KPMG

Inside Indirect Tax

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About this Newsletter

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

Global Rate Changes

— **Ghana:**[i] Effective August 1, 2018, Ghana split the 17.5-percent combined VAT and National Health Insurance Levy (NHIL) regime into three levies: a 12.5 percent VAT, a 2.5 percent Ghana Education Trust Fund (GETF), and a 2.5 percent NHIL. As a consequence, taxable sales remain subject to the same 17.5 percent tax burden. The VAT is levied on value added only, with input VAT credits available for taxpayers; the other two taxes, by contrast, are levied on the full consideration paid for the sale and are not recoverable for businesses, resulting in a greater absolute burden.

— **Kenya:**[ii] Effective September 1, 2018, Kenya subjects petroleum products, which until now were VAT exempt, to the standard VAT rate of 16 percent.

— **Venezuela:**[iii] Effective September 1, 2018, Venezuela increased the standard VAT rate from 12 percent to 16 percent for the remainder of fiscal year 2018 and for fiscal year 2019.

The Americas

United States: Call Tracking and Monitoring Services Not Subject to Sales and Use Tax in Texas

The Texas Comptroller recently issued a private letter ruling addressing whether a taxpayer’s call tracking and monitoring services were taxable data processing services. The taxpayer at issue provided a suite of services focused on call tracking and monitoring for car dealerships, home service businesses, and healthcare providers. The taxpayer’s services included consulting to improve a client’s call-handling processes; setting up phone numbers to help track and monitor inbound calls; evaluating sales calls and determining appropriate leads; and providing an online platform that logged, recorded, and mapped calls. Clients were charged a flat, monthly fee for these services.

Under Texas law, “data processing services” are subject to sales and use tax. Word processing, data entry, data retrieval, data search, information compilation, and computerized data storage or manipulation are all considered data processing services. Although the Comptroller determined that the taxpayer’s services contained elements of data processing, such as call tracking, logging, recording, and generating reports viewed using the taxpayer’s online platform, the Comptroller concluded that the “essence of the transaction” was nontaxable consulting services. In short, the data processing activities were performed to facilitate the consulting services. Clients purchased the taxpayer’s services to help them improve the quality of their employees’ interactions with customers via the telephone, not just to record and compile the calls. Therefore, the entire fee was not subject to tax.

Brazil: New Tax Offsetting Regulations Published

On June 13, 2018, the federal tax authority of Brazil issued Normative Instruction No. 1810 of 2018, which amends the federal taxes offsetting procedures. Until now, taxpayers were not allowed to offset social security taxes (e.g., INSS) with any other taxes managed by the federal tax authority (e.g., Corporate Income Tax – IRPJ, Social Contribution on Profits – CSLL, the federal social security contributions PIS, and COFINS). According to the Normative Instruction, taxpayers are entitled to offset social security taxes to other federal taxes, provided several conditions are met. First, the entity must report its social security and labor taxes through a digital platform called eSocial. This tool is part of the SPED platform (i.e., the system administered by the tax authority that aims to capture the digital filling and submission of legal entities bookkeeping, fiscal books etc.). Currently, the submission of labor and social security taxes through eSocial is mainly done by companies that are subject to the Real Profit method for calculation of corporate income taxes, i.e., companies whose annual revenue surpass BRL 78 million ($18.8 million). In addition, only credits generated after September 2018 are entitled to be offset. Credits generated prior to September 2018 can be subject to a refund claim. To seek the offset, taxpayers are required to request the refunds through an administrative and/or judicial procedure.

Canada: Proposed Amendments to GST Holding Company rules

On July 27, 2018, the Canadian Department of Finance (Finance) published a proposal that may restrict the amount of input tax credits (ITCs) that holding corporations are eligible to claim under the goods and services tax (GST) and harmonized sales tax (HST) applicable to them. The current GST/HST holding corporation rules allow a holding company to claim ITCs for GST/HST paid on property or services it acquires if it can reasonably be considered that the property or services are in relation to the shares or indebtedness of another corporation related to the holding company. A number of conditions must also be met, including a requirement that all or substantially all of the property of the other corporation is for consumption, use or sale in the course of its commercial activities. If the conditions are met, the holding company is deemed to acquire goods and services in the course of commercial activities and, as such, the holding company is eligible to claim ITCs.

The proposal significantly changes the GST/HST holding corporation rules. Among other items, the "reasonably" and "in relation to" tests are replaced with provisions that list specific activities and circumstances that may allow a holding company to claim ITCs. If the holding company incurs costs related to an activity or circumstance that is not listed in the proposals, it will generally not be eligible to claim ITCs. In addition, the proposal requires a holding corporation to acquire goods and services for the following specific purposes to claim ITCs for GST/HST paid on those goods and services: (1) specified transactions involving the shares and debt of the operating corporation; (2) the issuance or sale of shares or debt of the holding company to the extent that the proceeds are transferred to the operating corporation; and (3) other activities of the holding company if the holding company meets a new property test, which requires that all or substantially all of the property of the holding company is shares or debt of the operating corporations. The changes introduced by the proposal apply to any property or services acquired or imported after July 27, 2018.

In addition, Finance has also released a consultation that proposes two other changes to the GST/HST holding corporation rules: replacing the current "related" test with a "closely related" test (i.e., essentially raising the ownership test from more than 50 percent to 90 percent or more) and expanding the rules to include partnerships and trusts. Finance notes that the current "related" test may lead to "inappropriate policy outcomes" in some cases and adds that a company that owns a 51percent interest in an operating corporation may be entitled to ITCs on certain expenses while other shareholders of the same operating corporation may not be entitled to ITCs on similar expenses. To read a report prepared by the KPMG International member firm in Canada, please click here.

Europe, Middle East, Africa (EMA)

Angola: Draft VAT Law Published for Consultation

Angola's Ministry of Finance recently published draft legislation for the introduction of a new VAT regime that is intended to replace the current consumption tax regime in 2019. According to the draft, the VAT regime would be mandatory effective January 1, 2019 for taxpayers registered with the large taxpayers office and would be voluntary for other taxpayers during a transition period of two years. Taxpayers whose annual income meets or exceeds the in Angolan kwanza equivalent of $250,000 would be subject to simplified VAT. Effective January 1, 2021, the VAT regime would be mandatory for all taxpayers. However, taxpayers whose annual income is equal to or less than the Angolan kwanza equivalent of $250,000 would be subject to simplified VAT, with the option to apply the general regime.

The new VAT regime will have a standard VAT rate of 14 percent, which would apply on sales of goods and services in Angola, including imports. However, several transactions would be exempt, including: (1) basic goods, including milk, beans, rice, flour, cooking oil, cane sugar cane, and soap; (2) medical and health services provided by hospitals, clinics, etc.; (3) medicinal products and raw materials used to produce medicinal products, as well as medical devices; (4) educational services and related goods and services; (5) books, newspapers, and periodicals, unless containing erotic or pornographic content; (6) the rental of real estate, except for accommodations provided by hotels or similar entities; (7) goods in connection with agriculture, aquaculture, livestock, fishing, etc.; (8) passenger transport; (9) financial and banking transactions; (10) insurance and reinsurance operations; (11) specified petroleum products; and (12) exports and international shipments. In addition, the VAT regime will include a general exemption for various sales made in relation to petroleum operations, subject to certain conditions. According to the draft, VAT incurred on expenditures would be generally be deductible, with the deduction in relation to mixed sales taken accordingly.

Finally the draft law provides that the VAT period would generally be monthly, with electronic returns due by the last working day of the following month, and an annual return due by the last working day of April of the following year. The draft VAT law further clarifies that nonresident sellers making sales in Angola would be required to appoint a tax representative; if they do not, the recipient would be liable to self-assess VAT under the reverse charge mechanism.

