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

— Croatia: Effective January 1, 2020, Croatia reduced the VAT rate for meal preparation services (including take-away) and services related to copyrights of phonographic-right holders from 25 percent to 13 percent.

— Netherlands¹: Effective January 1, 2020, the Netherlands reduced the VAT rate applicable to sales of digital publications, including downloadable audio books, sheet music, teaching materials, e-books, newspapers, and magazines, including those requiring subscriptions from 21 percent to 9 percent.

— Nigeria: Effective February 1, 2020, Nigeria increased the standard VAT rate from 5 percent to 7.5 percent.

— Slovenia²: Effective January 1, 2020, Slovenia reduced the VAT rate applicable to sales of printed and digital publications, including books, newspapers, periodicals, and other specified publications, except those that are wholly or mainly for advertising purposes or those that are wholly or mainly consisting of video content or audio music content to 5 percent. The previous rates were 95 percent for printed books and 22 percent for digital publications.
— Sri Lanka: Effective December 1, 2019, Sri Lanka reduced its standard VAT rate from 15 percent to 8 percent. However, financial services remain subject to VAT at 15 percent. Moreover, the following sales are zero-rated: services rendered by hotels, guest houses, restaurants, and other similar businesses to tourists, providing they locally source at least 60 percent of their inputs from the domestic market and are registered with the Sri Lanka Tourism Development Authority.

— Zimbabwe: Effective January 1, 2020, Zimbabwe reduced its standard VAT rate from 15 percent to 14.5 percent.

The Americas

United States: Digital Automated Services Subject to Tax in Washington

On January 13, 2020, the Washington State Court of Appeals upheld a $3.1 million assessment of retailing Business & Occupation (B&O) tax and retail sales tax on an information technology firm. Gartner, Inc. v. State of Washington, Department of Revenue. The taxpayer provided proprietary technology-related information and services, including various subscription based research service packages that were the subject of the assessment. The main service included in the packages was the provision of online access to proprietary research documents in the taxpayer’s research library. Customers accessed these documents through a client specific portal after logging on to the taxpayer’s website. The Department argued that the provision of access to the research library constituted a digital automated service, which is subject to retail sales tax and retailing B&O. Under Washington law, a “digital automated service” is defined as “any service transferred electronically that uses one or more software applications.” “Transferred electronically” means “obtained by the purchaser by means other than tangible storage media.” A service or product that is transferred electronically but “primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service” is not classified as a digital automated service and is not subject to retail sales tax.

In challenging the assessment, the taxpayer contended it was providing professional services subject to service B&O tax, but not subject to retail sales tax. The taxpayer noted that due to its constant updating of research content, the “application of human effort” was involved and, as such, it was not selling a digital automated service. The taxpayer also explained that because its customers often purchased add-on services for access to human research analysts, the true object of a customer purchasing access was to obtain a professional service (e.g., the assistance of the research analyst). Additionally, the taxpayer argued that the imposition of retailing sales tax conflicted with the Internet Tax Freedom Act’s ban on discriminatory taxes on electronic commerce. After a trial court ruled in the Department’s favor, the assessment was appealed to the Washington State Court of Appeals.
In rebutting the taxpayer’s arguments, the court found that despite the capabilities of the various tools used to access and customize the research results to the individual customer, the research offering fell clearly within the definition and examples of digital automated services contained in the Department’s regulations. The court next held that the taxpayer’s research service did not meet the human effort exclusion from the definition of digital automated services. Developing the content for the research library involved human effort, but that effort occurred prior to a customer purchasing access to the research library. After the fact, the taxpayer did not allow customers to request any specific research be included in the library. The taxpayer next contended that the “true object” test applied because a single product was being sold that could be classified as subject to either service or retail tax. The court disagreed, holding instead that it was a “bundled transaction” in which there were two or more distinct and identifiable products sold for one non-itemized price instead of a single product with two or more components that cannot be separated, as evidenced by the fact that a customer could purchase access to the research tool without purchasing any direct interaction with human analysts. Further, although certain customers purchased enhanced packages that included help from human analysts that fact was not relevant to analyzing whether the service of providing access to the research library involved human effort that originated after the customer requested the service. The court also disagreed that the imposition of retail sales tax and retailing B&O on the service violated the Internet Tax Freedom Act. It explained that due to offering its research library via a software application with various search capacities, the taxpayer was offering an additional service that was not equivalent to the service of simply distributing content using e-mail or other methods.

**Colombia: Amendments to VAT Law**

On December 27, 2019, Colombia published Law 2010, which resumed the amendments established by Law 1943, 2019 that were declared unconstitutional. Law 2010 eliminates the simplified VAT regime. As a consequence, persons who were subject to the simplified VAT regime are no longer responsible for collecting or invoicing VAT. Persons who carry out activities subject to VAT are generally subject to the ordinary VAT regime. In addition, taxpayers who fall under the simplified taxation system (SIMPLE) and operate businesses such as small shops, mini markets, micro markets, and hair salons are not responsible for collecting and invoicing VAT. A VAT responsible taxpayer may be considered as not responsible if he proves that during the prior year he complied with the conditions for being considered non-VAT responsible. Until March 31, 2020, a VAT responsible taxpayer obliged to issue electronic invoices will not be subject to penalties for failing to do so, providing that the invoice is duly issued by the ordinary system and there is evidence proving that technical or commercial issues prevent the issuance of invoices electronically. Moreover, effective January 1, 2020, up to 30 percent (reduced to 20 percent effective 2021 and to 10 percent effective 2022) of the deductible costs and expenses are not required to be supported by an electronic invoice.
Law 2010 also amends the taxability of certain goods and services. The law exempts from VAT the following sales: real estate, bikes, electric bikes, electric motorbikes, skates, mono skates, electric mono skates, skateboards, and electric skateboards, with a value of up to 50 Tax Value Units (TVUs) (the sale of such products with a value exceeding 50 TVUs is subject to the reduced VAT rate of 5 percent); goods and services invoiced by booksellers; and beauty treatments and cosmetic surgeries. Moreover, the following sales are zero-rated: certain medicines and products related to human health; products for human and animal consumption, clothing, cleaning products, medicine, and building material sold in the Amazonian region; biofuel produced in Colombia to be used in diesel motors; and public transport vehicles for passengers and cargo shipments to owners of maximum two vehicles or for replacing one or two vehicles (for a period of 5 years). The Law further excludes from the scope of VAT the following sales: real estate units exceeding 26,800 TVUs, services provided by restaurants and bars, including catering services; and goods imported by mail from abroad with a value not exceeding $200.

The new law further adds rules to serve as guidance to determine the VAT basis for goods having an embedded national component as previously exported. When the client or customer is located within the national customs territory, the VAT basis is the amount invoiced plus custom duties. Moreover, entities in free-trade zones are allowed to subtract costs of raw material and services on which they have already paid VAT. Other amendments brought by Law 2010 include: foreign service providers are not required to invoice digital services provided to Colombian users; the national government is allowed to increase the VAT withholding rate from 15 percent to 50 percent; and VAT on beers and mixed beverages applies to all phases of the production and supply chain (previously, only the producer was obliged to apply and collect the VAT). To read a report prepared by the KPMG International member firm in Colombia, please click here.

Source: Colombia—Law for promoting economic growth published—VAT and national consumption tax details (Jan. 3, 2020), News IBFD.

**Mexico: Implementing Measures for Nonresident Digital Services Providers Required to Collect VAT**

On December 28, 2019, Mexico published in the official gazette the Miscellaneous Resolution for 2020, which, among other things, sets forth rules implementing the amendments to the VAT law that were previously adopted. (For KPMG’s previous discussion on Mexico’s tax reform, please click here.) The Resolution establishes the transition rules for the six percent VAT withholding applicable on the provision of staff. The rules establish that the withholding is applicable at the time of payment of the consideration. However, in the case of services whose digital tax receipt (CFDI) was issued in 2019 and paid within the first 10 calendar days of 2020, there should be no withholding. If the provision of staff is to a contractor to which the North Border Region Stimulus Decree applies, the applicable withholding rate is three percent and not six percent.
Moreover, effective June 1, 2020, the VAT and income tax reforms for digital services provided by nonresidents without a permanent establishment in Mexico will be effective. (For KPMG’s previous discussion on the application of VAT to digital services, click here.) In this respect, the Resolution clarifies that nonresidents without a permanent establishment who register in the Federal Taxpayers Registry (RFC) as of June 1, 2020, must designate a legal representative and domicile in Mexico. This procedure may be initiated online. The tax authority will publish bimonthly the list of nonresidents without permanent establishment in Mexico who are registered in the RFC. The Resolution further clarifies that these nonresidents may issue invoices for digital services performed within Mexico in accordance with the legislation of their respective country. However, the invoices must, at a minimum, include: (1) the name or company name of the issuer; (2) the city and country in which the invoice is issued; (3) the tax registration number of the issuer; (4) the sales price excluding VAT; (5) the VAT amount applicable to the digital service; (6) a description of the service; (7) the invoice issue date and the period covered by the consideration; and (8) the RFC number of the recipient. Moreover, the Resolution clarifies that for nonresidents that do not register with the RFC and who are liable only for VAT on imported digital services, the recipient of the service should pay the VAT liabilities through the “VAT on accidental acts” declaration. Nonresidents can pay the tax due in a foreign currency.

The tax reform also introduced new obligations for providers of digital intermediation services (e.g., digital platforms). The Resolution provides that such intermediaries must register with the RFC. Those who are already registered before June 1, 2020 must submit an update notice of economic activities and obligations for platforms. The intermediaries must issue CFDIs that support withholdings and payment information. These vouchers must have an additional information called “Technology Platform Services,” which will be published by the tax authorities. As a transitional measure, intermediaries will be allowed to issue PDF invoices in 2020 if the invoice, at a minimum includes: (1) the name or company name of the issuer; (2) the city and country in which it is issued; (3) the registration code of the issuer; (4) the tax registration number of the issuer; (4) the sales price excluding VAT; (5) the VAT amount applicable to the act; (6) a description of the act; (7) the invoice issue date and the period covered by the consideration; (8) the bank account number in which the consideration was deposited; (9) the amount of the income tax withheld from the total income actually received by natural persons through technological platforms; and (10) the amount of VAT withheld.

