more different customs territories. The customs warehouse regime similarly suspends the imposition of customs duties and import taxes on the importation of merchandise to allow for the storage of the imported goods for as long as the goods remain in the warehouse, provided they are not used domestically or abandoned. To read a report (in Spanish) prepared by the KPMG International member firm in Panama, please click here.

In Brief

— **Australia:**[i] On September 19, 2018, the Australian Taxation Office (ATO) issued GSTR 2018/2 – Goods and services tax: supplies of goods connected with the indirect tax zone (Australia). For a seller to be liable for GST on a taxable sale, the sale must be connected with Australia. GSTR 2018/2 explains, with examples, the different cases in which a sale of goods is considered connected, including if the sale is wholly within Australia, from Australia, or to Australia. It also explains cases in which a sale is disconnected.

— **Australia:**[ii] On September 24, 2018, the ATO published a guide on avoiding five common GST reporting errors. According to the ATO, return preparers should check the following items before submitting a return: (1) ensure the timing is correct, and report for the correct tax period; (2) check the figures to avoid accidental miscalculations and simple transcription errors; (3) ensure claims for GST credits can be substantiated; (4) ensure there is a creditable purpose (e.g., do not claim GST for goods purchased for personal use); and (5) ensure that GST is charged appropriately, including by businesses that may not realize they have passed the AUD75,000 (USD54,390) GST threshold.

— **Bahrain:** Effective January 1, 2019, Bahrain will implement a VAT in accordance with the Gulf-Cooperation Council VAT Framework Agreement. To read a report prepared by the KPMG International member firm in Bahrain, please click here.

— **Bolivia:**[iii] Bolivia recently approved a tax amnesty according to which (1) 95 percent of the penalties and 100 percent of the interest and fines relating to noncompliance with formal requirements will be waived, provided that the outstanding tax liabilities are paid in full by October 31, 2018 at the latest; (2) 90 percent of the penalties and fines for noncompliance with formal requirements and 100 percent of the interest will be waived, provided that the outstanding tax liabilities are paid in full between October 31, 2018 and January 31, 2019.; and (3) 80 percent of the penalties and fines for noncompliance with formal requirements and 100 percent of the interest will be waived on outstanding tax liabilities subject to payment facilities until 31 January 2019. Taxpayers must withdraw their judicial and administrative proceedings to apply for the tax amnesty. Moreover, taxpayers with outstanding tax liabilities relating to tax years before 2015 are entitled to the following regularization regime: (1) taxpayers not registered, or registered incorrectly, with the tax administration may consolidate the VAT, corporate income tax and transaction tax, paying 12 percent on 9 percent of the annual purchases corresponding to the last 3 years; (2) taxpayers registered under the general regime may consolidate the VAT, corporate income tax and transaction tax, paying 12 percent on the average of the annual income for the last 3 years; and taxpayers taxed under the VAT complementary regime may pay 4 percent on salaries or net remuneration relating to 2017.

— **Brazil:**[iv] The Chamber of Deputies is currently examining Bills 975/2018 and 976/2018 which aim to suspend State Agreements 181/2015 and 106/2017 (Convênios ICMS 181/2015 and106/2017). The Agreements authorize the levying of the state-level VAT (ICMS) on digital goods sold to end consumers through electronic means. (For KPMG's previous discussion on the agreement, please click here.) However, under Complementary Law 116/2003, as amended in 2016, software downloads and streaming are already subject to the municipal tax on services (ISS). Because ISS and ICMS should not be levied on the same taxable events, the Bills intend to suspend the charge of ICMS.

— **Bulgaria:**[v] On October 11, 2018, the Ministry of Finance of Bulgaria submitted to the parliament a bill amending the VAT Act. The bill, if approved, would introduce a mandatory VAT registration threshold of EUR 10,000 ($11,500) for sellers of telecommunications and electronically-supplied services to final consumers under the Mini One-Stop-Shop (MOSS) regime. In addition, the bill would implement into Bulgarian law the EU VAT Voucher Directive. The bill would further extend until June 30, 2022 the requirement for the purchaser to self-assess VAT under the reverse charge mechanism applicable to sales of grain and technical crops. In addition, the bill would allow online businesses to issue electronic cash receipts where there is no physical contact between seller and buyer as well as create a public register of online store operators. The bill would further introduce the option for the importer to defer payment of the import VAT rather than pay the import VAT upfront to the customs authority. The VAT deferral would be available to importers of goods such as aluminum, nickel, sulphur, tin, lead, zinc, organic chemical products, and similar products. Importers would have to meet the following criteria: (1) each imported food declared in the customs document must amount to at least BGN 50,000; and (2) the importer should not have any unsettled tax and social security liabilities. Finally, the bill would amend the scope of the VAT exemption relating to sales to vessels and aircraft used in international shipments; repeal the requirement to de-register for companies opening liquidation proceedings; and repeal the requirement to pay a minimum collateral of BGN 50,000 ($29,500) for fuel traders.