Source: Orbitax, Angola Consulting of Draft Legislation for New VAT Regime (August 3, 2018).

Belgium: Proposal to Introduce Optional VAT for Immovable Property Rental

On July 31, 2018, the government of Belgium submitted to the parliament a draft law that would introduce an optional VAT levy on the rental of immovable property. The draft law introduces a joint option for the landlord and tenant to levy VAT on the rental of buildings or parts of buildings, together with the corresponding land if necessary, provided that the tenant uses the goods in question solely for the economic activity by reason of which the tenant is considered a taxpayer.

The option would only be applicable to contracts relating to buildings or parts of buildings for which the VAT on immovable works with respect to the initial construction of the building is due October 1, 2018 at the earliest. For immovable works which extend to the creation of a new building to be carried out after October 1, 2018 or, if necessary, before October 1, 2018, but for which no VAT has yet become payable before October 1, 2018, the costs associated with these works include only the actual material construction costs that relate to the building or part of the building.

In addition, the draft law would introduce a new exception to the VAT exemption for the lease and rental of immovable property for a period of not exceeding 6 months for other than for habitation. Moreover, the draft law clarifies the term "spaces for storing goods" so that buildings and parts of buildings would be considered spaces for storing goods from the time that they are used primarily for this purpose (i.e., for more than 50 percent). To determine whether the space is used primarily for storing goods, the area or volume used would be taken into account, whichever criterion is the most appropriate according to the circumstances. In addition, no more than 10 percent of the total area may be used as a sales area.

The introduction of the optional VAT levy for certain immovable property affects the provisions on the taxable amount and the rules relating to the adjustment of the VAT initially deducted. The draft law therefore adds that for the taxable rental of buildings or parts of buildings following the exercise of the option to levy VAT, the normal value of the rental service applies as a taxable amount. In addition, the draft law provides for a specific adjustment period of 25 years.

Finally, the draft law also modifies Royal Decree No. 20 to apply the reduced VAT rates applicable to finance the leasing of real estate or immovable property to certain rentals of immovable property. Services of property rental that are not qualified as property leasing or real estate rent may also be taxed under the exercise of the option referred to in article 44(3)(2)(d) of the Belgian VAT Code.

Source: Belgium – Optional VAT for immovable property rental – draft law submitted to parliament (August 8, 2018), News IBFD.

Belgium: New VAT Penalty Regime Introduced

On July 30, 2018, the Ministry of Finance of Belgium published a new VAT penalty policy. The new policy introduces a full remission of certain types of VAT penalties if the following conditions are simultaneously met: (1) it is the first infraction of this nature, in a reference period of four years; (2) the taxpayer acted in good faith (i.e., the infraction was not committed with the intention of tax evasion or fraud; (3) an individual request for waiver of the fine is submitted by the taxpayer to the competent authority; and (4) at the time of submitting such request, the taxpayer must have fulfilled the sanctioned obligation and must have submitted all VAT returns. The full remission of the VAT penalty however only applies to a specific category of infractions. These are listed in category I in the newly published policy and mainly relate to infractions such as non- or late filing of the annual client listing, non- or late filing of the intracommunity sales listing, incorrect completion of VAT returns, etc.

The new VAT penalty policy also applies to infractions assessed during a VAT audit that do not have an impact on the VAT position of the taxpayer (e.g., reverse charge situations). The VAT penalty for these infractions will be fully waived if the four conditions are met, provided that the taxable amount of the invoice was reported in the VAT return and bookkeeping. For a second infraction of this nature, the fine will be reduced to two percent of the VAT amount. For the third and next infractions of this nature, the fine will be reduced to five percent (instead of the currently applicable 10 percent to 20 percent).

For the other categories of infractions, the new VAT penalty policy does not apply. Of course, the already existing possibility to request a reduction or remission based on justified motives (e.g., force majeure) remains effective for all categories of infractions. The tax authority will take into account the factual circumstances when assessing the request of the taxpayer (e.g., a lower penalty will be applied for not submitting a "nil" VAT return than for not submitting a VAT return wherein amounts should have been mentioned). The new policy applies retroactively on all reduction or remission requests submitted after April 1, 2018, for VAT penalties imposed as from January 1, 2018. To read a report prepared by the KPMG International member firm in Belgium, please click here.

Czech Republic: Supreme Administrative Court Clarifies Burden of Proof for Intra-EU Zero-Rating

On June 11, 2018, the Supreme Administrative Court of the Czech Republic (SAC) clarified the burden of proof relating to intra-EU sales of goods. 8 Afs 179/2016 – 33. In the case at hand, the tax authority challenged the zero-rating of a cross-border sale of mobile phones to Sweden. The invoicing took place through entities established in Sweden or Lithuania, and the taxpayer did not have sufficient evidence supporting the transaction. The tax authority ascertained the facts of the case and reviewed them by means of an international request for information from foreign tax authorities. From the information thus obtained, the Czech tax authority considered that the customers' books did not contain any records of any business transactions with the seller, and that one of the customers had gone bankrupt. It was not confirmed that the companies had effected any sales of goods such as those that had been purportedly sold to them by the seller.

The taxpayer stated that the customer's statutory representative had given him incorrect invoicing data upon the delivery of the goods. The taxpayer submitted an authenticated declaration of the customer's statutory representative stating the actual recipient of the goods. However, the tax authority, by means of a request for information, ascertained that criminal proceedings were pending against the statutory representative in the EU for VAT fraud and smuggling. The taxpayer was asked to support the entitlement to claiming the zero rating and subsequently changed its assertions as to the facts of the case, and stated that he had handed over the goods to the customer's carrier in Bohumín in the Czech Republic or in Poland, and that the delivery notes submitted had been confirmed by the driver upon delivery.

The SAC held that the seller failed to take adequate measures to ensure that the transaction would not lead to an involvement in tax fraud. According to the SAC, the taxpayer had been rather reckless to hand the goods over to the customer's carrier without having checked the final destination of the goods or determined whether they actually had been delivered there. In circumstances in which taxpayers are entirely passive and do not make any efforts to verify the information provided by the customer, they cannot plead good faith. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

European Union: ECJ Clarifies When Branch Constitutes a Separate Taxpayer

On August 7, 2018, the Court of Justice of the European Union (ECJ) published its judgment in *TGE Gas Engineering GmbH*, C-16/17, regarding whether tax authorities can refuse the right to deduct VAT solely on the basis that a nonresident that was registered for VAT used the VAT number of its VAT registration and not that of its fixed establishment at the time of formation of an Economic Interest Group (EIG) and subsequently used the fixed establishment's VAT number for the re-invoicing of that EIG's costs. In the case at hand, the taxpayer was established for VAT purposes in Germany. In Portugal, it had presence in two forms: (1) a stand-alone VAT registration as a nonresident and (2) a VAT registration of its Portuguese branch as a (dependent) fixed establishment (PT branch). The taxpayer formed an EIG with a Portuguese entity for which it used its stand-alone Portuguese VAT number. The EIG's goal was to implement the planned extension of the liquefied natural gas terminal that belonged to another party. PT Branch concluded a subcontract with the EIG which entailed reciprocal performance. For the purposes of attributing and re-invoicing the costs, the EIG used PT Branch's VAT number. The EIG charged VAT on those invoices. The VAT charged by the EIG was subsequently deducted by PT Branch. However, during a tax audit of PT Branch, the Portuguese tax authority took the position that PT Branch could not deduct this VAT because PT Branch was not a member of the EIG and, thus, the costs could not have been attributed to PT Branch. According to the Portuguese tax authority, the taxpayer and PT Branch both had their individual VAT numbers, making them separate taxpayers. If the taxpayer wanted to involve PT Branch in the EIG, it should have used that VAT number at the time of formation. Furthermore, there was no direct and immediate link between the VAT charged to PT Branch and its sales.

