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

- **Armenia:**[i] On June 7, 2019, the parliament of Armenia passed a law exempting the import of electric vehicles from VAT until January 1, 2022.
- **Greece:**[ii] On June 20, 2019, the Greek Public Revenue Authority announced the extension of the 30 percent reduction of standard VAT rates for the islands of Chios, Kos, Leros, Lesbos, and Samos until December 31, 2019. Without the extension, the standard VAT rates would have applied effective July 1, 2019.
- **Norway:**[iii] Effective July 1, 2019, Norway extended the VAT exemption for books and publications to cover e-journals and e-books, as well as audio books that are parallel editions of e-books.
- **Poland:**[iv] Effective November 1, 2019, Poland will reduce the VAT rate from 23 percent to 5 percent for e-books and certain bread products. Also, Poland will reduce the VAT rate from 23 percent to 8 percent for mustard, sweet pepper spice, some processed spices, and electronic news. Finally, Poland will reduce the VAT rate from 8 percent to 5 percent for tropical and citrus fruit; soups, broths, and homogenized food; baby and infant products including baby food, nappies, and car seats; and adult hygiene products.

The Americas

United States: Optional Liability Waivers Not Subject to Sales Tax in Kentucky

The Kentucky Court of Appeals recently affirmed a trial court decision holding that optional liability waiver fees were not subject to sales tax. *Dep't of Revenue v. Rent-A-Center East, Inc. & Rent-Way, Inc.* The taxpayers at issue were rent-to-own companies that rented tangible personal property, including furniture, appliances, computers, and other electronics, to Kentucky customers. If a rented item was damaged during the rental period, the customer was liable for the value of the item unless he/she had purchased an optional liability waiver. Under the terms of the waiver, if the rented property was damaged or destroyed as a result of certain types of events while the wavier was in effect, the customer was not liable for the value of the item. The taxpayers did not charge sales tax on the optional waiver fee. On audit, the Kentucky Department of Revenue asserted that these fees were part of the sales tax base and assessed tax and interest accordingly. The taxpayers disagreed with the assessment. Both the Board of Tax Appeals and the trial court ruled in favor of the taxpayer.

On appeal, the court adopted key portions of the lower court's opinion and held that the optional waivers were not sales of tangible personal property, a fact that was conceded to by the Department. The court declined to read the waiver agreement as a provision of the rental agreement, noting that the agreements were not "inextricably linked" and that the waiver did not interfere with the customer's right to possession or use of his rental property. The waiver simply granted an intangible right to the purchaser (i.e., the taxpayer would not pursue action against the renter for damage occurring under certain circumstances). For more information, please click here.

Brazil: Overview of Recently Published Indirect Tax Guidance

On June 17, 2019, Brazil published several "Consultation Solutions" in the official gazette.

- Consultation Solution No. 185 clarifies that presumed credits on the social security contributions (COFINS) and the social integration contributions (PIS/PASEP) for goods acquired from a resident legal entity for resale will now be taxed based on actual profit instead of presumed profit. The new rule does not apply to goods classified as new rubber tires and rubber inner tubes.
- Consultation Solution No. 3018 clarifies that the income earned by entities exercising an assignment of rights is subject to PIS and COFINS.
- Consultation Solution No. 189 clarifies that tax credits for PIS and COFINS are allowed on expenses incurred for packaging used during the production process, but not on expenses incurred for packaging used during shipment of the finished products.

— Consultation Solution No. 193 clarifies that entities providing call center, telemarketing, and telecommunication services are subject to PIS and COFINS based on their real profit under the cumulative calculation regime. The Consultation further clarified that revenues accrued from the performance of other services are subject to the general rules under the noncumulative calculation regime.

Source: Bloomberg Law News Jun 19, 2019, Brazil Gazettes Consultation Solutions Clarifying Presumed Credits Under Concentrated Taxation Regime; Bloomberg Law News Jun 19, 2019, Brazil Gazettes Consultation Solution Clarifying Presumed Profit Regime for Purchase, Sale Rights From Third Parties; Bloomberg Law News Jun 19, 2019, Brazil Gazettes Consultation Solution Clarifying Tax Credits on Social Security Contributions for Packaging Expenses; Bloomberg Law News Jun 19, 2019, Brazil Gazettes Consultation Solution Clarifying Social Contribution Calculation Basis for Income from Telemarketing Services.

Costa Rica: Overview of Recent VAT Developments

On June 26, 2019, Costa Rica published in the official gazette Decree No. 41820-H, which establishes the rules on electronic vouchers effective July 1, 2020. The Decree includes details of the procedure and specific obligations for issuing electronic vouchers and clarifies the obligations and exceptions of system providers for the issuance of electronic vouchers. The Decree further provides the format and technical specifications of the vouchers verifying compliance with the procedure. Finally, the Decree lists the taxpayers that are not required to comply with electronic voucher obligations.

On June 28, 2019, Costa Rica published in the official gazette Resolution DGT-R-36-2019, which establishes the obligation of taxpayers to self-assess value-added tax (VAT) through form D140. The form is only available on the tax authority's online platform *(Administración Tributaria Virtual (ATV)*). Taxpayers that are required to submit their tax returns on the Digital Taxation web portal *(Tributación Digital)* must use the ATV portal accessible through the Ministry of Finance website. The resolution has an annex with the instructions to complete the tax return. For the tax payment, National Large Taxpayers and Large Territorial Companies (so-called GETES) must use the "real-time debit" system. However, until the tax authority has this mechanism available on the ATV website, all taxpayers must use the "connectivity system" as a means for the payment. To read a report prepared by the KPMG International member firm in Costa Rica, please click here.

On June 28, 2019, Costa Rica published in the official gazette Resolution DGT-R-35-2019 in which the tax authority clarified that port and airport services, as well as shipping services for goods destined for export to ports, airports and land borders fall under the zero-rating for exports. For shipping services, it will be necessary that the carrier is registered with the tax authority and issues the corresponding electronic receipt, even if it is not registered as a customs agent. The tax authority further clarified that an advance ruling acknowledging that the service provider is included in the registry of exporters is not required. However, the exporter must share its exporter code with the service provider. To read a report prepared by the KPMG International member firm in Costa Rica, please click here.

On July 5, 2019, the Office of the Attorney General responded to a consultation filed by the Ministry of Finance, regarding whether the exemptions from VAT offered by law that existed before the VAT law had been repealed with enactment of the VAT. According to the Attorney General, the exemptions established by other laws were not repealed by the tax reform. Only the exemptions of article 9 of the General Sales Tax Law which were replaced by article 8 of the VAT law. To read a report prepared by the KPMG International member firm in Costa Rica, please click here.

On July 10, 2019, Costa Rica published in the official gazette the "Law for a moratorium on the application of sanctions related to the Value Added Tax." The Law establishes a three-month moratorium on penalties, interest, fines or any other sanction related to VAT. Large Taxpayers and GETES (by its initials in Spanish) are excluded from the moratorium. The moratorium does not exempt taxpayers from filing the tax returns, the tax payment, or the payment of the principal amount adjusted by the Tax Administration. To read a report prepared by the KPMG International member firm in Costa Rica, please click here.

On July 10, 2019, the tax authority of Costa Rica published a list of VAT-exempt entities under article 11 of the VAT Regulations. To obtain the VAT exemption, the listed entities must be registered in the electronic system of exemptions referred to as EXONET. The list includes the following entities and events: the Costa Rican Red Cross; the Costa Rican Fire Brigade; leasing of immovable property for micro and small enterprises duly registered with the Ministry of Economy; leasing of immovable property for micro and small agricultural enterprises duly registered with the Ministry of Agriculture; imports made by public transportation licensees, provided that they are necessary to render public transport services; the "Ayúdenos a Ayudar" Foundation; the National Children's Hospital Association; the Foundation for the Restoration and Protection of the Presidential House Heritage; the "Obras del Espíritu Santo" Association; the National Association for the Protection of Elderly People; "Escuela de Agricultura de la Región Tropical Húmeda (EARTH)"; "Instituto Centroamericano de Administración de Empresas (INCAE)"; local development associations; management boards of public education institutions; associations for the management of local water and sewer systems (ASADAS); wheelchair importers; the acquisition of goods by the providers of the social security system; the acquisition of goods by the providers of the municipalities; and acquisitions made by exporters, traders, distributors and producers of basic consumer goods.

The tax authority of Costa Rica recently confirmed that public institutions will be subject to VAT effective 2020. Public institutions are currently exempt from VAT if they did not pay general sales tax before the entry into force of VAT. All these entities will have to incorporate amounts related to their acquisition of goods and services in their 2020 budget.

Source: Bloomberg Law News Jul 1, 2019, Costa Rica Gazettes Decree Establishing Rules on Electronic Vouchers; CCH, Global VAT News & Features, Costa Rica To Introduce VAT On B2G Supplies From 2020 (July 25, 2019); Costa Rica - Criteria for VAT exemption on services provided to exporters – clarified (July 11, 2019), News IBFD; Costa Rica - List of VAT exemptions published (July 17, 2019).

Europe, Middle East, Africa (EMA)

Bahrain: VAT Return Guidance Published

In June 2019, the National Bureau for Revenue (NBR) for Bahrain published the VAT Return Filing Manual. The purpose of this manual is to provide taxpayers with an overview of the VAT rules and procedures in Bahrain concerning the VAT return process as well as the necessary guidance to help them navigate the NBR online portal and forms for VAT return filing, payment submission, and obtaining refunds. The manual requires that every taxpayer registered for VAT in Bahrain must submit a VAT return whether or not it has made any purchases, imports, or sales during a given reporting period. During the transitional period provided for 2019, taxpayers with annual sales exceeding BHD 5 million ($13.2 million) have a quarterly VAT period. Depending on the volume of annual sales, the transitional VAT periods for other taxpayers are January to June 2019, July to September 2019, and October to December 2019. After December 31, 2019, the standard reporting period rules apply. Under the standard rules, the return is due by the last day of the month following the VAT period. If the value of a taxpayer's annual sales exceeds BHD 3 million ($7.9 million), the taxpayer will have monthly VAT periods corresponding to the Gregorian calendar months. Otherwise, they will have VAT periods corresponding to Gregorian calendar quarters. All VAT returns should be submitted online using the NBR portal, which can be accessed on the NBR website.