Finally, the Resolution clarifies that natural persons who sell goods or services or lease an accommodation through a platform must register in the RFC. If they are already registered, they must submit an activity update notice, indicating the economic activities carried out through the platform. The Resolution further clarifies that the withholdings made by the intermediaries may be considered as final payment of both VAT and income tax provided that the corresponding notice is presented. This option is applicable to natural persons who obtain income only from activities carried out through platforms and whose income does not exceed MXN 300,000 ($16,000) in the
immediate past year. Natural persons who use platforms must issue a CFDI corresponding to the sale of goods or services and send it by email to the purchasers of the goods and services. To read a report (in Spanish) prepared by the KPMG International member firm in Mexico, please click here.

**Peru: Overview of Recent Indirect Tax Developments**

On November 12, 2019, the tax authority of Peru (Superintendencia Nacional de Administración Tributaria, SUNAT) published Administrative Guidance 143–2019-SUNAT/7T0000, which clarifies the VAT treatment applicable to sales of services by a nonresident governmental entity to an individual domiciled in Peru. The Guidance explains that persons that are not engaged in business activities, but carry out taxable transactions, are treated as VAT taxpayers to the extent that their transactions are carried out on a regular basis. VAT regulations clarify that services are deemed carried out on a regular basis when they are similar to commercial services. Moreover, in Administrative Guidance 117–2019-SUNAT/7T0000 and Letter 146–2011-SUNAT/200000, the SUNAT stated that the commercial nature of a service does not depend on the number of times the service is provided, but on the nature of the service itself. Therefore, a service is deemed a commercial service when any entity performing business activities is able to provide such service. The Guidance concludes that the services provided by the nonresident governmental entity to the individual domiciled in Peru are subject to VAT (irrespective of the fact that such services were provided only once by the foreign entity) to the extent that such services can be provided by any other entity performing business activities. Conversely, if the services can only be provided by such a nonresident governmental entity, they are not characterized as commercial services and thus are not subject to VAT.

On November 12, 2019, the SUNAT published Administrative Guidance 151–2019-SUNAT/7T0000 in which it clarified that VAT incurred on expenses is deductible provided that the purchase price of the goods is a deductible expense according to the income tax law. The Guidance further concludes that the total amount of VAT paid on the import of goods must be regarded as an input VAT credit, even in cases where only part of the purchase price of goods is deductible for income tax purposes.

On December 12, 2019, Peru published Emergency Decree No. 024–2019 in the official gazette, It extends until December 31, 2020 the validity of the following VAT incentives: (1) the VAT exemption on goods listed in Annexes I and II of the VAT Law; (2) the VAT refund applicable to taxpayers acquiring goods funded through foreign donations and imports made by diplomatic missions; and (3) the VAT exemption granted to electronic money institutions on the issuance of electronic money.

On January 28, 2020, the SUNAT published Administrative Guidance 202–2019-SUNAT/7T0000, which clarifies the tax treatment of food testing services provided by a nonresident company to a resident company. In the case at hand, a nonresident company conducted food testing activities abroad. A resident company then applied the results of the food testing in the manufacture of products in Peru. Such products were traded in Peru and
abroad. According to the SUNAT, food testing services are characterized as technical assistance services for tax purposes. The provision of such services is characterized as an import of services for VAT purposes and, therefore, it is subject to VAT in Peru. The taxpayer is the resident company receiving the services.

Source: Peru—VAT on supply of services—clarified (Nov. 15, 2019), News IBFD; Peru—Input VAT credit on imports of goods—clarified (Nov. 22, 2019), News IBFD; Peru—VAT incentives extended (Dec. 23, 2019), News IBFD; Peru—Food testing services provided abroad—tax treatment clarified (Feb. 10, 2020), News IBFD.

Europe, Middle East, Africa (EMA)

Austria: Overview of Recent Indirect Tax Developments

On October 23, 2019, the European Commission referred Austria to the ECJ for its failure to align its VAT rules for travel agents. Case C-787/19. The European Commission claims that the ECJ should declare that Austria has failed to fulfil its obligations under the EU VAT Directive. Specifically, the Commission contends that Austria fails to meet the terms of the Directive because it excludes those travel services that are provided to taxpayers who use those services for their business from the special travel agent VAT mechanism, and it allows travel agents that are subject to the special mechanism to determine the taxable amount for VAT on a flat-rate basis for groups of services or for all services provided during a taxable period.

On December 6, 2019, the Austrian Federal Ministry of Finance published updated VAT Regulations 2000. The updates include: (1) application of the 10 percent reduced rate on electronic publications effective January 1, 2020; (2) transactions through online platforms and zero-rated intra-EU sales; (3) sourcing rules for mail-order sales, consignments, and the Mini One Stop Shop (MOSS) effective January 1, 2021; (4) clarifications on the VAT basis determination, including voluntary expenses and employee tax benefits; (5) deduction rules relating to intra-EU sales, hidden distributions, and passenger vehicles; (6) the treatment of money and capital transactions, and land leases; (7) residency requirements for small businesses with gross receipts under EUR 35,000 ($38,000) until December 31, 2019; (8) import VAT exemptions and deductions effective January 1, 2021; and (9) recordkeeping requirements for online platforms.

On December 4, 2019, Austria published Regulation 378 in the official gazette. The Regulation provides implementation rules for the recently approved 5 percent digital services tax (DST) applicable to online advertising, which became effective January 1, 2020. (For KPMG’s previous discussion on Austria’s digital services tax, please click here.) The Regulation provides that online advertisers subject to the digital tax are required to file annual returns electronically. The Regulation also provides that the Ministry of Finance must
provide an online digital procedure for the transmission of the annual returns for digital tax that must be made available on the Ministry of Finance website and that online advertisers must register via a web form made available on the same website. Online advertisers that have no domicile, management, or permanent establishment in Austria or another Member State of the EU or the European Economic Area, must appoint a fiscal representative for the tax; the representative must also be an authorized agent and shall be responsible for filing the annual return.

On December 20, 2019, the Austrian Federal Ministry of Finance issued a guidance on the newly implemented DST. Topics covered in the guidance include: (1) the imposition and description of the digital tax on certain online advertising service providers; (2) criteria for taxpayers to qualify as DST service providers; and (3) the calculation basis for the DST; (4) deadlines for payments and filings for annual tax returns; (5) calculation periods, the registration process, and return submission procedures; and (6) requirements for fiscal representatives.


Czech Republic: Guidance on VAT Treatment of Bad Debt

Effective April 1, 2019, the General Financial Directorate (GFD) of the Czech Republic introduced significant changes concerning corrections of the tax base in relation to bad debts. The GFD guidance explicitly stipulates that if a creditor’s receivable arose before the amendment’s effective date, but involves insolvency proceedings commenced after April 1, 2019, the taxpayer must apply the new law. The GFD further draws attention to the fact that the amendment allows for the correction of the tax base for receivables included in the approved reorganization plan, which was not possible under the original wording of the act.

Moreover, the guidance clarifies the reporting of corrections in the creditors’ VAT returns and VAT ledger statements. Following the changes in the relevant provisions of the VAT Act, the XML structure of the VAT ledger statements changed from October 1, 2019. As a consequence, the field “Corrections in respect of irrecoverable debt” in A.4 should be designated as follows: “N”—not a correction for irrecoverable debt; “A”—a correction pursuant to Section 44 of the VAT Act effective before March 31, 2019; or “P”—a correction pursuant to Section 46 et seq. of the VAT Act. The choice of the correction parameters will also be reflected in VAT returns; the completion of returns has also changed accordingly.

In addition, the GFD also includes a summary of the judgment of the Court of Justice of the European Union (ECJ) in A-PACK CZ, Case C-127/18 (May 8, 2019). The Czech VAT Act stipulates that a taxpayer cannot make a correction to the tax base for a bad debt if the debtor is no longer a VAT
taxpayer. In its judgment, the ECJ clearly states that this provision of the Czech act is contrary to the EU VAT Directive. If both the creditor and the debtor were VAT taxpayers at the time a taxable sale was effected, but the debtor ceased to be a VAT taxpayer between the date of this sale and the date conditions for the correction to the tax base for bad debt were met, the creditor has the right to make a correction. Finally, the guidance contains, among other things, detailed descriptions of various situations such as corrections relating to assigned receivables, restrictions regarding the tax base corrections, suspension of deadlines, additional corrections, cancellation of corrections made, the determination of correction amounts, and the conditions for making a correction of a VAT deduction by the debtor. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

European Union: Exemption for Independent Group of Persons Not Limited to Groups Exclusively Providing Services to Members

On November 19, 2019, the ECJ published its judgment in *Infohos*, case C-400/18, regarding whether a Member State can refuse the VAT exemption provided to members of independent groups of persons (IGP) because the IGP renders services to non-members. According to the EU VAT Directive, Member States are allowed to implement a VAT exemption applicable to IGPs who render services that are linked to the exempt output sales of their members. In the case at hand, the taxpayer is a Belgian association that specializes in hospital information technology and provides services to its members and a third party. The taxpayer entered into a collaboration agreement with IHC group NV with which the taxpayer exchanged services to create innovative software solutions for its members. The taxpayer took the view that its services should be exempt from VAT on the basis of the IGP exemption. However, the Belgian tax authorities refused the application of the exemption because the taxpayer also rendered services to third parties, thus creating an exclusivity condition for the application of the IGP exemption.

The ECJ first highlighted that the exemptions of the EU VAT Directive are autonomous concepts of EU law that must be interpreted strictly, and Member States must not interpret the exemptions inconsistently with the purpose or the principle of VAT neutrality. The ECJ concluded that there is nothing in the text of the provision at issue that justifies the application of the exclusivity condition by Belgium. Moreover, a contextual interpretation does not lead to any conclusion about the application of the exclusivity condition and the exclusivity condition is not in line with the purpose of the exemption. The purpose of the exemption is to remove VAT costs that would be included in the services exchanged between members of an association to facilitate their collaboration where it results in the provision of services for the public interest. The purpose of the exemption is not limited because the taxpayer provides services to non-members and, therefore, the application of the exemption to the services provided by the taxpayer to its members should not be limited. However, the services rendered to non-members of the IGP cannot benefit from the exemption.