PT Branch did not agree with the rejection of the input VAT deduction, and the case was brought before the national court.

The ECJ reiterated the definition of a taxpayer for VAT purposes, emphasizing that when a company is established in a Member State and has a branch located in another Member State, those two persons are, in principle, regarded as a single taxpayer. However, this is not the case if the branch is a separate taxpayer because it carries out an independent economic activity. In the case at hand, according to the ECJ, it was clear that the German head office and PT Branch both had a separate VAT number, but that these were attributable to one single entity, namely the German entity. Therefore, they were regarded as one taxpayer for VAT purposes.

The ECJ subsequently took into account the legal framework for the right to deduct input VAT, reiterating that this is an integral part of the EU VAT system and that this right can in principle not be limited. Therefore, according to the ECJ, because the German head office and PT Branch were one taxpayer, it should be allowed to deduct VAT, provided that the substantive conditions governing the right to deduct input VAT were met. If the national tax authorities have the information necessary to establish that a taxpayer is subject to VAT, they cannot impose additional requirements that might have the effect of rendering the right to deduct VAT ineffective for practical purposes. Therefore, Member States' tax authorities cannot refuse the right to deduct input VAT solely on the basis that a nonresident but VAT-registered taxpayer used the VAT number of its VAT registration and not that of its fixed establishment at the time it formed an EIG and subsequently used the fixed establishment's VAT number for the re-invoicing of that EIG's costs. It was up to the referring court to assess whether the other requirements for the right to deduct VAT were met.

Source: PT: ECJ, August 7, 2018, Case C-16/17, TGE Gas Engineering GmbH – Sucursal em Portugal v. Autoridade Tributária e Aduaneira, ECJ Case Law IBFD.

Switzerland: Mail Order VAT Rules Finalized

On August 15, 2018, Switzerland's Federal Council announced that it has finalized regulations concerning the application of the previously amended VAT law to mail-order companies. Recall, effective January 1, 2019, Switzerland will remove the general exemption on small consignment sales made by mail-order companies established outside Switzerland to a consumer in Switzerland. According to the new rules, mail-order companies with annual turnover of at least CHF 100,000 ($103,500) from small consignments that are free of import taxes will be required to collect VAT at the time of the sale. Companies that reach the CHF 100,000 threshold will be deemed to have made the sale in Switzerland instead of abroad, according to an explanatory memorandum released with the ordinance. The new rules are intended to help domestic companies, which have argued that they are at a competitive disadvantage compared to foreign firms that have not previously had to include VAT in their sales prices.

Source: Tax Notes, Switzerland Finalizes Mail-Order VAT Rules (August 16, 2018).

United Kingdom: Updated Fulfilment House Guidance Published

On August 14, 2018, the UK tax authority (HMRC) announced that businesses can now cancel their registration for the Fulfilment House Due Diligence Scheme using HMRC's online service. Recall, businesses that store goods imported from the EU for or on behalf of someone outside the EU were required to register by June 30, 2018, with the new regime to be rolled out effective April 1, 2019. The Fulfilment House Due Diligence Scheme is intended to ensure that overseas traders comply with the UK's VAT regulations. It provides that a business seeking to carry on a third-country goods fulfillment business must first notify and gain approvals from HMRC. A business must then notify HMRC if they know or have reasonable grounds to suspect that a third country customer has not met a VAT or customs duty obligation in relation to third-country goods stored by the approved person. It also restricts an approved person from carrying on a third country goods fulfillment business with a person named in a notice issued by the Commissioners. The regime also provides that an approved person must give notice to all third-country customers about the scheme and makes further provision about what that notice must state. Among other things, it includes certain due diligence and recordkeeping obligations, including that the business must verify a third-country customer's VAT registration number. Those trading as a fulfillment business before April 1, 2018, were required to apply on or before June 30, 2018, and those trading after April 1, 2018, are required to apply on or before September 30, 2018. Approved fulfillment businesses must complete due diligence checks on their overseas customers and maintain records about the goods they store from April 1, 2019. Those who stop trading as a fulfillment business must tell HMRC within 30 days, newly via the online system. The business will cease to be approved to operate as a fulfillment business from the date that HMRC receives notice.

Source: Global VAT News & Features, UK Issues Guidance For Fulfillment Businesses That Cease Trading (August 20, 2018).

United Kingdom: Guidance In Case of No Brexit Deal

On August 23, 2018, HMRC issued guidance on how to prepare for Brexit if the UK and the EU do not agree on a deal before March 29, 2019, including two specific notices on the VAT and trade consequences. The notice on trade aims to inform businesses of the implications for the trade in goods between the UK and EU countries and the actions they may want to now consider taking to mitigate the potential impacts if the UK leaves the EU on March 29, 2019 with no agreement in place. If that occurs, there would be immediate changes to the procedures that apply to businesses trading with the EU. It would mean that the free circulation of goods between the UK and EU would cease. The guidance highlights that businesses would have to apply the same customs and excise rules to goods moving between the UK and the EU as currently apply where goods move between the UK and a country outside of the EU. This means customs declarations would be needed when goods enter the UK (an import declaration), or when they leave the UK (an export declaration). Separate safety and security declarations would also need to be made by the carrier of the goods. The EU would apply customs and excise rules to goods it receives from the UK, in the same manner it does for goods received from outside of the EU. The EU would require customs declarations on goods coming from, or going to, the UK, as well as requiring safety and security declarations. For movements of excise goods, the Excise Movement Control System (EMCS) would no longer be used to control suspended movements between the EU and the UK. However, the EMCS would continue to be used to control the movement of duty-suspended excise goods within the UK, including movements to and from UK ports, airports, and the Channel tunnel. This will mean that immediately on importation to the UK, businesses moving excise goods within the EU, including in duty suspension, will have to place those goods into UK excise duty suspension, otherwise duty will become payable.

The VAT guidance aims to inform UK businesses of the implications for VAT rules for goods and services traded between the UK and EU Member States if no agreement is reached. The UK government will introduce postponed accounting for import VAT on goods brought into the UK, meaning that businesses registered for UK VAT that import goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the goods arrive at the UK border. This will apply both to imports from the EU and non-EU countries. The Low Value Consignment Relief for parcels with a value of GBP 15 ($19.50) or less will not be extended to goods entering the UK from the EU. VAT will be payable on all goods entering the UK as parcels sent by overseas businesses, unless they are already relieved from VAT under domestic rules. For parcels valued up to and including GBP 135 ($175), a technology-based solution will allow VAT to be collected from the overseas business selling the goods into the UK. Overseas businesses will charge VAT at the point of purchase and will be expected to register with an HMRC digital service and account for VAT due. On goods worth more than GBP 135 sent as parcels, VAT will continue to be collected from UK recipients in line with current procedures for parcels from non-EU countries.

The guidance further clarifies the VAT treatment applicable to exports of goods. Distance selling arrangements will no longer apply, and UK businesses will be able to zero-rate sales of goods to EU consumers. Current EU rules would mean that EU Member States will treat goods entering the EU from the UK in the same manner as goods entering from other non-EU countries, with associated import VAT and customs duties due when the goods arrive into the EU. VAT-registered UK businesses will continue to be able to zero-rate sales of goods to EU businesses and will not be required to complete intra-EU sales lists, but will need to retain evidence to support the zero-rating of the sale and prove that the goods actually left the UK. UK businesses will be able to continue to sell goods they have stored in an EU Member State to customers in the EU in line with current rest of world rules. In addition, UK businesses will continue to be required to register for VAT in the EU Member States where sales are made so that they can account for the VAT due in those countries. The main VAT sourcing rules will remain the same, including that for the sale of digital services to non-business customers in the EU, the sourcing will continue to be based on where the customer resides. Relative to the above, the UK will not be part of EU-wide VAT IT systems such as the VAT Mini One Stop Shop (MOSS). UK businesses will be required to register for the MOSS non-union scheme in an EU Member State if selling digital services to consumers in the EU. Lastly, in relation to VAT refunds, the guidance states that UK businesses will continue to be able to claim refunds of VAT from EU Member States, but will no longer have access to the EU VAT refund system and will need to use the existing processes for non-EU businesses.