In July 2019, the NBR published the VAT Return Modification Manual in which it clarifies the rules and procedures for VAT return modifications initiated by a taxpayer or the NBR. According to the manual, if an adjustment is required or an error is found in a VAT return, it is the responsibility of the taxpayer to notify the NBR and modify the information via the NBR's online portal within the five-year statute of limitations established by the VAT Law. Modifications can relate to a change in a previously recorded business transaction or an internal error. Changes in previously recorded business transactions include the following: customer returns of purchased goods triggering the issuance of a credit note; goods received are damaged, triggering a change in the acquisition costs and the receipt of a credit note; there is confirmed nonpayment or bad debt; and input VAT on capital assets is adjusted. An internal error occurs when the taxpayer makes a mistake in its reporting of transactions in the original VAT return and includes the following: the understatement of deductible input VAT, with some purchase invoices excluded for a given VAT period; the overstatement of VAT; and the wrongful treatment of a sale that was zero-rated instead of standard-rated.

Adjustments caused by a change in a previously recorded business transaction must be done in the VAT return for the VAT period during which the change occurred. If the adjustment is not made during the relevant VAT period, the VAT payer must submit a correction or self-amendment to correct the error. Any adjustments to a VAT return should be supported by an explanation and

supporting documentation. Internal errors leading to a misreported net VAT due or refundable of less than BHD 5,000 ($14,000) can be completed as a correction in the VAT return for the VAT period following the original period. A self-amended VAT return should be submitted if there is an error leading to a misreported net VAT equal to or greater than BHD 5,000. Unlike modifications through adjustment and correction, self-amendments replace the original VAT return. A VAT return for a period under NBR audit cannot be amended; taxpayers must either wait until the audit is complete or contact the NBR and notify them of the amendments they would like to perform.

Source: Orbitax, Bahrain Publishes VAT Return Filing Manual (July 1, 2019); Slim Gargouri, Bahrain Clarifies Rules for Amending VAT Returns, Tax Analysts (August 1, 2019).

Czech Republic: VAT Treatment of Meal Vouchers Clarified

The General Financial Directorate of the Czech Republic recently issued two papers on the VAT treatment applicable to meal vouchers. In the first, the GFD confirmed that meal vouchers are vouchers in the meaning of the VAT Act. In the second, the GFD clarified that the VAT treatment will depend on whether they are single-purpose or multi-purpose vouchers. The paper concludes that in most cases, they will be multi-purpose vouchers (i.e., vouchers where the tax rate or the sourcing is not known at the time of their issue). Yet, it is also possible that the contractual conditions of some meal vouchers will make them single-purpose vouchers. The paper assumes that meal vouchers are transferred from their issuers to employers and subsequently to employees, for consideration.

For VAT purposes, the transfer of a single-purpose voucher must be treated as a sale of goods or services covered by the voucher. The company issuing the single-purpose meal vouchers will pay VAT on the amount of the voucher, including any commission charged to the customer (usually an employer), immediately at the point of its transfer to the employer. For catering services, the meal voucher including the commission paid by the employer will be subject to 15 percent VAT. The employer receiving and subsequently distributing the meal vouchers to employees for consideration is required to pay the output VAT and will have full entitlement to VAT deduction on the purchase (the amount of the meal vouchers and the commission). The intermediary commission charged by the issuer of the meal vouchers to its partners with whom the meal vouchers are used should be subject to the standard VAT rate (currently 21 percent).

For multi-purpose vouchers, VAT will only be paid at the time the meal voucher is used by the employee. The tax base should be the nominal amount stated in the meal voucher, regardless of the amount of payment received from the employee. The commission charged to the employer by the business partners is subject to the standard VAT rate. As the issue and redemption of multi-purpose meal vouchers is outside the scope of VAT, a question has arisen whether issuer of the meal vouchers will have the full entitlement to VAT deduction on these sales. The paper concluded that the issuer indeed is entitled to VAT deduction in the full amount, on all direct and indirect costs connected with the issue, as well as the distribution or redemption of

multi-purpose meal vouchers. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

Czech Republic: Proposal to Introduce a Digital Services Tax

On July 4, 2019, the Czech government started the formal legislative process to introduce a digital services tax (DST) that would be imposed at a rate of seven percent on selected digital services. Taxpayers would be subject to the tax if they meet the following cumulative criteria: (1) total consolidated revenues of the group in which the taxpayer is a member (or of a stand-alone entity that is not member of a group) above EUR 750 million ($841 million), and (2) total revenues of the group in which the provider is a member (or of a stand-alone entity that is not member of a group) from taxable digital services delivered in the Czech Republic above CZK 50 million ($2.2 million). The following services would be considered taxable digital services falling under the DST: (1) carrying out targeted advertisement campaigns, (2) allowing the use of multi-sided digital interfaces, and (3) selling user data. Sales of digital services within the group would not be considered to be taxable.

The targeted advertisement is understood to be advertisement directed at users based on data collected about the users. The decisive factor would be if Czech users (mostly determined from IP addresses) see the advertisement, click on it, and order based on the advertisement, or undertake other actions connected with the obligation to pay for the placement of the advertisement (remuneration events). The tax base for advertising services would be determined based on the ratio of Czech remuneration events to total remuneration events. This ratio would then be applied to the total worldwide revenue of the taxpayer generated from the targeted advertisement campaign. The entity paying the tax would be a company from the group charging for the placement of targeted advertisement to clients (companies selling goods or services based on the advertisements, advertising companies, etc.).

The legislation further states that providers of multi-sided digital interfaces not providing any other taxable digital services in the Czech Republic would be subject to tax only if they have more than 200,000 users. The use of multisided digital interfaces (e.g., on demand companies, and online marketplaces) is understood to be the conclusion of a transaction between users of a multisided digital interface enabling the underlying sales of goods or provision of services, or making available to users or other use of a multisided digital interface. The decisive factor would be when all members (e.g. seller and buyer) of the transaction realized through the interface are known or when the payment for the use of the interface is known (e.g., registration is subject to a fee). The services would be subject to tax if a Czech user (based primarily on the IP address of the user) participates in a transaction or if the registration to the interface is made by a Czech user. It would not be based on where the sale takes place or where the payment is made. The tax base for multi-sided digital interface related services would be determined based on the ratio between the number of Czech users participating in the transaction and the total number of users participating in the transaction. This ratio would then be applied to the total amount of revenue derived from the use of the interface with at least one Czech user. For the use of the interface subject to the registration fee, the tax base would be created by fees paid by Czech users.

Finally, the legislation would define the sale of user data as the sale of data gathered about users of the digital interface and obtained based on their activity on the digital interface, except data gathered through a sensor device or obtained by a regulated financial institution. The service would be considered to be rendered if all users on whom data is collected are known and if at least one of those users is from the Czech Republic (determined primarily by the IP address of the user). The tax base for the sale of user data would be determined as the ratio between the number of Czech users and the total number of users on which data were collected, this ratio will be applied to the total revenue from the sale of data with at least one user.

The effective date of the new DST would be the first of the month after the month of its publication in the collection of laws. The government plans an effective date at some point in the middle of 2020. However, the exact timing will depend on the legislative process. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

European Union: VAT Committee Working Papers

The European Commission recently published working papers resulting from the 113th meeting of the VAT Committee held on June 3, 2019. The VAT Committee was set up to promote the uniform application of the provisions of the European Union (EU) VAT Directive. Because it is an advisory committee and does not possess legislative powers, the VAT Committee cannot make legally binding decisions. It can, however, provide guidance on the application of the Directive.

In Working Paper No. 968, the VAT Committee addresses the implementation of the quick fixes package. The Working Paper discusses call-off stock arrangements, how small losses should be treated and whether a call-off stock warehouse constitutes a fixed establishment. The Working Paper further discusses how the clarification rules concerning chain transactions should be applied together with the triangulation simplification rules. In addition, the Working Paper discusses how the new substantive requirements for intra-EU sales of goods should be understood in connection with Directive 2008/9 on cross-border VAT refunds, considering the timing difference between performing the transaction and submitting a recapitulative statement, and the optional self-assessment mechanism for non-established vendors. Finally, the Working Paper addresses how the term "independent" should be understood for documentary evidence provided by independent parties for intra-EU sales of goods.

In Working Paper No 969, the VAT Committee discusses a question raised by the French tax authority concerning the VAT treatment of sales performed by charge point operators (CPOs) and e-mobility service providers (eMSPs). The main questions discussed in the Working Paper were whether the CPO sales directly to the electric vehicle users or to the eMSP which then resells to the users, whether the transactions in question are business-to-business (B2B) or business-to-consumer (B2C), and whether the seller needs to charge VAT or the self-assessment requirement under the reverse charge mechanism applies. Finally, the Commission published an information paper on recent judgments of the Court of Justice of the European Union (ECJ).

Source: European Union - European Commission publishes documents from 113th VAT Committee meeting (June 4, 2019), News IBFD.

European Union: Supervisory Board Members and Similar Officials May not Qualify as Taxpayer for VAT purposes

On June 13, 2019, the ECJ published its judgment in *IO*, Case C-420/18, regarding whether a member of the supervisory board of a foundation qualifies as a taxpayer for VAT purposes. In the case at hand, the taxpayer is a member of the supervisory board of a foundation the core activity of which is to offer housing to people in need. The taxpayer receives remuneration on an annual basis for his work as a member of the supervisory board, which is determined according to the rules for standardization of remuneration of senior officials in the public and semi-public sector. The taxpayer is appointed by the members of the board of the foundation for 4-year terms and may be dismissed or suspended by them. According to the State Secretary of Finance of the Netherlands, the taxpayer should be treated as a taxpayer for VAT purposes. As a result, the taxpayer filed a VAT return in that year and paid the corresponding VAT amount. The taxpayer further filed an objection against his status as taxpayer subject to VAT that was rejected.

The ECJ first examined whether the taxpayer carried out economic activities and if so, whether those economic activities were carried out independently by the taxpayer. As regards the first part, the ECJ, with reference to its case-law, found that the activities carried out by the taxpayer qualify as economic activities because they were carried out in a sustainable manner; they were carried out for remuneration; and the remuneration should be regarded as falling within the scope of "a continuing basis." As regards whether the taxpayer carried out economic activities independently, the ECJ considered the employment relationship or any other legal links between the taxpayer and the foundation that would exclude the taxpayer from VAT. In this respect, the ECJ found that the criteria of employment are not met in the case of a member of a supervisory board, despite the fact that the relationship between the supervisory board and the taxpayer was legally classified as "employment" and the duties of the taxpayer were performed on the basis of a contract for services. The ECJ found that there was no link of dependency concerning the terms of employment because the members of the supervisory board are not bound by any instructions about the method of exercising their duties and they act independently and critically concerning the other members of that board.

