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

- **Albania:**[i] On February 22, 2019, Albania introduced a reduced VAT rate of 6 percent on sales of advertising services via audiovisual media and a VAT exemption for sales of veterinary services, advertising services by print media, and printing services for newspapers.
- **China:**[ii] Effective April 1, 2019, China reduced the standard VAT rate (applicable to sales and leasing of goods and repair services) from 16 percent to 13 percent and the intermediate VAT rate (applicable to shipping, postal, construction services and sales of certain limited goods) from 10 percent to 9 percent for the construction and shipping sectors. To read a report prepared by the KPMG International member firm in China, please click here.
- **Finland:**[iii] Effective July 1, 2019, Finland will reduce the VAT rate from 24 percent to 10 percent on sales of e-books, magazines and newspapers in electronic form, and the sale of single copies of printed magazines.
- **Turkey:**[iv] On March 23, 2019, Turkey published in the official gazette Communique No. 25 which zero rates the sale of published books and periodicals (with the exception of adult books and magazines that are sold in bags).

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The Americas

United States: Internet Tax Freedom Act Does Not Bar Taxation of Equipment According to Kansas Board of Tax Appeals

The Kansas Board of Tax Appeals recently addressed whether the Internet Tax Freedom Act (ITFA) barred the Kansas Department of Revenue from assessing sales and use tax on an Internet service provider's (ISP) purchases of equipment. The taxpayer at issue provided its customers wireless access to the Internet in select regions of Kansas, with an emphasis on rural and underserved areas. The taxpayer purchased a variety of equipment (e.g., transmitters, facilities, cables, routers, and switches) that was used to provide Internet access to its customers. It was not disputed that without the equipment, the taxpayer could not provide Internet access to its customers. After the Department of Revenue assessed sales and use tax on the taxpayer's purchases, the taxpayer appealed to the Board arguing that the assessment was preempted by the ITFA. Specifically, the ITFA preempts states from taxing charges for internet access. Internet access is defined, in part, to include the purchase, use or sale of telecommunications if the telecommunications are purchased, used, and sold to provide Internet access. The taxpayer's argument, in essence, was that its equipment purchases were purchases of telecommunications used to provide its services.

The Board did not agree and concluded that the use of the term "telecommunications" as defined in and in the context of the ITFA was not intended to preempt state taxation of the equipment used to create capacity or to provide Internet access to end users. In the Board's view, the ITFA reference to "telecommunications" was intended to capture when an ISP, such as the taxpayer, purchased capacity that in turn was used to provide Internet access to its customers. The purchase of capacity is a distinct element from the purchase of the equipment utilized by an ISP to provide this capacity. The taxpayer's argument, the Board noted, ignored the distinction between preemption of fees for the service of providing capacity and pre-emption of the costs for the equipment that provides the capacity. The Board concluded that the assessments at issue were not preempted by the ITFA. For more information, please click here.

Canada: PST Liability for Nonresidents in Saskatchewan

In May 2018, Saskatchewan finalized changes to its provincial sales tax (PST) legislation to clarify that a retail sale in the province now includes sales of a taxable goods or services by a person who does not otherwise carry on business in Saskatchewan, if the goods or services are acquired for use or consumption in or relating to Saskatchewan. Specifically, Saskatchewan broadened the meaning of "retail sale in the province" as it applies to the definition of a "vendor" for registration purposes. As a result, nonresident businesses that previously may not have qualified as vendors may now be subject to all the PST rules, similar to other business located in the province. In some cases, these rules have retroactive application as of April 1, 2017.

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The sale of most goods and certain specified taxable services for consumption or use in Saskatchewan as well as taxable contracts of insurance are subject to PST. Some examples of taxable services, include: accounting services; legal services; engineering services; computer services (i.e., computer software; license and access fees for computer programs; software; applications; electronic storage; various services related to computers (including: training and support services, webhosting, backing up computer data, removing viruses, spyware or malware)); repair and installation services telecommunication services (including: telephone, cable television and satellite services, pay-per-view movies, gaming, and Internet entertainment streaming services); and real property services, including construction and repair services. Nonresident businesses currently not registered for PST purposes in Saskatchewan should review their sales into the province and assess whether they are liable to register for and collect PST. To read a report prepared by the KPMG International member firm in Canada, please click here.

Canada: New QST Rules Effective for Electronic Platforms

On February 28, 2019, the Quebec Revenue released a Quebec Information Bulletin, which, effective March 1, 2019, requires electronic platforms to collect and remit Quebec sales tax (QST) on all taxable sales of intangibles and services made through their platforms to Quebec consumers from all vendors that have no physical or significant presence in Quebec and not registered under the general QST registration system, regardless of whether they are Canadian vendors located outside Quebec or foreign vendors. Recall, in 2018, Quebec amended the QST rules for operators of certain electronic platforms. As a result, these operators started to collect QST on sales of intangibles and services made to consumers in Quebec through their platforms by certain vendors located outside Quebec. These QST rules apply as of January 1, 2019 to transactions involving foreign vendors that are located outside Canada and that are not registered for goods and services tax (GST) and for QST under the general QST registration system. For transactions through operators' qualifying platforms involving Canadian vendors located outside Quebec, similar rules were to apply, before the Quebec Revenue announcement, effective September 1, 2019. The Quebec Information Bulletin does not amend the implementation date for vendors making directly qualifying sales to consumers in Quebec, which remains September 1, 2019. To read a report prepared by the KPMG International member firm in Canada, please click here.

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Bahrain: VAT Import and Export Guide Published

In February 2019, Bahrain's National Bureau for Revenue (NBR) published the Imports and Exports VAT Guide. According to the NBR, imports of goods into Bahrain are subject to VAT at the standard rate of five percent, unless the goods are specifically exempt. The guide states that goods that benefit from a customs duty exemption remain subject to VAT. Cases where imports of goods are exempt from VAT include inter alia goods imported in Bahrain that are either zero-rated or VAT exempt if they were sold locally in Bahrain, such as basic food items, investment precious metals, pearls and precious stones, prescribed medicines and medical equipment, etc.

The NBR further highlights that exports of goods are subject to Bahrain VAT at a rate of zero percent provided the following conditions are met: (1) the goods sold must be shipped from a place in Bahrain to a destination outside the Gulf Cooperation Council (GCC) Implementing States within 90 days from the date of their sale; (2) the goods must not have been changed, used, or sold to a third party before leaving Bahrain; and (3) the vendor must retain the commercial and official documents evidencing the shipment. A GCC Implementing State is a GCC Member State that has implemented national VAT legislation compliant with the GCC framework and that recognizes Bahrain as an Implementing State. In this respect, the guidance includes that Bahrain does not currently recognize any other GCC Member States as Implementing States for the purpose of VAT. Until further notice, any transaction involving another GCC Member State is treated, for VAT purposes, as a transaction involving a non-Implementing State. Documentation that should be retained by the sellers of the goods in order to evidence the export operations include: (1) the documentation issued by the Customs Affairs at the Ministry of Interior to confirm the export; (2) the commercial document that identifies the vendor, the customer, and the place of delivery of the goods; (3) the shipping documents confirming the delivery of the goods outside the territory of the Implementing States (bill of lading, airway bill, or certificate of shipment); and (4) for the sales of goods in a departure area of an airport or port, details of the boarding pass of the purchaser evidencing that the individual is traveling to a destination outside the territory of the Implementing States.

Source: Orbitax, Bahrain Releases Imports and Exports VAT Guide (Feb. 8, 2019).

Czech Republic: Proposed Amendments to VAT Law

The Czech parliament is currently considering a bill introducing the final phase of the electronic reporting of sales (ERS) and reducing the VAT rate on certain sales. Under the ERS, any cash payments made by customers are instantly reported to the tax authorities through the Internet. Taxpayers (e.g., retail shops) then immediately receive a code to be included on customer receipts. The bill will extend the ERS regime to taxpayers in all sectors. However,

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subject to conditions, the smallest entrepreneurs would have the option to apply the off-line ERS regime (i.e., use official receipts' books distributed by the tax authority). To support the adoption of the ERS, the bill would also reduce the VAT rate to 10 percent for the following sales: drinking water, catering, serving non-alcoholic beverages and draught beer, clothing repairs, hairdressing services, and home care for children and specific groups of citizens. The launch of the final phase of the ERS, and the corresponding reduction of the VAT rates, would take place 6 months after the bill's entry into force.

In addition, the Czech parliament is currently considering the tax package for 2019, which also includes proposed amendments to the VAT law. In its latest iteration (Senate version), the proposal would include the above mentioned reduction of the VAT rate to 10 percent for selected goods and services in order to accelerate the effective date of such changes. Moreover, the Senate would change the rules for filing tax returns by extending the deadline for filing a tax return if filed electronically from three months after the end of the taxable period to four months (meaning that for a calendar year taxable period, the deadline for such filings would be May of the following year). The Senate also proposes cancelling the requirement to provide a tax advisor's power of attorney for preparing a tax return to the tax administrator by the end of the three month period for filing the tax return. This deadline should extend automatically if the tax return is prepared by a tax advisor and filed within six months after the end of the taxable period. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

Source: Czech Republic—Bill on electronic reporting of revenues, reduced VAT rates for certain supplies—discussed in lower chamber of parliament (Feb. 20, 2019), News IBFD.

Czech Republic: Receivables Transferred Under Factoring Contract Subject to VAT

The Supreme Administrative Court of the Czech Republic (SAC) recently published a judgement regarding whether the difference between the nominal value of a receivable and its purchase price upon its transfer may be viewed as a factoring consideration, which is subject to VAT. Case 4 Afs 143/2018. In the case at hand, the SAC dealt with the regular purchasing of short-term receivables that were not overdue or hard to recover at the time of transfer (assignment). The purchase price of the receivables being transferred was set at 95.17 percent of their nominal value. No other consideration was contracted in the factoring contract.

In the SAC's opinion, the difference between the nominal amount of the receivables and their purchase price comprised a consideration for the factoring service. The SAC did not accept that the difference would reflect the actual economic value of the receivables at the time of their transfer. Yet, the risk level of the receivables was not subject to detailed proving. The court did not accept the taxpayer's arguments referring to the Court of Justice of the European Union (ECJ) judgment in the *GFKL*, Case C-93/10 (Oct. 27, 2011), in which it held that a transfer of a receivable at a price lower than its nominal value was not a provision of a service for consideration. The *GFKL* case involved a one-off transfer of highly risky receivables. According to the SAC,

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both cases were different and that the conclusions made in the GFKL case could not be applied to the case in question. The court pointed out that in the case at hand, the difference between the nominal value of the receivables and their purchase price was not due to a decrease in their market value.