Finally, on September 11, 2018, the European Commission published its own guidance on the withdrawal of the UK and EU rules in the field of VAT. The guidance covers issues of VAT payment and VAT refunds, including specific advice to taxpayers for preparing for a withdrawal of the UK without a withdrawal agreement.

Source: Orbitax, UK Issues Guidance on VAT and Trade if No Brexit Deal is Reached with the EU (August 27, 2018).

Asia Pacific (ASPAC)

Australia: Guidance on When a Sale of Real Property is Connected with Australia

On August 22, 2018, the Australian Taxation Office (ATO) issued GSTR 2018/1, which discusses when a sale of real property is connected with Australia and, as such, may be subject to goods and services tax (GST) in Australia, provided that the other conditions for the levy of GST are met. According to the guidance, a sale of real property is connected with Australia if the real property, or the land to which the real property relates, is in Australia. Real property is defined to include any interest in or right over land; a personal right to call for or be granted any interest in or right over land; or a license to occupy land or any other contractual right exercisable over or in relation to land. A sale of real property is connected with Australia if it involves, for example, the sale of land situated in Australia; the grant, assignment or surrender of a lease or license of land situated in Australia; a personal right to call for or be granted any interest or right over land in Australia; the grant of a put or call option over land situated in Australia; a license to occupy land in Australia; or the grant of contractual rights to occupy or stay at accommodation in Australia. This would include a stay at a hotel or motel on presentation of a voucher or travel document.

With respect to sales of rights to accommodation in Australia, the guidance clarifies that there are a variety of different means by which accommodation in Australia may be provided. The provision of such accommodation, including a sale of rights to the accommodation, will be a sale of real property connected with Australia when the accommodation is in Australia.

This is because the sale is the sale of a license to occupy property situated in Australia or a contractual right exercisable over or in relation to land situated in Australia. The provision of rights to accommodation will be a sale connected with Australia irrespective of whether it provides any actual accommodation to the guest. For example, the seller could be a tour operator which grants a traveler the right to stay at a hotel in Australia, where the hotel is operated by a different entity. The tour operator is making a provision of rights to accommodation in Australia, which is a sale of real property connected with Australia.

Source: Orbitax, Australia Issues GST Ruling on Supplies of Real Property (August 28, 2018).

India: Retained Issuance Charges on Lapsed Reward Points are Subject to GST

On April 11, 2018, the Authority for Advance Rulings – Haryana (AAR) published a ruling regarding whether lapsed reward points are subject to GST. AAR No. HAR/HAAR/2017/18/4. In the case at hand, the taxpayer operates a point-based loyalty reward program for which it charges a management fee to participating partners. Customers purchasing products from participating partners are rewarded with reward/payment points that can be redeemed against the future purchases of products of the participating partner. The reward points are valid for 36 months form the date of issuance. The taxpayer receives an issuance fee of INR 0.25. On redemption of the reward points by the customer the taxpayer pays INR 0.25 to the concerned store. In case of failure to redeem the reward points within the validity period, the points are forfeited and the issuance fees are retained by the taxpayer. The taxpayer asked the AAR whether the value of points forfeited would amount to consideration towards actionable claims and thus not be subject to GST or whether they should be treated as sales of goods or services subject to GST.

According to the AAR, goods under the Central GST Act and the Haryana GST Act are defined as every movable property other than money and securities, but including an actionable claim. The sale of an actionable claim, other than lottery, betting and gambling, is not subject to GST. According to the AAR, reward points earned fall within the definition of actionable claim. In the case at hand, after the expiration of the reward points, the end customer loses its rights over the points. As the customer cannot enforce its right over redeeming the reward point after the expiration term, the reward points can no longer be considered actionable claims. The forfeiture of points whose validity period has lapsed does not mean that the actionable claim has been transferred, but that the reward points are no longer covered under the definition of actionable claim. In addition, the taxpayer has the right to retain the issuance fee on expiration of the reward points. As a consequence, the value of points forfeited and retained are equivalent to consideration received in lieu of services provided by the taxpayer and should thus be subject to GST. To read a report prepared by the KPMG International member firm in India, please click here.

India: Advance Ruling Authority Clarifies When Post Sales Discounts Can be Taken into Account when Determining Sales Value

On June 27, 2018, the Authority for Advance Rulings – Maharashtra (AAR) published a ruling on the GST treatment applicable to discounts given after the sale took place. In the case at hand, the taxpayer is engaged in the manufacture and sale of cement and associated products to various authorized dealers (ADs). Due to specificities of the market, the ADs have to sell the goods to the end customer at a price lower than the purchase price. ADs are compensated by the taxpayer in the form of a "rate difference" commonly known as trade discount, which is paid by the taxpayer by way of issuance of a credit note. While the sales price of the goods sold by the taxpayer to the ADs gets reduced subsequently due to the rate difference, the taxpayer ends up paying GST on the total value mentioned in the original invoice. The taxpayer thus asked the AAR to clarify whether the amount paid to ADs toward the rate difference after selling the goods can be considered for the purpose of determining the transaction value.

According to the AAR, a discount given by the taxpayer after the goods have been sold has to be established in the agreement entered into before such a sale. The Central GST Act clearly states that the value or magnitude of the discount given after the sale of goods has to be present in such an agreement. In other words the discount cannot be open-ended. Therefore, the value of the discount cannot be determined on any basis solely at the discretion of the seller. In addition, the mere use of the word "discount" does not meet the requirement prescribed in the Central GST Act. The word "discount" if left open-ended or without qualifications or criteria attached can mean there can be any percentage of discount ranging from a bare minimum to even 100 percent. Such discounts cannot be considered as arm's length business transactions. As a consequence, in the event of lack of any rationale or basis, the rate difference offered post-sale does not comply with the requirements of the Central GST Act and the discount cannot be taken into consideration when determining the value of the sale. To read a report prepared by the KPMG International member firm in India, please click here.

India: GST Return Filings Clarified

On August 10, 2018, India's Central Board of Indirect Taxes and Customs (CBIC) published notifications concerning the submission of GST returns for periods up to March 2019. In Notification No. 43/2018 and 44/2018, the CBIC clarifies that taxpayers with aggregate gross receipts of up to INR 15 million ($206,500) in the current or preceding financial year, which have a principal place of business in the state of Kerala, in Kodagu district of the state of Karnataka, and in the Mahe region of the Union Territory of Puducherry, must file Form GSTR1 (for sales) for the period July-September 2018 on or before November 15, 2018. All other taxpayers with aggregate gross receipts of up to INR 15 million in the current or preceding financial year must file Form GSTR-1 as follows:

- For the period July 2017-September 2018, the due date is October 31, 2018
- For the period October-December 2018, the due date is January 31, 2019; and
- For the period January-March 2019, the due date is April 30, 2019.

All taxpayers with gross receipts of INR 15 million or above in the current or preceding financial year must file Form GSTR-1 as follows:

— For the period July 2017-September 2018, the due date is October 31, 2018; and

— For the months October 2018-March 2019, the due date is the 11th of the following month.

In addition, the CBIC has published Notification No. 45/2018, 46/2018, and 47/2018, which provide that for the period July 2017-November 2018, Form GSTR-3B (simplified GST return) and any payment due must be submitted by December 31, 2018. Recall, the GST Council approved amendments to the GST regime in July 2018 that are expected to be finalized before the end of the year and will further change the GST return filing requirements, which include simplification of the process and allowing quarterly filing for taxpayers with aggregate turnover up to INR 50 million ($688,000). To read a report prepared by the KPMG International member firm in India, please click here.