However, the ECJ observed that the taxpayer does not act in his own name, for his own account or under his own responsibility. According to the articles of association of the foundation, the taxpayer represents the foundation on a legal level; his representation is legally binding to the foundation; and the taxpayer does not carry any liability against third parties that may derive from representing the foundation. Also, the ECJ concluded that the taxpayer, as a member of the supervisory board, does not bear any financial risk and, therefore, his status is not similar to that of an entrepreneur. As a consequence, while the taxpayer is not bound by any legal ties to the foundation, he does not carry out independently any economic activity and is therefore not a taxpayer for VAT purposes. Based on the ECJ judgment, supervisory board members who do not independently perform economic activities should not be regarded as a taxpayer for VAT purposes. Supervisory

board members consequently do not have to charge VAT on their fees. Moreover, supervisory board members who have already filed a notice of objection in respect of VAT that has already been remitted can invoke this judgment. If their situation is indeed covered by the judgment, previously charged VAT can be credited. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

Source: NL: ECJ, June 13, 2019, Case C-420/18, IO v. Inspecteur van de rijksbelastingdienst, ECJ Case Law IBFD.

European Union: Offshore Jackup Drilling Rigs do Not Qualify as Vessels used for navigation on the High Seas

On June 20, 2019, the ECJ published its judgment in *Grup Servicii Petroliere SA,* Case C-291/18, regarding whether the sale of offshore jackup drilling rigs is covered by the term "vessels" within the meaning of the EU VAT Directive. Recall, in the case at hand, the taxpayer sold three offshore jackup drilling rigs, operating in the Black Sea in Romanian territorial waters) to certain Maltese purchasers to perform drilling activities. Jackup rigs, or self-elevating units, are mobile platforms that consist of a buoyant hull which has been fitted with several movable legs. The taxpayer issued invoices, applying the zero-rating regarding the sale of vessels used for navigation on the high seas. After the sale, the taxpayer continued to operate these platforms in the Black Sea under the terms of a bareboat charter. The Romanian tax authority determined that the evidence showed that the actual and preponderant use of the platforms occurs when they are in a parked position for drilling and not when they navigate, which is only an activity subsidiary to drilling. The Advocate General (AG) earlier this year opined that offshore jackup drilling rigs should not fall within the zero-rating for sales of vessels because they are not used for navigation on the high seas.

Unlike the AG, the ECJ did not discuss the definition of "high seas," but rather focused on the objective of the zero-rating provision. The ECJ highlighted that the zero-rating provision at issue applies to vessels used for navigation on the high seas and observed that a vessel can only be used for navigation if it is used primarily to move on the sea. Moreover, according to established case-law, the objective of the zero-rating provision is to encourage international shipments. However, offshore jackup drilling rigs are mobile floating offshore drills, to which are attached several movable arms that are raised during the towing operation to the drilling site. In the drilling position, the platform is placed several tens of meters above sea level by means of these deployed arms supported on the bottom from the sea, to form a static platform. It, therefore, appears that the offshore jackup drilling rigs at issue in the main proceedings are not of such a nature as to be mainly used for navigation, subject to verification by the national court. As a consequence, the sale of jackup drilling rigs should not be zero-rated.

Source: European Union; Romania - ECJ decision (VAT): Grup Servicii Petroliere (Case C-291/18) – VAT zero rate; supply of vessels; offshore jackup drilling rigs (June 20, 2019), News IBFD.

European Union: Scope of VAT Exemption for Medical Services and Reduced Rate for Medicinal Products and Medical Devices Clarified

On June 27, 2019, the ECJ published its judgment in *Belgisch Syndicaat van Chiropraxie and Others*, Case C-597/17, regarding the scope of the VAT exemption for medical services and the application of the reduced VAT rate to medicinal products or medical devices. In the case at hand, Belgian chiropractors, osteopaths, plastic surgeons, and certain professional associations brought actions before the national court in May and June 2016 seeking the annulment of Article 110 of the Belgian Law of December 25, 2015. Article 110 limits the application of the VAT exemption relating to medical services. They consider that Article 110 is incompatible with the EU VAT Directive as it limits, without reasonable justification, the exemption to practitioners of a regulated medical or paramedical profession, a status which does not benefit chiropractors and osteopaths. In addition, the plastic surgeons argue that Article 110 provides an unjustified difference in treatment between the medicinal products or medical devices provided for interventions and treatments for aesthetic purposes and those provided in the context of for interventions and treatments for therapeutic purposes, as only the latter are subject to a reduced rate of VAT.

According to the ECJ, the provision of medical care must be exempted if it satisfies two conditions: (a) to constitute a provision of medical care and, and (b) to be performed in the exercise of the medical and paramedical professions as defined by the Member State concerned. In this respect, the ECJ observed that chiropractors and osteopaths provide medical care. In addition, while the Member States have discretionary power to define the medical professions that benefit from the exemption, the exemption is not necessarily reserved for practitioners of a profession regulated by the Member State, as it cannot be excluded that practitioners not belonging to such a profession may have the qualifications necessary to provide care of a quality sufficient to be considered as similar to those offered by the members of such a profession, especially if they have undergone training offered by an educational establishment recognized by that Member State. As a consequence, the ECJ held that the EU VAT Directive does not reserve the application of the exemption to which it refers to services performed by practitioners of a medical or a paramedical profession as regulated by the legislation of the Member State concerned.

Regarding the application of the reduced rate to certain products, the ECJ highlighted that Member States may choose to apply a reduced VAT rate to certain pharmaceutical products or specific medical devices while applying the standard rate to other of these products or devices. However, the principle of fiscal neutrality prohibits the Member States from treating similar goods or services differently. According to established case law, to determine whether goods or services are similar, the average consumer's point of view should be taken into account. Goods or services are similar if they have similar properties and meet the same needs with the consumer, based on comparability of use criteria, and when existing differences do not significantly influence the average consumer's decision to use one or other of the goods or services. The ECJ observed that therapeutic use and aesthetic use represent two distinct types of practical use, which do not meet the same need for the average consumer. As a consequence, the ECJ held that the EU VAT Directive

does not preclude a national provision which provides for different treatment of medicinal products and medical aids provided in connection with an operation or treatment of a therapeutic nature on the one hand, and medicinal products and medical aids sold in connection with an operation or treatment of a purely aesthetic nature on the other.

Source: BE: ECJ, June 27, 2019, Case C-597/17, Belgisch Syndicaat van Chiropraxie and Others, ECJ Case Law IBFD.

Hungary: Advertisement Tax Compatible with EU Law

On June 27, 2019, the General Court of the European Union published its judgment in Hungary v. Commission, Case T-20/17, regarding whether Hungary's Advertising Tax is in breach of EU State aid rules. Under Hungary's Advertisement Tax, entities that broadcast or publish advertisements are subject to the advertisement tax. Entities making advertisements available to the public (newspapers, audiovisual media, billposters) are, therefore, taxpayers, but not advertisers (i.e., the entity for whom the advertising is produced) or advertising agencies who are intermediaries between advertisers and broadcasters or publishers. The European Commission found in 2016 that the advertising tax violates State aid rules because its progressive tax rates grant a selective advantage to certain companies (those with lower advertising revenue) without any justification for this differential treatment. The Commission also found that the loss offset rules violate State aid rules as they unduly favor certain companies.

The General Court first held that in determining the "normal" reference tax system for the tax at issue, to ascertain whether certain undertakings benefited from selective advantages, the Commission identified a 'normal' system which was either incomplete, without any tax rate, or hypothetically, with a single tax rate. Considering the progressive nature of the tax at issue and the absence of differentiated scales of rates for certain undertakings, the only normal system which should be used for comparison in the present case was the advertisement tax itself, with its structure including its single scale of progressive rates and successive bands. The General Court further held that the Commission was not entitled to select f an objective other than that chosen by the Hungarian authorities, namely the objective of establishing sectoral taxation on gross receipts in accordance with a redistributive purpose. It may reasonably be presumed that an undertaking which achieves a high gross receipts may, because of various economies of scale, have proportionately lower costs than an undertaking with a smaller gross receipts. Consequently, an undertaking with high gross receipts may have proportionately greater disposable revenue which makes it capable of paying proportionately more gross receipts tax. A redistributive objective, such as that pursued in the present case, is, therefore, compatible with a gross receipts tax. Moreover, in the light of the objective sought by the Hungarian authorities, the Commission has failed to show that the tax variation selected entailed selective advantages. Finally, as regards whether the 50 percent deductibility of the losses of undertakings which were not profit-making in 2013 was compatible with the internal market, the General Court finds that that reduction in the taxable amount is established according to objective criteria irrespective of the choices of the undertakings concerned and is

not, therefore, selective. As a consequence, the General Court annulled the Commission's State aid decision against Hungary. The decision may provide some insights on how the EU courts would review the compatibility with EU law of the Digital Services Taxes that are currently proposed in several EU Member States.

Source: Orbitax, EU General Court Annuls Commission Decision that Hungary's Advertising Tax Violated State Aid Rules (July 1, 2019).

Hungary: Proposed Amendments to VAT Law

On June 4, 2019, Hungary's Ministry of Finance has submitted draft tax law amendments to Hungary's parliament for the current and forthcoming year (No. T/6349. and T/6351).. The draft law would allow taxpayers to recover VAT on bad debts when receivables are overdue for more than 12 months. The recovery would be available through self-revisions for transactions performed after December 31, 2015, and would be subject to various requirements (e.g., mandatory notification of the partner and the Tax Authority, applicable only between independent parties, and those parties shall not be subject to bankruptcy, liquidation or forced termination proceedings). Effective January 1, 2020, the draft law would enable taxpayers to ask for reimbursement of VAT directly from the tax authority if the tax was unduly (unnecessarily) paid by the taxpayer to the issuer of an invoice provided that the latter paid the VAT amount to the tax authority and there is no other way to recover the VAT (e.g., the invoice issuer improperly charged VAT instead of the reverse-charge scheme and the invoice issuer ceased to exist in the meantime). The request for recovery should be submitted within 6 months before the limitation period for tax assessment expires. In addition, the draft law would decrease the VAT rate of accommodation services from 18 percent to 5 percent with an extension of the tourism development contribution of 4 percent to the respective services. As of the 31st day following the acceptance and publication of the draft act, the applicability of the VAT exemption of services related to importation and certain customs procedures will be limited to services which are directly provided to the seller or buyer of the products subject to importation or customs procedures (e.g., services related to importation of goods, services related to goods under customs suspension or transit procedures). Finally, the draft law would implement the EU VAT quick fixes package effective January 1, 2020. The VAT quick fixes concern the following four changes: simplified treatment for the call-off stock arrangement, uniform rules to simplify drop shipments, mandatory VAT identification number to apply the zero VAT rate, and simplified proof of intra-EU sales. To read a report prepared by the KPMG International member firm in Hungary, please click here.