Source: BE: ECJ, Nov. 20, 2019, Case C-400/18, Infohos v. Belgische Staat, Case Law IBFD.
European Union: Overview of Latest VAT Expert Group Discussion Papers

On November 27, 2019, the VAT Expert Group (VEG) of the European Commission held its 24th meeting. The VEG is composed of individuals appointed in a personal capacity with the requisite expertise in the area of VAT and organizations representing businesses and tax practitioners who can assist in the development and implementation of VAT policies. The VEG discussed several procedural aspects regarding of the VEG (VEG No 002—Procedures and VEG No 035 REV1—Purpose and remit of the group). The VEG also published VEG No 086—Upgrading the EU VAT system which identifies areas where the current EU VAT system could be improved and formulates questions whether certain initiatives would contribute to this end. The European Commission sees a possibility that with the proper use of the One Stop Shop regime and the reverse charge mechanism, businesses may only require one VAT ID number for the entirety of the EU. The European Commission further believes that there might be certain new business models (e.g., the sharing economy) which are not sufficiently captured by the current VAT rules. Finally, technological solutions should be effective means to combat VAT fraud, however these should not create additional administrative burden for businesses.

Source: European Union—European Commission—VAT Expert Group meeting on November 27, 2019 (Nov. 21, 2019), News IBFD.

European Union: Technical Updates to VAT E-Commerce Package Adopted

On December 2, 2019, the European Union published in the official journal Council Directive (EU) 2019/1995 amending the EU VAT Directive relating to distance sales of goods and certain domestic sales of goods. Recall, on December 5, 2017, the EU Council adopted the VAT e-commerce package, which, among other things, extends the scope of the special mechanisms for non-established taxpayers providing telecommunications, broadcasting, and digital services to final consumers (the so-called "Mini One Stop Shop") to all types of services as well as to intra-EU distance sales of goods and distance sales of goods imported from non-EU territories or countries, turning the Mini One Stop Shop into a One Stop Shop. The Mini One Stop Shop allows sellers to use a web portal in the Member State in which they are identified to account for the VAT due in other Member States. The VAT e-commerce package further introduces special provisions applicable to taxpayers who facilitate certain sales to final consumers made by other taxpayers through the use of an electronic interface such as a marketplace, platform, portal or similar means. Directive (EU) 2019/1995 lays down additional rules needed to implement these amendments to the EU VAT Directive applicable effective January 1, 2021. Specifically, the rules address electronic interfaces that facilitate sales of goods to final consumers in the EU by taxpayers not established in the EU and the special arrangements for the declaration and payment of import VAT where the One Stop Shop for distance sales of goods imported from non-EU territories or countries is not used.
On December 4, 2019, the European Union published in the official journal Council Implementing Regulation (EU) 2019/2026 amending the VAT Implementing Regulation regarding sales of goods or services facilitated by electronic interfaces and the One Stop Shop mechanism. Section 2 of Chapter XI of this Regulation lays down detailed provisions for the application of the Mini One Stop Shop. Implementing Regulation (EU) 2019/2026 lays down detailed rules for application of the new One Stop Shop.


**European Union: Overview of Recently Published VAT Committee Working Papers**

The European Commission recently published the documents resulting from the 114th meeting of the VAT Committee held on December 2, 2019. The VAT Committee was established to promote the uniform application of the provisions of the VAT Directive. It is an advisory committee and cannot take legally binding decisions. It can, however, provide guidance on the application of the Directive. During its latest meeting, the Committee published an information paper on the recent adoption by Lithuania and the United Kingdom a temporary requirement for the buyer to self-assess VAT under the reverse charge mechanism.

In Working Paper No 924 the VAT Committee discusses the VAT aspects of centralized clearance for customs upon importation. Under the system, an operator may lodge at the customs office competent for the place where it is established the customs declarations for goods presented at a customs office in another Member State. The VAT Committee now published REV4 and REV5 of the working paper.

In Working Paper No 981, the VAT Committee discusses a question raised by the Netherlands as to whether “combined lifestyle intervention” (CLI) services would qualify for VAT exemption for medical services. CLIs consist of nutritional advice, physical training and psychological support aimed at the prevention of health risks. In the opinion of the VAT Committee, these services should not qualify for the VAT exemption.

In Working Paper No 982, the VAT Committee discusses how the findings of the ECJ judgment in Srf konsulterna should be interpreted. Case C-647/17 (March 13, 2019). In this case, the ECJ held that accounting and management courses in the form of seminars provided only to taxpayers in return for a fee are taxable where the courses take place.

In Working Paper No 983, the VAT Committee discusses the implementation of the Voucher Directive, which became effective January 1, 2019. It describes the new rules and provides guidance on the interaction of the new rules with other provisions, including: (1) the qualification of utility tokens under the Voucher Directive, (2) exempt sales of services incorporated into a voucher, (3) the relation between the VAT treatment of vouchers and VAT special schemes, and (4) the qualification of city cards under the Directive.
Finally, on December, 12, 2019, the European Commission published the latest list of nonbinding guidelines resulting from meetings of the VAT Committee. The list includes guidelines on VAT rules applicable to the recharging of electric vehicles, the application of the quick fixes package effective January 1, 2020, and VAT issues related to the withdrawal of the United Kingdom from the EU.

Source: European Union—European Commission publishes documents from 113th VAT Committee meeting (June 4, 2019), News IBFD; European Union—European Commission publishes latest list of VAT guidelines (Dec. 16, 2019), News IBFD.

France: Reporting Obligations of Online Platforms Increased

On January 7, 2020, the French tax authority updated its guidelines on the additional reporting obligations for online platform operators. According to French law, operators of online platforms must submit a user’s activity report each user (since 2016) and to the French tax authorities (since 2019).

The first declaration to the French tax authority was due before January 31, 2020. The information required includes: the company’s details—such as the business name, place of establishment, company SIREN registration number and the user status (i.e., business or non-business). For business users, the data must include (1) the company name, trade name or user name as it appears on the online platform, (2) the company address, (3) the company SIREN registration number (or VAT identification number), (4) the company website address, (5) the company e-mail address, (6) total number of transactions conducted during the year, (6) total gross amount of transactions, and (7) the company bank details in “IBAN format” with a BIC code. For a non-businesses users, the data must include: (1) the user surname and/or common name, (2) the user first name, (3) the user address, (4) the user telephone number (preferably mobile phone), (5) the user e-mail address, and (6) the user date of birth. The online platform operator must file the report in a provided electronic specified by the French tax authorities (i.e., an XML folder). No other document format is acceptable.

According to the guidance, in the report due on January 31, 2021, platform operators must identify in a distinct manner the total amount of all transactions that fall within the scope of French VAT. The authority clarified that operators must comply with the new obligation for a user who is a natural person residing in France or abroad, or a legal entity effectively having its head office in France or abroad if it conducts transactions that are taxable for VAT purposes in France. Moreover, as soon as a good is shipped from France, the place of delivery is deemed to be located in France. When a good is “pre-positioned” in a warehouse in France by a user from another EU Member State or a user located outside the EU, the transaction will be subject to VAT in France. The tax authority further clarified that regarding users who are legal entities effectively having their head office in France, the VAT treatment will be assessed by the French tax authority. Consequently, platform operators must report the gross amount of transactions conducted by such taxpayers. With regard to distance-selling transactions, the threshold provided for by the French tax legislation will be assessed by the French tax authority as well. Consequently, for these types of transactions, platform operators must report transactions for business users located in another EU Member State, the
gross amount of transactions having been the subject of a sale of goods to a user that is not subject to VAT and residing in France. Finally, with respect to the services related to real estate located in France, platform operators must report the gross amount of transactions relating to immovable property located in France. The potential exemption of some of these transactions (for instance, rental) will be assessed by the French tax authority.

The new reporting obligations imply that an online platform must communicate data for which they will have to determine the VAT treatment. Consequently, the platforms will need to be actively in the determinations of the VAT treatment for every transaction; and the gross receipts that must be reported to the French tax authority. Additional guidance from the French tax authorities is anticipated. To read a report prepared by the KPMG International member firm in France, please click here.

**Germany: New E-Invoicing Regulations for Public Procurement**

Effective November 27, 2019, Germany introduced new e-invoicing requirements for public procurements. Following the adoption on April 16, 2014, of Directive 2014/55/EU, the Member States agreed to work together on a common standard for electronic invoicing and to implement this at the national level. In Germany, separate implementation in the federal government and in the 16 federal states is necessary. On September 6, 2017, the federal government of Germany introduced the Ordinance on Electronic Invoicing relating to the organization of e-invoicing that involves federal contracting.

The core element of e-invoices is a structured electronic format that enables the document to be processed automatically. PDF files, image documents, and scanned paper invoices are excluded. The invoice must be issued and transmitted in a format for which an appropriate service provider may also be used. Exceptions apply only to invoices which are issued for not more than EUR 1,000 ($1,091) following the fulfillment of a direct order, which relate to certain defense and security orders, or which are issued in situations where one body acts in the name of another body.

Invoice issuers must use the current version of the German XRechnung data exchange standard for issuing electronic invoices. Another data exchange standard may be used provided that it meets the requirements of the European standard for e-invoicing. A federal administration portal is available to the issuer and recipient for the transmission of invoices. In this case, the invoice sender must have a user account, or the invoices will be rejected by the recipient. The relevant recipient must view and process the invoice without any media discontinuity using a dialog procedure that is supported by a web browser.

The Ordinance on Electronic Invoicing is effective November 27, 2018. Since then, various national authorities have been required to receive and process e-invoices. For sub-national entities the requirement has been in place only since November 27, 2019. For business owners themselves, the obligation to issue electronic invoices to public contracting authorities of the federal government will be effective November 27, 2020. To read a report prepared by the KPMG International member firm in Germany, please click here.
Italy: Overview of Recent Indirect Tax Developments

On October 8, 2019, the Italian Tax Authorities (ITA) published Ruling Answer No. 437 clarifying the issuance of deferred electronic invoices. The ITA confirmed that the issuance date for such invoices can be the last day of the calendar month during which the relevant sale took place. It is not mandatory to quote the date of the last sale, and a vendor may issue more than one deferred electronic invoice in the same calendar month to the same purchaser, provided that such invoices are electronically transmitted by the 15th day of the month following the one during which the sale took place.