Accordingly, the SAC concluded that the difference in the amount of 4.83 percent of the receivables' (nominal) amount was a consideration for a factoring service, and as such was subject to VAT. It is not relevant that the consideration was not explicitly agreed-upon in the contract. The court's decision-making might have been influenced by the fact that, originally, the consideration had been agreed-upon in the contract and the purchase price of the receivables had been 100 percent of their nominal value; only subsequently, by an amendment to the contract, the price of the receivables was reduced and, at the same time, the commission stopped being charged. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

European Union: Live Streaming Services Should be Sourced Where Vendor is Established According to Advocate General

On February 13, 2019, the ECJ published the Opinion of its Advocate General (AG) in *L.W. Geelen*, Case C-568/17, regarding whether live streaming services should be sourced to the location where the performance occurs or where the vendor is established. Under the EU VAT rules, the general sourcing rule for sales of services provided to a consumer (B2C services) is where the vendor is established. However, the EU VAT Directive provides for multiple exceptions, including for services relating to cultural, artistic, sporting, entertainment and similar activities, which are sourced where those activities take place. In the case at hand, the taxpayer, established in the Netherlands for VAT purposes, provided live interactive webcam sessions to consumers in the Netherlands. The Dutch consumers paid fees for interacting with performers located in the Philippines through accounts created on the platform of an Internet service provider, which in turn transmitted part of the payment to the taxpayer who provided the necessary software and material equipment to the performers in the Philippines, enabling them to interact with the customers in the Netherlands. The Dutch tax authorities assessed VAT for the services provided by the taxpayer to the Dutch customers. However, the decision was cancelled by the court of first instance which opined that the services related to entertainment activities and their sourcing was where the services were physically carried out (i.e., in the Philippines). Consequently, the services should not have been subject to Dutch VAT.

According to the AG, services should be taxed in the place of consumption. In the case of entertainment services, which is an exception to the general rule, the place of consumption coincides with the place where they are physically carried out. The reason is that both the vendor and the customer are located at the same place where the services are provided. However, the AG continued that, in the case of entertainment services provided by distance, technological developments have made it possible that vendors, or persons providing the services on their behalf, were located in a different place than their customers when receiving the services.

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The AG highlighted that taxation in the place of consumption, under circumstances such as those in the case at hand, would be possible if the vendor were able to identify the location of the customer making use of the services. According to the AG, while this is currently possible based on the solutions resulting from the VAT E-Commerce Directive, it was not possible in the period concerned, because, at the time, there were practical difficulties that made the legislator decide not to adopt that approach. The AG concluded that the provisions concerning services related to entertainment do not lead to the taxation of services provided by distance. In the AG's opinion, a more suitable solution would be to apply the general rule (i.e., where the vendor is established).

In case the ECJ should not follow the AG's opinion on the applicable sourcing rules, the AG suggested defining the place "where services are physically carried out" by analyzing the elements of the services in the case at hand. The AG concluded that they comprise the organization of live performance sessions, on the one hand, and the provision of access to those sessions via the Internet, including interactive communication with the performers, on the other. According to the AG, the place where the webcam interactive sessions are physically carried out is the place where the taxpayer exercises its activities (i.e., in the Netherlands). In this respect, the AG highlighted that the critical element is the place where the provider exercises its activities, not the place where the Filipino performers are located. The ECJ must now decide whether to follow the nonbinding Opinion of its AG.

Source: European Union; Netherlands—ECJ Advocate General's opinion (VAT): L.W. Geelen (Case C-568/17)—place of taxation; live interactive webcam sessions—details (15 Feb. 2019), News IBFD.

European Union: VAT Fraud Committed by Customer Does Not Automatically Affect Import VAT Exemption of Vendor

On February 14, 2019, the ECJ published its judgment 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 of 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. Recall, 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

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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 ECJ confirmed that the VAT exemption for imports depends on the substantive conditions laid down for the zero-rating of intra-EU transfers of goods to another Member State. In the case at hand, the intra-EU transfer of the goods fulfilled the substantive conditions laid out in the EU VAT Directive and thus was subject to the exemption. Consequently, the taxpayer was entitled to the VAT exemption of the importation of the goods from Switzerland to Austria. Regarding the tax evasion by B and K in relation to the exemption on importation to the taxpayer, the ECJ highlighted that the EU VAT Directive entails a dual exemption; the VAT exemption related to the importation of the goods and the VAT exemption of the subsequent intra-EU sale of the goods. The ECJ highlighted that, where the conditions for the VAT exempt importation are fulfilled, the importation is subject to tax at the final destination of the goods (i.e., in Bulgaria) rather than the point of first importation (i.e., in Austria). In this regard, the ECJ stated that since the conditions for the VAT exempt importation are fulfilled, B and K are subject to the import VAT in Bulgaria rather than in Austria. Because the tax evasion was committed in relation to an intra-EU sale from Bulgaria, the responsibility to disallow the VAT exemption on the sale falls on the Bulgarian tax authority. The ECJ concluded that, where the VAT exemption depends on the transfer of goods that does not relate to tax evasion, the taxpayer cannot be refused the VAT exemption, provided that it was not aware or could not be aware of the intention of another party to commit tax evasion.

Source: AT: ECJ, Feb. 14, 2019, Case C-531/17, Vetsch Int. Transporte GmbH, ECJ Case Law IBFD.

European Union: Member States May Impose Time Limits for Rectifying Invoices in Nonresident Refund Application Process

On February 14, 2019, the ECJ published its judgment in *Nestrade, S.A.*, Case C-562/17, regarding whether tax authorities may impose a time limit for non-EU companies to rectify invoices when they file a refund claim in an EU Member State. In the EU, non-EU established companies may, provided certain conditions are met, request from an EU Member State a refund of the VAT incurred in that Member State under the 13th VAT Directive. In the case at hand, the taxpayer is a company established in Switzerland that filed for a refund of VAT incurred in Spain for the third and fourth quarters of 2009. The invoices submitted for refund were issued by a Spanish vendor of goods to the Dutch VAT number of the taxpayer. The Spanish tax authority rejected the VAT refund because the taxpayer failed to provide the corrected invoices (i.e., the invoices issued to the taxpayer's Swiss VAT number). The taxpayer did not challenge the rejection, which became final in the month after the issuance of the decision. The taxpayer obtained the corrected invoices from the vendor, cancelled the old ones and requested a VAT refund from the Spanish tax authority for two periods: for 2008-2010 and for the first quarter of 2011. The

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taxpayer included the corrected invoices in the VAT refund application for 2011. The Spanish tax authority granted a VAT refund for 2008-2010 but refused to refund the VAT on the corrected invoices because the corrected invoices that had been included in the previous claim had already been rejected.

The ECJ drew parallels between the EU VAT Directive and the 13th Directive regarding the power of Member States to limit the right to deduct VAT in the case where taxpayers provide information about incomplete invoices after a refusal decision is adopted. The ECJ referred to its settled case law in which it held that Member States are allowed to limit the right to a VAT refund of taxpayers that fail to rectify VAT invoices. However, the ECJ highlighted that to proceed as such, Member States should respect: (1) the principle of equivalence (i.e., the protection of rights that are granted by EU law should be equivalent to the protection of rights granted by domestic law) and (2) the principle of effectiveness (i.e., national provisions should not make the exercise of the rights granted by EU law excessively difficult).

The ECJ found no breach of the principle of equivalence and left it for the referring court to verify. Regarding the principle of effectiveness, the ECJ found that there was no breach, subject to verification by the referring court. According to the ECJ, there had been enough time for the taxpayer to defend itself. Specifically, the taxpayer had three months, before the issuance of the rejection notice by the Spanish tax authority, to provide the corrected invoices which were made available by the vendor. In addition, according to the Spanish refund procedure, the taxpayer had a month to appeal the rejection of its VAT refund claim. The ECJ added that the information provided to the Spanish tax authority in the context of other VAT refund applications regarding invoices issued by the vendor was not enough to determine the right to a VAT refund. As a consequence, the ECJ held a Member State is allowed to impose a time limit on the possibility of rectifying incorrect invoices, for example by the rectification of the VAT identification number originally shown on the invoice, for the purposes of the exercise of the right to a VAT refund, provided that the principles of equivalence and effectiveness are respected.

Source: ES: ECJ, Feb. 14, 2019, Case C-562/17, Nestrade, S.A. v. Agencia Estatal de la Administración Tributaria (AEAT), Tribunal Económico-Administrativo Central (TEAC), ECJ Case Law IBFD.

European Union: ECJ Clarifies Scope of Sourcing Rule Related to Admissions to Educational Events

On March 13, 2019, the ECJ published its judgment in *Srf konsulterna AB*, Case C-647/17, regarding the concept of admissions to educational events for determining the sourcing of an educational service. Recall, in the case at hand, the taxpayer, a company established in Sweden, was wholly owned by a professional association for accounting, management and salary consultants. It provides educational and vocational training to consultants in return for a fee. Among other activities, the taxpayer provides seminars with 30 hours instruction spread over five days with a one-day break in the middle. Those seminars are made available only to professionals established or having a fixed establishment in Sweden, regardless of whether they are members of the taxpayer's parent professional association. The syllabus is decided in advance and assumes that participants have prior knowledge and

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experience in accountancy, although it can be adapted depending on the level of competence of those who actually attend. Seminars take place in a conference facility. Participants must register in advance, pay in advance, and have been accepted before the start of the course. As a consequence, the taxpayer has access to information on participants' identity, such as their names, addresses, personal identification numbers or registration numbers. Some of the taxpayer's seminars take place in various locations in Sweden, while others are held in other EU Member States. Regarding the latter, the taxpayer requested the Swedish Revenue Law Commission to rule on whether the service should be sourced to Sweden or to the Member State in which the seminar took place. The Revenue Law Commission held that such seminars are to be regarded as provided in Sweden under the general sourcing rules and not where the event took place pursuant to the special sourcing rule for admissions to cultural, educational, and similar events. The Swedish tax authority did not agree with the grounds given in that decision and lodged appealed that ruling. The ECJ's AG earlier this year opined that the services in question qualified as admissions of educational events.

The ECJ first recalled that, based on its settled case-law, the general sourcing rules do not take precedence over the special sourcing rules (including the special sourcing rule for admissions to educational events). In every situation, the question which arises is whether that situation is covered by one of the special sourcing rules. If not, it falls within the scope of the general sourcing rules. It follows that the sourcing rule pertaining to admissions to educational events must not be regarded as an exception to a general rule, and must be narrowly construed. Based on the VAT Implementing Regulation, admission to educational and scientific events, such as conferences and seminars, include the provision of services of which the essential characteristics are the granting of the right of admission to an event in exchange for a ticket or payment. The courses at issue provided by the taxpayer to VAT registered customers are seminars, which take place over five days, with a day break, in a Member State other than Sweden, where the company has established its business. Those courses, which require the physical presence of those VAT registered customers, are therefore part of the educational events category referred to in the Implementing Regulation.

The ECJ further addressed whether the essential characteristics of the courses at issue consist in granting admission to those courses. According to the ECJ, when two or more components or acts provided by the taxpayer are so closely linked that they form, objectively, a single, indivisible economic sale, which it would be artificial to split, the transaction is a single sale. Moreover, the ECJ noted that the purpose of the sourcing provisions is to avoid, first, conflicts of jurisdiction which may result in double taxation, and, secondly, non-taxation. Accordingly, the underlying logic of the sourcing provisions is that goods and services should be taxed as far as possible at the place of consumption. The ECJ concluded that the place where courses, such as those at issue, are deemed to be provided must be determined on the basis of the sourcing rules pertaining to admissions to educational events, and those courses must, consequently, be subject to VAT in the place where the services are actually provided (i.e., the Member State where those courses are given).