Italy: Overview of Recently Published VAT Guidance

On May 14, 2019, the ITA published Ruling Answer No. 142 clarifying the mandatory electronic invoicing applicable from January 1, 2019. In general, if a taxpayer removes qualifying goods from a VAT warehouse, the required self-invoice may alternatively be issued in paper or electronic format. However, if the removed goods have been the object of a provision of services taking place in Italy which increased their value during the period in which they

were stored in the VAT warehouse, it is mandatory to issue the self-invoice in electronic format, and, consequently, transmit it through the ITA SdI system.

On May 30, 2019, the ITA published Ruling Answer No. 172 clarifying the rules surrounding the issuance of debit notes for adjustments of the taxable amount. In the case at issue, after being granted by its vendor certain discounts and rebates, a large-scale retailer wanted to know whether it was entitled to issue a debit note to rectify the relevant taxable amount and VAT due previously included in the original invoice issued by the vendor at the time of sale. The ITA denied the purchaser the ability to issue debit notes for adjustments of taxable amounts, because the only person entitled to reduce the relevant taxable amount and VAT due on a specific sale is the vendor. The new rules on mandatory electronic invoicing, applicable effective January 1, 2019, have not changed such a principle.

On June 3, 3019, the Italian Tax Authorities (ITA) published Ruling Answer No. 178 providing clarifications on the VAT treatment of transactions executing specific settlement agreements regulated by article 1965 of the Civil Code. In general, where such settlement agreement has a declaratory nature (i.e., it does not entail a new obligation between the parties involved), the VAT treatment of related transactions must be determined based on the original sale. Conversely, if the settlement agreement has a novative nature (i.e., the parties involved assume new or different obligations), the VAT treatment of related transactions must be determined according to these new obligations, independently from the original sale.

On June 12, 2019, the ITA published Ruling Answer No. 189 in which it clarifies the VAT and fuel cost deductibility for members of a cooperative when fuel is purchased from a distribution plant at the cooperative's headquarters. VAT deductions on fuel purchases will be allowed for vehicles if the deduction amounts are proven through the submission of debit, credit, or prepaid card records to the ITA. Payments made on a mediated basis are allowed for deductions if there's an uninterrupted and traceable chain of payment from the vendor to the purchaser. Moreover, the ITA held that VAT and fuel costs can be deducted together even if payments are made through compensation agreements.

On June 17, 2019, the ITA published Ruling Answer No. 194 in which it clarifies that entities can form VAT groups, even if they're controlled by a non-VAT registered individual, provided that intra-group transactions with financial constraints occur, a control relationship exists between the entities, and the controlling entity is an Italian-domiciled entity or individual. Entities forming a VAT group controlled by a non-VAT registered individual can elect to exclude the controlling individual from the group.

On June 20, 2019, the ITA published Ruling Answer No. 17 in which it clarified that special purpose vehicles (SPVs) created solely to hold shares or investments for a merger or leveraged buy-out transaction cannot deduct VAT unless there is direct or indirect involvement by the management of the target company.

On June 20, 2019, the ITA published Ruling Answer No. 199 in which it clarified a fund's eligibility for VAT variance notes and deductions after a

management company is replaced, without interruption, for a continuing mutual fund or real estate investment fund. According to the ITA, asset management companies must maintain separate accounts for funds, and funds are considered an independent asset from the management company that administers them. The replacing management companies can claim VAT variance notes and deductions from transactions before their administration of a fund provided that the VAT variance notes and deductions must be claimed for a fund within one year of a management company's replacement.

Source: Italy - Electronic invoicing – clarifications issued (June 20, 2019), News IBFD; Italy - Debit notes for adjustments – clarifications issued (June 21, 2019), News IBFD; Italy - VAT treatment of transactions related to specific settlement agreements – clarifications issued (June 21, 2019), News IBFD; Bloomberg Law News Jun 18, 2019, Italy Tax Agency Clarifies VAT, Fuel Cost Deductions for Cooperatives; Bloomberg Law News Jun 20, 2019, Italy Tax Agency Clarifies VAT Group Creation for Entities Controlled by Individuals; Bloomberg Law News Jun 25, 2019, Italy Tax Agency Clarifies VAT Deductions From Merger Leveraged Buy-Outs.

Poland: Proposal to Introduce Mandatory VAT Split Payment System Effective November 1, 2019

On July 19, 2019, the lower house of the Polish parliament approved a law introducing an obligation to use a split payment mechanism for selected transactions effective January 1, 2020. A voluntary split payment mechanism was introduced in Poland effective July 1, 2018. Under this mechanism, the buyers decide whether they will pay using the mechanism by transferring the net amount to the seller's regular bank account and the VAT amount to a dedicated account (so-called "VAT account"). According to the law, the mandatory split payment will apply to domestic sales that are currently accounted for under the self-assessment or reverse charge (e.g., delivery of steel bars, mobile phones, waste, and secondary raw materials), sales covered by the joint and several liability of the buyer (e.g., fuel and steel pipes), the provision of construction services, parts and accessories for motor vehicles, coal and coal products, European Union emissions trading allowances, and electronic machinery and equipment and parts. The exact list of goods and services to which the mandatory split-payment mechanism will apply will depend on the classification assigned in the Number of Polish Classification of Goods and Services [PKWiU]. According to the law, the mandatory split payment will apply to payments resulting from invoices documenting transactions exceeding PLN 15,000 ($4,000). For transactions below the threshold, the split payment mechanism is voluntary, but if the transaction(s) exceeds PLN 12,000 ($3,100) per month, the joint and several liability for the unsettled VAT will apply. VAT invoices for transactions subject to the mandatory split payment mechanism must include the annotation "*mechanizm podzielonej platnosci*" (split payment mechanism). Noncompliance with this requirement will result in the Polish tax authority imposing on the seller and the buyer a mandatory additional tax liability of 100 percent of the VAT amount invoiced. The Ministry of Finance further plans to introduce the possibility of making payment for more than one invoice via a single payment message. However, this possibility will be restricted, and

the payment message will have to cover all invoices received by the taxpayer in a given period from a single vendor. Finally, the proposal would require taxpayers applying the mandatory split payment, including nonresidents, to open a Polish bank account. The legislation was referred to the Senate Public Finance Committee on August 5, 2019. To read a report prepared by the KPMG International member firm in Poland, please click here.

Russia: Overview of Recent VAT Developments

On May 13, 2019, the Ministry of Finance of Russia (MOF) issued Guidance Letter 03-07-08/34098 in which it clarified that agency services involving the sale of a nonresident principal's goods in Russia are deemed to have been provided in Russia and thus subject to Russian VAT. Taxpayers conducting business activities on behalf of third parties will use the commission or agency contracts (or any other fees paid) as the VAT base for the performance of those contracts.

On May 15, 2019, Russia's arbitration court for the Far Eastern Federal District issued Decision F03-896/2019 on whether the free transfer of assets for temporary use is subject to VAT. In the case at hand, the taxpayer, an aircraft company, transferred its aircraft for free temporary use by another company, which the tax authority considered subject to VAT. According to the court, the transfer of ownership of goods, the results of work performed, and the provision of services free of charge are all recognized as sales of goods or sales of work or services for VAT purposes. A service is defined as an activity for which the results have no tangible form, can be sold, and are consumed in the process of performing the activity. By granting its assets for free temporary use by third parties, the taxpayer provides a service to those parties because the free transfer results in the recipients' right to use the assets and could satisfy their needs, and the results of service do not have a tangible form. As a consequence, the court held that the free transfer by the taxpayer is a taxable sale for VAT purposes. The VAT base should be calculated as the value of the free service based on market prices for the rental of similar aircraft.

On May 17, 2019, the MOF issued Guidance Letter No. 03-07-08/35644 in which it clarifies that consultancy and legal services provided to a foreign legal entity are deemed to be provided outside of Russia and are thus not subject to VAT in Russia even if the purchasing foreign legal entity is registered in Russia for VAT purposes as a provider of electronic services to Russian customers.

On June 27, 2019, the MOF published Guidance Letter 03-07-08/47222 in which it clarified that R&D work and information processing services, including collection and compilation services, systematization of information files, and the provision of the results of that work, are sourced where the recipient of the R&D services is located. If the recipient is a nonresident that is not registered with the Russian tax authority, the R&D work will not be sourced to Russia and will not be subject to VAT in Russia.

On July 11, 2019, the MOF published Guidance Letter 03-07-08/51317 in which it clarified that the sale of electronic services is sourced where the recipient of the services is located. Under Russian VAT law, electronic services include:

granting the right to use computer programs and databases online, including updates and additional functions; providing online advertising services and space; posting offers to purchase or sell goods, works, or services and property rights online; providing technical, organizational, informational, and other services online for the purpose of establishing contracts, and concluding transactions between buyers and sellers; providing and maintaining a commercial or personal presence online, supporting users' electronic resources (websites and pages), and granting access to those resources (including the ability to modify them) to other users; storing and processing information for online access to the provider; providing computing capacities to store information in real time; providing domain names and hosting services; administering information systems and websites; providing services that are performed automatically online when data is entered by the purchaser, automated services involving request-based data search and selection, and online data resources; granting the right to use e-books and other publications, informational and educational materials, graphic images, musical works (with or without text), and audiovisual works online; searching for and providing information about potential buyers; providing access to internet search systems; and maintaining statistics online. If the buyer of electronic services is a foreign legal entity that is not registered with the Russian tax authorities, those electronic services will not subject to Russian VAT.

On July 11, 2019, the MOF published Guidance Letter 03-07-08/51616 in which it clarified that engineering services are sourced to the place where the recipient of the services is located. If the recipient is a taxpayer registered and operating legally in Uzbekistan, the engineering service is not sourced to Russia and is thus not subject to VAT in Russia.

On July 11, 2019, the MOF published Guidance Letter 03-07-08/51296 in which it clarified that if a foreign legal entity is registered in Russia, the VAT due on its services involving the rental of immovable property in Russia is to be paid by the foreign legal entity.

Source: CCH, Global VAT News & Features, Russian Lawmakers Mulling Precious Metals VAT Exemption (Jun. 26, 2019); Iurie Lungu, Russia Clarifies Corporate Tax, VAT Matters, Tax Analysts (June 19, 2019); Iurie Lungu, Free Transfer of Assets Subject to VAT, Russian Court Rules, Tax Analysts (June 24, 2019); Russia - VAT treatment of supplies of consultancy and legal services to foreign entities – MoF clarifications (June 17, 2019), News IBFD; Iurie Lungu, Iurie Lungu, Russia Clarifies Foreign Tax Offsets, VAT on R&D, Tax Analysts (July 22, 2019); Russia Issues Tax Guidance on Issues Involving Nonresidents, Tax Analysts (July 26, 2019); Iurie Lungu, Russia Issues Guidance Letters on Cross-Border VAT, Tax Analysts (July 31, 2019).