- **Canada:**[vi] On June 21, 2018, the Cannabis Act received Royal Assent. As a consequence, cannabis for non-medical purposes will become available for legal retail sale in Canada on October 17, 2018. In anticipation of this development, a coordinated cannabis taxation framework is being implemented. On September 17, 2018, the federal government of Canada released for consultation technical draft regulatory and legislative proposals under the Excise Act, 2001 providing for excise duty rates. These rates would come into effect when cannabis for non-medical purposes becomes available for legal retail sale. Under the Coordinated Cannabis Taxation Agreements, the provinces and territories will be entitled to 75 percent of revenues from excise duties on cannabis products, and the federal government will be entitled to 25 percent.
- **China:**[vii] On September 5, 2018, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) of China jointly issued Circular [2018] No. 93 increasing the VAT refund rates for exports of electromechanical, cultural and other products effective September 15, 2018. According to the Circular, the export tax refund rate for multi-component integrated circuits, non-electromagnetic interference filters, books, newspapers and other products is increased to 16 percent. The Circular further increases the export tax refund rate to 13 percent for bamboo carvings, wood fans and other products. Finally, the Circular increases the export tax refund rate for basalt fiber and related products, safety pins and other products to 9 percent. The Circular includes a list of nearly 400 products and their applicable VAT refund rates.
- **China:**[viii] On September 5, 2018, the MoF and the SAT jointly issued Circular [2018] No. 91, which exempts interest income derived by financial institutions on loans granted to small enterprises and sole traders from VAT. According to the circular, interest derived by qualified financial institutions on loans granted to small enterprises and sole traders is exempt from VAT in the period between September 1, 2018 and December 31, 2020 provided that the amount of the loan does not exceed CNY 10 million ($1.45 million) and the interest charged on the loan is less than 150 percent of the contemporaneous benchmark interest rate of the People's Bank of China.
- **Egypt:**[ix] On August 14, 2018, Egypt published in the official gazette a law implementing a 180-day tax amnesty covering stamp duty, personal income tax, corporate income tax, general sales tax, and VAT liabilities that matured before August 15, 2018. According to the tax amnesty, interest and penalties on outstanding tax debts will be reduced by the following amounts: (1) 90 percent waiver if the tax debt is settled within 90 days of the entry into force of the tax amnesty; (2) 70 percent if the tax debt is settled within 45 days after the 90-day deadline for the 90 percent waiver; or (3) 50 percent if the tax debt is settled within 45 days after the deadline for the 70 percent waiver.
- **European Union:**[x] On September 12, 2018, the ECJ published its judgment in *Gamesa Wind România S.R.L.*, Case C-69/17, in which it held that a Member State tax authority cannot refuse a taxpayer's right to deduct VAT if that taxpayer's VAT identification number was deactivated, but later on was reactivated.