On October 23, 2019, the ITA issued Ruling Answer No. 421 on completion of section VG of the annual VAT return for VAT groups and submission of relevant data where foreign entities are involved. In particular, if the controlling entity is a foreign entity which does not have an Italian VAT identification number, related data must be included in section VG part I, crossing box No. 7 and not indicating the VAT identification number in box No. 5. Relevant data of all entities involved in the control chain must be included in section VG part II, even if they do not participate in the VAT group calculation. However, foreign entities which are only involved in the control chain and do not have an Italian VAT identification number do not need to be included.

The ITA recently published Ruling Answer No. 487 in which it clarified that the representative of a VAT group has the responsibility for ensuring compliance with the VAT rules, but all the members are jointly and severally liable for VAT debts and related penalties and interest resulting from an audit or assessment of ITA. In particular, the ITA clarified that this rule also applies with respect to the assets of special purpose vehicles established for securitization operations or asset management.

On October 31, 2019, the ITA published Ruling Answer No. 461 clarifying, among other things, the VAT treatment of carpooling services offered to employees by their employers through digital platforms provided by third parties. According to the ITA, the sums paid by riders to drivers to share the travel costs are not subject to VAT, even if collected and transferred through the intervention of third parties. However, the sums withheld by the provider of the platform are subject to VAT. In this respect, the service providers may issue simplified or cumulative periodic invoices.

On November 19, 2019, the ITA published Law Principle No. 24 in which it clarified that VAT grouping regime may apply to group members resident in other EU Member States, provided they meet all requirements and are registered in Italy through direct VAT identification, fixed establishment or appointment of a VAT representative. It cannot, however, be extended to group members resident in third countries.

On November 28, the ECJ published the Opinion of its Advocate General (AG) in Société Générale (C-565/18), regarding the compatibility of the Italian financial transaction tax with EU law. The financial transaction tax applies to any transaction involving derivative financial instruments having as their underlying assets financial instruments governed by Italian law, regardless without regard to where the transaction was concluded or the country of residence of the contracting parties. The Advocate General concluded that the Italian financial transaction tax does not infringe the free movement of capital because it is not discriminatory.
On December 17, 2019, the ITA published Protocol No. 1427541, which amends the implementing rules for the issuance and receipt of electronic invoices through the ITA’s SdI system (sistema di interscambio). Effective July 1, 2019, qualifying taxpayers and their representatives may view as well as download issued and received electronic invoices through the ITA website, provided that they explicitly adhere to such service by February 29, 2020 (previously, 20 December 2019).

The ITA recently updated the instructions to opt for the application of the VAT grouping regime (Form AGI/1). To exercise the option, the VAT group representative must electronically file the request by September 30 of the year preceding that in which the regime should apply. The updated instructions allow, in certain circumstances, taxpayers to amend the data previously submitted, provided that the regime has not yet become effective (e.g., if the Form AGI/1 has been duly filed before September 30, 2019, corrections and modifications can be made by January 1, 2020). In particular, the VAT group representative may file a substitute form to correct, integrate, or delete data previously communicated. However, the VAT identification number attributed to the group, as well as the date from which the regime applies, will not change.

The ITA recently published Ruling Answer No. 519 clarifying the rules applicable to vouchers effective January 1, 2019. According to the ITA, the qualification of a voucher as a single-purpose voucher (SPV) or a multiple-purpose voucher (MPV) depends on whether the applicable VAT treatment of the goods or services to which the voucher relates is certain at the time of issue. Such qualification must be assessed taking into account the sourcing and the nature, quality and quantity of, and the VAT rates applicable to the goods and services sold. For example, experience gift vouchers could qualify as SPVs, provided that the place of the transaction, and the nature, quality and quantity of and the VAT rates applicable to the relevant goods or services are already known at the time of issue.

The ITA recently published Answer No. 20/2019 clarifying the rules regarding VAT deregistration. According to the ITA, a taxpayer can deregister, and the related VAT identification number be cancelled, only if all the obligations deriving from sales and purchases have been duly performed and completed. In particular, it is not possible to deregister if the taxpayer carried out sales of services for which considerations have not been paid and the corresponding invoice has not been issued, unless the taxpayer issued such invoices before the consideration was paid.

Source: Italy—Electronic invoicing—clarifications issued (Nov. 8, 2019), News IBFD; Italy—Tax aspects of carpooling services—clarifications issued (Nov. 7, 2019), News IBFD; Italy—VAT grouping regime—instructions updated (Nov. 11, 2019); Italy—VAT group calculation regime—clarifications issued (Nov. 20, 2019), News IBFD; Italy—Electronic invoicing—implementing rules amended (Dec. 18, 2019), News IBFD; Italy—VAT grouping regime—clarifications issued (Jan. 3, 2020), News IBFD; Italy—VAT treatment of vouchers—clarifications issued (Jan. 6, 2020); News IBFD; Italy—VAT deregistration—clarifications issued (Jan. 7, 2019), News IBFD.
Nigeria: Amendments to VAT Law

On January 14, 2020, Nigeria published the Finance Act of 2019 in the official gazette. Among other things, the Finance Act amends the VAT Act effective January 13, 2020, unless otherwise specified. The Finance Act seeks to expand the definition of “goods” to include “any intangible product, asset or property over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land.” Consequently, the taxability of incorporeal property, such as rights, patents, trademarks, and royalties is no longer questionable.

The Finance Act further clarifies the ambiguity on the sourcing of services deemed to be sold in Nigeria if the “services are rendered in Nigeria by a person physically present in Nigeria at the time of service provision, or the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria.” As a consequence, all services provided (either locally or imported) to a Nigerian-based customer and enjoyed in Nigeria become taxable in Nigeria, and nonresidents providing services (including digital services) to non VAT-registered customers are required to register for and collect VAT in Nigeria if they make taxable sales above the registration threshold. However, the VAT registration mechanism for such nonresidents has yet to be clarified. For services provided to a VAT-registered customer, the customer is liable to self-assess VAT under the reverse charge mechanism.

The Finance Act also seeks to resolve the controversy involving the definition of “exported services,” which are zero-rated for VAT purposes. It redefines exported service as a “service rendered within or outside Nigeria by a person resident in Nigeria, to a nonresident person outside Nigeria.” The Finance Act also clarifies that VAT should be accounted for on a cash rather than accrual basis. As a consequence, VAT collected is due to the tax authority only when collected and VAT credits can only be taken when taxpayers pay their vendors. A taxpayer who is entitled to a VAT refund is required to first recover its overpayment as a credit against subsequent VAT collections. Any excess over and above the amount credited against VAT collections would then be refunded.

Finally, the Finance Act introduces other changes to the VAT Act, including: (1) introducing a VAT exemption on assets transferred pursuant to a related-party business reorganization; (2) increasing penalties for non-compliance; (3) introducing a requirement to deregister in the event of business cessation; (4) clarifying the definition of “basic food items;” (5) broadening of the scope of VAT exempt transactions to include locally manufactured sanitary towels, tuition relating to nursery, primary, secondary, and tertiary education; and (6) setting the annual VAT registration threshold to NGN 25 million ($69,000). To read a report prepared by the KPMG International member firm in Nigeria, please click here.
Poland: Overview of Recent Indirect Tax Developments

On October 18, 2019, the Polish government published regulations providing for forthcoming changes to the VAT filing systems. Taxpayers will be required to file modified JPK_VAT files (forms in JPK file format) in place of the current VAT-7 and VAT-7K declarations. The Government confirmed that large VAT-registered businesses will be required to adopt the system effective April 1, 2020, and all other taxpayers will begin using new JPK_V7M effective July 1, 2020. There will be two variants of the form: JPK_V7M, for taxpayers paying monthly, and JPK_V7K, for taxpayers paying quarterly.

On December 24, 2019, Poland published a law delaying the application of the retail sales tax until July 1, 2020 in the official gazette. The retail sales tax was challenged by the European Commission as impermissible state aid after it was introduced in July 2016. The General Court of the European Union overturned the Commission’s determination that the tax was impermissible state aid, but the Commission appealed to the ECJ. The law delays the tax collection to avoid uncertainty and allow time for the ECJ to issue a decision.

Effective January 1, 2020, Poland amended the threshold to qualify as a small taxpayer for VAT purposes to PLN 5,248 million ($1.3 million). The threshold is set at PLN 197,000 ($50,300) for agents and commissionaires.

On January 27, 2020, the Polish Ministry of Finance published a draft amendment to the personal income tax, corporate income tax, and VAT Acts, which, if approved, would be effective April 1, 2020. Under current rules, effective January 1, 2020, taxpayers are prohibited from making payments above PLN 15,000 ($3,800) to an account not included on the VAT Taxpayer Register (so-called “White List”). Otherwise, they are held jointly and severally liable with the seller for any VAT not remitted to the tax authority and they cannot treat the payments as deductible cost for CIT purposes. Taxpayers may avoid this if they inform the tax authority of the payment via a special form within 3 days. The proposal would extend this deadline to 7 days. Moreover, taxpayers who apply the split payment mechanism would not be required to verify their counterparty’s account number on the White List or inform the tax authority that the payment was made to an account not listed on the White List. To read a report prepared by the KPMG International member firm in Poland, please click here.

On February 4, 2020, the Polish Council of Ministers adopted a proposal to implement the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; and (3) establish uniform criteria in determining the VAT treatment of EU chain transactions. As the legislative process aimed at implementing the Quick Fixes was not completed on time, the Minister of Finance published a clarification note on December 23, 2019, stating that, during the period between January 1, 2020 and the entry into force of implemented provisions, a taxpayer may rely on either the Directive (and the Implementing Regulation thereto) or on Polish statutory rules in force, as long as the taxpayer follows one set of rules, i.e. the EU Quick Fix or the domestic rules.
Effective April 1, 2020, Poland will apply new rules on reduced VAT rates (currently, 5 percent and 8 percent). Rates applicable to some products will be decreased (and simplified by eliminating differences between similar categories of products). For instance, the following goods will be subject to the 5 percent rate: bakery and confectionery products; printed books and e-books; and tropical and citrus fruits. Goods subject to the 8 percent rate will include newspapers, journals (both printed and electronic) and specialist periodicals. Some rates will be increased with a view to eliminate differences between similar categories of products. For instance, sea foods will be subject to the standard rate of 23 percent instead of the current varied reduced rates and numerous unprocessed spices will be taxed at 8 percent instead of 5 percent. Goods subject to reduced rates will be identified by reference to the Combined Nomenclature (CN). References are usually made to CN headings and, in some cases, even to chapters or sections. Services are classified by reference to the Polish Classification of Goods and Services 2015. Taxpayers can apply for binding rate rulings, which will protect taxpayers in a similar manner that tax rulings.