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The ECJ added that the fact that the courses at issue were subject to advance registration and payment is irrelevant for the purposes of the application of the sourcing rule pertaining to admissions to educational events. There is nothing in the wording of the provision to suggest that such criteria could be taken into consideration in determining the place where those services are seemed to be provided.

Source: SE: ECJ, 13 Mar. 2019, Case C-647/17, Skatteverket v. Srf konsulterna AB, ECJ Case Law IBFD.

European Union: Update on Proposed E-Commerce VAT Rules

On March 12, 2019, the European Commission issued a release concerning an agreement reached by EU Member States on detailed measures needed to simplify the VAT collection rules for sales of goods online. The new rules are intended to provide for a smooth introduction of the new VAT measures for e-commerce and to be effective in January 2021. (For KPMG's previous discussion on the e-commerce proposal, click here.) According to the Commission, when non-EU companies, including those that use warehouses or fulfilment centers in the EU, sell goods to EU consumers through online marketplaces, it can be difficult for tax authorities to collect the VAT due on those goods. According to the measures agreed in December 2017, online marketplaces will be deemed to be the seller when they facilitate sales of goods with a value up to EUR 150 ($170) to customers in the EU by non-EU businesses using their platform. Importantly, the same rules will apply when non-EU businesses use online platforms to sell goods from fulfilment centers in the EU, irrespective of their value, allowing tax authorities to claim the VAT due on those sales. Online platforms will also be expected to keep records of sales of goods or services made by businesses using the platform. The new rules agreed by the Member States in March specify, in more detail, when online marketplaces are considered to facilitate such sales or when they are not considered to do so, based on whether or not they are setting the terms and conditions of the sale as well as their involvement in the payment or ordering and delivery of the goods. They also specify in detail the type of records required to be kept by platforms facilitating sales of goods or services to customers in the EU. Final adoption of the new rules will be possible when the consultative opinion of the European Parliament becomes available.

European Union: Guidance on Brexit Published

The European Commission recently published several guidance notes on the customs, excise and VAT consequences of a "no-deal" Brexit. The Guidance Note on customs related matter discusses the most relevant consequences of the United Kingdom becoming a third country from the perspective of the European Union. The topics discussed include: EU businesses having to acquire an Economic Operator Registration Identification (EORI) number if they intend to trade with the United Kingdom; customs decisions (authorizations, binding tariff information decisions, binding origin information decisions) made by the authorities of the United Kingdom no longer being valid in the European Union; the United Kingdom not benefiting from EU tariff quotas; the United Kingdom no longer being subject to preferential trade agreements concluded by the European Union with other third countries; goods being brought into the territory of the European Union from the

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United Kingdom having to undergo all relevant customs formalities (e.g. entry summary declaration); and goods exported from the European Union to the United Kingdom also being subject to exit formalities.

The Guidance Note on excise matters should be read in conjunction with the note on customs matters and explains scenarios of ongoing intra-EU cross-border movements, highlighting that excise documentation from the authorities of the United Kingdom will no longer be valid and, therefore, the intra-EU movement of goods may not be effected and goods must be treated as third country products. The Guidance Note on administrative cooperation concerning VAT discusses the amount of VAT collected by the United Kingdom and other EU Member States under the EU mini-one-stop-shop (MOSS) scheme, and VAT amounts collected by other EU Member on behalf of the United Kingdom.

Finally, the European Commission published an update to the VAT Committee's nonbinding guidelines, which address the following VAT consequences of a no-deal Brexit: (1) the on-going movement between the United Kingdom and the European Union at the moment of withdrawal; (2) "re-importation" of goods returned from the United Kingdom after the withdrawal; (3) personal property imported from the United Kingdom within 6 months from the withdrawal; and (4) cross-border VAT refunds of input VAT incurred before the withdrawal but claimed after it.

Source: European Union; United Kingdom—European Commission publishes guidance notes on customs, excise and VAT consequences of "no-deal" Brexit (Mar. 21, 2019), News IBFD.

France: Digital Services Tax Proposal

On March 6, 2019, the French government published a draft legislation implementing a three percent digital services tax, which, if approved by the French parliament before December 31, 2019, would be retroactive effective January 1, 2019. Companies subject to the digital services tax would be those with digital gross receipts of more than EUR 750 million ($852 million) worldwide and more than EUR 25 million ($28 million) in France. Under the proposed digital services tax, taxable services could be separated into three categories: (1) the provision of a digital interface to enable users of platforms to interact with each other in order to exchange goods or services (only platforms remunerated by a commission fee to enable interactions between users would be targeted); (2) services for the purchase, storage, and distribution of advertising, advertising control, and performance measurement, as well as services for the management and transmission of user data; and (3) the resale and management of personal data for advertising purposes. Companies selling goods on their website or providing content on a platform, as well as communication and payment services, would be exempt from the digital services tax. Similarly, regulated financial services and services provided between companies of the same taxpayer group would be excluded from the scope of the digital services tax.

The draft legislation further clarifies that the provision of a digital interface would be subject to the French digital services tax if the user completing the transaction is located in France or if the interface account is opened from a

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location within France. For services marketed on the interface, taxation would occur if the advertising is consulted in France by the user or when the user, whose data is sold, consults the interface in France. The burden of proof for determining the location of the user or the place where the account on the interface is opened would rest with the taxpayer. Finally, the digital services tax would be due for each calendar year during which a taxable activity is performed. The digital services tax would follow the system established for VAT with respect to the declaration, recovery or litigation. An annual declaration would be filed in April of the following calendar year. Installment payments of the tax would be due in April and October, the total of which would need to correspond to the amount of the digital services tax that was due for the prior calendar year. The payment of any balance would be due upon the filing of the yearly declaration in April. For 2019, a "super installment" payment of the tax would be due in October and would correspond to the theoretical digital services tax based on 2018 figures. To read a report prepared by the KPMG International member firm in France, please click here.

Italy: New VAT Obligations for Intermediaries Involved in Remote Sales of Goods

On February 12, 2019, Italy published Law No. 12 of 2019, which introduces new measures regarding the remote sale of certain goods. The new rules apply to intermediaries who facilitate, through the use of electronic interfaces (e.g., marketplaces, platforms, portals, or similar tools), the remote sale of mobile phones, video game consoles, tablet personal computers, and laptops to final consumers. These intermediaries are deemed to purchase the goods from the initial seller (deemed business-to-business (B2B) sale) and then to have made a sale to the final consumer (deemed B2C sale). According to Law No. 12, the new rules apply to remote sales of the aforementioned goods when they are imported from outside the EU that have an intrinsic value of no more than EUR 150 ($170) and intra-EU sales of goods by non-EU sellers to final consumers. The intermediary facilitating the remote sales in question must keep records of the sales. The records must be sufficiently detailed to enable the tax authority of the Member State where those sales are taxable to verify that VAT has been accounted for correctly. The records must be made available electronically on request to the Member State concerned and kept for a period of 10 years from the end of the year during which the transaction is performed. If the intermediary is not established in a country with which Italy has entered into a reciprocal assistance agreement, it should designate an intermediary to act in its name and on its behalf. It is not yet clear when these new rules will become effective. To read a report prepared by the KPMG International member firm in Italy, please click here.

On April 4, 2019, the Italian government discussed a bill, which, if adopted, would replace the above rules. According to the proposal, taxpayers who facilitate, through the use of an electronic interface such as a virtual marketplace, platform, portal or similar means, remote sales of imported goods or goods shipped from within the EU, would be required to transmit for each vendor using the platform, within the month following each calendar quarter, the following information: (1) the name, residence or domicile, and email address of each vendor; (2) the total number of goods sold in Italy; and (3) the total sales price of the goods sold in Italy or their average sales

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price. According to the proposal, the first report would be due in July 2019. In addition, the proposal would introduce a joint and several liability for the intermediary on the sales for which it has failed to send (or has sent incomplete) information, unless the intermediary can prove that the VAT has been paid by the vendor. These new rules would apply to all goods sold and not only to mobile phones, video game consoles, tablet personal computers, and laptops. To read a report prepared by the KPMG International member firm in Italy, please click here.

Italy: Overview of Recently Published VAT Guidance

On February 20, 2019, the Italian Tax Authority (ITA) published Ruling Answer No. 65/2019 in which it clarified the VAT treatment of services rendered for a foreign real estate investment fund with properties located in Italy. According to the ITA, the following services are subject to VAT: assisting with the preparation and implementation of a business plan; assisting with the management of litigation or pre-litigation; coordinating a periodic evaluation of the portfolio; and providing assistance for the current management of the portfolio. However, services which mainly consists of portfolio management activities or having the primary aim of taking care of the customer's financial interest and increasing its portfolio's value fall within the general sourcing rules, and are thus outside the scope of Italian VAT when provided to a foreign real estate fund (e.g., the preparation of a memorandum on potential transactions, the drafting of strategic plans on possible vendors or purchases of immovable properties or the assistance in negotiations).

On February 22, 2019, the ITA clarified that the sale of food or beverages for immediate consumption is subject to the 10 percent VAT rate.

On February 26, 2019, the ITA published Ruling Answer No. 67/2019 in which it clarifies the application of the new rules on mandatory electronic invoicing and the monthly communication of data on transactions carried on with counterparts established abroad, which are effective January 1, 2019. (For KPMG's previous discussion on these new obligations, click here.) Regarding an entity established abroad and registered in Italy for VAT purposes, the ITA confirmed that the foreign entity is not required to register to the ITA SdI system (sistema di interscambio) because the new rules on mandatory electronic invoicing do not apply to nonresidents. Moreover, an Italian vendor may opt to issue an e-invoice for sales to foreign entities in order to benefit from the simplification of not having to include such transactions in the monthly communication of data on transactions carried on with counterparts established abroad. However, nonresidents should also receive a paper copy of the e-invoice. In addition, nonresidents may exercise their right to deduct VAT on the basis of the paper copy of the e-invoice (i.e., a document which faithfully and exclusively reproduces the content of the e-invoice issued in XML format without adding new or different elements). In order to obtain such a paper copy, it is necessary to print the e-invoice and certify its compliance with the original document in accordance with the Italian VAT law. The ITA further clarified that only taxpayers established in Italy must submit the monthly communication of data on transactions carried on with counterparts established abroad.

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On March 1, 2019, the ITA published Ruling Answer No. 69/2019 in which it clarified that the four percent reduced VAT rate for publications only applies to the sale of electronic publications with identifying international standard book numbers (ISBN) or international standard serial numbers (ISSN).

On March 1, 2019, the ITA published Resolution No. 33/E which establishes a special tax credit for certain taxpayers in order to offset the costs of tools for the electronic submission of reports to the ITA. According to the ITA, taxpayers with annual gross receipts exceeding 400,000 euros ($454,000) may claim a deduction to 50 percent of qualified expenditures, with a maximum of 250 euros ($284); and may claim a deduction to up to 50 euros (US$57) for each tool purchased. The resolution is effective July 1, 2019 and the deductions apply to purchases made in 2019 and 2020.