- **European Union:**[xi] On September 21, 2018, the European Commission (EC) published its study on the VAT Gap for 2016. The "VAT Gap is defined as the difference between the amount of VAT revenue actually collected and the theoretical amount that is expected to be collected, given the observed information on the country's economy and the actual VAT legislation. According to the EC's study, the EU-28 VAT Gap amounted to EUR 147.1 billion ($170.6 billion) in 2016. The study emphasizes that the VAT Gap cannot be considered as synonymous with VAT fraud. Besides VAT fraud and tax evasion and avoidance, the VAT Gap can also be influenced by bankruptcies and tax arrears, as well as reporting problems in national accounts. The smallest VAT Gaps were observed in Luxemburg (0.85 percent), Sweden (1.08 percent) and Croatia (1.15 percent). The largest VAT Gaps were registered in Romania (35.88 percent), Greece (29.22 percent) and Italy (25.90 percent). Overall, half of the EU-28 Member States recorded a VAT Gap below 9.9 percent.
- **Georgia:**[xii] On September 17, 2018, the Revenue Service of Georgia published Guidance Letter No. N11117 in which it clarified that if a construction company receives a share in the ownership of the immovable property as payment for its services, these services are subject to VAT at the zero rate. If the construction company subsequently resells the immovable property, however, the sale will be subject to VAT at the standard rate.
- **Georgia:**[xiii] On September 17, 2018, the Revenue Service of Georgia published Guidance Letter No. N11116 in which it clarified that if a non-profit organization provides to itself a building, this transaction is subject to VAT in the reporting month when the deemed sale took place. The amount of deductible VAT should be adjusted depending on whether the ratio of the taxable sales made by the taxpayer has increased or decreased, compared with the year in which the immovable property was acquired. In case of immovable property, an adjustment period of 10 years applies, under certain conditions.
- **Georgia:**[xiv] On September 17, 2018, the Revenue Service of Georgia published Guidance Letter No. N11118 in which it clarified that if a taxpayer purchases goods and credits the VAT incurred in the month of purchase, the subsequent return of these goods to the vendor obliges the taxpayer to adjust the amount of VAT deducted in the reporting month when such a return takes place. This obligation remains applicable even if the vendor does not issue an amended VAT invoice.
- **Kenya:**[xv] On September 21, 2018, Kenya published in the official gazette the Finance Act 2018, which, among other things, amends the country’s VAT law retrospectively effective July 1, 2018. The Finance Act clarifies that the taxable value for mobile cellular services is determined based on the consideration for the sale (including excise duty and other taxes) or if the seller and recipient are related, the open market value of the sale. The Finance Act further decreases the VAT rate applicable on petroleum products from 16 percent to 8 percent following the expiration of the exemption applicable on fuel. The taxable value for fuel excludes excise duty, fees and other charges. Kenya previously repealed the VAT

exemption on fuel. Moreover, the Finance Act exempts specified hearing aids and motor vehicles of returning public officers or their spouses, while also zero-rating corn flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10 percent in weight and medications under specified HS Codes including medications containing ephedrine or its salts or pseudoephedrine or its salts.

— **Mexico:**[xvi] On September 5, 2018, the government of Mexico issued a tax reform proposal, which, if approved, would introduce a reduced VAT rate of eight percent for certain regions along the border with the United States. Moreover, the proposal would introduce a three percent tax on digital services income. The tax would be levied on income from different digital service activities, including advertising on digital interfaces, digital sales platforms (services and goods), and the transmission of data generated by users of a digital interface if such data transmission generates income. The tax would generally apply if a user accesses the digital interface/platform using a device in Mexico. Certain exemptions would apply, including a general exemption where annual revenue from digital services does not exceed MXN 100 million ($5.3 million).

— **Netherlands:**[xvii] On August 30, 2018, the Ministry of Finance of the Netherlands's provided answers to questions regarding the taxation of Airbnb income. According to the Ministry of Finance, VAT at the reduced rate (currently six percent) is only due if the tenant is a taxpayer who rents out his residence as accommodation in the hotel, bed-and-breakfast, camping and holiday activity sector to persons who stay there for a short period.

— **Netherlands:**[xviii] On September 18, 2018, the Minister of Finance presented to the parliament the Tax Plan 2019, which, if approved, would amend the country’s VAT law effective January 1, 2019. The Tax Plan would increase the reduced VAT rate of six percent to nine percent. The Tax Plan would further amend the VAT exemption applicable to sports so that it applies to sporting activities provided to members or non-members alike. Moreover, the existing mechanism for small enterprises would be replaced with an optional VAT exemption mechanism for all taxpayers (natural and legal). Under the new mechanism, sales performed by a taxpayer whose gross receipts do not exceed EUR 20,000 ($23,157) per year and who has opted for the mechanism will be exempt from VAT. Moreover, the Netherlands plans to implement amendments to the EU VAT Directive relating to the sale of telecommunications, broadcasting, and electronic supplied services. As a consequence, EU vendors of such business-to-consumer sales not exceeding EUR 10,000 ($11,500) will be allowed to apply the VAT rules in their country of establishment instead of those of the country where the customer is located.