Russia: Overview of Recent Indirect Tax Developments

On September 3, 2019, the Ministry of Finance of Russia (MOF) issued Guidance Letter no. 03–07–08/67700 in which it clarified the VAT treatment of the licensing of rights of audiovisual works for display on television to a Russian resident by a nonresident registered in Russia as a digital service provider for VAT purposes. Since January 1, 2019, nonresident digital service providers are required to register for and charge Russian VAT on sales of digital services made to business customers. The MOF clarified that the Russian business customer may deduct the VAT incurred on the acquired digital services (including the right to use copyrighted works under a licensing agreement), provided that the required documents are obtained.

On November 13, 2019, the MOF issued Guidance Letter no. 03–04–05/87621 in which it clarified that the transfer of shares in a company’s authorized capital, including such transfer without consideration, carried out by an individual is not subject to VAT.

On November 18, 2019, the MOF issued Guidance Letter no. 03–07–14/80174 in which it clarified that a business is no longer eligible to apply the VAT exemption for small businesses if the required gross receipts threshold is exceeded even if the contract that resulted in exceeding the gross receipts limit was terminated (whether through a court procedure or voluntarily).
On November 11, 2019, the MOF issued Guidance Letter 03–07–08/86848 in which it clarified that engineering services, including pre-project and project services, provided to a nonresident are sourced outside of Russia and are not subject to Russian VAT. However, project management services provided by a Russian taxpayer to a nonresident are considered provided in Russia and are subject to 20 percent VAT in Russia. The MOF further clarified that, effective July 1, 2019, a resident VAT payer can deduct VAT incurred on goods and services that are used to provide pre-project and project services abroad.

On November 19, 2019, the MOF issued Guidance Letter 03–07–08/89137 in which it clarified that the transfer rights that are not related to intellectual property are sourced to where the seller of those rights operates (i.e., abroad for nonresidents). For transfers of patents or the granting of licenses, trademarks, copyrights, and other similar intellectual property, the transaction is sourced to where the recipient operates (i.e., in Russia for a Russian buyer).

On November 20, 2019, the MOF issued Guidance Letter No. 03–07–08/89869 in which it clarified that, effective July 1, 2019, taxpayers may deduct VAT incurred on the import of movable property in Russia that is leased to a nonresident.

On December 4, 2019, the MOF issued Guidance Letter No. 03–11–11/79836 in which it clarified that taxpayers, including legal entities and individual entrepreneurs subject to the simplified tax regime, are not subject to VAT in Russia and do not self-assess VAT when acquiring exclusive rights to computer software from a nonresident since such services are VAT exempt.

On December 10, 2019, the MOF issued Guidance Letter no. 03–07–14/93614 in which it clarified that the alienation of property by an individual entrepreneur is not subject to VAT if such property has not been used in the course of taxable business activities because individuals when selling goods (works, services) as part of non-entrepreneurial activities are not deemed as taxpayers of VAT.

Source: Russia—VAT implications of licensing of television rights from non-resident registered in Russia—MoF clarifications (Nov. 22, 2019), News IBFD; Russia—VAT implications of transfer of shares without consideration—MoF clarifications (Dec. 4, 2019), News IBFD; Russia—Input VAT deduction on movable property leased by non-resident—MoF clarifications (Dec. 10, 2019), News IBFD; Russia—VAT obligations upon acquisition of exclusive rights to computer software from non-resident—MoF clarifications (Dec. 10, 2019), News IBFD; Russia—Application of VAT exemption in case of change in turnover due to terminated contract—MoF clarifications (Dec. 12, 2019), News IBFD; Saudi Arabia: Guidance on VAT Treatment of Exported Services

On December 3, 2019, the General Authority of Zakat and Tax of the Kingdom of Saudi Arabia (KSA) issued a guide on the VAT treatment of sales of services made to nonresident of the Gulf Cooperation Council (GCC) reflecting recent amendments made to article 33 of the VAT regulations. The article provides

Saudi Arabia: Guidance on VAT Treatment of Exported Services

On December 3, 2019, the General Authority of Zakat and Tax of the Kingdom of Saudi Arabia (KSA) issued a guide on the VAT treatment of sales of services made to nonresident of the Gulf Cooperation Council (GCC) reflecting recent amendments made to article 33 of the VAT regulations. The article provides
the conditions to be met to treat a sale of services made by a taxpayer to a non-GCC resident customer as zero-rated. The guide contains a chapter on the sourcing of services as the zero rate for services provided to a non-GCC resident is applicable only where services are sourced in the KSA.

The guide clarifies that the exceptions to this rule are classified based on the customer’s residence and the nature of services. The exceptions based on the nature of services include: the leasing of vehicles to non-taxable customers; the sale of goods and passenger transport services; the sale of services which are closely linked to real estate; telecommunications services and digital services; and other services which are considered to take place at the place of actual performance. According to the guide, customers which are residents in a GCC member state that does not have an electronic information exchange system in place with the KSA are considered to be non-GCC residents for the purpose of applying VAT (which is currently the case of the United Arab Emirates and Bahrain, the other two GCC member states that have recently implemented a VAT system).

In addition, the guide provides detailed explanations on the exceptions to the zero-rating of sales in the following situations: services subject to special sourcing rules; the customer is a resident of a member state; the customer or any other person benefits directly from a service in a member state; the services are performed in relation to tangible goods located within a member state during the sale; and the eligibility of zero rating under other articles of implementing regulations. These exceptions appear to reflect a force of attraction principle whereby if a nonresident entity has a permanent establishment in the KSA, the services will always be subject to VAT even if the benefit of the service is received abroad.

Source: Saudi Arabia; GCC—Guidelines on supplies of services to non-GCC residents—issued (06 Dec. 2019), News IBFD.

Ukraine: Overview of Recent Indirect Tax Developments

On September 16, 2019, the State Fiscal Service of Ukraine (SFS) issued Guidance Letter 271/PKI/04–36–12–01–16 in which it clarified that factoring transactions on an account receivable in Ukrainian currency are not subject to VAT.

On September 16, 2019, the SFS issued Guidance Letter 273/6/99–00–07–03–02–15/ITC in which it clarified that if a company writes off the value of the assets due to their expiration or shortage and such assets have not been used in VAT exempt transactions, the company must adjust the calculation of its VAT liability and amend its consolidated tax invoice.

On October 8, 2019, the SFS issued Guidance Letter 627/6/99–00–07–03–02–15/ITC in which it clarified that software products sold by a nonresident to a resident in Ukraine are not subject to VAT and should not be reported in the Ukrainian VAT return of the customer.

On October 17, 2019, the SFS issued Guidance Letter 810/ITC/15–32–04–01–12 in which it clarified that lease payments under a rent-to-own agreement for a residential property are subject to VAT at the standard 20 percent rate. However, the final purchase of the property is exempt from VAT, because it is not considered the first sale of the home.
On October 22, 2019, the SFS issue Guidance Letter 920/6/99–00–07–03–02–15/ITC in which it clarified the VAT registration requirements for taxpayers performing accounting and record keeping duties for joint ventures that are not legal entities. According to the SFS, taxpayers performing such duties are required to register for VAT if they are paid over UAH 1 million ($41,000) in the last 12 calendar months. The registration application must be filed by the 10th of the calendar month following the month during which the threshold is met. Taxpayers not meeting the threshold are advised to register voluntarily within 20 calendar days of the beginning of a tax period.

On October 24, 2019, the SFS issued Guidance Letter 974/6/99–00–07–03–02–15/IPK in which it clarified that the transfer of part of the assets under a separation balance sheet to a newly created successor entity from a legal entity that has been reorganized (including though a spin-off) is not subject to VAT in Ukraine.

On October 24, 2019, the SFS issue Guidance Letter 987/6/99–00–07–03–02–15/IPC in which it clarified that recruitment services provided by nonresidents to Ukrainian businesses are not subject to VAT because the service is sourced outside Ukraine. However, the standard 20 percent VAT rate applies to recruitment services provided by Ukrainian businesses to nonresidents as the services are sourced where the vendor is registered.

On October 28, 2019, the SFS issued Guidance Letter 1047/6/99–00–04–02–03–15/ITC in which it clarified that a non-VAT registered taxpayer receiving services from a nonresident has the right to correct previously declared erroneous VAT calculations by submitting an amendment form to the tax authority, subject to the statute of limitation period.

On October 31, 2019, the SFS, issued Guidance Letter 1127/6/99–00–07–03–02–15/PKI in which it clarified that consulting services provided to nonresidents where the work is performed at the place of business of the buyer are not subject to VAT because the services are sourced outside of Ukraine. Moreover, taxpayers should not include such services in the computation of the total sales volume when determining their VAT registration obligations.

On October 31, 2019, the SFS issued Guidance Letter 1124/6/99–00–07–03–02–15/IPK in which it clarified that services involving the granting of access to computer programs are sourced where the seller is established. The tax base should be determined based on the contractual value, which includes any funds and the value of tangible and intangible assets that a taxpayer receives directly from the buyer or through a third person as compensation. The VAT liability arises on the earlier of the date on which payments for the goods or services are deposited in the VAT payer’s bank account; the date on which the goods or property rights are shipped or transferred; or on which a document confirming the provision of the services was executed.

On November 5, 2019, the SFS issued Guidance Letter 1185/6/99–00–07–03–02–15/PKI in which it clarified that commissions earned by licensed securities traders for trading or managing securities are not subject to VAT and that cash payments, including commissions, made to licensed securities traders for the cost of such services are not included in the VAT base.
On November 21, 2019, the SFS issued Guidance Letter 1471/6/99–00–07–03–02–15/PKI in which it clarified that warranty payments received from an insurance company are not subject to VAT if the payments are used to fulfill the warranty obligations, with the unused portion returned to the insurance company quarterly. However, payments used for services beyond the scope of the agreed upon warranty repairs are subject to VAT and the taxpayer receiving the payments must compute the amount of any VAT liability incurred.