On March 5, 2019, Italy published a Decree which postpones the deadlines for several VAT reporting and paying obligations. The deadline for filing the communication of data on invoices related to the last two quarters, or the last semester, of 2018 has been postponed from February 28, 2019 to April 30, 2019. The deadlines for filing the communication of data on transactions carried on with counterparts established abroad for January 2019 and February 2019 have been postponed from February 28, 2019 and March 31, 2019, respectively, to April 30, 2019. The deadline for filing the communication of data on periodical VAT calculations for the last quarter of 2018 has been postponed from February 28, 2019 to April 10, 2019. Finally, the deadline for the payment of VAT due for the first quarter of 2019 by taxpayers facilitating, through the use of an electronic interface, distance sales of mobile phones, game consoles, tablet PCs and laptops has been postponed from April 16, 2019 to May 16, 2019, with the application, however, of a 0.4 percent monthly late interest. In addition, the deadline for filing the monthly communication of data on transactions carried on with counterparts established abroad for March 2019 and April 2019 has also been postponed, for these taxpayers, to May 31, 2019.

Source: Bloomberg Law News (Feb 25, 2019), Italy Tax Agency Clarifies VAT Treatment of Services for Foreign Investment Funds; Italy—Supplies of services to real estate investment funds—clarifications issued (Mar. 1, 2019), News IBFD; Bloomberg Law News (Feb. 27, 2019), Italy Tax Agency Clarifies VAT Rate on Supply of Food, Beverages for Immediate Consumption; Italy—Electronic invoicing—further clarifications issued (Mar. 1, 2019), News IBFD; Bloomberg Law News (Mar 6, 2019); Italy Tax Agency Clarifies VAT Rate for Online Publications Databases; Bloomberg Law News (Mar. 6, 2019), Italy Tax Agency Issues Resolution on Tax Credits for Electronic VAT Submission Adaptations; Italy—Deadlines for several VAT obligations postponed (Mar. 6, 2019), News IBFD.

Russia: Overview of Recently Published VAT Guidance

On January 11, 2019, Russia's Ministry of Finance (MOF) published Guidance Letter 03-08-05/506, in which it held that when a Russian legal entity enters into a factoring agreement with a nonresident legal entity and transfers to the nonresident monetary claims (accounts receivable) to another Russian legal entity at a price that is lower than the real value of the claims, such factoring services provided by the nonresident are not deemed to have been provided in Russia, and consequently, are not subject to VAT in Russia.

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On January 17, 2019, Russia's MOF published Guidance Letter 03-07-08/1850, in which it clarified that the nonresident VAT registration obligation for business-to-business digital services providers, which was effective January 1, 2019, applies even if some of the electronic services provided by foreign legal entities in Russia are exempted from VAT in Russia.

On February 1, 2019, Russia's MOF published Guidance Letter No. 03-07-08/5954, in which it clarified that under Russia's sourcing rules sales of intellectual property rights, such as software licenses, are considered provided in Russia, and subject to VAT, if the recipient of the rights is resident of Russia. Where such rights are provided to a non-resident, they are not considered sold in Russia and therefore not subject to VAT. Further, the sourcing for auxiliary works or services in relation to the main sale is in the same place as the main sale. In this respect, training and technical support services in relation to the sale of software licenses to a nonresident are also not considered provided in Russia and not subject to VAT.

Source: Iurie Lungu, Russia Issues 3 Guidance Letters on Nonresident Taxation, Tax Analysts (Feb. 11, 2019); Orbitax, Russia Clarifies VAT Obligations for Software Rights Granted to a Non-Resident (Feb. 27, 2019).

South Africa: New VAT Registration Requirements for Nonresident E-Services Providers

On March 18, 2019, the South African Revenue Service (SARS) published Notice R.429, which amends the 2014 regulations prescribing electronic services under the VAT Act effective April 1, 2019. (For KPMG's previous discussion on the proposed amendments to the electronic services rules in South Africa, click here.) This includes the replacement of a specified list of services with a general definition, which provides that "electronic services" means any services provided by means of an electronic agent, electronic communication or the Internet for any consideration, other than: (1) educational services provided from a place in an export country and regulated by an educational authority in terms of the laws of that export country; (2) telecommunications services; or (3) services provided from a place in an export country by a company that is not a resident of South Africa to a company that is a resident of South Africa if both companies form part of the same group of companies and the company that is not a resident of South Africa itself provides those services exclusively for the purposes of consumption of those services by the company that is a resident of South Africa. The new regulations define "group of companies" as two or more companies in which one company (the "controlling group company") directly or indirectly holds shares in at least one other company (the "controlled group company"), to the extent that 70 percent of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies, or any combination thereof and the controlling group company directly holds 70 percent of the equity shares in at least one controlled group company.

In addition, the amended VAT legislation introduces an exception to the electronic vendor's VAT liability where an intermediary facilitates the sale of the electronic services provided by the nonresident vendor. The intermediary will be deemed to make the sale where: (1) the intermediary qualifies as a

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taxpayer under the South African VAT Act, (2) the intermediary acts on behalf of a principal who is not a resident of South Africa and not a taxpayer for South African VAT purposes, (3) the electronic services are sold to a person in South Africa, and (4) the intermediary is responsible (at a minimum) for issuing the invoices and collecting the payment for electronic services. If the abovementioned applies, the nonresident electronic service provider will not be liable to register for VAT in South Africa and the intermediary will be required to account for VAT on the sale of the electronic services. Finally, South Africa increased the VAT registration threshold for foreign electronic service vendors from ZAR 50,000 ($3,500) to ZAR 1 million ($70,350) for sales made effective April 1, 2019. On March 20, 2019, the South African Revenue Service published a set of frequently asked questions with regards to the VAT rules on sales of electronic services following a recent update to VAT regulations. To read a report prepared by the KPMG International member firm in South Africa, please click here.

Ukraine: Overview of Recently Published VAT Guidance

On January 16, 2019, Ukraine's State Fiscal Service (SFS) published Guidance Letter No. 165/6/99-99-15-03-02-15/ІЛК, in which it clarified that spare parts used in the provision of repair services, during the warranty period of the equipment concerned, by a Ukrainian resident to Ukrainian customers under an agreement with a nonresident are treated as if they are used in transactions subject to VAT. As a consequence, the Ukrainian resident has the right to deduct VAT incurred on the purchase/import of the spare parts used for providing repair services during the warranty period of the equipment.

On January 25, 2019, the SFS published Guidance Letter No. 138/6/99-99-15-03-02-15/ІЛК, in which it held that capital repayment by a company to its shareholders in the form of cash or corporate rights and shares in other companies that are owned by such company is not a sale subject to VAT. However, if the capital repayment takes places in the form of property, such transaction is recognized as a sale of goods and is subject to VAT.

On February 1, 2019, the SFS published Guidance Letter No. 358/6/99-99-15-03-02-15/ ІЛК outlining the procedure used to determine the VAT base in transactions involving the sale of self-manufactured goods or services. According to the SFS, VAT imposed on the sale of goods or the provision of services should be determined based on their contractual value. However, if the goods sold were manufactured independently by the transferor, the VAT base cannot be lower than the usual price for those goods. The contractual value for VAT purposes includes any funds and the value of tangible and intangible assets that a taxpayer receives directly from the buyer or through a third person as compensation for the provision of goods or services. Unless proven otherwise, that usual price corresponds to the market price for the relevant goods, works, or services. However, this rule does not apply to transactions deemed to be controlled for transfer pricing purposes. The market price is the price at which goods, works, or services are transferred to another owner, provided that: (1) the seller wants to transfer the goods, works, or services; (2) the buyer wants to receive them voluntarily; (3) both parties are mutually independent, legally and in fact, and have sufficient information about the goods, works, or services; and (4) the prices prevailing on the

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market match those for identical (or, in their absence, similar) goods, works, or services under comparable commercial conditions.

The SFS recently published Guidance Letter No. 5400/6/99-99-15-03-02-15/ІПК, in which it clarified that services, including freight shipping services, are considered to be provided in the place of registration of the service provider. As a consequence, freight shipping services are only taxable in Ukraine if they are provided by a resident or a nonresident that is registered in Ukraine or operates through a permanent establishment there. However, services related to freight shipping activities, including loading and unloading, warehouse processing of goods, and other similar types of services, are taxable in Ukraine if they are provided in the Ukrainian customs territory, regardless of whether the services are provided by a resident or a nonresident. Taxpayers must determine their VAT liabilities regarding the sale of goods or services on the earlier of the date that payments for the goods are deposited in the VAT payer's bank account and the date that the goods are shipped or transferred or a document confirming the provision of the services is executed.

Source: Ukraine—Right to deduct input VAT for spare parts used for repair services during warranty period of equipment—SFS clarifications (Feb. 13, 2019), Ukraine—VAT implications of capital repayment to shareholders—SFS clarifications (Feb. 20, 2019), News IBFD; News IBFD; Iurie Lungu, Ukraine Clarifies Procedure for Determining VAT Base, Tax Analysts (Feb. 11, 2019); Iurie Lungu, Ukraine Issues VAT Guidance on Freight Transport Services (Feb. 13, 2018).

United Arab Emirates: Guidance on VAT Treatment of Financial Services

In February 2019, the United Arab Emirates (UAE) Federal Tax Authority (FTA) published a VAT guide for financial services. In general, financial services are subject to VAT at the standard rate (currently 5 percent) when they are provided for an explicit fee, discount, commission, rebate, or similar type of charge, including in relation to the operation of a bank account, money transfers, mortgages (including commercial mortgages), loans, advances or credit (including business loans), card-related services, etc. Moreover, the sale of investment grade precious metals is subject to VAT at zero percent. Financial services are exempt if they are remunerated by way of an implicit margin or spread (i.e., no explicit fee is charged for the service). For such services, VAT incurred on purchases cannot be recovered. In all cases, the following classes of financial services are exempt from VAT: (1) the issue, allotment, or transfer of ownership of an equity security or a debt security and (2) the provision, or transfer of ownership, of a life insurance contract or the provision of re-insurance in respect of any such contract (more details on insurance is included in the insurance guide).

The guide further clarifies that any sale made under an Islamic financial arrangement that is certified as Shariah-compliant and that is intended to achieve or effectively achieves the same result as a non-Islamic financial product will be treated in the same way as its non-Islamic counterpart. The guide recognizes that certain aspects of Islamic finance may preclude direct equivalence in VAT treatment. In those cases, the underlying purpose, features, and circumstances of the relevant product must be taken into account when determining the appropriate VAT treatment.

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Where financial services are exported to recipients established outside the GCC Member States, the services are zero-rated. Where financial services are made to a recipient established within the GCC, the VAT treatment is more complex. If the recipient is registered or registerable for VAT in the GCC state in which the financial service is received, the sale is outside the scope of the UAE VAT and the recipient is liable to self-assess VAT under the reverse charge in the GCC member state in which the service is received. VAT incurred on purchases that is wholly attributable to such sales is recoverable whether or not the sales in question would have been exempt or taxable in the UAE. However, if the recipient is not registered nor registerable for VAT in the GCC state in which the financial service is received, the service will be sourced to the UAE, in which case the sale will have the normal UAE VAT liability and related VAT recovery. Financial services imported from outside the GCC are liable to VAT at the standard rate if the services would be standard-rated were they provided in the UAE. In this case, the recipient of the service will be liable to self-assess VAT under the reverse charge mechanism.