Ukraine: Overview of Recently Published VAT Guidance

On May 21, 2019, the Supreme Court of Ukraine ruled that the Ukrainian tax authorities and administrative courts are not allowed to assess whether the services received/provided by taxpayers are fictitious as part of its procedure for blocking the registration of VAT invoices'. Case No. 0940/1240/18 dated 21 May 2019. In particular, if the taxpayer submitted all documents to the tax authorities upon their request within the procedure for blocking the registration of VAT invoices, the latter must register the VAT invoices for the taxpayer. At the same time, if the submitted documents provide evidence that the services are fictitious, the Ukrainian tax authorities must perform a tax audit of the taxpayer to assess VAT liabilities and respective penalties.

On May 15, 2019, the Ukrainian State Fiscal Service (SFS) issued Letter No. 2172/6/99-99-12-02-01-15/ІПК in which it clarified that a VAT invoice is registered in the Unified Register of VAT invoices if the taxpayer received the two required notifications (i.e. Notification No. 1 confirming that the VAT invoice was duly submitted to the tax authorities and Notification No. 2 confirming that the VAT invoice was duly registered); or if the taxpayer received only Notification No. 1 provided that no Notification No. 2 or a notification on the denial of/blocking of the registration of the VAT invoice was sent to the taxpayer within 1 working day. The SFS further emphasized that Notification No.1 should be automatically sent to the taxpayer no later than 1 hour after the VAT invoice was submitted for registration. Consequently, if the taxpayer has not received Notification No.1, the VAT invoice is considered not to have been sent to the tax authorities.

On May 15, 2019, the SFS issued Letter 2218/6/99-99-15-02-02-15/ІПК in which it clarified that online education services provided in Ukraine from abroad are sourced to where they are used and are thus subject to VAT. The SFS further held that if the nonresident also provides telecommunications services, those services will be considered to be provided in the place where the recipients are registered to do business or, in the absence of registration, in the place of their permanent or predominant residence. For that purpose, telecommunications services comprise services related to the transmission, distribution, or receipt of signals, words, images, sounds, or information of any kind through the use of cable, satellite, or other electromagnetic communications systems. This includes granting or assigning rights to transmit, distribute, or receive such information, including the granting of access to global information networks. If the nonresident also provides other services that are not mentioned above in connection with its online education services, the other services will be considered to have been provided in the place where the provider is registered to do business and will not be subject to VAT in Ukraine.

On May 23, 2019, the SFS published Letter 2343/6/99-99-15-03-02-15/IPK in which it clarified that if a taxpayer transfers goods or provides services free of charge to other persons for use in marketing or other promotional events (including free distribution) and the cost of those goods or services is included in the value of the taxpayer's taxable transactions (i.e., in the price of goods or services that are subject to VAT), the goods or services are considered to be used as part of its business activities and will not be viewed as a separate

sale. Therefore, no additional VAT will be collected from the taxpayer. If the value of goods or services that a taxpayer transfers or provides free of charge is not included in the taxpayer's transactions that are subject to VAT, the transfer will be viewed for VAT purposes as a gratuitous sale of goods or provision of services and will be subject to VAT based on the applicable market value of similar goods or services. If the gratuitous distribution of the taxpayer's goods is done by third parties, the service by the third parties will be subject to VAT based on the value of the distribution services (rather than the value of goods being distributed).

On June 7, 2019, the SFS issued Letter No. 2241/6/99-99-15-03-02-15/IPK in which it clarified that if the terms of a licensing agreement provide for the right to use the intellectual property (including trademark) without the possibility of selling or disposal of the trademark, the income paid for the use of such intellectual property qualifies as royalty for VAT purposes and is thus not subject to VAT. However, if the licensing agreement allows for disposal of the trademark, the income paid for its use will not be considered a royalty and is thus subject to VAT.

On June 12, 2019, the SFS published Letter No. 2490/6/99-99-15-03-02-15/IPK in which it clarified that product development services, including jewelry models, provided by residents to nonresidents are sourced in Ukraine and therefore subject to VAT.

On June 13, 2019, the SFS published Letter No. 2618/6/99-99-15-03-02-15/IPC in which it clarified that exhibition services in the fields of culture, art, education, science, sports, entertainment, and other similar services are sourced where the exhibition takes place. If the location of the exhibition is outside Ukraine, the transaction is not subject to VAT in Ukraine.

On June 14, 2019, the SFS published Letter No. 2603/6/99-99-15-03-02-15/IPK in which it clarified that the VAT obligations from long term contracts (i.e., those lasting more than one year) arise from the date of the actual transfer of the results of the work to the executor. The SFS further clarified that phased delivery contracts are not considered long term, even if they're in effect for more than one year. The VAT credit for long term contracts can be taken from the date the debit of funds from a bank account or the date of receipt of goods or services. Construction contracts that are not considered long-term create a VAT obligation with the first event performed under the contract and create tax credits with the first qualifying event.

On June 20, 2019, the SFS issued Letter 2690/8/18-28-12-01-40/IPK in which it clarified that customer search services provided by a Ukrainian resident to a nonresident under an agency contract are subject to VAT in Ukraine.

On June 21, 2019, the SFS published Letter No. 2676/6/99-99-12-02-01-15/IPK in which it clarified that merger reorganizations are not subject to VAT and require losses, including VAT liabilities, to be confirmed by the tax authority, the transferring entity, and the successor entity in the tax period immediately after the transfer. Besides, the merged entity must be removed from the VAT register as of the transfer date. Merged entities removed from the VAT register are entitled to accrued refunds in the tax period after their removal.

Source: Ukraine - Supreme Court rules that fictitious character of services cannot be assessed upon procedure for blocking VAT invoices' registration (June 19, 2019); Ukraine - Procedure for registering VAT invoices – SFS clarifications (June 19, 2019), Iurie Lungu, Ukraine Clarifies Tax Treatment of Online Education Services (June 21, 2019); News IBFD; News IBFD; Bloomberg Law News Jun 18, 2019, Ukraine Tax Authority Clarifies VAT Place of Supply Rules for Product Development Services; Bloomberg Law News Jun 18, 2019, Ukraine Tax Authority Posts Letter Clarifying Place of Supply Rule for Overseas Exhibition Services; Bloomberg Law News Jun 19, 2019, Ukraine Tax Authority Posts Letter Clarifying VAT Obligations, Credits for Long-Term, Construction Contracts; Bloomberg Law News Jun 26, 2019, Ukraine Tax Authority Clarifies VAT Rules for Merger Reorganizations; Iurie Lungu, Ukraine Issues 2 VAT Guidance Letters, Tax Analysts (June 26, 2019); Ukraine - VAT treatment of trademark used under licensing agreement – SFS clarifications (July 2, 2019).

Asia Pacific (ASPAC)

Bangladesh: Amendments to VAT Law Including Nonresident Digital Services Provisions

On June 20, 2019, the parliament of Bangladesh adopted the Finance Act of 2019, which amended the VAT law effective July 1, 2019. The amendments introduce new sourcing provisions for nonresident vendors, including that any sale made by a nonresident carrying on an economic activity from or through a fixed place in Bangladesh is treated as being made in Bangladesh. Any sale not made from or through a fixed place in Bangladesh is treated as being made in Bangladesh if the sale relates to immovable property situated in Bangladesh; relates to a good that is transferred, conferred, installed, or assembled in Bangladesh; or is any of the following and is made to VAT unregistered person: (1) the services are physically provided in Bangladesh by the service provider staying in Bangladesh at the time of sale; (2) the services are directly related to land located in Bangladesh; (3) the services are radio or television broadcasting, or telecasting services received at an address in Bangladesh; (4) the services are electronic services delivered to a person located in Bangladesh at the time of sale; or (5) the sale is of a telecommunications service initiated by a person located in Bangladesh at the time of sale, other than a telecommunications provider or a person who is a global- roaming person temporarily staying in Bangladesh. A sale of services to a registered recipient is sourced to Bangladesh if the recipient carries on an economic activity from or through a fixed place in Bangladesh and the sale is made for that economic activity or to that fixed place. Nonresidents are required to register and appoint a local fiscal representative if their annual sales in Bangladesh is above the BDT 30 million ($355,000) registration

threshold. However, if imported services are provided to registered persons, the recipient is required to self-assess VAT under the reverse charge mechanism.

The amendments further abolish the existing price declaration system before a sale of goods takes place, with VAT to be paid on the basis of the fair market price; and the requirement to maintain a sufficient balance in the Account Current Register while selling goods, with businesses allowed to pay tax at the end of the month through VAT returns. The amendments further increase the VAT registration threshold from BDT 8 million ($94,700) to BDT 30 million and introduce a VAT flat-rate of 4 percent for small and medium enterprises with annual gross receipts between BDT 5 million ($59,000) and BDT 30 million. Small and marginal traders with annual gross receipts of up to BDT 5 million are exempt from VAT. Also, the amendments introduce reduced VAT rates of 5, 7, and 10 percent for specific goods and services and a fixed VAT rate of 5 percent for local traders. VAT rates of 2.4 percent and 2 percent for pharmaceutical and petroleum products, respectively, are applicable at the trading stage. The amendments further exempt from VAT several transactions, including the production and sale of low-valued bread, hand-made biscuits and hand-made cakes; local sales of agricultural machinery; the rental of a business showroom run by women entrepreneurs; certain sales of utilities to designated areas; and the procurement of services from construction firms, consultancies, supervisory firms and legal advisors by investors in public-private partnerships. The amendments subject to VAT certain transactions that were previously exempt, including the sale of plastic and aluminum items, soybean oil, palm oil, sunflower oil and mustard oil; astrologists, marriage media services and sales of entertainment programs, serials, dramas, telefilms, to be broadcasted on television channels and social media; and the import stage of telecom equipment.

Source: Bangladesh - Budget 2019/20 – indirect taxation (June 14, 2019), News IBFD; Orbitax, Bangladesh Budget for 2019-2020 Delivered (June 18, 2019).