Ukraine’s parliament recently accepted for consideration a draft law which would require nonresidents providing digital services to Ukrainian individual customers to register for and collect VAT effective January 1, 2021 if their taxable sales exceed UAH 1 million ($40,900) per year. Under the draft law, digital services would include the sale of images or text, including photographs, e-books, and magazines; the sale of audiovisual works, videos, and games; online gambling and the provision of related services; the provision of access to electronic commercial, educational, and entertainment information and other similar resources; the provision of cloud technologies for data placement; the transfer of the right to use computer software and related updates, as well as the remote servicing of that software and electronic equipment; and the provision of advertising services on the internet, mobile applications, and other electronic resources. The following would not qualify as electronic services: services that are ordered online but are not provided via the internet; the transfer of the right to use computer software (including computer games) and databases on physical carriers; consulting services by email; and internet access services.

China: Overview of Recent Indirect Tax Developments

On November 25, 2019, the Ministry of Finance (MOF), the Ministry of Commerce and the State Taxation Administration (SAT) released a circular (Circular [2019] No. 91) concerning VAT refunds on the purchase of equipment used by domestic research and development (R&D) institutions or foreign-invested R&D centers for the period January 1, 2019—December 31, 2020. Domestic R&D institutions that are eligible for the full refund of VAT include the R&D or technology institutions designated and approved by the MOF, Customs Service, the Ministry of Science and Technology and the SAT. Foreign-invested R&D centers are also eligible for the refund if they meet the required conditions. Foreign-invested R&D centers established on or before September 30, 2009, must meet the following conditions: (1) the invested amount must be at least $5 million where the R&D center is a separate entity with legal personality or a department of a company or branch; (2) the R&D expenses exceed CNY 10 million ($1.43 million) on an annual basis; (3) the staff engaged in R&D exceeds 90; and (4) the cumulative value of the equipment purchased is more than CNY 10 million. Foreign-invested R&D centers established on or after October 1, 2009, must meet the following conditions: (1) the invested amount is at least $8 million where the R&D center is a separate entity with legal personality or a department of a company or branch; (2) the staff engaged in R&D exceeds 150; and (3) the cumulative value of the equipment purchased is more than CNY 20 million ($2.86 million). A foreign-invested R&D center must be recognized as such by the competent department of commerce. A guideline for approval of foreign-invested R&D centers and a list of eligible equipment are attached to the circular.

On December 31, 2019, the SAT issued Announcement No. 45/2019, which amends the VAT deduction rules, effective January 1, 2020. A domestic subcontractor receiving payments from a domestic general contractor for an overseas construction project is presumed to have generated income from abroad and is eligible for the VAT exemption for cross-border services. The tax credit rating of a taxpayer may be applied to determine VAT refund amounts. Effective from March 1, 2020, taxpayers with invoices issued on or before December 31, 2016, which exceed the confirmation and certification deadlines but satisfy other criteria, are still permitted to take VAT deductions.

Source: China (People's Rep.)—Input VAT refund on purchase of equipment used by R&D institutions—continued (Nov.26, 2019), News IBFD; Bloomberg Law News Jan. 6, 2020, China Tax Agency Announces Amendments to VAT Deduction Rules.
India: Amendments to GST Law

On January 1, 2020, the Central Board of Indirect taxes and Customs (CBIC) issued Notification No. 01/2020—Central Tax, which amends several key goods and services tax (GST) provisions effective January 1, 2020. The Notification introduces an alternative composition scheme for certain sellers with annual gross receipts not exceeding INR 5 million ($70,000). The composition scheme is an alternative method of levying GST, which allows small taxpayers to pay GST at a flat rate of 6 percent regardless of the nature of their sales. The Notification further allows states to request a higher registration threshold of INR 4 million ($56,000) for sellers of goods, provided the GST Council has made such a recommendation. The Notification further empowers the Commissioner to extend the due dates for filing the Annual Return and Reconciliation statement as well as the monthly and annual statement by a taxpayer required to collect GST under the tax at source (TCS) mechanism. Under the TCS, e-commerce operators are required to collect part of the GST from the consideration received by them on behalf of the underlying sellers who use the online platform. Moreover, the Notification introduces the option for taxpayers to transfer any tax, interest penalty, fee, or any other amount available in the electronic cash ledger to the electronic cash ledger for integrated GST, central GST, and state GST. In addition, the Notification empowers the National Anti-profiteering Authority to impose a penalty equal to 10 percent of the profiteered amount. Finally, on December 31, 2019, the CBIC issued Notification No. 29/29-Central Tax (rate) and Circular No. 354/189/2019-RCU, which amend the self-assessment requirement for leases of motor vehicles. To read a report prepared by the KPMG International member firm in India, please click here.

Malaysia: Measures to Reduce Compliance Burden for Nonresident Digital Services Providers

Malaysia’s Ministry of Finance (MOF) recently issued a release on measures to reduce double taxation of digital services provided by non-resident service providers, which are subject to service tax effective January 1, 2020. (KPMG’s previous discussion on Malaysia imposing service tax on remote digital services, please click here.) The MOF has extended the group relief facility to the import of services. As a consequence, local recipients do not need to self-assess service tax on taxable services imported from foreign providers within the same group. The MOF further introduced an exemption from accounting for and paying service tax on the importation of professional services and advertising services if the services are the same as those provided by the company. Moreover, local service providers that have paid service tax to foreign service providers on the importation of digital services are allowed to file a refund claim to offset the actual amount of service tax paid. The MOF also noted that distance education services for preschool, primary and secondary education, and tertiary education, including vocational and professional training, provided online either by local or foreign service providers are exempt. Online services such as e-newspapers and other scientific or historical materials are also exempt. Finally, on December 30, 2019, the Royal Malaysian Customs Department (RMCD) published an announcement in which it clarifies that nonresident digital service providers can apply to the RMCD to be allowed to issue invoices inclusive of service tax (rather than detail
net, tax, and gross amounts). Nonresident digital services providers can further apply to the RMCD to be allowed to account for service tax on invoice date rather than payment date.


**Thailand: Updated Proposal to Require Nonresident Digital Services Providers to Collect VAT**

On January 14, 2020, the Thai Revenue Department (TRD) issued the third draft of the proposed VAT amendments that will affect nonresident e-commerce operators and electronic platforms. Under this draft, the key VAT obligations of foreign companies providing digital services to non-VAT registered recipients remain unchanged from the previously issued draft. (For KPMG’s previous discussion on the previous proposal, please click [here](#).)

A foreign company that provides digital services to a non-VAT registered person would be required to register for VAT in Thailand, subject to meeting the THB 1.8 million ($58,000) threshold. The registered foreign company would have an obligation to remit the VAT collected to the TRD, without a right to credit any Thai VAT incurred on expenditures. Where a foreign company provides services, receives the payment of service fees, and delivers the services through an electronic platform, the electronic platform operator would be required to register for and pay VAT on behalf of all foreign companies that use its platform. The third draft clarifies that the platform owner would only be required to register for VAT once and pay the combined VAT for all relevant foreign companies.

The third draft further clarifies the definitions of “goods,” “digital services,” and “electronic platforms.” Any intangible assets transferred via the Internet or any other electronic network would be excluded from the definition of goods. Digital services would be defined as a service delivered through the Internet or any other electronic network which are substantially automated in their nature and cannot be provided without information technology. An electronic platform would be defined as markets, channels or any other method that several service providers use to provide digital services to service recipients.

The draft law would further amend the VAT self-assessment requirement to explicitly state that (1) a Thai VAT registered person who pays a service fee to a foreign digital services provider would be required to self-assess VAT on such services, and (2) the foreign company would not be required to register for VAT in Thailand. Moreover, the draft clarifies that a foreign company who has registered for Thai VAT for providing digital services outside of Thailand and where such services are used in Thailand by a non-VAT registered person would be prohibited from issuing Thai tax invoices. Finally, the draft states that an electronic VAT registration system may be introduced at a later point by the Minister of Finance. Further details are expected to be released later. At this stage, it is unclear when the proposed VAT amendments will be enacted. To read a report prepared by the KPMG International member firm in Thailand, please click [here](#).
2020 Incoterms Published

The International Chamber of Commerce (ICC) recently published the new Incoterms for 2020, which are expected to be effective for a decade. In its new list, the ICC has renamed the Delivered at Terminal (DAT) Incoterm Delivered at Place Unloaded (DPU). DPU is the Incoterm in which goods are delivered unloaded at the place of destination and the change of name is because the goods cannot only be unloaded at a shipping terminal or infrastructure, but at any other point in the destination country which has the required facilities for unloading (e.g. factory or warehouse).

The ICC also included in the Free Carrier the option of Bill of Lading (BL) with on-board notation. The buyer may instruct the carrier to issue a BL which specifies that the goods have been loaded aboard the ship. The BL is still the most common shipment document used in the letter of credits transactions to substantiate the delivery of the goods and, thereby, payment of the credit to the seller.

The new Incoterms further clarify the Carriage & Insurance Paid (CIP) and Cost, Insurance and Freight (CIF) Incoterms. The Incoterms CIP means the seller is obliged to take out under contract shipping insurance in favor of the buyer with extensive coverage. Nevertheless, the parties may agree to take out insurance which offers reduced coverage. The Incoterms CIF means that the seller is obligated under the contract to take out insurance only with minimum coverage. This derogation from CIP is justified on the basis that as the CIF is commonly used for bulk maritime shipments (raw materials, minerals etc.) whose price per kilo is low and where a requirement for insurance with maximum coverage would significantly raise the policy premium, making it much more expensive. As with Incoterms CIP, the parties may agree to take out insurance which offers broader coverage.

The Incoterms 2020 more precisely explain which party, seller or buyer, is responsible for carrying out customs formalities and clearance, and for assuming the costs and risks thereof. The release of goods in transit is included for the first time in the new Incoterms. For the release of goods in transit, the rule which is used is that the liability is assigned to whoever assumes the risk of shipment to the place of delivery. Therefore, in the Incoterms EXW, FCA, FAS, FOB, CPT, CFR, and CIP in which the risk of shipment is transferred at origin (country of the seller), the liability in the customs transit clearance is assumed by the buyer. In Incoterms DAP, DPU, and DDP the risk is passed on at the destination (country of the buyer), so the seller bears the liability. This change may be relevant in international sales for which the goods must pass through customs of complex countries prior to arriving at the customs of the import country.

Moreover, the security liability is addressed more precisely for two circumstances: shipments from the country of origin to that of the destination and customs clearance formalities and procedures (export/transit/import). During the shipment of the goods, the security liability is assumed by the
party which executes the carriage of goods contract: Seller (CPT, CFR, CIP, CIF, DAP, DPU and DDP) or buyer (EXW, FCA, FAS and FOB). As far as customs clearances are concerned, the safety liability lies with the party which must undertake the clearance.