Finally, the guide addresses the VAT treatment applicable to certain specific financial services, the recovery of VAT and apportionment methods where VAT incurred on costs is partly attributable to both taxable sales and exempt sales of financial services, and includes a detailed list of different financial services types and their treatment for VAT purposes.

Source: Orbitax, UAE Issues VAT Guide for Financial Services (Feb. 7, 2019); Slim Gargouri, UAE Issues Guidance on VAT on Financial Services (Feb. 6, 2019).

United Kingdom: Amendments to VAT Treatment Applicable to Personal Contract Purchases

On February 27, 2019, the UK tax authority published Revenue and Customs Brief 1 (2019) regarding changes to the VAT treatment of personal contract purchases (PCP) following the ECJ's decision in *Mercedes Benz Financial Services*, Case C-164/16 (Oct. 4, 2017), effective June 1, 2019. (For KPMG's previous discussion on the ECJ case, click here.) PCP contracts are contracts that provide for the customer to pay a series of lease payments and then make a choice whether to pay a substantive payment to acquire the asset, or to return the asset at the end of a period of hire. HMRC previously regarded sales made under such contracts as sales of goods and a separate provision of a credit. Following the ECJ decision, HMRC now considers that some of these contracts are a single sale of taxable leasing services. In the Brief, HMRC clarifies that hire purchase contracts (HP contracts) are contracts where the final instalment is a substantive amount ("balloon" payments), similar to those in PCP contracts. However, the final instalment is not optional under HP contracts. Such agreements normally have a much lower option fee to acquire the asset which is payable immediately after (effectively at the same time as) the balloon payment. Where the option fee is clearly below the anticipated market value of the asset, these sales are not affected by the ECJ decision, regardless of the level at which the balloon payment is set.

According to HMRC, the correct treatment of PCP and similar contracts depends on the level at which the final optional payment is set. If, at the start of the contract, it is set at or above the anticipated market value of the goods

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at the time the option is to be exercised, the contract will be considered a sale of leasing services from the outset and VAT must be accounted for on the full value of each instalment. There is no advance, or credit, and thus no finance element. However, if, at the start of the contract, the level at which the final optional payment is set below the anticipated market value, such that a rational customer would buy the asset when they exercise the option, it is a sale of goods, with a separate provision of a financial service. VAT is due on the sale of goods in full at the outset of the contract, while the financial service is exempt from VAT.

HMRC will generally accept that the optional payment is set below the anticipated market value if it is below the value expected based on historical depreciation rates in immediately preceding years for the same or similar assets, such as the same model of car. Businesses may use another method to establish the anticipated open market value of the asset, providing it produces a credible assessment of future value, given information available at the time the assessment is made. Moreover, businesses must maintain, as part of their business and accounting records, evidence which demonstrates how they have arrived at the figures they have used. Businesses must adopt the correct treatment for all new contracts no later than June 1, 2019. HMRC provides guidance on the steps to take for past contracts depending on whether they have treated PCPs as sales of goods or services and depending on whether the final optional payment is above or below market value.

United Kingdom: Platform Services Could Qualify as VAT Exempt Management of Investment Funds According to Upper Tribunal

On December 20, 2018, the UK Upper Tribunal (UT) published its judgment in *BlackRock Investment Management (UK) Ltd*, [2018] UKUT 415, regarding whether technology services provided to an investment manager could qualify as VAT exempt services. Under UK law, the management of special investment funds (SIFs) is VAT exempt. In the case at hand, a US company provided the service of the use and functionality of an investment management platform to a group company in the UK. The UK entity used this platform partly for managing SIFs and, for the most part, for managing non SIFs. The VAT dispute essentially concerned whether and to what extent the UK company should account for VAT under the reverse charge mechanism for the fees paid for the use of the platform. The parties agreed that there was a single sale of the platform in this case and that the non-SIF usage constituted the predominant element. If it was agreed that the platform could constitute a sale of fund management, the further question then would arise as to whether this single sale could be bifurcated, so that instead of applying taxation by reference to the majority element as per established ECJ case law, the services could instead be exempted insofar as they were provided to SIFs. The First Tier Tribunal (FTT) earlier determined that the platform services qualified as "management" of funds for VAT purposes. In principle, therefore, they could qualify for exemption depending on the underlying funds involved. However, it found that the consideration could not be apportioned to reflect the VAT liability of the underlying transactions. The FTT considered that the case law principles on single sales did not allow for exceptions in this instance and that therefore the platform service should be standard rated and the

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reverse charge should apply in full to it. The taxpayer appealed this decision on the apportionment issue and HMRC cross-appealed on the exemption issue.

The UT agreed with the FTT on the exemption issue. It referred in particular to the ECJ case law in determining that the FTT made no error of law in its finding that: (1) the platform services were intrinsically connected to the activities characteristic of an investment fund; (2) they formed a distinct whole; and (3) they were specific and essential to the management of a SIF (each a key requirement for the fund management exemption). The UT considered that the platform services clearly had an inner coherence relative to fund management and that there was no blurring of those services with the activities of the taxpayer, which could cause those services to lose their distinctive character. Those two facts alone demonstrated that the services formed a distinct whole. The UT, however, diverged from the FTT in finding that the consideration for the platform services could arguably be apportioned for VAT purposes between the taxable non-SIFs and the exempt SIFs. In granting the request for a preliminary reference to the ECJ, the UT relied on uncertainty arising from the ECJ's judgment in *Commission v Luxembourg*, Case C-274/15 (May 4, 2017), which concerned the cost sharing exemption and showed according to the taxpayer that it was necessary in certain limited circumstances to apportion a single sale in order to not frustrate the purpose of the exemption by preventing its application in practice. This, the taxpayer argued, was also the case for the platform at issue. The tribunal agreed this point was not clear and should therefore be referred to the ECJ. To read an article prepared by the KPMG International member firm in the UK, please click here.

Asia Pacific (ASPAC)

China: Amendments to VAT Rules

On February 2, 2019, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) of China jointly issued Circular [2019] No.20 clarifying the definition and scope of several VAT exempt services. According to the Circular, the term "pension institute" includes various pension institutes providing centralized living and care services which are registered in accordance with the regulation on the Protection of Rights and Interests of the Elderly of China and filed with the civil affairs department. Moreover, from February 1, 2019 through December 31, 2020, the services listed in the specification of the national medical service price project are exempt from VAT if they are provided by medical institutions entrusted by other medical institutions at a price not higher than the guide price determined by the competent authorities. In addition, from February 1, 2019 through December 31, 2020, free interest loans between enterprises within a group are exempt from VAT. Finally, premiums of life insurances that are longer than one year in duration, are eligible for the VAT exemption, even prior to the approval of the insurance regulatory department. Insurance companies that exploit such

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products but have not yet been eligible for exemptions may apply to the competent tax authority. Once the life insurance is included in the exemption list issued by the MoF and SAT or is registered, the tax (business tax which is now abolished) paid but not deducted or refunded can be used in deducting the VAT payable in the following months.

On March 20, 2019, the MoF, the SAT, and the General Custom Administration jointly issued several Announcements introducing amendments to the VAT rules effective April 1, 2019. In addition to reducing the VAT rates as discussed above, the Announcements reduce the VAT credit for taxpayers purchasing agricultural products from 10 percent to 9 percent. Moreover, the Announcements confirm that businesses registered as general VAT taxpayers no longer need to stage their input VAT credit claims for purchases of real estate and projects under construction over a two year period. Instead, VAT credits for purchases of real estate and construction services are claimable in full up-front, provided the purchase is for a taxable purpose. There is a special transitional rule to deal with purchases which have not yet benefited from a full VAT credit at the time these new policies take effect. The Announcements further contain "change of use" rules which require VAT credits to be adjusted where actual use of an asset does not align with intended use for business purposes.

In addition, the Announcements allow businesses registered as general VAT taxpayers to claim VAT credits for domestic passenger transport services. This means, in effect, that for the first time businesses are eligible to claim VAT credits for domestic flights, rail and road transportation services (including taxi fares if the support invoices are VAT electronic general invoices or have the passenger ID information), all of which become subject to the 9 percent VAT rate effective April 1, 2019. One further key consequence of these changes is on travel agents and transportation service providers. In particular, many travel agents apply either a "net basis" method, or alternatively, a "buy-sell" method, depending on the needs of their customer base. These changes may no longer produce any real benefit in applying a "net basis" method to transport services they procure or arrange. Certain transport service providers will need to configure their systems and processes to produce relevant invoice documentation for their customers, and where alternative documents such as passenger tickets are produced, the inclusion of passenger identification information.

Moreover, between April 1, 2019 and December 31, 2021, taxpayers in the following industries are eligible for a 10 percent super deduction: postal services; telecommunications services; modern services, which includes research and development and technical services, information technology services, cultural and creative services, logistics services, logistics and ancillary services, certification and consulting services, leasing, radio, film and television services, business support services; and lifestyle services, which includes cultural and sports services, education and healthcare, travel and entertainment, food and beverage, accommodation and citizens daily services. The new rule allows eligible businesses to increase their VAT credits by 10 percent if they meet certain requirements, including" (1) the eligible services referred to above must comprise more than 50 percent of total sales, initially in the 12 months preceding April 1, 2019; (2) there are special rules governing

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new businesses which commence operations on or after April 1, 2019, in which sales from the first 3 months of operations are measured; (3) there are special rules governing how VAT credit carry forward balances impact the calculations; (4) and there are also special rules preventing access to the super deduction for taxpayers exporting goods and services.

The Announcements further introduce a VAT refund mechanism on a "trial basis" if the following conditions are met: (1) the VAT credit balance has grown incrementally for six consecutive months (or two consecutive quarters, for those who file on a quarterly basis), starting from April 2019; (2) the VAT credit balance has grown by not less than RMB 500,000 over that same six month period; (3) the taxpayer's tax credit rating is an "A" or "B" (which effectively denotes them as being highly compliant taxpayers); (4) the taxpayer has not had cases of fraudulent refund claims, false issuance of special VAT invoices or tax evasion penalties (no more than twice), within the 3 year period preceding the applicable tax refund; and (5) the taxpayer has not benefited from the VAT refund upon collection and VAT refund after collection policies; (6) the refunds which are provided are only those incrementally accruing from April 1, 2019; and (7) the refund which is eventually allowed represents 60 percent of the incremental VAT refund available while only VAT credits supported by special VAT invoices, customs clearance certificates, or tax clearance certificates for imported services can be refunded.

Finally, the Announcements cut the export rebate rates to 13 percent and 9 percent, respectively, for exports that enjoyed 16 percent and 10 percent rebate rates in accordance with VAT cuts effective April 1, 2019. To read a report prepared by the KPMG International member firm in China, please click here.

Source: China (People's Rep.)—MOF and STA clarify VAT issues (Feb. 8, 2019), News IBFD; China (People's Rep.)—Significant amendments to VAT announced (22 Mar. 2019), News IBFD; Bloomberg Law News (Mar. 22, 2019), China to Lower Export Rebate Rates in Accordance With VAT Cut.