— **Nigeria:** The KPMG International member firm in Nigeria has prepared a report discussing the VAT challenges faced by the electricity industry in Nigeria and the proposed amendments to the VAT rules affecting the industry.

— **OECD:**[xix] On September 6, 2018, the Organization for Economic Cooperation and Development (OECD) published its Working Paper No. 39 on simplified registration and collection mechanisms for taxpayers that are not located in the jurisdiction of taxation. On October 24, 2017, the OECD published a guidance regarding effective collection of VAT on cross-border sales, where it has been identified that taxation in the country of consumption is the preferred option. In the case of business-to-business (B2B) transactions, collection in the country of consumption can be allocated to the business customer; however, in the case of business-to-consumer (B2C) transactions, such an approach is not practical and compliance is very low. The current Working Paper discusses in more detail the preferred approach for B2C situations, namely simplifying the compliance obligations for foreign sellers in the country of consumption. Simplifying the compliance burden can be achieved by simplifying VAT registration procedures and streamlining reporting and collection procedures. Some jurisdictions (e.g. the European Union, New Zealand, and Australia) have already implemented such simplifications, and the OECD analyses their experiences in its Working Paper. The general finding of the Working Paper is that experiences are favorable overall, with some outstanding issues to resolve. In cross-border sales, although an overwhelming portion of revenues are generated by large enterprises (for which compliance costs have been reduced significantly), for small and medium-sized enterprises, compliance costs are still high compared to their revenues. Moreover, the Working Paper states that information sharing and guidance need to be improved to facilitate compliance.

— **Oman:** According to recent media reports, the Ministry of Finance of Oman has confirmed preparations to target VAT implementation in Oman for September 2019, though the actual date of enforcement is currently under review. To read a report prepared by the KPMG International member firm in Oman, please click here.

— **Peru:**[xx] On September 6, 2018, Peru published in the official gazette Legislative Decree No. 1395 (the Decree), which amends the country's VAT law effective October 1, 2018. According to the Decree, branches, agencies and any other permanent establishments in Peru, as defined by the Income Tax Law, are deemed persons liable to VAT. Moreover, the rules for assessing the correct amount of input VAT, when it is related to taxable and exempt transactions, were amended. A seller must separately account for the acquisition of goods, services, construction contracts, and imports to be used exclusively for exempt and taxable operations, and where such determination cannot be made, the VAT credit must be calculated proportionally according to the procedure established by regulation. In addition, to qualify for the VAT exemption on export of services, taxpayers domiciled in Peru who render services partially abroad must be registered in a special registry of the tax authority. Finally, the Decree amends the scope of VAT withdrawal provisions regarding bank accounts, among other things effective January 1, 2019.

— **Philippines:**[xxi] On August 22, 2018, the Bureau of Internal Revenue of the Philippines (BIR) issued Revenue Regulations No. 20-2018 prescribing the implementing rules and guidelines for the excise tax on sweetened beverages. According to the Regulation, sweetened beverages refer to non-alcoholic pre-packed beverages of any constitution (liquid, powder or concentrate) that contain caloric and/or non-caloric sweeteners. The tax rates and tax base are as follows: (1) PHP 6 ($0.11) per liter of volume capacity for beverages containing pure caloric and/or non-caloric sweeteners; (2) PHP 12 ($0.22) per liter of volume capacity for beverages containing purely high fructose corn syrup or a combination of caloric or non-caloric sweetener; and (3) exempt for beverages containing purely coconut sap sugar and stevia glycosides. The persons liable to pay the excise tax are manufacturers or importers of sweetened beverages. The excise duty must be paid before removal of goods from the place of production for local manufacturers and before release from customs for imported drinks. The Regulation also provides a list of beverages that are exempt from the excise tax.

— **Portugal:**[xxii] Effective January 1, 2019, Portugal will implement a new mandatory e-invoicing mechanism for sales made to public bodies in line with EU Directive 2014/55/EC.

— **Puerto Rico:**[xxiii] The government of Puerto Rico recently proposed to repeal the four percent sales and use tax (SUT) applicable on sales of business to business services in two phases. The first phase would decrease the rate to three percent effective January 1, 2019 and down to zero percent effective January 1, 2020. Prepared food would also be taxed at a reduced SUT rate of 4.5%. This rate would be effective for transactions after June 30, 2018, and the seller would need authorization from the Secretary of Treasury.