Malaysia: New Sales and Services Tax Regime Implemented

On August 28, 2018, Malaysia published the legislation for the formal repeal of the GST and the reintroduction of the Sales and Services Tax (SST) effective September 1, 2018 in the official gazette. (For KPMG's previous discussion on the repeal of the GST and the reintroduction of the SST, please click here.). The legislation includes: the Goods and Services Tax (Repeal) Act 2018; the Sales Tax Act 2018; the Service Tax Act 2018; the Customs (Amendment) Act 2018; and the Free Zones (Amendment) Act 2018.

Malaysia further published in the official gazette the Service Tax (Rate of Tax) Order 2018, which sets the rate at 6 percent, except for taxable services relating to specified credit card or charge card services, which are subject to a fixed rate of MYR 25. In addition, Malaysia published in the official gazette the Sales Tax (Rates of Tax) Order 2018, which sets the rates of tax for goods under the new Sales Tax regime that is effective September 1, 2018. This includes a standard rate of 10 percent, a reduced rate of 5 percent, specific rates based on volume/weight for petroleum oils, fuels, natural gas, etc., and certain exemptions.

Finally the Royal Malaysian Customs Department (RMCD) has issued several regulations, orders and guides on the new SST regime that are available on the RMCD's website.

Source: Malaysia – Proposed guides, regulations and orders issued for SST (August 27, 2018), News IBFD; Orbitax, Malaysian Enacts Legislation for New Sales and Service Tax Regime (August 29, 2018); Orbitax, Malaysia Publishes Order Setting Sales Tax Rates (August 31, 2018).

Trade & Customs (T&C)

India: AEO-T1 Application Simplified

On August 10, 2018, the Directorate of International Customs of India (DIC) issued Circular No. 26/2018, which simplifies the compliance requirements for the Authorized Economic Operator (AEO) T1 application. According to the Circular, all new applications for AEO-T1 must be filed in Annexure 1 and Annexure 2 of the Circular at a Zonal AEO cell. The final acceptance or rejection of the application is carried out by the Zonal AEO Program Manager. For applications already received prior to the issuance of the circular the Zonal AEO Program Manager has discretion to allow the processing either under the old rules or the new annexures. To read a report prepared by the KPMG International member firm in India, please click here.

In Brief

— **Argentina:**[iv] On August 3, 2018, the tax authority of Argentina (AFIP) issued General Resolution 4290, which amends and updates the regulation on issuing electronic invoices effective August 6, 2018. According to the Resolution, the following businesses are required to issue electronic invoices: VAT taxpayers, VAT exempt persons; businesses outside the scope of VAT; and small taxpayers (monotributistas). Rules established for special situations or specific activities will continue to apply. The Resolution specifies dates between August 3, 2018 and April 1, 2019 on which the different categories of taxpayers are required to start issuing electronic invoices. In addition, the Resolution includes a list of 32 different types of documents to be issued electronically (including invoices, receipts, debit and credit notes, and tickets issued by ticketing machines) plus a number of subcategories depending on the nature of the issuing party or the counterparty (VAT taxable, VAT exempt, etc.). It also lists documents excluded that are dependent on the issuing party. Finally, businesses that fail to comply with the Resolution will not obtain the required authorization codes for the issuance of invoices, among other things.

— **Australia:**[v] On August 2, 2018, the ATO issued guidance on the requirement for the purchaser to self-assess GST under the reverse charge mechanism for business to business (B2B) transactions of precious metals. The requirement was applied retroactively to April 1, 2017. The guidance clarifies the definition of reverse charge; the products and sales covered; the applicability to second-hand goods dealers; and record keeping requirements for sellers and purchasers.

— **Australia:**[vi] On August 17, 2018, the ATO issued guidance for multinational companies and public companies that are subject to a GST streamlined assurance review. These reviews were launched this year, as part of ATO's efforts to improve oversight of multinationals' tax affairs. They form part of the Top 1000 Tax Performance Program, under which the ATO reviews the income tax affairs (and newly indirect tax affairs) of large public and multinational groups with a turnover above AUD 250 million ($178 million). The guidance sets out what is required from the group as part of a review. The reviews are intended to ensure that the correct amount of goods and services tax is collected and to provide assurance to taxpayers that they are in compliance with their GST obligations. Businesses under review will have received a letter from the ATO arranging a first meeting and including details of the information needed at the first stage of the review. According to the guidance, the ATO will first look at a group's structure and business activities and then at a group's approach to tax governance and risk management.

— **Bahamas:**[vii] The Bahamas Department of Inland Revenue recently announced new VAT exemptions effective August 1, 2018. The exemptions include breadbasket items such as baby food/formula, bread, butter, cheese, cooking oil, flour, rice, and others, as well as prescription and most over-the-counter medication.

— **Belgium:**[viii] On June 27, 2018, Belgium published in the official gazette a notice concerning the electronic verification of the VAT exemption applicable to sales made to diplomats and international organizations effective July 1, 2018. According to the notice, a business authorized to make exempt sales can issue an electronic certificate for the transactions localized in Belgium. This certificate will enable the tax authority to verify a request for the application of the VAT exemption following an electronic exchange of data. Due to this procedural change, the exemption of goods sold for personal use by diplomats in international organizations will no longer be claimed on forms 450 and 451. Businesses that wish to acquire the status of authorized business may file a written application for authorization. Diplomats with international organizations as referred to in the VAT Code must comply with the new procedure by August 31, 2018. From this date, document 451 can no longer be used as a valid supporting document for the application of the exemption.

— **Belgium:**[ix] On May 31, 2018, the tax authority of Belgium published Circular 2018/C/68 regarding the sourcing of shipping services and related services based on their effective use and enjoyment. The Circular focuses in detail on a provision introduced on November 23, 2017 and that, under certain conditions, identifies Belgium as where shipping and related services are sourced if they are used or enjoyed there. This new rule is the counterpart to the existing provision according to which these services are considered provided outside the EU, under certain conditions, if their effective use or effective enjoyment occurs outside the EU. Given the doubt that may have arisen with regard to the correct application of the new conditions between the date on which they took effect and the publication of the Circular, the tax authority announced that it will not impose any penalty on taxpayers acting in good faith that may not have paid the VAT in Belgium for that period.

— **Bulgaria:**[x] On August 10, 2018, Belgium published various amendments to the VAT law; they are effective from the date of publication, unless otherwise provided. The law introduces a VAT exemption for sales of foods, excluding alcoholic beverages (spirits), that are given free for charitable purposes and expands the scope of social work services that are VAT exempt. Moreover, the law allows taxpayers to deduct VAT on alcoholic beverages (spirits) that are offered as samples as part of a tasting. In addition, the law limits use of the reverse charge mechanism for construction services by small VAT exempt business and farmers by prohibiting such taxpayers from providing their VAT number to contractors effective October 1, 2018. Finally, the law introduces a new VAT flat-rate scheme based on gross receipts, which is primarily for professionals effective January 1, 2019.

— **Brazil:**[xi] On August 20, 2018, the Superior Court of Justice of Brazil (STJ) ruled that the non-payment of the Brazilian state VAT ICMS is a crime which can lead to imprisonment between 6 months and 2 years as well as monetary fines. ICMS is due on the import of products and on the physical movement of goods, including electricity. ICMS also applies on interstate and inter-municipal transportation services and communications services. In addition, ICMS applies on the resale of products in the domestic market and when products are physically removed from a manufacturing facility. The STJ stated that the act of companies charging the ICMS to the end consumer and not passing it on to the tax authorities is classified as criminal misappropriation. The ICMS charged by companies to the end consumer is not considered company revenue, but only cash inflow which must be passed on to the tax authorities.