India: Overview of Recently Published GST Guidance

On March 7, 2019, India's Central Board of Indirect Taxes and Customs (CBITC) issued Notification No. 10/2019-Central Tax, which provides an exemption from registration for any person engaged in the exclusive of certain sale of goods (e.g., ice cream, pan masala, and tobacco) and whose aggregate gross receipts in the financial year does not exceed INR 4 million ($58,000), with certain exceptions.

On March 7, 2019, the CBITC issued Notification No. 11/2019-Central Tax, which provides that for registered taxpayers with aggregate gross receipts of up to INR 15 million ($217,000) in the current or preceding financial years, the deadline for submitting the GST return Form GSTR-1 for the months of April, May, and June 2019 is July 31, 2019.

On March 7, 2019, the CBITC issued Notification No. 12/2019-Central Tax, which provides that for registered taxpayers with aggregate gross receipts exceeding INR 15 million in the current or preceding financial years, the deadline for submitting the GST return Form GSTR-1 for the months of April, May, and June 2019 is the 11th day of the month following each month.

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On March 7, 2019, the CBITC issued Notification No. 13/2019-Central Tax, which provides that the deadline for submitting the GST return Form GSTR-3B for the months of April, May, and June 2019 is July 31, 2019 is the 20th day of the month following each month, with the same deadline for the payment of the tax (no distinction is made based on aggregate gross receipts).

On March 7, 2019, the CBITC issued Notification No. 14/2019-Central Tax, which extends the aggregate gross receipts threshold for taxpayers to opt for the composition scheme to gross receipts not exceeding INR 15 million in the preceding financial year, although the threshold is INR 7.5 million ($108,500) for certain states and the scheme is not available for certain manufacturers. Under the GST composition scheme, small taxpayers can simplify their GST obligations and pay GST at a flat rate.

On March 7, 2019, the CBITC issued Notification No. 2/2019—Central Tax (Rate), which provides a composition scheme with a rate of six percent for taxpayers with aggregate gross receipts in the preceding year not exceeding INR 5 million.

On March 7, 2019, the CBITC issued Circular No. 92/11/2019-GST, which clarifies the GST treatment applicable to various sales promotion schemes. According to the Circular, free samples and gifts are not subject to GST, but the vendor is not allowed to recover GST unless the sale falls within the scope of a sale on account of provision included in Schedule I of the GST Act. The CBITC further considers that a "buy one get one free" scheme constitutes a taxable sale and that the vendor is allowed to credit any GST incurred related to that sale. The taxability of such a sale should be dependent upon whether the sale is a composite sale (i.e.,) or a mixed sale. A composite sale is a sale comprised of two or more goods or services, which are bundled and sold together, one of which is a principal sale. A mixed sale is a combination of two or more goods or services made together for a single price, but they can be sold separately and are not dependent on any other. In addition, the Circular clarifies that for discounts including a buy more and volume discounts the tax base is considered to be net off discounts. Finally, regarding secondary discounts that are not known at the time of sale, the tax base is the gross value of the sale. To read a report prepared by the KPMG International member firm in India, please click here.

Source: India Issues Notifications on GST Registration, Return Filing Deadlines, and Other Matters, Orbitax (March 14, 2019).

India: Pre-Fabricated Warehouse Qualifies as Immovable Property

The Authority for Advance Ruling (AAR) of West Bengal recently held in *Tewari Warehousing Co. Pvt. Ltd*, 2019—VIL—47-AAE-SGST, that a pre-fabricated warehouse cannot be conceived without beneficial enjoyment of the civil structure embedded on earth and is thus an immovable property. As a consequence, the taxpayer is not allowed to recover GST incurred in relation to the construction of the warehouse. In the case at hand, the taxpayer provides warehousing services. It proposed to construct a warehouse on a leasehold land using pre-fabricated technology. The warehouse is fixed by bolts to a low reinforced cement concrete platform embedded to the ground. The rest of the structure elements are joined with one another by nuts and bolts and can be dismantled and restructured at another location.

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According to the AAR, the pre-fabricated system has been used for constructing the warehouse and the system is not a warehouse in itself. The issue under contention is not the beneficial enjoyment of the system, but the property of the warehouse that is built. As a storage facility, a warehouse is associated with the space available, whereas the system refers to the materials and structures used for turning the space into a covered storage facility. As technology advances, the engineering for building a factory or a house uses more and more pre-fabricated structures, which have obvious benefits in terms of time and cost. Such building blocks should not be confused with the property being built, which is directly associated with the beneficial enjoyment of the land. Moreover, the applicant had taken the land on a 30 years lease period for the purpose of building a storage facility. The structure that is being built is therefore not intended to be used only temporarily. As a consequence, the AAR held that the technology used for the construction of the warehouse involves the application of pre-fabricated structure and developing the floor of the warehouse. The warehouse cannot be conceived without beneficial enjoyment of the civil structure embedded on earth. The warehouse is therefore an immovable property and GST incurred on the construction cost cannot be recovered. To read a report prepared by the KPMG International member firm in India, please click here.

Trade & Customs (T&C)

China: New Policies for Comprehensive Bonded Zones

China's customs administration along with other agencies including the State Administration of Taxation and Ministry of Commerce jointly published a draft version of "opinions" for promoting comprehensive bonded zones (CBZs). The opinions would aim at developing CBZs into globally advanced centers for five types of operations: processing and manufacturing; research and development (R&D) and design; logistics and distribution; inspection and maintenance; and sales and services.

Since 1990, China has introduced six types of special customs supervision areas, ranging from free trade zones to export processing zones, bonded logistics parks, bonded ports, cross-border industrial zones, and CBZs that were introduced later. A common feature of the different types of special customs supervision areas is that goods are allowed to enter these areas free from customs duty and other import taxes. However, since each type of special area has its own characteristics, their advantages and limitations are different when engaging in different businesses. Due to the different functions of each type of special area, the State Council published the guidance in 2012 to propose that the existing export processing zones, bonded logistics parks, bonded ports, cross-border industrial zones, and other eligible bonded zones be gradually converted into CBZs with unified requirements. In principle, any newly established special supervision area would be a CBZ.

The opinions state that CBZs are to be developed into "five centers," meaning that CBZs would extend their focus from traditional functions such as export processing and logistics distribution to other business areas including research, development, innovation, inspection, testing, and sales

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services in order to cultivate new advantages in the international market. The opinions propose that the "VAT general taxpayer" status would be granted to enterprises in CBZs. Moreover, domestic sales of cell phones and automobile parts manufactured in CBZs and Goods and articles imported into CBZs for R&D purposes would be exempted from automatic import license requirements. The bonded storage and display of automobiles in CBZs would be permitted at designated automobile import ports. Based on logistical needs, financial leasing enterprises registered in CBZs would be allowed to declare imported and exported large-scale equipment (such as aircraft, ships and ocean infrastructure) to CBZ customs without the equipment actually entering the CBZ, as long as effective supervision and enforcement of relevant tax policies can be assured. To read a report prepared by the KPMG International member firm in China, please click here.

In Brief

- **Angola:**[v] On February 21, 2019, the Angolan National Assembly announced the implementation of Angola's new VAT (IVA) regime effective July 1, 2019. Recall, the new regime includes a single VAT rate of 14 percent which replaces the current 10 percent consumption tax. For small taxpayers with annual revenue below $250,000, a 7 percent reduced rate will apply. The regime also includes certain exemptions, including for basic foodstuffs, certain fuel products, and certain financial/intermediation services. The new VAT will first apply to large taxpayers and imports of goods and will be transitioned to other taxpayers with full implementation effective January 1, 2021. Taxpayers not initially required to apply the regime are to be allowed to opt in voluntarily if meeting certain accounting and IT conditions. However, taxpayers who, in the previous fiscal year, have exceeded the $250.000 threshold and do not opt in voluntarily, will be subject to the transitional VAT regime with a 7 person VAT applied to their quarterly gross receipts and a VAT deduction limited to 4 percent of the VAT incurred.
- **Albania:**[vi] On February 11, 2019, Albania proposed to apply the reduced VAT rate of six percent to electronically supplied publications.
- **Australia:**The KPMG International member firm in Australia prepared a report on the application of GST on how care services that can be found here.
- **Australia:**[vii] On March 26, 2019, Australia published new GST regulations (A New Tax System (Goods and Services Tax) Regulations 2019), which replace the 1999 GST regulations effective April 1, 2019. A comparison table of the 1999 and 2019 regulations is available here.
- **Bermuda:**[viii] Effective April 1, 2019, Bermuda increased the financial services tax rate for banks from 0.005 percent to 0.0075 percent and the financial services tax rate for domestic insurers from 2.5 percent to 3.5 percent. Bermuda also expanded the exclusion for certain premiums for domestic insurers to include premiums relating solely to government insurance, in addition to the existing exclusion for health insurance and annuities. For this purpose, government insurance is defined to mean insurance policies taken out by a government department.

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- **Bolivia:**[ix] The National Tax Service of Bolivia recently announced that the implementation of an electronic invoicing system (*Sistema De Facturacion Electronica* (SFE)) will delayed until around August. The delay will allow more time for businesses to prepare for the introduction of the new system.
- **Bulgaria:**[x] On February 1, 2019, Bulgaria published amendments to Ordinance N-18 of 2006 regulating the issuing of fiscal receipts were published in the State Gazette. The amendments provide that the fiscal receipts registering sales of liquid fuels must include, in addition to current requirements, information about the amount of VAT, excise duty, sale price of the fuel excluding excise duty and VAT (net value), and purchase price of the fuel excluding excise duty and VAT (purchase value). This information must be displayed on separate lines in the fiscal receipt according to the type of liquid fuel. Traders must be comply with the new requirement no later than March 31, 2019.
- **Brazil:**[xi] On February 22, 2019, Brazil published Private Ruling 99003/2019, which clarifies that the suspension of the contributions to the federal social contributions (PIS and COFINS) does not apply to legal entities that, although characterized as commercial exporters, are not preponderantly exporters habilitated according to Normative Instruction 595/2005.
- **Chile:**[xii] On February 8, 2019, the Internal Revenue Service of Chile (IRS) published Ruling 509, in which it clarified the requirements for the use of the specific tax applicable on diesel as a credit against VAT. Although Chilean tax law provides for the tax on diesel to be creditable against VAT, the IRS held that this possibility only exists if the relevant company does not carry out shipping activities. In the Ruling, the taxpayer carried out services related to mining activities, employing for this purpose trucks and machinery that used diesel but not for shipping. According to the IRS, the requirements for the use of this tax benefit are as follows: (1) the company must be a VAT taxpayer or an exporter; (2) the company must demonstrate that it uses the diesel in its business activities; and (3) the company cannot use the diesel in motorized vehicles which are capable of transiting streets or public roads in general. In the case at hand, because the company owns and uses trucks for the purposes of the services it renders, even if the vehicles are not used for shipping activities, it cannot apply for the benefit in those particular cases. This is because trucks, by nature, have the ability to transit streets and roads (even if they are not effectively used for shipping purposes).
- **Chile:**[xiii] On February 8, 2019, the IRS published Ruling 510 in which it clarifies the VAT rules applicable to billing and invoicing of international shipping services. In the case at hand, a Chilean company provided international shipping services to and from Chile. Some of these services were rendered to Chilean clients. However, in some cases, no trucks were available at the time of service and, therefore, foreign shipping companies needed to be contracted for the conclusion of the service. Considering that the service was materially rendered abroad (and thus a service export), the taxpayer could issue a service export invoice to the Chilean client, because services were in fact rendered abroad or a VAT exempt invoice, as while the services were

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rendered abroad, the service provider and the beneficiary (the client) were both Chilean companies. The IRS concluded that, even though the shipping services were rendered abroad, they were provided to another Chilean company. As a consequence, the taxpayer must issue a VAT exempt invoice.