Vietnam: Digital Economy Subject to Tax Effective July 1, 2020

On June 13, 2019, the National Assembly of Vietnam passed a new tax administration law ("LTA") which will affect many nonresident enterprises selling goods and services into Vietnam via digital and e-commerce business models effective July 1, 2020. The LTA introduces new provisions to regulate and tax sales of goods and services directly to individuals located in Vietnam by nonresident vendors as well as cross-border payment transactions, specifically, payments by individuals (and other entities in Vietnam) to nonresident entities and enterprises who are not registered for tax or who do not declare and pay tax in Vietnam. E-commerce is defined as conducting part or the whole of the process of commercial activity by electronic means connected to the Internet, mobile telecommunications network or other open networks. The LTA imposes the tax collection burden on the financial sector, who will be required to report and collect taxes from certain transactions. Critically it is the financial sector who will be required to identify which transactions are subject to these new rules and act accordingly. Besides, state agencies (e.g., the State Bank) will now become responsible for coordinating with tax authorities to facilitate the collection of taxes on e-commerce

activities while commercial banks will become responsible for the collection of tax on behalf of foreign enterprises who conduct e-commerce activities in Vietnam. However, it is unclear how this coordination requirement between the State agencies and the tax authorities will work in practice. Nonresident businesses who sell goods and services and who do not have a permanent establishment in Vietnam will be required to register, declare and pay tax in Vietnam or authorize other parties to do so on their behalf. While it is expected that the new tax requirement will take some form of withholding arrangement, that is not clear at this point. Additional legislative guidance, Decrees or Circulars will be required to outline how this will to occur in practice, especially the tax registration or authorized declaration, the application of tax treaties, the identification of e-commerce transactions, as well as tax refunds where the tax withholding is not relevant or appropriate. To read a report prepared by the KPMG International member firm in Vietnam, please click here

Trade & Customs (T&C)

European Union: New Reduced Dataset for Declaration of Low-Value Consignments

On July 5, 2019, the European Union published in the official journal Commission Delegated Regulation (EU) 2019/1143 of March 14, 2019, amending Delegated Regulation (EU) 2015/2446 regarding the declaration of certain low-value consignments. Commission Delegated Regulation (EU) 2015/2446 provides that goods with an intrinsic value not exceeding EUR 22 may temporarily be declared by simply presenting them to customs instead of by lodging a customs declaration. One of the reasons for this is that most goods with a value not exceeding EUR 22 may be granted an exemption from VAT by the Member States and may also benefit from relief from customs duty. Taking into account the fact that the low-value consignment exemption for imported goods not exceeding EUR 22 in value will be abolished effective January 1, 2021, the currently available simplification regarding customs declaration will also be abolished. Consequently, a customs declaration for goods with a value not exceeding EUR 150 will have to be filed, but with a reduced data set (i.e., only including data relating to VAT).

Source: European Union - Commission Delegated Regulation introducing reduced dataset customs declarations regarding low-value consignments – published in Official Journal (July 8, 2019), News IBFD.

In Brief

— **Albania:**[v] On June 26, 2019, the Albanian tax authority reminded taxpayers that there is no transfer of economic activity, and therefore, no VAT liability for the transfer of goods or services for the benefit of a taxpayer who intends to liquidate an activity, the transfer of goods such as the sale of product stock; and the transfer of all or part of the assets of a taxpayer for carrying out any activity which is not then exercised by the transferor. The tax authority further explained that the transfer must occur between two taxpayers, and the VAT relief does not apply if the transfer is made by a taxpayer for the benefit of a tax-exempt person. To benefit from the VAT relief the following are necessary: (1) the transfer of activity must be documented with a notarized transfer contract; (2) all records and books relating to the transferred assets must be kept by the transferee after the transfer; (3) the transfer must take place between two taxpayers registered for VAT purposes in Albania; (4) the parties involved in the transfer should expressly record, within the transfer contract, their intention to benefit from the specific VAT treatment provided under the VAT Act; and (5) both the transferor and the transferee are required to notify the tax authority of the transfer at least 45 calendar days before it occurs.

— **Angola:**[vi] On August 13, 2019, Angola published Law no. 17/19, which postpones the date of the VAT's entry into force from July 1, 2019 to October 1, 2019. For KPMG's previous coverage on the new Angolan VAT system, please click here.

— **Aruba:**[vii] On June 10, 2019, the government of Aruba issued a letter informing the Chamber of Commerce and other stakeholders that the transition period to include the tax on business gross receipts *(belasting op bedrijfsomzetten*, BBO), the health tax (*bestemmingsheffing AZV,* BAZV) and the public-private partnership projects additional funding tax (*belasting addidionele voorzieningen PPS-projecten*, BAVP) in the shelf price of goods is extended until October 1, 2019.

— **Australia:**[viii] On June 26, 2019, the Australian Taxation Office opened a consultation on a draft goods and services tax (GST) ruling (GSTR 2019/D1) concerning when acquisitions of business transaction accounts by deposit-taking institutions are made with a credible purpose. The draft ruling explains that an objective assessment must be used to determine the relevant connection of the acquisition to the making of GST exempt sales. Moreover, taxpayers must make a factual inquiry to determine the credible purpose of the acquisition. Finally, the draft ruling clarifies the treatment of transaction accounts that do and do not involve taxable sales of interchange services.

— **Austria:**[ix] On June 6, 2019, the European Commission referred Austria to the ECJ for its failure to correctly apply the special scheme for travel agents as provided under the EU VAT Directive. According to the EU VAT Directive, the taxable amount in the case of travel agents is the difference between the price paid by the customer and the actual cost of a purchased service (i.e., the profit margin). Under the special scheme, travel agents are not allowed to deduct VAT on costs relating to services purchased from other businesses. Moreover, according to the decision of the ECJ in *Commission v. Spain* (Case C-189/11), the calculation of the margin must refer to every single service provided by the travel agent.

However, Austria allows travel agents to calculate a single profit margin for all their sales taxed under the special scheme for a year rather than on a transaction basis.

— **Bulgaria:**[x] On June 5. 2019, the parliament of Bulgaria submitted a proposal for the introduction of the following new reduced VAT rates: a 9 percent VAT rate for medicinal products included in the list of medicinal products covered under the National Health Insurance Fund and for dietary foods for special medical purposes; and a 5 percent VAT rate for meat, milk, eggs, flour and flour-based food products. Also, the proposal would increase the VAT registration threshold from BGN 50,000 ($28,675) to BGN 100,000 ($57,350). If adopted, the amendments would apply effective January 1, 2020.

— **Cambodia:**[xi] On June 10, 2019, Cambodia's General Department of Taxation (GDT) has issued Notification 9898, which clarifies that exported services may qualify for zero-rating if (1) the services are provided outside Cambodia by a resident company where the company sends resident staff or technicians to perform the services outside Cambodia or engages nonresident staff or technicians to perform the services outside Cambodia; or (2) the sales are provided in Cambodia for exclusive use outside Cambodia by a nonresident person, which may not use the service in any way in relation to any business or economic benefit in Cambodia. To be eligible for the zero-rating, a Cambodian resident company must maintain documentation evidencing the sale of services, including the contract specifying the service fee, the type of service, and place of services, documents showing a payment from outside Cambodia to a bank in Cambodia; the original invoice, and related accounting documents.

— **Canada:** The KPMG International member firm in Canada has prepared a report on the investor collection obligations for distributed investment plans. Distributed investment plans must collect this information to help them comply with their upcoming goods and services tax/harmonized sales tax (GST/HST) and Quebec sales tax (QST) obligations. Investors that hold units in distributed investment plans are required to respond to these requests and share specific details as required by the GST/HST and QST information-sharing rules. In Canada, investment vehicles are generally required to pay GST/HST on their inputs at a blended rate that reflects the provinces where their investors are located, with a look-thorough for certain types of investors. They must collect investor information in order to comply with their GST/HST requirements. These rules were extended to investment plans structured as limited partnerships on January 1, 2019. The partners or managers of limited partnerships may not yet be familiar with the rules. In addition, some investors will need to prepare to provide details to distributed investment plans in which they hold units—even if not specifically requested by the plans. The distributed investment plans will need these details to prepare their calculations and update their systems so they can fulfill their 2019 GST/HST and QST obligations. Plans that do not collect the data by December 31 and that have not requested the required information from their investors by October 15 may have their provincial attribution percentages affected due to specific calculations under the selected listed financial institutions rules.

— **Chile:**[xii] In July 2019, Chilean lawmakers started debates on a government proposal to impose a 19 percent tax on sales of online services by nonresidents to individuals in Chile. Services affected include the sale of content, intermediation for physical goods and services, provision of data storage and software, and advertising. Nonresidents would have the option of declaring and paying the tax on a monthly, bimonthly, or quarterly basis. If they do not comply with the new requirement, Chile's tax authority could require intermediaries such as banks and credit card companies to collect the tax from customers. The proposal replaces the Finance Ministry's original proposal for a special 10 percent tax on online transactions. That plan would have had intermediaries charge customers 10 percent on the amount they paid to the digital platform.

— **China:**[xiii] On June 5, 2019, the State Taxation Administration and Ministry of Finance of China jointly published Circular [2019] No.73, which extends the VAT exemption for the production and distribution of domestically produced anti-HIV drugs until December 31, 2020. To enjoy the exemption, the drugs must be purchased by the AIDS Drug Administration Departments of various provinces in accord with government procurement procedures and must be provided free of charge to HIV-infected patients. Manufacturers or distributors are required to set up separate accounts to keep records on the sales of VAT exempted drugs.

— **Czech Republic:**[xv] On June 6, 2019, the Czech Ministry of Finance proposed legislation to reduce the VAT rate on the following transactions to 10 percent: sales of electronic publications; home care for children, as well as for old, sick, or disabled people; catering services and beverages, including draft beer served as part of a catering service, but excluding catering services that are exempt; water treatment services and water distribution via networks; sewage disposal and treatment services, including other services related to these activities; home cleaning services; household window washing services; footwear and leather product repair services; the repair and modification of clothing and textile products; bicycle repair; hairdressing and barbershop services; book rental; and drinking water provided to customers by water mains.

— **European Union:**[xvi] On July 2, 2019, the European Commission adopted Commission Implementing Regulation (EU) 2019/1129 amending Implementing Regulation (EU) No. 79/2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No. 904/2010 concerning administrative cooperation and combating VAT fraud. The measures, which the Member States will be required to adopt by January 1, 2020, are intended to reduce the amount of VAT lost to fraud in the European Union. They are part of a package of temporary fixes to VAT rules until a new EU VAT system can be implemented. The new regulations are intended to improve the efficacy of current enforcement efforts, in particular by opening up new lines of communication and avoiding duplication of work and enhancing the amount of information shared among state officials charged with tackling VAT fraud. Specifically, the regulations are intended to improve how Member States cooperate in exchanging information, and the mechanisms to track the movement of

goods cross-border and ensure they do not disappear into the black market. Further, the regulations will enhance the ability of Eurofisc – the network of national officials charged with detecting and combating new cases of cross-border VAT fraud –by providing these officials with more complete and timely vehicle registration data, and enabling them to request a wider range of information from the European Union Agency for Law Enforcement Cooperation (Europol) and the European Anti-Fraud Office (OLAF). The regulations further provide that domestic authorities should assist other EU officials present in their territory, and provide new mechanisms for authorities to identify potential fraud by exchanging information on entities' outstanding tax liabilities and VAT refund requests.