— **Canada:** Effective July 1, 2018, large businesses are essentially no longer required to repay input tax credits for the provincial component of the Ontario HST. However, even if the Ontario recapture rate is now reduced to zero, and as such no net recapture input tax credits (RITCs) are generally required to be paid for Ontario HST payable on or after July 1, 2018, large businesses may continue to have related reporting requirements. Based on the Canadian Revenue Agency's Schedule B, it appears that large businesses may still be technically required to report the amount of gross RITC that are subject to the Ontario RITC rules on Schedule B until June 30, 2021 to be compliant with the GST/HST. In addition, Prince Edward Island started a three-year phase-out period of the province's HST RITC rules on April 1, 2018 and will expire on April 1, 2021. Finally, the Quebec sales tax restrictions on input tax credits will expire on January 1, 2021.To read a report prepared by the KPMG International member firm in Canada, please click here.

- **Chile:**[xii] On August 7, 2018, the Chilean Internal Revenue Service (SII) issued Ruling 1649 clarifying, among other things, the VAT treatment of air transportation income derived by a nonresident company through its agency in Chile. According to the ruling, international air transportation activities are generally exempt from VAT in Chile. Moreover, companies carrying out international air transportation activities in Chile have the right to request the restitution of any VAT paid in the acquisition of goods and services used for the performance of such services. Finally, any operation between the head office and its agency in Chile will not be subject to VAT because VAT regulations require the presence of at least two persons. As the agency is an extension of the principal, this requirement is not met (despite the separate entity fiction, which is fully operational for income tax purposes).
- **Chile:** Effective August 1, 2018, taxpayers listed as Withholding Agents and who acquire goods or services taxed with VAT from those taxpayers registered in the list of taxpayers subject to withholding are required to retain, declare and remit the VAT on these transactions. The list is updated every six months on the SII website. Taxpayers are required to verify if their counterpart is included on any list. Taxpayers not included on the list of Withholding Agents, who can prove that they carry out transactions with taxpayers included on the list of Taxpayers Subject to Retention, may request to be included in the list of Withholding Taxpayers. To read a report (in Spanish) prepared by the KPMG International member firm in Chile, please click here.
- **Chile:** On August 23, 2018, the Ministry of Finance of Chile submitted to the parliament the draft law for the modernization of taxation. It includes reforms of the tax system to encourage growth, entrepreneurship, investment, savings, and employment. The draft law, if adopted, would, among other things, introduce a 10 percent digital tax that would apply on digital services provided by foreign platforms and used by natural persons in Chile, as well as measures for the creation of a taxable presence in Chile for certain service providers such as ride-sharing applications and measures to strengthen customs and VAT enforcement on goods purchased via e-commerce. The law would further reduce the VAT refund relating to the purchase or construction of capital assets period from six months to two months. The period established for the tax authority to resolve the application would also be reduced from 60 days to 5 days. To read a report prepared by the KPMG International member firm in Chile, please click here.
- **China:**[xiii] On June 27, 2018 the State Administration of Taxation of China published Circular 70/2018 regarding the refund of VAT for certain industries in 2018. In general, VAT refunds are only allowed where a taxpayer has actually overpaid or qualifies for an export VAT refund, while refunds are not allowed where input VAT exceeds output VAT. Circular 70/2018 provides that such excess VAT paid in 2018 may be refunded for enterprises operating in advanced manufacturing and modern service industries, as well as for power grid enterprises. To qualify, taxpayers must have a tax compliance grade of A or B (grading system includes ratings of A, B, C, D) and follow prescribed procedures.

— **Colombia:**[xiv] On August 3, 2018, Colombia published Decree No. 1415 on the requirements for nonresidents to register in the tax register (RUT) when providing electronic services to persons that are not obliged to withhold VAT. (For KPMG's previous discussion on the draft decree, please click here.) The Decree provides that nonresidents may send an application for RUT registration, update, or cancellation on the tax authority's (DIAN) website (or other electronic mechanism that may be implemented). For this purpose, registration may be completed by the nonresident directly or through a legal representative. Information to be submitted as part of the application includes the corporate name, tax ID in the country of residence, address, phone number, etc. Once registered, nonresidents are required to collect VAT on their taxable sales in Colombia.

— **Croatia:**[xv] The government of Croatia recently proposed to reduce the standard VAT rate from 25 percent to 24 percent effective January 1, 2020. The government further proposes to expand the scope of the 13 percent reduced VAT rate to include child diapers, fresh meat, fish, fruits, and vegetables effective January 1, 2019.

— **Czech Republic:** The government of the Czech Republic recently proposed amendments to the VAT law. They would be effective January 1, 2019. The amendment proposes to explicitly exclude employees and other persons carrying out economic activity under an employment, civil service, or a similar relationship from the category of taxpayer. The proposal would clarify the wording of the relevant provision so that it applies also in situations subject to the self-assessment requirement under the reverse charge mechanism and that late payment interest should only be charged on the difference between output VAT and the related deduction of input VAT. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

— **European Union:** On August 7, 2018, the ECJ published its judgment in *Viking Motors*, C-475/17, in which it held that Member States are allowed to levy a national sales tax only at the retail stage where such tax is not levied at all stages of production and distribution, it is not certain that a taxpayer passes on the burden to the final consumer, and if there is not an VAT deduction mechanism.

— **Greece:**[xvi] On August 1, 2018, the Independent Public Revenue Authority of Greece issued Circular 1155/2018, which clarifies that if a taxpayer registers for VAT retroactively, it is entitled to recover VAT for purchases it performed from the retroactively declared date. Taxpayers established in Greece will have the right to deduct the VAT incurred as from the date of the retroactive registration on the basis of the invoices already received. Nonresident taxpayers that retroactively register for VAT must request their Greek vendors include the (retroactively obtained) Greek VAT registration number in the already issued invoice. Only then will the retroactively registered nonresident taxpayer be able to exercise its VAT deduction right. If a foreign taxpayer registers a permanent establishment retroactively, the vendors must issue supplementary invoices stating the VAT corresponding to sales of goods and services made relating to such permanent establishment. In all the above cases, the deduction right will be exercised in the VAT return (to be filed with delay) for the period in which the relevant sale has been made and reported accordingly.

— **Hungary:**[xvii] On August 21, 2018, the European Commission published a Proposal for a Council Implementing Decision authorizing Hungary to limit the right to deduct VAT on the leasing of passenger cars to 50 percent between January 1, 2019 and December 31, 2021. The decision recognizes that, in practice, it has proved difficult to support the business usage by keeping journey logs. This rule will apply in situations where a passenger car is not used exclusively for business purposes. The Proposal defines passenger cars as vehicles designed for the transportation of a maximum of nine persons and with a gross vehicle weight not exceeding five tons. Vehicles usually used solely for business purposes will be excluded from the derogation, including: vehicles designed for the shipment of goods; -vehicles serving special purposes (crane trucks, fire engines, truck mixers, etc.); vehicles designed for the transportation of ten or more persons; tractors; and trailers.

— **Ireland:**[xviii] Irish Revenue recently updated the VAT Tax and Duty Manual to include new guidance relating to the Transfer of Business Relief. In addition, Irish Revenue reorganized material previously included in the VAT and Vehicle Registration Tax (VRT) on Transactions Involving Motor Vehicles manual. This material can now be accessed via the following manuals: VAT and VRT on Transactions Involving Motor Vehicles; Partial Recovery of VAT on qualifying passenger motor vehicles; and Recovery of VAT on motor vehicles.