— **Qatar:** According to recent media reports, Qatar will implement a VAT during 2019. To read a report prepared by the KPMG International member firm in Qatar, please click here.

— **Russia:**[xxiv] The city of Saint Petersburg recently announced a proposal to introduce a tourist tax. If adopted, the tax will be levied at the rate of up to two percent of the price of accommodation and could be extended to the entire territory of Russia.

— **Singapore:**[xxv] The Inland Revenue Authority of Singapore (IRAS) recently updated its online guidance for the funds industry on reclaiming goods and services tax (GST). According to the guidance, effective July 1, 2018, funds need only submit a simplified statement of claims, comprising a three-line statement of the GST claimed, which can be filed through "myTaxMail" via the online filing portal, "myTaxPortal." Unless requested by the IRAS, it is no longer necessary to submit a breakdown of the GST claimed and other supporting documents. If a fund is submitting a statement of claims for the first time it may, depending on the category of fund, also be required to provide an approval letter from the Monetary Authority of Singapore (MAS) as well as a MAS annual declaration/self-assessed declaration form. Effective September 1, 2018, qualifying funds will have to use CorpPass to log in to myTaxPortal to file their Statement of Claims.

— **Slovakia:**[xxvi] Slovakia recently proposed to apply the reduced VAT rate (currently 10 percent) to accommodation services effective January 1, 2019.

— **Slovakia:**[xxvii] On September 26, 2018, the government of the Slovak Republic proposed a draft law amending the VAT law, which, if approved, would be effective January 1, 2019. The government proposes to implement into Slovak law the EU VAT Voucher Directive and amendments to the EU VAT Directive relating to the sale of telecommunications, broadcasting, and electronic supplied services. In addition, the draft law would amend the definition of the term "turnover" for VAT purposes and introduce limitations for treating the sale of immovable property, which is determined for dwelling, as a taxable sale if conditions for exemption are fulfilled. Moreover, the sale of a construction (building) after 5 years from the first approval of the building based on which the building was approved for use would be taxable, if certain conditions are met (e.g., the building was over 5 years old before the sale significantly reconstructed). In addition, the draft law would repeal the requirement to deposit an interest free collateral upon VAT registration. Finally,-foreign taxpayers not established within the EU would be required to issue invoices in line with the Slovak VAT Act if the sourcing of the goods or services is in the Slovak Republic.

— **United Arab Emirates:**[xxviii] The Federal Tax Authority (FTA) of the United Arab Emirates (UAE) recently issued VAT Public Clarification VATP006 on the VAT invoicing rules. It clarifies: (1) the requirement to issue a tax invoice, or where permitted a simplified tax invoice, to the recipient of a sale; (2) the rules on simplified invoices and the items that must be included; (3) the rules concerning tax invoices issued in a foreign currency, which must show a tax amount converted to Emirati dirham; and (4) the rules concerning the rounding of figures on tax invoices.

— **United Kingdom:**[xxix] On July 8, 2018, the UK tax authority (HMRC) published Revenue and Customs in Brief 9 (2018) in which it clarified that damp-proofing products no longer qualify as energy-saving materials in the UK and are therefore subject to VAT at the standard rate effective September 1, 2018.

— **United Kingdom:**[xxx] On September 7, 2018, HMRC published Revenue and Customs Brief 6 (2018) in which it explains when the VAT exemption for domestic service charges may be applied and what property management and similar companies must do if they have wrongly applied the exemption and, as thus not declared the correct VAT amount due, or recovered an incorrect amount of VAT incurred on purchases.

— **Vietnam:**[xxxi] On September 17, 2018, Vietnam published a decree in the official gazette requiring businesses to issue standard electronic VAT invoices effective November 1, 2018. According to the decree, businesses must use the standard format, even if the information for the invoice is incomplete and submit investment certificates, regardless of individual transaction sizes if their annual gross receipts exceeds 10 billion VND ($428,500).