- **Colombia:**[xiv] The National Tax Authority of Colombia (DIAN) recently published Circular 000006, which provides guidance on the application of a new set of rules introduced by the recently adopted tax reform for assessing VAT on products imported from abroad or from free trade zones (FTZ) containing Colombian materials that previously had been exported (For KPMG's previous discussion on the tax reform, click here.) According to the tax reform, effective January 1, 2019, imports of products finished abroad or in an FTZ containing Colombian materials that have been exported are subject to VAT on the total amount of the imported product, including customs duties and production costs, as well as the amount of the national component included in the good. According to DIAN, Box 83 of the import declaration form must include the national added value under FOB terms (USD) when the product was introduced in an FTZ or the amount of the national raw materials is sent abroad for producing re-imported products. In addition, DIAN clarified that for assessing the VAT base in Box 98, Boxes 78 (FOB in USD) and 82, the amount of freight, insurance and other expenses in USD must be added up; the resulting amount must be computed with the amount included in Box 58 (exchange rate). The final amount must be added to the amount included in Box 94 (customs tariff duties in COP).
- **Congo (Republic of):**[xv] On December 28, 2018, the Republic of Congo enacted law 40-2018, which amongst other items amends the VAT law effective January 1, 2019. The law sets the VAT registration threshold is set at XAF 60 million ($103,000). In addition, the law applies the reduced VAT rate of five percent to locally manufactured cement. Moreover, the law clarifies that no VAT deduction is allowed on expenses incurred in connection with services rendered by nonresident service vendors in cases where the corresponding remuneration has not been subjected to income tax. Finally, any VAT credit must be recorded and approved by the tax authority within the statute of limitation period of four years. Consequently, such credit can be offset against a similar tax according to a schedule agreed between the taxpayer and/or his representative and the tax authorities.
- **Costa Rica:** On February 15, 2019, Costa Rica published law No. 21,191 which amends article 460 of the Commercial Code in order to allow an electronic invoice to be accepted in the same manner as a physical invoice. As a consequence, the acceptance of an invoice through electronic receipt or a confirmation message sent by the debtor from the debtor's email address is valid. To read a report prepared by the KPMG International member firm in Costa Rica, please click here.
- **Costa Rica:** On March 18, 2019, Costa Rica published in the official gazette Executive Decree 41615-MEIC-H which establishes the list of "basic consumption goods" for VAT purposes effective April 18, 2019. Products included in the basic food basket will be exempt until July 1st, 2020, and after this date will be taxed with a reduced rate of 1 percent. In general,

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the products are related to breads and tortillas, rice, flour, milk, meat, eggs, sausages, canned tuna, fruits, vegetables, beverages, personal hygiene items, school goods and other food products. To read a report prepared by the KPMG International member firm in Costa Rica, please click here.

- **Costa Rica:**[xvi] Costa Rica's Ministry of Finance recently published for consultation a second draft of the implementing regulations for the country's new VAT system, which will be effective July 1, 2019. Areas covered by the regulations include rules concerning the scope of supplies subject to VAT, including cross-border digital services, the rules for taxable events and time of supplies, the taxable basis, the rates, the registration and return requirements, and VAT credits.
- **Cyprus:**[xvii] The Cypriot tax authority recently issued Circular EE 229 clarifying that the long-term lease of immovable property with the right to dispose of the property as owner at the end of the lease period is classified as a sale subject to VAT effective January 1, 2019. VAT applies at the standard rate (currently 19 percent) or at the reduced rate of 5 percent if the lessee is an individual who will use the property as his primary place of residence. The long-term lease of previously owned property is VAT-exempt. The circular further clarifies the interpretation of the term "effective transfer of the right to immovable property," explaining that, in addition to outright ownership, the term applies to (1) the holding of an interest in a property for 99 years; (2) long-term leases in which there is a large initial payment almost equal to the current fair market value of the property, followed by a periodic payment of a nominal rent; and (3) long-term leases in which, at the inception of the lease, the aggregate amount of the monthly rent is determined to be almost equal to the total fair market value of the immovable property. Finally, the circular includes transitional measures regarding the application of VAT to specific cases.
- **Czech Republic:** The Supreme Administrative Court of the Czech Republic recently held that a customer's liability for VAT unpaid by the seller does not take precedence over denying the customer's right to VAT deduction. As a consequence, the tax authority should deny the customer's right to VAT deduction during the assessment stage of a tax audit, even where the conditions for invoking the liability are met. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.
- **Denmark:**[xviii] On February 20, 2019, the Danish Customs and Tax Administration published a binding tax board answer clarifying that a Danish entity cannot deduct VAT on invoices from a Danish subcontractor in a non-EU Member State for assembly, supervisory, or technical tasks. The board found that since the contracting entity had authority over the subcontractor's activities, the subcontractor was providing labor. The sourcing of labor services is considered the location where services are performed. Since the labor services were sourced outside the EU, the board found that the services were not taxable in Denmark and the taxpayer could not claim any VAT related VAT deduction.
- **European Union:**[xix] On February 13, 2019, the ECJ published its judgment in *Human Operator Zrt.*, Case C-434/17, in which it held that EU law precludes national legislation which provides for the application of a measure derogating from the EU VAT Directive before the EU act authorizing that derogation has

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been notified to the Member State which requested it, despite the fact that that EU act does not mention the date of its entry into force or the date from which it applies, even if that Member State has expressed the wish for that derogation to apply with retroactive effect.

- **European Union:**[xx] On February 11, 2019, the VAT Expert Group of the European Commission held its 21st meeting. The VAT Expert Group is composed of individuals appointed in a personal capacity with the requisite expertise in the area of VAT and organizations representing in particular businesses and tax practitioners which can assist in the development and implementation of VAT policies. The VAT Expert Group discussed the VAT e-commerce package adopted at the end of 2017 and gave presentations on the following topics: (1) proposals recently published on certain detailed rules and the state of play of negotiations conducted within the European Council; (2) IT developments necessary to expand the current mini one stop shop (MOSS) to also cover goods; and (3) the state of play of customs-related aspects of the e-commerce package.
- **European Union:**[xxi] On February 27, 2019, the ECJ published the Opinion of its AG in *Federal Express Corporation Deutsche Niederlassung*, Case C-26/18, in which the AG argued that the importation of goods presupposes the goods to enter the economic network of the EU, assuming that the entry occurred in the Member State where the goods have been removed from any of the procedures mentioned in the EU VAT Directive. A national court may challenge this assumption if it can be proven that despite infringing the customs rules applicable to the procedures mentioned in the EU VAT Directive (i.e., thus generating the customs debt in the Member State where the infringement was committed) the goods enter the economic network of the EU in that other Member State where it was consumed, and consequently the VAT becomes due in the latter Member State. The ECJ must now decide whether to follow the nonbinding Opinion of its AG.
- **European Union:** On March 12, 2019, the Economic and Financial Affairs Council of the EU (ECOFIN) did not reach agreement on the digital advertising tax proposed in 2018. (For KPMG's previous discussion on the proposal, please click here.) Member States' representatives held an exchange of views on a watered-down version of the Commission's digital services tax (DST) proposal, but failed to reach consensus on a compromise text tabled by the Romanian Presidency of the EU. It remains to be seen whether all Member States will be able to agree on a common EU position. To read a report prepared by the KPMG International EU Tax Center, please click here.
- **India:** The state of Maharashtra recently introduced an amnesty program to settle pre-GST disputes. To read reports prepared by the KPMG International member firm in India, please click here and here.
- **India:** On April 1, 2019, the Indian Central Board of Indirect Taxes and Customs posted online the consolidated Central GST Rules, as of March 29.
- **Ireland:**[xxii] On February 26, 2019, the Irish tax authority published eBrief No. 034/19 on the update of the VAT and duty manual (the manual) that sets out the VAT treatment and applicable VAT rates of food supplements and other substances for human consumption. A tax authority concession allowed the

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zero VAT rate to be applied to certain types of vitamins, minerals, and fish oils. Following a review of the VAT treatment of food supplements, the tax authority issued new guidance in December 2018 prescribing that the zero VAT rate would be removed from March 1, 2019. The implementation of the manual is now delayed until November 1, 2019 as the tax authority plans to examine the policy and legislative options for the taxation of food supplements.

- **Ireland:**[xxiii] On March 17, 2019, the parliament of Ireland passed the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 (the Act), which includes amendment's to the VAT law as part of Ireland's "no deal" Brexit preparations. The Act provides for a new postponed accounting mechanism for all importers registered for VAT in Ireland. It further provides for a modification of the postponed accounting mechanism in the future which will make the authorization for the above mechanism subject to stricter conditions. In the future, qualification for postponed VAT accounting may be subject to certain criteria and conditions. In addition, the Act amends the Section 56 VAT authorization scheme (the Scheme) which entitles authorized taxpayers to receive qualifying goods and services at a zero rate of VAT. The Act amends the definition of a "qualifying person" for the purpose of the Scheme. Under the new definition, it would be necessary for an applicant to demonstrate that their gross receipts meets the 75 person zero-rated transactions test for 12 months immediately preceding the making of an application. Regulations yet to be published will flesh out the terms upon which the amended Scheme will apply. To read a report prepared by the KPMG International member firm in Ireland, please click here.
- **Ireland:** On march 11, 2019, the Irish tax authority published Revenue eBrief No. 048/19 which updates its VAT guidance regarding: the VAT treatment of VAT vouchers, the VAT treatment of activities of public bodies; the VAT treatment of the integrated single electricity market; the VAT treatment of staff secondments; the VAT treatment on gifts and promotional items, the VAT treatment of member-owned golf clubs, and the VAT rate changes in accordance with the Finance act of 2018.
- **Isle of Man:**[xxiv] Effective April 1, 2019, the Isle of Man imposes a soft drinks industry levy (sugar tax). The levy has a main rate of 18 pence per liter, which applies to drinks containing at least 5 grams of added sugar per 100ml, and a higher rate of 24 pence per liter for drinks containing at least 8 grams of added sugar per 100ml.
- **Korea:** The Ministry of Economy and Finance of Korea (the Ministry) recently proposed amendments to the Enforcement Decree of the VAT Law, which if approved, would extend the due date of tax invoices, allow VAT deduction for tax invoices including an incorrect date of sale, allow VAT deduction in case of errors in determining consignment sales, and amend the taxable period for consolidated VAT payments at a principal place of business. To read a report prepared by the KPMG International member firm in Korea, please click here.
- **Lithuania:**[xxvi] Effective July 1, 2019, Lithuania will allow businesses with gross receipts below EUR 300,000 ($340,000) in the previous year to file returns quarterly. Businesses whose gross receipts falls under the VAT threshold would be required to file a VAT return by the 25th of the month following the end of

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the relevant quarter. Newly registered taxpayers would be able to file quarterly immediately if they can demonstrate a reasonable expectation that their gross receipts will be below the threshold during the year.