— **Denmark:**[xvii] On June 4, 2019, the Danish Customs and Tax Administration published Binding Answer No. SKM2019.289.SR, in which the National Danish Tax Board could not confirm that a real estate company did not pursue economic activity and therefore was not able to transfer land free of VAT to three newly established subsidiaries. In the case at hand, the company plans to transfer the land to the subsidiaries in exchange for shares in the subsidiaries, develop the land under an agreement with the municipality, and then transfer the land to the municipality for free. The tax board determined that the taxpayer pursued economic activities subject to VAT and cannot subdivide the entire company base and deposit the individual plots into newly established subsidiaries without paying VAT. The VAT basis for the new individual land plots is not the purchase price, manufacturing price or calculated cost since shares are being exchanged for the land, but should be calculated based on how many square meters of land are being deposited into each subsidiary.

— **Denmark:**[xviii] On June 6, 2019, the Danish Customs and Tax Administration published Binding Answer No. SKM2019.291.SR on the VAT treatment applicable to the sale and installation of a pallet transportation system in a Danish warehouse by a nonresident. In the case at hand, the nonresident also subcontracted services from other vendors in connection with the installation work. The National Danish Tax Board confirmed that the purchaser, not the vendor, is liable for VAT under the reverse charge mechanism because the pallet transportation system is considered a service to real estate as it is integral to the functioning of the warehouse and the seller has no fixed place of business in Denmark to provide services, but rather carries out contracted work for a limited time at the customer's location. The board also explained that Denmark the subcontracted services are not sourced to Denmark because the nonresident company does not have a registered office or fixed place of business in Denmark.

— **Denmark:**[xix] On June 17, 2019, the Danish Customs and Tax Administration published Binding Answer No. SKM2019.313.SR in which the National Danish Tax Board could not confirm that the sales completed by a vendor in a third country to the auctioneer in Denmark was subject to Danish VAT. According to the tax board, the sale is not sourced to Denmark because the vendor transfers the goods to the auctioneer's carrier in a third country and the auctioneer obtains custody and control over the goods at the time

of the transfer to the carrier, rather than at the time the goods arrive in Denmark. However, the auctioneer can deduct the import VAT incurred on the import of the goods in Denmark. As the right to dispose of the goods is transferred to the auctioneer in a third country and not in Denmark, the Danish VAT rules do not apply to the case at hand.

— **Finland:**[xx] On June 24, 2019, the tax authority of Finland issued an update of its guidance regarding the VAT treatment of books, newspapers, and magazines (Guidance number VH/1538/00.01.00/2019). The guidance reflects the VAT Act amendment making books, newspapers and magazines in electronic format subject to the reduced VAT rate of 10 percent instead of the standard 24 percent VAT rate effective July 1, 2019. The guidance elaborates on the characteristics that different kinds of publications may have and whether they qualify for the reduced VAT rate.

— **Georgia:**[xxi] On June 10, 2019, the Revenue Service of Georgia published Guidance Letter No. N11120 in which it clarified that when taxpayers undertake a barter transaction and one of the transactions is not a taxable sale (e.g., sale of land), the seller of the exempt goods and/or services is allowed to deduct the VAT invoiced by the other party of the transaction provided that goods and/or services received will be used in future taxable transactions.

— **Georgia:**[xxii] On July 1, 2019, the Minister of Finance of Georgia adopted a decision on the tax treatment of cryptocurrency transactions. According to the decision, the sale of cryptocurrencies is exempt from VAT. The VAT treatment of the sale of computing power to generate cryptocurrencies is exempt from VAT if the recipient is registered outside of Georgia and does not have a place of management or permanent establishment in Georgia related to the sale. However, the sale of computing power to generate cryptocurrencies is subject to VAT if the recipient is registered in Georgia or has a place of management or permanent establishment in Georgia related to the sale.

— **Hungary:**[xxiii] On May 31, 2019, the Hungarian Ministry of Finance announced the Economy Protection Action Plan. Among other things, the Plan would defer the implementation of the advertising tax from January 1, 2020, to December 31, 2022, reduce the VAT rate on accommodation services from 15 percent to 8 percent and extend the 4 percent tourism tax to these services. The Plan would further introduce VAT refunds of up to HUF 5 million ($17,300) for taxpayers constructing new homes or renovating existing properties in small settlements effective January 1, 2020.

— **Indonesia:**[xxiv] Indonesia's Ministry of Finance recently issued Finance Regulation no. 81/2019, providing for a VAT exemption for student accommodation and inexpensive housing if a house fulfills the following conditions: (1) the building area does not exceed 36 square meters; (2) the selling price does not exceed the selling price limit (dependent on location), as stated in the Annex to the Regulations; (3) it is the first house owned by an individual who belongs to a group of low-income people, is used alone

as a place of residence, and is not transferable within a period of four years after being owned; (4) the land area is not less than sixty square meters; and (5) it was acquired using cash or financed through subsidized or non-subsidized credit facilities, or through sharia-based financing.

— **Ireland:**[xxv] On June 14, 2019, the Irish Revenue published eBrief No. 114/19 discussing introduction of the first phase of a two-tier VAT registration system applicable effective June 15, 2019. Under the two-tier VAT registration system, taxpayers will need to specify whether the VAT registration is for "domestic-only" or "intra-EU" status purposes. The intra-EU registration facilitates intra-EU acquisitions from and reporting of intra-EU sales to all EU Member States. A simplified registration procedure is available for "domestic-only" applicants. These taxpayers may at any time apply for "intra-EU" status if they subsequently engage in intra-EU trade. Taxpayers with active VAT registrations granted before the introduction of two-tier registration will be treated as having "intra-EU" status. Approval of an intra-EU registration will also cover domestic activity. Taxpayers registered as intra-EU sellers will automatically be registered in the EU VAT Information Exchange System.

— **Kenya:**[xxvi] On June 14, 2019, Kenya published the Finance Bill for 2019-2020, which, if approved, would amend the country's VAT law. The Finance Bill amends the definition of sale of imported services to provide for a sale made to any person rather than a sale made to a registered person. The new definition would, however, not introduce any obligations for nonresident vendors as VAT on imported services should be accounted for by the recipient. Also, sales made through a digital marketplace would be subject to VAT, but it remains to be seen how this new obligation would be implemented. Moreover, the Finance Bill would reduce the withholding VAT rate from 6 percent to 2 percent, and goods removed from a special economic zone for domestic use would be deemed to have been imported and thus subject to VAT at the time of removal from the zone. The VAT exemption for specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power, would require a recommendation from the cabinet secretary for energy matters. The Finance Bill would further exempt from VAT the following: inputs for electric accumulators and separators including lead battery separator rolls sold to manufacturers of automotive and solar batteries in Kenya, agricultural pest control products; locally manufactured motherboards; inputs for the manufacture of motherboards approved by the cabinet secretary responsible for information communication technology; and plant, machinery and equipment used in the construction of a plastics recycling plant. Finally, the sale of denatured ethanol would be zero-rated. To read a report prepared by the KPMG International member firm in Kenya, please click here.

— **Latvia:**[xxvii] On June 12, 2019, Latvia published a law amending the country's VAT rules effective July 1, 2019 in the official gazette. The amendments include: (1) establishing a unified VAT regime for transactions relating to building construction; (2) implementing EU directives for vouchers and distance selling; (3) applying the VAT self-assessment requirement

on purchases of ferrous and non-ferrous semi-finished metal products; (4) expanding the list of transactions eligible for a VAT exemption; and (5) amending VAT registration rules. The ministry of finance also confirmed that the VAT self-assessment requirement on purchases of household electronic appliances and construction products is expected to cease on December 31, 2019.

— **Lithuania:**[xxviii] Effective July 1, 2019, Lithuania allows businesses whose sales in the previous year did not exceed EUR 300,000 ($338,000) to opt for filing quarterly VAT returns.

— **Mauritius:**[xxix] On July 25, 2019, Mauritius published the Finance (Miscellaneous Provisions) Act 2019, which amends the country's VAT law, in the official gazette. The Finance Act clarifies that where there is a splitting of a business entity into different entities to avoid VAT registration, each entity will be required to register for VAT. Currently, a VAT-registered person may claim input VAT on capital goods such as plant, building, machinery, and equipment. The Finance Act extends this to include VAT incurred on goodwill when acquiring a business and the acquisition of intangible assets (i.e., software, patents or franchise agreements). Moreover, the Finance Act clarifies that a VAT invoice issued to a non-VAT-registered person in business, must contain the name, business address and business registration number of the person to whom the invoice is issued. The Finance Act further provides that principal officers, which include any person with powers that could be exercised by the Board of Directors, may be held personally liable for the VAT obligations of the company. Moreover, the Finance Act introduces a VAT refund mechanism for event organizers registered with the Economic Development Board. Such organizers will be allowed to claim a VAT refund on accommodation costs incurred by visitors attending business meetings, conferences, or weddings attended by 100 or more visitors staying for a minimum of three nights in a hotel in Mauritius. Finally, all VAT returns will have to be filed and VAT liabilities paid electronically. To read a report prepared by the KPMG International member firm in Mauritius, please click here.

— **Nepal:**[xxx] On May 29, 2019, Nepal's Ministry of Finance presented the Budget for 2019 - 2020, amending the VAT law effective July 16, 2019. The Budget reduces the minimum period after which a carried forward VAT credit balance may be refunded from six months to four months and introduces immediate VAT refunds for individuals and entities enjoying diplomatic privileges that claim a refund against the purchase of goods and services from listed vendors. The Budget further exempts accident and health insurance from VAT. In addition, the Budget announces that consumers purchasing goods and services subject to VAT with a bank card or other electronic means will receive an immediate 10 percent refund of the VAT directly to their bank account. Finally, VAT billing will be made effective through online billing connected to the Central Billing Monitoring System housed at the Inland Revenue Department.

— **Nigeria:**[xxxi] On June 24, 2019, the court of appeal of Nigeria published its judgment in *Vodacom Business Nigeria Limited* on the applicability of VAT to services provided outside Nigeria by a nonresident company. In the case at hand, the taxpayer contracted a nonresident company based

in the Netherlands to provide bandwidth capacities to be used in Nigeria. The bandwidth capacities were transmitted by the nonresident to its satellite in orbit and received in Nigeria by the taxpayer via its earth station. The nonresident did not charge VAT on its invoice to the taxpayer for the service rendered. Similarly, the taxpayer did not remit VAT to the Federal Inland Revenue Services (FIRS) on the transaction. The court of appeal upheld a previous decision of the federal high court which adopted the "destination principle" for imported services to determine what was liable to VAT in Nigeria and not the "origin principle." The destination principle holds that VAT is applicable in the territory where goods and services are consumed as opposed to the territory in which they are produced. As the bandwidth capacities of the satellite in orbit are used in Nigeria, the court of appeal concluded that the lower court was right in holding that the subject transaction is liable to VAT. As a consequence, Nigerian companies carrying on business with other companies outside Nigeria would be required to self-account for VAT on their transactions notwithstanding that the services were provided outside Nigeria, and regardless of whether the service providers charged VAT in their invoices. To read a report prepared by the KPMG International member firm in Nigeria, please click here.