— **Zambia:** The 2019 Zambian Budget, introduced on September 28, 2018, proposes to abolish the VAT and replace it with a sales tax. No date for implementation was specified.

i. Orbitax, Australia Issues GST Ruling on Supplies of Goods Connected with the Indirect Tax Zone (September 21, 2018).

ii. CCH, Global VAT News & Features, Australia Highlights Most Common GST Reporting Errors (September 26, 2018).

iii. Bolivia – Tax amnesty – bill published (September 11, 2018), News IBFD.

iv. Brazil – Chamber of Deputies examines suspension of ICMS on digital goods (September 4, 2018), News IBFD.

v. Bulgaria – Ministry of Finance publishes bill amending VAT Act (September 4, 2018), News IBFD; Bulgaria – Proposed amendments to Value Added Tax Act – public consultation launched (September 12, 2018), News IBFD.

vi. Canada – Draft technical regulatory and legislative proposals related to excise tax on Cannabis released (September, 19 2018), News IBFD.

vii. China (People's Rep.) – VAT refund rates for certain products increased (September 10, 2018), News IBFD.

viii. China (People's Rep.) – VAT exemption for interest on loans granted to small enterprises and sole traders (September 12, 2018), News IBFD.

ix. Slim Gargouri, Egypt Offering Tax Amnesty, Tax Analysts (September 7, 2018).

x. RO: ECJ, September 12, 2018, Case C-69/17, Siemens Gamesa Renewable Energy România S.R.L., formerly Gamesa Wind România, v. Agenţia Naţională de Administrare Fiscală – Direcţia Generală de Soluţionare a Contestaţiilor, Agenţia Naţională de Administrare Fiscală – Direcţia Generală de Administrare a Marilor Contribuabili, ECJ Case Law IBFD.

xi. European Union – European Commission reports on EU-28 2016 VAT Gap of EUR 147.1 billion (September 21, 2018), News IBFD.

xii. Georgia – Clarifications regarding VAT treatment of construction services (September 26, 2018), News IBFD.

xiii. Georgia – Clarifications regarding VAT treatment in case of self-supplies (September 26, 2018), News IBFD.

xiv. Georgia – Clarifications regarding adjustments of input VAT (September 26, 2018), News IBFD.

xv. Kenya – Finance Act 2018 – indirect taxation (September 16, 2018), News IBFD.

xvi. Orbitax, Mexico to Reintroduce Reduced VAT Rate for Border Regions (September 7, 2018); Orbitax, Mexico's Plans for a Digital Services Tax (September 17, 2018).

xvii. Netherlands – Taxation of Airbnb rental income: State Secretary answers questions (September 3, 2018), News IBFD.

xviii. Netherlands – Tax plan 2019 – VAT (September 20, 2018), News IBFD.

xix. OECD – OECD publishes VAT working paper on simplified registration and collection mechanisms (September 11, 2018), News IBFD.

xx. Orbitax, Peru Publishes Legislative Decree Amending VAT Law to Ensure Correct Application (September 18, 2018); Peru – VAT provisions – amendments published (September 14, 2018), News IBFD.

xxi. Philippines – Sweetened beverages tax – implementing rules and guidelines issued (September 6, 2018), News IBFD.

xxii. CCH, Global VAT News & Features, Electronic Invoicing Mandatory For Portuguese B2G Supplies In 2019 (September 17, 2018).

xxiii. Puerto Rico Tax Reports, 658, PUERTO RICO TAX REPORTS (September 28, 2018).

xxiv. Russia – Proposal to introduce hotel tax (September 26, 2018), News IBFD.

xxv. Global VAT News & Features, Singapore Simplifies GST Reclaim Procedure For Funds (September 12, 2018).

xxvi. Slovak Republic – Proposal to reduce VAT rate for accommodation services (September 27, 2018), News IBFD.

xxvii. Slovak Republic – Amendments to VAT law approved by government (September 28, 2018), News IBFD.

xxviii. CCH, Global VAT News & Features, UAE Issues VAT Guidance On Invoicing (September. 12, 2018).

xxix. CCH, Global VAT News & Features, UK VAT Change For Damp-Proofing Products Effective (September 3, 2018).

xxx. United Kingdom – VAT: domestic service charges (September 7, 2018), News IBFD.

xxxi. Bloomberg BNA, Vietnam Announces Decree on Mandatory Electronic VAT Invoices (September 24, 2018).

About Inside Indirect Tax

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

Kent Johnson
Partner
Seattle

Frank Sangster
Principal
Philadelphia

Philippe Stephanny
Senior Manager
Washington, D.C.

kpmg.com/socialmedia