Tax professionals should pay attention when determining where a transaction has occurred, as Incoterms are not always definitive. As this could pose a compliance risk, most contracts should contain separate information about when and where title and ownership is transferred. However, Incoterms clearly set out import duties responsibilities, especially in Incoterm DPP where it is assumed that the seller is responsible for import. This implies, in most cases, that the obligation to pay import VAT (or its local equivalent) will likely be the seller’s responsibility. All other Incoterms assume the buyer is responsible for import duties, clearance and other formalities.

In Brief

— **Albania**: On December 18, 2019, the parliament of Albania approved the 2020 Fiscal Package, which, among other things, amends the VAT law. Per the Package, the sale of new electric vehicles is exempt from VAT. The sale of electric vehicles with more than nine seats used for public transport remains subject to the reduced VAT rate of six percent. The sale of construction services related to buildings destroyed during the 2019 earthquake is VAT exempt during the rebuilding process. In addition, taxpayers are required to issue the VAT self-assessment invoice within 10 days of the month following the month of the sale (previously the deadline was the 14th day of the next month). The 2020 Fiscal Package further harmonizes the VAT law with the new rules implementing a new electronic invoicing system to replace the current invoices (pre-printed invoices to be completed by hand).

— **Algeria**: On December 11, 2019, Algeria’s President signed into law the Finance Act for 2020. The Act extends the scope of VAT to apply to online sales of digital goods and certain digital services in Algeria, which are subject to the nine percent reduced rate. It also removes the VAT liability threshold, introduces a new VAT rate, introduces a VAT refund period for “partial taxpayers,” introduces VAT exemptions for startups, and extends the application of the reduced VAT rate for the tourism sector until 2022. To read a report prepared by the KPMG International member firm in Algeria, please click [here](#).

— **Angola**: On December 26, 2019, the tax authority of Angola issued a notice clarifying the VAT payment and declaration procedure under the transitional VAT regime for taxpayers with invoicing volumes or import operations for the previous year over AOA 120.6 million ($244,000). The notice clarifies that VAT payments for the fourth quarter of 2019 are due January 31, 2020. The taxpayers at issue owe three percent VAT on the total value of goods and services actually purchased in the quarter, including purchases from nonresidents. Finally, the tax authority clarified that taxpayers must file returns electronically through the taxpayer portal and must electronically submit monthly vendor operations information by the last day of the following month.
— **Armenia**: On December 9, 2019, Armenia’s Ministry of Finance issued a clarification regarding the increase of the VAT registration threshold from AMD 58.35 million ($122,000) to AMD 115 million ($240,000) effective January 1, 2020. Taxpayers that exceeded the AMD 58.35 million prior to the amendments being signed into law (i.e., June 27, 2019), are not eligible for the new AMD 115 million threshold (i.e., such taxpayers must remain registered for VAT). For taxpayers that have not exceeded the old threshold, the new threshold applies retroactively from the date the amendments were signed into law.

— **Australia**: On December 11, 2019, the Australian Taxation Office finalized GST Ruling GSTR 2019/1 which discusses when a sale of anything other than goods or real property is connected with the indirect tax zone (i.e., Australia) for GST purposes. For a vendor to be liable for GST on a taxable sale, one of the requirements is that the sale must be connected with the indirect tax zone. The Ruling further explains exclusions from the connected with Australia rules, where some sales of intangibles made by nonresidents are treated as being not connected with Australia. The Ruling applies from October 1, 2016 and supersedes previous rulings on this matter without material amendments, except that the new ruling also covers digital services.

— **Bahrain**: Bahrain’s National Bureau of Revenue (NBR) recently issued new guidance on calculating the market value on related party transactions for VAT purposes. According to the NBR, VAT should be calculated based on the market value for sales between related persons where the following conditions are met: (1) the value of the sale is lower than the market value and (2) the customer is not entitled to deduct the VAT in full. The market value is the fair price tradeable in the open market between two independent parties under similar circumstances at the same date as the date of the sale and in accordance with the following conditions: (1) neither the seller nor the customer is subject to any kind of commercial pressure, (2) both the seller and the customer independently work to achieve what is in their best interest, and (3) the transaction is made within a reasonable period of time (i.e., no time pressure). If the market value cannot be determined in accordance with these criteria, the NBR expects the value to be determined based on the methodologies set out in the guidelines issued by the Organization for Economic Cooperation and Development (OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations). The methodologies should be used notwithstanding that the parties involved may both reside in Bahrain. The NBR will not pre-approve any methodology used by a taxpayer to determine the market value of related party transactions. However, taxpayers must keep records and details of the methodology used to determine the market value of sales made between related persons to provide to the NBR upon request. If the records are not provided to the NBR within 30 days from the date of request, or if the NBR finds that the related parties used a value lower than market value, then the NBR has the right to replace the value used with the market value and shall calculate the VAT on this basis.
**Belgium**: On November 26, 2019, the Belgian Federal Public Finance Service (FPS) published a circular providing commentary on the VAT consequences of the new rounding rules that are effective December 1, 2019. According to the circular, vendors must round up or down to the nearest five cents on all cash payments. Taxpayers may apply this rule on a voluntary basis on non-cash payments. The circular explains that if the total amount payable ends in one, two, six or seven cents, it should be rounded down to the nearest multiple of five cents. If the total amount payable ends in three, four, eight or nine cents, it should be rounded up to the nearest multiple of five cents. Companies must round the total amount paid in cash by the consumer, subject to the following conditions: (1) the payment is made in the physical presence of both the consumer and the company, and (2) the amount payable is more than five cents. Rounding is not permitted for distance sales and sales between private individuals or companies. If the company rounds only cash payments, only the amount actually paid in cash should be rounded (even if the payment is made partly in cash and partly using another payment method). If the company decides to round payment methods other than cash, the total amount payable is rounded even if multiple payment methods are used. In this case, it must clearly display that the total amount is always rounded. The sales receipt or supporting documentation must indicate the total amount payable, and the rounded amount, whether that is the amount actually paid in cash or the actual total amount paid.

**Belgium**: On December 23, 2019, Belgium published in the Royal State Gazette a Royal Decree implementing the EU VAT Quick Fixes requirement to have sufficient documentary proof to substantiate the zero-rating of intra-EU sales of goods. To this end, a taxpayer must be in possession of all documents justifying the existence that the goods have effectively been shipped. These documents include contracts, order forms, invoices from shipping companies and payment documents. In addition, the Decree adds specific legal rebuttable presumptions effective January 1, 2020. These presumptions are new evidence at the European level to demonstrate the reality of the shipment of goods from one EU Member State to another. The new rules further provide for an additional national rebuttable presumption according to which a taxpayer may also provide proof of shipment from Belgium to another EU Member State by means of a destination document relating to those goods in combination with the invoice relating to the shipping of such goods if carried out on behalf of the vendor. Also in this case, the possession of those documents will reverse the burden of proof.

**Bolivia**: On October 29, 2019, Bolivia’s National Tax Service (Servicio de Impuestos Nacionales, SIN) issued normative directory resolution 101900000018, which amends the rules introducing a new electronic invoicing system. The Resolution sets forth a new implementation schedule, starting from June 1, 2020. The Resolution further updates the deadlines for issuing, through the Virtual Invoicing System-SFV, manual invoices, pre-valued invoices, invoices for public shows and invoices for rents. Moreover, the Resolution states that the invoices whose issuance was authorized by the SIN through the Virtual Invoicing System-SFV must be effectively issued by
taxpayers before May 31, 2020. Authorized invoices not issued before or on that date must be cancelled. In addition, the Resolution establishes the Quick Response Code (QR) as the only requirement for the issuance of pre-valued invoices related to the telecommunications sector. Finally, the Resolution provides that invoices issued via online computerized invoicing, online electronic invoicing and electronic invoicing with fixed deadlines (*Facturación Electrónica por Ciclos*) will be valid for purposes of determining the following taxes: VAT; the complementary regime to the VAT (RC-VAT); corporate income tax (*Impuesto a las Utilidades de las Empresas*, IUE); and the Integrated Tax System (*Sistema Tributario Integrado*, STI).

— **Canada**: The KPMG International member firm in Canada published a special report on employers’ indirect tax obligations on employee benefits. Many employers that offer taxable benefits to their employees must remit amounts of GST, harmonized sales tax (HST), and Quebec sales tax (QST) related to these benefits by March 31, 2020. These tax amounts are due each year, and are an actual cost to employers because they are not collected from the employees. When determining the proper amounts to remit, employers should note that some of the 2019 calculations may be different from the prior year’s calculations due to the phase-out period of the recaptured input tax credits for HST purposes in certain provinces and the phase-out of input tax refund restrictions for QST purposes in Quebec.

— **Colombia**: The National Tax Authority of Colombia (*Dirección de Impuestos y Aduanas Nacionales*, DIAN) recently published Ruling 2576 in which it held that the transactions carried out under a franchise agreement between a Colombian parent and a foreign subsidiary are carried out between related parties and are therefore not subject to the VAT zero-rate treatment applicable to the export of services.

— **Croatia**: Effective January 1, 2020, Croatia amended its VAT law. The amendments include, among other things, the implementation of the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; (3) establish uniform criteria in determining the VAT treatment of chain transactions; and (4) introduce a common framework for the documentary evidence required to claim a VAT exemption for intra-EU sales of goods. The amendments further increase the threshold to apply the cash accounting system from HRK 3 million ($437,000) to HRK 7.5 million ($1.1 million). The amendments further clarify that the VAT exemption for sales of public interest is granted to all entities regardless of their institutional form. Finally, taxpayers are allowed to adjust VAT if the acquirer of the goods and services not having a permanent establishment or habitual residence in Croatia notifies the taxpayer in writing that a VAT refund was not requested. To read a report prepared by the KPMG International member firm in Croatia, please click here.
— **Denmark**¹⁴: Effective January 1, 2024, businesses in certain sectors will be required to use electronic sales registers to reduce VAT avoidance. These include cafes, taverns, discos, pizzerias, barbecue bars, ice cream parlors, grocers including 24-hour kiosks, and restaurants. It is expected that the registration systems with the required standards will be available from mid-2021.