— **Kenya:**[xix] On July 25, 2018, Kenya published the Tax Laws (Amendment) Act 2018 in the official gazette. Among other things, the Act amends the VAT Act effective July 1, 2018. The law exempts from VAT the following transactions, which were until now zero-rated: the transfer of a business as a going concern by a registered person to another registered person; the sale of natural water, excluding bottled water, by a National Government, County Government, any political sub-division thereof or a person approved by the Cabinet Secretary responsible for water development, for domestic or for industrial uses; articles of apparel, clothing accessories, and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in firefighting; taxable goods sold to marine fisheries and fish processors upon recommendation by the relevant state department; the sale of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight; goods imported by passengers arriving from places outside Kenya, subject to several limitations and conditions; and taxable goods for emergency relief purposes for use in specific areas and within a specified period, sold to or imported by the Government or its approved agent, a nongovernmental organization or a relief agency authorized by the Cabinet Secretary responsible for disaster management, subject to certain conditions. In addition, the following previously zero-rated transactions are now subject to VAT at the standard rate: agricultural pest control products and inputs or raw materials for electric accumulators and separators supplied to manufacturers of automotive and solar batteries in Kenya.

- **Kosovo:**[xx] According to news reports, the government of Kosovo is proposing amendments to its VAT law to align it with EU law effective January 1, 2019. The proposal would introduce new payment procedures and the deferral of VAT on imports as well as a flat-rate regime for the agricultural sector. In addition, the proposal would reduce the VAT rate for public transportation and milling services to from 18 percent to 8 percent. The proposal would further change in the sourcing rules for public transportation so that it is based on the proportion of mileage covered in the relevant jurisdictions instead of the place of origin. Moreover, the proposal would zero-rate school supplies and goods manufactured in Kosovo for use as raw materials in other production. The proposal would introduce new rules regarding the VAT liability of non-resident sellers and tax representatives. In addition, the proposal would reduce the minimum threshold for VAT input credit refund claims from EUR 3,000 ($3,500) to EUR 1,000 ($1,162) and amend the VAT rules regarding bad debts, providing that an amount would not be considered a bad debt for VAT purposes unless collection procedures are initiated within 24 months from the payment deadline. Finally, the proposal would introduce new VAT compliance penalties ranging from EUR 1,000 to EUR 50,000 ($58,000) and simplify the VAT deregistration process so that deregistration may apply from the date requested, instead of 2 months later as currently provided.

- **Kyrgyzstan:**[xxi] On August 3, 2018, the Ministry of Economic Affairs of Kyrgyzstan announced a draft law that includes measure to replace the current differentiated rates of sales tax (one percent to three percent) with a single rate of five percent for purchases made with cash. The separately levied VAT is not affected by the change.

- **Luxembourg:** Effective August 1, 2018, Luxembourg introduced a new VAT grouping regime. (For KPMG's previous discussion on Luxembourg's proposal to introduce a VAT grouping regime, click here.) To read a report prepared by the KPMG International member firm in Luxembourg, please click here.

- **Malta:**[xxii] Effective September 1, 2018, Malta's Commissioner of Revenue requires taxpayers to submit a number of VAT documents in electronic format, including requests for a new VAT number, requests for VAT number reactivation, requests for de-registration, and several others. Any VAT forms submitted in paper form will be rejected.

- **Peru:**[xxiii] On August 2, 2018, Peru published Legislative Decree No. 1370 regarding invoices and receipts in the official gazette. According to the Decree, the electronic summary of invoices issued in electronic format is deemed a valid means of representing such invoices, despite the fact that the parties may have access to the complete information by other means. In addition, whenever documentation related to such invoices is also issued in electronic format, the electronic summary of such documents will be deemed a valid means of representation, despite the fact that the parties may have access to the complete information by other means. Moreover, the Decree allows the tax authority to collect data and validate taxpayers' information to authorize digital certificates and digital signatures, which the taxpayers may use to comply with their tax obligations.
- **Poland:**[xxiv] The Ministry of Finance of Poland recently announced its plan to abolish the obligation to file monthly VAT returns effective January 1, 2019. The data needed by the tax authority will be gathered from the SAF-T (JPK_VDEK) file. Considering the information published so far, every active taxpayer will file one SAF-T (JPK_VDEK), instead of VAT returns and VAT SAF-T (JPK_VAT) records submitted as they are now. The new SAF-T will be the basis for VAT settlement, and will determine final VAT liability as well as serve as running VAT registers.
- **Russia:**[xxv] On July 25, 2018, the Ministry of Finance of Russia issued Guidance Letter 03-07-08/50871 in which it held that services provided by a Russian legal entity involving the transfer to a nonresident that does not operate in Russia of exclusive rights to use a trademark are not deemed to be provided in Russia and consequently are not subject to VAT in Russia. Moreover, the VAT paid by the Russian legal entity in connection with the acquisition of the trademark that was later transferred to the nonresident cannot be deducted from the Russian entity's VAT liabilities.
- **Saudi Arabia:**[xxvi] On July 31, 2018, the Saudi General Authority of Zakat and Tax (GAZT) published the Simplified VAT Filing Guidelines, which cover what is a VAT return, including an overview of VAT collection across the supply chain. It also outlines that VAT returns will be filed quarterly if annual taxable sales are up to SAR 40 million ($10.6 million) and monthly if exceeding SAR 40 million and describes how taxpayers are to complete VAT return forms, including an overview of the VAT return form inputs and examples of potential filing scenarios.
- **South Korea:**[xxvii] South Korea's Ministry of Economy and Finance recently published the 2018 Tax Revision Bill. If approved, it would extend the scope of services for which nonresident providers are required to register for VAT in South Korea to include overseas cloud services.
- **Sri Lanka:**[xxviii] On August 16, 2018, Sri Lanka published the Value Added Tax (Amendment) Act, No. 25 of 2018 in the official gazette. It amends the VAT Act effective August 16, 2018. The Amendment Act introduces a VAT Refund Scheme for Tourist. In addition, the Amendment Act repeals the VAT exemption applicable to the following items: aircrafts or helicopters; sunglasses; wood (sawed); fabric for domestic consumption subject to a

cess at a specific rate in lieu of chargeability of any other tax payable on importation at the point of entry into the country; and the sale of residential accommodation other than lease or rent. The Amendment Act further repeals the import VAT exemptions on the following items: aircraft engines or aircraft spare parts; cinematographic cameras and projector parts and accessories; aircraft simulators and parts; green houses, poly tunnels and materials for the construction of green houses, by any grower of agricultural products or plants of any type; and fabric. Finally, the Amendment Act exempts the following transactions: infant milk; electrical goods; magazines, journals or periodicals; plants, machinery or accessories for renewable energy generation; medical machinery or medical equipment; energy saving bulbs; hot air balloons; locally manufactured jewelry; healthcare services provided by medical institutions or professionally qualified persons providing such care other than hospital room charges; geriatric services or child care services; international telecommunication services provided by "External Gateway Operators" to local telecommunication operators; sales of residential accommodation effective April 1, 2019, other than any lease or rent by any person, and where such sale is not relating to a sale of any condominium housing unit; and the Sri Lanka Deposit Insurance Scheme.

— **Uganda:**[xxix] Effective July 1, 2018, Uganda introduced a new concept of Value Added Tax (VAT) withholding. (For KPMG's previous discussion on the proposed introduction of VAT withholding, click here.) Under the VAT withholding regime, a designated person is required to withhold 100 percent of VAT on purchases i.e., 18 percent of the invoice value on payments made to any VAT-registered person or to a person who is not registered but is required to be registered on the basis that it makes a sale for an amount equivalent to UGX 37,500,000 ($10,000). The amount withheld must be remitted to the tax authority by the 15th day of the month following the month it was incurred. The designated VAT withholding agent must keep records of the payment and the tax deduction. The online return system has been designed in such a way that once the Withholding VAT agent has filed and paid the tax withheld to Uganda Revenue Authority, the person from whom tax was withheld is notified by email and if registered with the Uganda Revenue Authority, can generate the VAT withholding tax certificate from the Uganda Revenue Authority web-portal. It should be noted that once a person has received payment for services or goods less the VAT which had been withheld by an agent, such a person is allowed to offset the VAT withheld against the VAT payable for that particular month.