- **Lithuania:**[xxvi] On February 22, 2019, the EU published in the official journal Council Implementing Decision (EU) 2019/309 which authorizes Lithuania to require the purchaser of hard drives to self-assess VAT under the domestic reverse charge mechanism. The derogation will be applicable from March 1, 2019 until February 28, 2022.
- **New Zealand:**[xxvii] The New Zealand Inland Revenue Department (IRD) recently released for consultation eight new guidance documents, including one on the GST registration obligations, which are intended to support taxpayers with complying with the nation's tax laws where they temporarily provide accommodation, in particular through sharing economy sites. According to the IRD, it will consult on some further draft items on short-stay accommodation in the coming months. One consultation would cover the GST issues in detail, and another would cover the issues that arise where the property is held in trust.
- **New Zealand:**[xxviii] The New Zealand government recently announced that it is considering the introduction of a digital services tax. Proposals will be released in a discussion document to ensure that multinationals pay their fair share of tax in the country.
- **Niger:**[xxix] Effective January 1, 2019, Niger introduced an 18 percent financial transactions tax (FTT) on banking and other financial activities as well as securities and money trading. The tax base is the gross value of interest, fees, commissions, and other similar remuneration. Some exemptions are available for specific payments. The trigger event is the completion of the service or, in the case of loans, the crediting of the beneficiary's account. The FTT should be remitted to tax authorities within 15 days after the month in which the remuneration has been received.
- **Norway:**[xxx] On February 11, 2019, the Norwegian tax authority published a tax appeals board decision confirming the tax authority's denial of VAT deduction for transaction costs related to the sale of shares in a company that is voluntarily registered for VAT on its rental activities. The appeals board noted that non-taxable events, like a sale of shares, are not eligible for VAT deduction unless the sale has a relevant and close connection to a taxable transaction in the normal course of business. The taxpayer argued that the transaction costs were related to the VAT liable leasing activity in the company sold. The tax authority denied the VAT deduction because sale of shares is an exempt service and the transaction costs were not sufficiently related to a taxable activity.
- **Norway:** Effective April 1, 2019, Norway split up the air passenger tax into two tiers, with the level of tax paid depending on the passenger's final destination. Previously, the air passenger tax was charged at a flat rate of NOK 84 ($9.82)

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per passenger regardless of the length of the flight. The tax applies to the commercial transportation by air of passengers from Norwegian airports, with the exception of flights from the Norwegian continental shelf and airports on Svalbard, Jan Mayen, and the Norwegian dependencies. Certain categories of passengers are also exempt from the tax, including airline employees on business travel, children under the age of two, transit and transfer passengers, and NATO personnel. Under the new measure, flights departing from Norway with their final destination in Europe would be taxed at NOK 75 ($8.77), with journeys to destinations beyond Europe to be taxed at NOK 200 ($3.38) per passenger.

- **OECD:** On March 22, 2019, the Organisation for Economic Cooperation and Development (OECD) issued a release reporting that delegates from over 100 jurisdictions, including regional and international organizations, have unanimously endorsed new rules that will ensure the collection of additional VAT and GST revenues. The report includes new measures to make e-commerce marketplaces liable for the VAT/GST on sales made by online traders through their platforms as well as data-sharing and enhanced co-operation recommendations between tax authorities and online marketplaces. This new report builds on the solutions for the effective collection of VAT on digital sales included in the base erosion and profit shifting (BEPS) Action 1.
- **Panama:**[xxxi] On February 20, 2019, the Panamanian National Assembly passed a bill to introduce a selective tax on the consumption of domestic or imported sugary drinks at the following rates: 7 percent for carbonated beverages; 5 percent for other sugary drinks; and 10 percent for syrups. Products containing less than 7.5 grams of sugar per 100 milliliters are exempt from the tax.
- **Poland:**[xxxii] On February 22, 2019, the EU published in the official journal Council Implementing Decision (EU) 2019/310 authorizing Poland to introduce a mandatory "split payment mechanism" to certain business-to-business (B2B) sales of goods and services listed in the Annex of the Implementing Decision, if the payment of the consideration is through electronic bank transfer. Under the split payment mechanism, the customer transfers the charged VAT amount to a separate, blocked bank account of the seller, which account may only be used, in general, to offset the vendor's payable VAT balance with the tax authority. The derogation applies from March 1, 2019 until February 28, 2022.
- **Portugal:**[xxxiii] On February 15, 2019, Portugal published in the official gazette Decree-Law 28/2019, which includes rules that aim to consolidate the processing and archiving of invoices and other tax relevant documents. The Decree-Law is generally applicable as from February 16, 2019, although specific rules referred to below will be valid from January 1, 2020 onwards. According to the Decree Law, taxpayers that have their head office, a permanent establishment or domicile in Portugal and gross receipts exceeding EUR 50,000, are required to use certified software for the issuance of invoices (a transitional provision applies under which the threshold in 2019 is EUR 75,000). Unless instructed otherwise, taxpayers are not required to print the invoices or send them by electronic means to the purchaser if the latter is not a taxpayer. The Decree Law includes an incentive for the digitalization and electronic archiving of invoices issued and received on paper. The Decree Law further states that for 2019 and 2020, the submission deadline for the billing SAF-T file will be the 15th day and 10th day, respectively, of the month following the

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issuance of the invoice. Currently, the deadline is the 20th day of the month following the issuance of the invoice. The Decree-Law also includes a second batch of amendments to be introduced effective January 1, 2020. These include the inclusion of a QR code and a unique document code (a specific code assigned by the authorities according to a model to be defined by a ministerial order) on invoices and other tax-relevant documents.

- **Qatar:** According to recent news, Qatar is likely to implement VAT in January 1, 2020, and the government is expected to release a draft of the law prior to the implementation date. Qatar's VAT law and Executive Regulations will provide definitive rules on how VAT will be applied across all business types. To read a report prepared by the KPMG International member firm in Qatar, please click here.
- **Spain:**[xxxiv] On February 7, 2019, the Spanish tax authority clarified the criteria for applying the reduced VAT rate of 10 percent for services performed by performers, directors and technicians as modified by the Royal Decree Law 26/2018 of December 28, 2018. According to the tax authority, the reduced VAT rate is applicable regardless of whether the services are hired by an agent acting on behalf of the artist or if other artists are hired as employees to render that service. Regardless of (1) the place where the show is performed; (2) the determination of the consideration; and (3) the specifically pursued objective of the show, theatre plays must include text recited or other forms of artistic expression adapted to the stage, whereas musical plays must include a sound scheme (whether or not combined with literary texts). However, services rendered for the performance of a magic show are taxed at the standard VAT rate (currently 21 percent).
- **South Africa:** Effective June 1, 2019, South Africa will introduce a carbon tax of ZAR 120 ($8.28) per ton of carbon dioxide equivalent (CO_2e) of greenhouse gas emissions above set tax-free allowances, which could reduce the initial carbon tax rate to as low as ZAR 6 ($0.41)—ZAR 48 ($3.31) per ton of CO_2e. Although the carbon tax is relatively simple in structure, its implementation is likely to be challenging as the carbon tax is based on fossil fuel consumption, industrial process emissions as well as fugitive emissions, all of which are not regularly or consistently measured. To read a report prepared by the KPMG International member firm in South Africa, please click here.
- **Turkey:**[xxxv] On February 20, 2019, Turkey published in the official gazette General Communiqué No. 24, which implements a VAT refund mechanism based on a pre-control report intended to speed up the VAT refunding process based on Sworn Tax Advisor (STA) certification report. According to the Communiqué, VAT refund claims made on the basis of a STA certification report are examined by means of a VAT Refund Risk Analysis System (KDVİRA) determining whether the claim is correct. Under this system, a VAT Refund pre-Control Report is produced. Fifty percent of the VAT refund claim approved under the VAT Refund pre-Control Report is refunded within 10 days after the VAT Refund pre-Control Report has been produced. In order to apply for the new VAT refund procedure, taxpayers must meet the following conditions: (1) they must have submitted VAT returns for 24 tax periods; (2) at least the last three VAT refund claims must have been finalized; and (3) the taxpayer, partners, partnerships and legal representatives of the taxpayer are not under investigation.

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- **Ukraine:**[xxxvi] On February 13, 2019, Ukraine extended until January 1, 2023 the VAT and customs duty exemption for goods imported into the customs territory of Ukraine by resident space industry enterprises within the scope of international agreements on space activities ratified by Ukraine.
- **United Arab Emirates:**[xxxvii] The United Arab Emirates' Federal Tax Administration recently released Public Clarification VATP011 on the VAT treatment of sponsorships, grants, and donations. According to the guidance, a donation, grant, or sponsorship deal may be subject to VAT only where it is consideration provided in exchange for taxable sales. Where any benefit is received in return for the payments, VAT implications will arise. However, where no benefit is received, the payments will be treated as outside the scope of VAT as they will not be seen as consideration for a sale. The guidance provides examples of where such sponsorships, grants, or donations will be subject to VAT and where they will be treated as outside the scope of VAT.
- **United Kingdom:**[xxxviii] On January 28, 2019, the UK First Tier Tribunal recently published its judgment in *Eat Ltd.*, [2019] UKFTT 0067 (TC), in which it held that the sale of heated breakfast muffins and ciabatta rolls for off-premises consumption is subject to the standard VAT rate (currently 20 percent). The evidence demonstrated that the products, which were assembled off-site with part-baked rolls, were finished in a retail outlet's grill in order to be served and consumed hot, according to the tribunal. Under the United Kingdom's VAT rules, the standard rate applies to the sale of food in the course of catering, which includes food served hot for off-site consumption. "Hot food" covers food that has been heated for consumption "at a temperature above the ambient air temperature" and is above that temperature when served to a customer.
- **United Kingdom:**[xxxix] On February 20, 2019, HMRC published a "Mythbusters" document, which lays out some common views on Making Tax Digital (MTD) and explanations about why they are incorrect. Under the MTD project, most businesses and self-employed taxpayers will be required to manage their tax affairs digitally, with tax returns replaced by digital tax accounts by 2020. For VAT purposes, MTD is effective April 1, 2019. For KPMG's previous discussion on MTD, click here. The KPMG International member firm in the UK has prepared two reports on how and when to sign up for MTD.
- **United Kingdom:**[xl] On February 27, 2019, HMRC updated the VAT guide for measures on unfulfilled sales, including: (1) provisions related to VAT due on all cancellation charges, deposits, and fees for full or partial payments; (2) accounting for VAT refunds to customers in the next tax return; (3) provisions for types of deposits for creating tax points; and (4) provisions related to acts of third party as a stakeholder for the sale of property and deposits.

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Footnotes

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