— **Norway:**[xxxii] On May 29, 2019, the Norwegian Ministry of Finance launched a public consultation on proposals to simplify the VAT regime by moving to a single VAT rate. Stakeholders are invited to comment on the findings of a committee tasked with considering ways to simplify the Norwegian VAT regime. The committee's main recommendation was removal of existing reduced and zero rates of VAT and the application of a single rate that would be two percent lower than the current 25 percent standard rate. At present, there are three reduced rates: one of 15 percent which applies to food and non-alcoholic beverages; one of 12 percent which applies to passenger transport, hotel accommodation and some types of entertainment; and one of 11.11 percent which applies to raw fish. Certain other sales are zero-rated or exempt from VAT. The committee, which submitted its report to the Government on May 15, 2019, argued that the promotion of government policy objectives in areas such as public health and the environment can be better achieved by measures other than reduced and zero rates of VAT, which increase administrative costs for businesses and the tax authority. It proposed the transition to a single VAT rate start with removal of the reduced VAT rate for food and introduction of a 12 percent intermediate rate for goods and services currently subject to the zero percent VAT rate.

— **Pakistan:** The KPMG International member firm in Pakistan has prepared a report on the Budget for 2019, which, among other things, would amend the Pakistani sales tax.

— **Poland:**[xxxiv] The Polish Ministry of Finance recently launched a consultation on the development of new VAT rules for companies engaging in leaseback transactions, focusing on the criteria to be met for businesses to retain the right to deduct VAT for costs associated with a property used for business purposes that is the subject of a leaseback transaction. The consultation follows the ECJ decision in *Mydibel SA*, Case C-201/18, in which the ECJ allowed the taxpayer to recover VAT paid on construction, alteration, and

renovation services for a building that was later the subject of a sale-leaseback transaction. The taxpayer successfully argued that the sale and leaseback transaction is a purely financial transaction, designed to increase its liquidity, but it did not change how the building is used in making taxable sales. (For KPMG's previous discussion on the *Mydibel* case, click here.)

— **Poland:**[xxxiv] On June 10, 2019, the Polish lower house of parliament accepted for consideration a bill to amend the VAT and excise tax laws. The bill includes measures to revise the definition of "first occupation" of a building as a condition for the VAT exemption so as to comply with EU rules; exempt goods from import VAT in the event of a future agreement on cross-border roads and bridges with a third country; allow same-day paper filing for supporting documents that cannot be filed together with the mandatory electronic declaration; clarify the documentation requirements for taxpayers to obtain an accelerated refund within 25 days; enable taxpayers to restore their VAT registration by submitting all missing declarations within two months of deletion from the VAT registry; implement measures to combat and penalize invoice fraud; and extend the tax regime on fuel to additional fuel types.

— **Poland:**[xxxv] Polish lawmakers are considering reinstatement of the tax on retail sales, which was deemed lawful by the General Court of the European Union in a May 2019 judgment. The retail sales tax was originally effective September 1, 2016. All retailers were liable to pay tax under that law, irrespective of their legal status. The tax was based on the gross receipts of the companies concerned and had a progressive rate structure. Taxpayers with monthly gross receipts in excess of PLN 17 million ($4.41 million) were subject to tax. The tax rates applied to such monthly gross receipts were 0.8 percent from PLN 17 million to PLN 170 million ($44 million) and 1.4 percent beyond PLN 170 million. By decision of June 30, 2017, the European Commission found that the tax at issue constituted state aid incompatible with the internal market and that it had been implemented unlawfully. The retail sales tax was suspended this year, with taxpayers absolved from filing returns and paying taxes under the regime. In its May 2019 decision, the General Court agreed with Poland and annulled the Commission's decisions against the Polish regime, stating that the Commission had incorrectly classified the measure at issue as State aid. The proposal would repeal legislation suspending the regime and reinstate the levy effective September 1, 2019.

— **Saudi Arabia:**[xxxvi] On June 28, 2019, the General Authority of Zakat and Tax of Saudi Arabia (GAZT) issued a guide (currently available only in Arabic) on the VAT treatment of the retail sector, which clarifies the mandatory VAT registration for taxpayers with annual gross receipts over SAR 375,000 ($100,000) and the optional VAT registration for taxpayers below the threshold who are performing an economic activity. The guide further discusses which categories of sales are taxed at the standard, exempt, or a zero rate and the sourcing and self-assessment rules. Also, the guide discusses the VAT treatment applicable to retail and discounted prices, single and multiple deliveries, and presumed sales. Finally, the guide covers various topics including calculation methods; credit notes; special rules for international sales, online transactions, and third party sales; filing,

declaration, and correction procedures; and fines.

— **Slovenia:**[xxxviii] On June 20, 2019, the Slovenian Ministry of Finance *announced* a government proposal to submit a digital services tax proposal to the National Assembly by April 1, 2020.

— **Slovenia:**[xxxix] On July 9, 2019, the Slovenian tax authority announced that it will increase tax compliance checks on companies carrying out certain services for foreign e-commerce platforms to ensure they are charging VAT when required. The tax authority highlighted that is tackling tax evasion associated with the sale of goods online by businesses using a foreign VAT identification number, when the company has a permanent establishment in Slovenia. As part of these efforts, the authority said it will seek to ensure that those providing services to these businesses charge VAT when required. It said it will redouble its focus on those providing the following services to online retailers: packing, storage of products, delivery, administrative services, accepting returned packages, and communicating with customers. The tax authority stated that companies providing such services must determine whether the client has a permanent establishment in Slovenia. If it does, VAT should be charged on those services provided to the client.

— **South Africa:**[xi] On June 4, 2019, the South African Revenue Service issued a binding general ruling, BGR 51, on the cancellation of the VAT registration for a foreign electronic services provider. According to the ruling, when the total value of taxable sales is less than ZAR 1 million ($72,000) for any consecutive 12-month period, the vendor may submit a written request and the Commissioner must cancel the VAT registration, effective from the last day of the tax period in which the threshold was not met (or as otherwise determined) and must notify the vendor of the effective date and its last tax period. The vendor must continue to charge VAT on its sales and is liable to pay taxes until the last tax period.

— **Sweden:**[xii] On June 3, 2019, the Swedish Tax Agency updated its guidance on the taxation of Swedish permanent establishments (PEs) that are part of a foreign VAT group. The guidance was updated to include a recent tax authority position on other EU countries that only allow domestic establishments to be included in a VAT group making intra-corporate transactions fall outside the scope of VAT. In such cases, the provision of services for compensation made between a Swedish PE and the foreign VAT group should not be regarded as a sale.

— **Sweden:**[xiii] Effective July 1, 2019, Sweden applies VAT to the provision of health care personnel by recruitment agencies. The change in policy follows a Supreme Administrative Court ruling on June 7, 2018, in which the court found that the hiring from a staffing company by healthcare services provider of personnel is not a healthcare service. HFD 2018 ref. 41. As such, this service is not eligible for VAT exemption and is taxable.

— **Tanzania:**[xiiii] On June 30, 2019, Tanzania published in the official gazette the Finance Act of 2019, which includes amendments to the country's VAT law effective July 1, 2019. The Budget exempts from VAT imported refrigeration boxes (HS Code 8418.69.90), grain drying equipment to reduce costs incurred in grain drying for storage purposes with the aim of stimulating

the production of grain crops; aircraft lubricants imported by domestic operators, the air force, or airline corporations recognized in a Bilateral Air Service Agreement, and airline tickets, flyers, calendars, diaries, labels and employees' uniforms with the names of the airline operator if they are imported by airlines recognized under a Bilateral Air Service Agreement. The Budget further zero-rates the sale of electricity services from the Tanzanian mainland to Zanzibar, removes the restrictions on exports of raw agricultural products, and reintroduces VAT on sanitary pads.

— **Uganda:** On June 13, 2019, the Minister of Finance, Planning and Economic Development of Uganda presented the Budget for 2019-2020, which includes amendments to the country's VAT law effective July 1, 2019. The Budget reduces the VAT withholding rate to six percent. This amendment will not apply to taxpayers who, in the opinion of the Commissioner, have regularly met their compliance obligations under the VAT Act. The United Nations Entity for Gender Equality and the Empowerment of Women has been added to the list of public international organizations that benefit from tax reliefs. Finally, the Budget exempts from VAT aircraft insurance services; rice mills and agricultural sprayers; the sale of drugs, medicines and medical sundries; education material; welding machines and sewing machines; the sale of certain feasibility studies, design and construction services. To read a report prepared by the KPMG International member firm in Uganda, please click here.

— **United Kingdom:**[xliv] On June 13, 2019, HMRC released a policy paper, introducing a self-assessment requirement for purchases of gas and electricity certificates (renewable energy certificates) in the United Kingdom effective June 14, 2019. These certificates are issued to gas and electricity generators when they produce energy from renewable means. They are commonly called Guarantees of Origin (GoOs) and are also known as Renewable Energy Certificates (RECS), Renewable Obligation Certificates (ROCS), Renewable Energy Guarantee of Origin (REGO) and International Renewable Energy Certificates (I-RECS). These certificates can also be bought and sold as a commodity attracting others into the market which creates an opportunity for fraud.

— **Uzbekistan:**[xlv] On May 24, 2019, Uzbekistan published Resolution No. ПП-4337, which provides that certain entities are entitled to a VAT payment deadline extension of up to 120 days upon request if more than 50 percent of their total revenue from the realization of goods (works and services), including revenue received through an agent is from export . The term is calculated from the date of the customs declaration of imported raw materials, components, and materials used in the manufacturing of exported products.

— **Uzbekistan:**[xlvi] On May 27, 2019, Uzbekistan published Resolution No. 2775-2, which amends the VAT refund procedure for transactions subject to a zero rate of VAT. To obtain a VAT refund, an eligible taxpayer must apply directly to the State Tax Committee (previously, through a tax administration office) with the required documents on the sale of goods. The application may be filed electronically through the taxpayer's account. The VAT amount will be refunded to the taxpayer's bank account within 7 working days (previously, 15 days).

About *Inside Indirect Tax*

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

Footnotes

[i] Armenia - Import of electric vehicles to be exempt from VAT – law adopted (June 19, 2019), News IBFD.

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