— **Ukraine:**[xxx] Ukraine recently amended the exemption threshold for imported goods purchased online. Under current rules, imported goods are exempt from customs duty and VAT as long as the aggregate value of the goods does not exceed EUR 150 ($174) per month. Effective 1 January 2019, the exemption is limited to three purchases per month with a total value of EUR 150.

— **United Kingdom:**[xxxi] On July 25, 2018, the First Tier Tribunal of the UK (FTT) issued its judgment in *Done Brothers (Cash Betting) Ltd*. in which it held that sales made by operators of fixed-odds betting terminals are VAT exempt under the EU's fiscal neutrality principle if sales for equivalent games (e.g. casino games) are exempt. [2018] UKFTT 0406 (TC). In addition, on July 24, 2018 the FTT published its judgment in *The Rank Group PLC* in which it held that slot machine sales were entitled to the same VAT treatment as the betting terminals, which were exempt during the period at issue. [2018] UKFTT 0405 (TC).

— **United Kingdom:**[xxxii] On July 30, 2018, the UK Court of Appeal published its judgment in *Adecco UK Ltd* in which it affirmed an earlier FTT decision that an employment agency should be liable to account for VAT on the entire fee received from clients for work provided by non-employed temporary workers. [2018] EWCA Civ 1794

— **United Kingdom:**[xxxiii] HMRC recently announced that it has commissioned research into VAT unregistered businesses that import goods and services to the UK. The research is to support policymaking decisions. According to HMRC, the aim of the study, which will run from August to December, is to understand current international trading activity and behaviors, and the impact of the sourcing rules. A research firm will contact a random sample of VAT unregistered businesses and responses will be confidential. In July, HMRC also began a study into tax agents' views on filing income tax self-assessment and VAT returns.

— **Venezuela:**[xxxiv] On August 21, 2018, Venezuela published two decrees amending the VAT Law effective September 1, 2018 in the official gazette. The decrees repeal the VAT exemption applicable to fuels derived from hydrocarbons, as well as inputs and additives aimed at improving the quality of gasoline. The decrees further repeal the general consumption tax set out in article 48(3) of the Hydrocarbons Law. In addition, the decrees exempt the shipping of merchandise and state that the US dollar is the reference value to determine the application of the additional 15 percent VAT rate to the sale of luxury goods and services. Moreover, the VAT taxable period is changed to weekly instead of monthly. The weekly determination of VAT is equal to the amount of the VAT collected on sales that legally correspond to the taxpayer for the taxable transactions of the VAT period, less VAT incurred on purchases that the taxpayer is entitled to offset, according to the VAT law. The basis of the advance payment is the VAT amount reported the previous week divided by the business days of the week. The advance payment of the previous week is offset against the VAT payable in the weekly definitive VAT return. Finally, according to SNAT/2018/0128 published on August 28, 2018 the filing of the VAT withholding return must be done weekly in accordance with the dates set out in the tax calendar for large taxpayers and the VAT withholdings are payable on the same day the VAT withholding return is due.

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iii. Venezuela – Standard VAT rate increased (August, 20 2018), News IBFD.

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v. Bloomberg BNA, Australia Tax Agency Issues Guidance on GST Reverse Charge Mechanism for Precious Metals Industry (August 6, 2018).

vi. CCH, Global VAT News & Features, Australia Guides MNEs On GST Streamlined Assurance Reviews (August 22, 2018).

vii. Orbitax, The Bahamas Provides VAT Exemption for Bread Basket Items and Medications (August 8, 2018).

viii. Belgium – Notice concerning electronic verification of VAT exemption for supplies to diplomats, international organizations, etc. (August 1, 2018), News IBFD.

ix. Belgium; European Union – Place of supply of transport services and related services (August 1, 2018), News IBFD.

x. Orbitax, Belgium Publishes Law on Miscellaneous VAT Provision Amendments (August 24, 2018).

xi. Brazil – Non-payment of state VAT – Superior Court of Justice: imprisonment penalty and pecuniary fines apply (August 29, 2018), News IBFD.

xii. Chile – IRS clarifies income and VAT taxation of UAE air transportation company (August 15, 2018), News IBFD.

xiii. Orbitax, China Provides Input VAT Refund for Certain Industries in 2018 (August 7, 2018).

xiv. Orbitax, Colombia Publishes Decree on Tax Registration for Non-Resident Service Suppliers (August 28, 2018).

xv. Slim Gargouri, Croatian Finance Ministry Consulting on Draft Tax Amendments, Tax Analysts (August 27, 2018).

xvi. Greece – VAT deduction right in case of retroactive VAT registration (August 7, 2018), News IBFD.

xvii. European Union; Hungary – European Commission proposal authorizing Hungary to allow 50% deduction of input VAT on lease of passenger cars – published (August 21, 2018), News IBFD.

xviii. Orbitax, Ireland Publishes eBriefs on Repayments and Offsets of Taxes and Duties, VAT Transfer of Business Relief, Late Return Surcharges, and Other Matters(August 7, 2018).

xix. Orbitax, Kenya Publishes Amendment Act Including Income Tax, Stamp Tax, and VAT Changes (August 9, 2018).

xx. Orbitax, Kosovo Finalizing VAT Amendments to Comply with EU Law (August 28, 2018).

xxi. Orbitax, Kyrgyzstan to Increase Sales Tax Rate to 5% (August 29, 2018).

xxii. Orbitax, Malta Announces Mandatory Submission of VAT Electronic Forms (August 23, 2018).

xxiii. Peru – Electronic invoices and digital signatures – amendments published (August 14, 2018), News IBFD.

xxiv. Poland – Obligation to file monthly VAT returns to be abolished from 2019 (August 20, 2018), News IBFD.

xxv. Iurie Lungu, Russia Clarifies Cross-Border Individual Tax, VAT Matters, Tax Analysts (August 28, 2018).

xxvi. Orbitax, Saudi Arabia Publishes Simplified VAT Filing Guidelines (August 6, 2018).

xxvii. Orbitax, Overview of South Korea 2018 Tax Revision Bill Published (August 6, 2018).

xxviii. Tax Notes, Sri Lanka Reviews VAT Changes (August 27, 2018).

xxix. Orbitax, Uganda Introduces VAT withholding (August 14, 2018).

xxx. Orbitax, Ukraine Amends Customs and VAT Exemption Threshold for Online Purchases (August 9, 2018).

xxxi. J.P. Finet, Betting Terminal Supplies Exempt from VAT, U.K. Tribunal Says (August 3, 2018).

xxxii. CCH, Global VAT News & Features, UK Court Issues Landmark VAT Ruling On Employment Agencies' Supplies (August 16, 2018)

xxxiii. Global VAT News & Features, HMRC Seeking VAT Policy Feedback From Importers, Tax Agents (August 22, 2018).

xxxiv. Venezuela – VAT Law amendment gazetted (August 27, 2018), News IBFD; Venezuela – New VAT and income tax advance payments – decree gazetted (August 28, 2018), News IBFD; Venezuela – Regulation on tax advance payments – gazetted (September 3, 2018), News IBFD.

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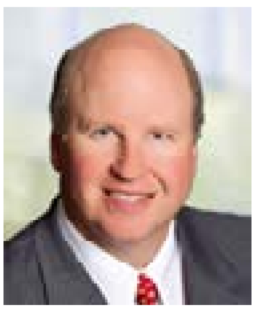

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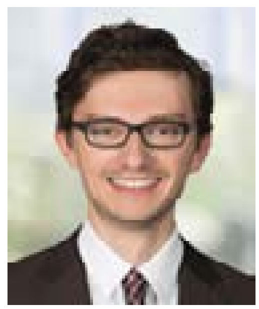

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