— **Denmark**¹⁵: On December 4, 2019, the Danish tax authority published a tax board binding Answer No. SKM2019.599.SR clarifying the application of the VAT exemption for newspapers to an electronic publication. In the case at hand, the taxpayer is a publisher of current news and other stories through his website; he considers the publication to be VAT exempt under the newspaper exemption. The tax board confirmed that the exemption applies because the taxpayer’s publication is read primarily for its current news material content; addresses a wide, general circle of readers; and covers a broad subject area.

— **Ecuador**¹⁶: On November 20, 2019, Ecuador published in the official gazette Resolution NAC-DGERCGC19-00000051, which establishes the procedures for exporters of services to obtain a VAT refund. According to the Resolution, exporters may request refunds of VAT paid on the import of raw materials and assets necessary for the provision of services. Services exporters are eligible for a VAT refund provided that they have an active tax ID (Registro Único de Contribuyentes, RUC); have submitted the VAT returns corresponding to the periods to which the VAT refunds relate; and are considered exporters according to Resolution CPT-RES-2019-003. The Resolution further clarifies that the VAT refund only relates to amounts that are not offset (e.g., tax credits, deductible costs or expenses) or compensated in any other way. Exporters of services must submit the VAT refund request to the Internal Revenue Service (IRS) by using the official forms. The VAT refund request must include, among other things, a list of invoices and receipts related to the export of services.

— **Ecuador**¹⁷: On December 31, 2019, Ecuador published the Law of Simplicity and Tax Progressivity (Law No. SAN-2019–1270) in the official gazette. The Law amends the VAT law to provide that the import of digital services consumed in Ecuador are within the scope of VAT, including provisions for VAT registration by non-resident service providers. The Law further clarifies that for sales made by service providers that are not registered, the VAT is either self-assessed by business recipients or withheld by an intermediary is involved in facilitating the payment (e.g., credit card issuer and others specified by resolution).

— **European Union**¹⁸: On December 19, 2019, the ECJ published its judgment in Segler-Vereinigung Cuxhaven e.V., Case C-715/18, in which it held that the letting of boat moorings does not fall within the scope of the reduced VAT rate applicable to accommodation services.
— **European Union**

**19:** On December 19, 2019, the ECJ published its judgment in *Amarasti Land Investment*, Case C-707/18, in which it held that the parties involved in a sale of land are free to contractually agree that the purchaser bears all the costs related to the administrative formalities, such as the first registration of the land. However, this does not automatically entitle the purchaser to deduct VAT related to those costs. Moreover, the purchaser, in carrying out all the administrative formalities related to the transfer of the land, is deemed to provide a service to the vendor, regardless of the existence of any consideration.

— **European Union**

**20:** On December 19, 2019, the ECJ published the Opinion of its Advocate General in *AGROBET CZ, s.r.o.*, Case C-446/18, in which it opined that it is not consistent with the EU VAT Directive to defer the assessment and payment of the undisputed part of the excess VAT claimed for an indefinite period of time until the disputed part of the excess VAT claimed has been adequately inspected.

— **Estonia**

**21:** On December 19, 2019, Estonia published Law No. 521 in the official gazette. It implements the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; (3) establish uniform criteria in determining the VAT treatment of chain transactions; and (4) introduce a common framework for the documentary evidence required to claim a VAT exemption for intra-EU sales of goods.

— **Fiji**

**22:** On November 24, 2019, the Fijian Revenue and Customs Authority published the draft 2020 VAT Act, which would replace the 1991 VAT Act. The draft bill would impose a nine percent standard VAT rate, unless a taxable sale is zero-rated. The bill would further establish anti-avoidance rules and set the criteria for compulsory and voluntary VAT registration, including cancellation of the registration. Moreover, the bill would establish rules for bundled transactions and for the sale of goods or services, including through an electronic marketplace. In addition, the bill would establish VAT credit rules, carry-forward rules, and VAT adjustments rules, including for bad debts; implement rules for the time and value of sales, including taxable period determinations. The bill would also include special rules for telecommunications, rights and options, currency exchanges, vouchers and employee benefits, general insurance, forfeit deposits, and deemed sales. Finally, the bill would implement procedures for deadlines, refunds, returns, invoices, and submitting required documentation.

— **France**

**23:** On December 12, 2019, the French tax authority published a ruling clarifying that reinsurance companies, with some exceptions, are VAT exempt. If a company acts as a marketplace for reinsurance, it will not be exempt because it is not carrying out an insurance service itself. Reinsurers making more from their fees than the policy also will not be exempt.
France: On December 20, 2019, the French General Directorate of Customs and Indirect Taxes published Circular No. CPAD1937201C on the declaration of the exchange of goods between EU Member States. The Circular replaces previous guidance and takes into account the possible exit of the UK from the EU. The Circular clarifies the VAT treatment of goods shipped between France and the UK before and after the withdrawal date; the impact of Brexit on the European declaration of services; Brexit’s impact on the calculation of the reporting threshold of EUR 460,000 ($498,000); transfers of inventory or the permanent transfer of fixed assets; and the VAT exemption regime for individuals.

France: On February 10, 2020, the French tax authority published a press release confirming that the installments of digital services tax (DST) due for the tax year 2020, which should, in principle, be paid in April and October 2020, may be replaced by a single instalment to be paid in December 2020 with no late payment interest or penalties being imposed. The press release follows an announcement made by the Finance Minister at the World Economic Forum Annual Meeting in Davos, Switzerland, on January 22, 2020 in the context of negotiations on new international taxation rules. The tax authority stated that the DST due with respect to 2019 is not impacted by the measure and must be declared and paid in April 2020 (after deduction of installments paid in November 2019) as planned initially.

Hungary: On December 12, 2019, the Hungarian National Tax and Customs Administration issued a guide on the VAT changes for 2020. The changes include the implementation of the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; (3) establish uniform criteria in determining the VAT treatment of chain transactions; and (4) introduce a common framework for the documentary evidence required to claim a VAT exemption for intra-EU sales of goods. Other amendments include a VAT rate reduction for accommodation services to 5 percent, subject to a 4 percent tourism development contribution and an amendment allowing a reduction in the VAT base for bad debt claims.

Hungary: On December 23, 2019, the Hungarian National Tax and Customs Administration explained the VAT adjustment rules for bad debts effective January 1, 2020. The explanation includes the determination of bad debts for VAT purposes and the conditions for the debts’ eligibility for VAT adjustment. The explanation further clarifies the documentation requirements and the accounting, reporting, and adjustment computation rules. Finally, the explanation includes transitional provisions for bad debts relating to transactions carried out between December 31, 2015, and January 1, 2020.
**Iceland**: On December 30, 2019, Iceland published in the official gazette a law introducing VAT exemptions for so called “green” vehicles. The law provides that the customs authority, at the time of customs clearance, may cancel the VAT on electric, hydrogen and hybrid vehicles. For fully electric and hydrogen powered passenger vehicles (and motorcycles), the maximum VAT in customs exemption is ISK 1,440,000 ($11,350) between January 1, 2020, and June 30, 2020, and ISK 1,560,000 ($12,300) between July 1, 2020 and December 31, 2023. Local sellers of these vehicles shall not collect VAT for the first ISK 6,000,000 ($47,300) between January 1, 2020 and June 30, 2020, and ISK 6,500,000 ($51,200) between July 1, 2020 and December 31, 2023. For hybrid passenger vehicles (and motorcycles), i.e. vehicles that use gasoline/diesel and electric motors as powertrain, the maximum VAT in customs exemption is ISK 960,000 ($7,560) between January 1, 2020, and December 31, 2020; ISK 600,000 ($4,700) between January 1, 2021 and December 31, 2021; and ISK 480,000 ($3,800) between January 1, 2022 and December 31, 2022. Local sellers these vehicles are not required to collect VAT for the first ISK 4,000,000 ($31,200) between January 1, 2020 and December 31, 2020, and ISK 2,500,000 ($19,500) between January 1, 2021 and December 31, 2021, and ISK 2,000,000 ($15,600) from January 1, 2022 and December 31, 22. Busses used in public transportation that are powered by methane, methanol, electricity and hydrogen powertrains are fully exempt from VAT in customs. Local sellers of busses do not collect VAT from the first local sale of busses used in public transport.

**India**: The Gujarat High Court recently held that GST does not apply on ocean freight shipping services provided by a person outside India for goods shipped to India. To read a report prepared by the KPMG International member firm in India, please click [here](#).

**Ireland**: On December 23, 2019, the Irish tax authority published Revenue eBrief No. 224/19 which clarifies recent amendments to the VAT Act, including: (1) amendments to the provisions on the deductibility of VAT incurred on service charges, such as legal fees related to business transfers, effective December 22, 2019; (2) the power of tax authorities to inspect and remove records with respect to mutual assistance requests, effective December 22, 2019; and (3) subjecting food supplements used for human consumption to a reduced VAT rate, effective January 1, 2020.

**Japan**: In December 2019, the government of Japan proposed a tax reform outline, which, among other things, would allow taxpayers to apply, under certain circumstances, for a one month filing extension for the consumption tax return. To read a report prepared by the KPMG International member firm in Japan, please click [here](#).

**Lesotho**: On November 7, 2019, the Lesotho Revenue Authority (LRA) issued a public notice informing all VAT-registered taxpayers to complete standardized VAT schedules, which must include the following information: the invoice date; the vendor’s name; the vendor’s VAT number; the invoice number; the description of the goods and services purchased; the amount excluding VAT; and the total amount. These VAT schedules must be submitted together with the monthly VAT returns. The purpose of the schedules is
to provide detailed information on the VAT credit claimed on expenses incurred by taxpayers. According to the LRA, this process will speed up the processing and payment of VAT refund claims. The LRA will reject VAT refund claims if returns are filed without VAT schedules.

— Liechtenstein: Liechtenstein and Switzerland recently agreed on a new VAT cooperation pact. The new arrangement will enable authorities in each state to request VAT and customs information from the other on taxpayers in the other state, or on domestic businesses subject to VAT in the other state. According to the Liechtenstein government, the agreement will simplify tax enforcement and administration where a domestic company appoints an entity in Switzerland to oversee its Liechtenstein tax affairs or manages its affairs from there. The two countries have also agreed to expand electronic access by both authorities to information relevant to the enforcement of tax on imported goods.

— Luxembourg: On December 6, 2019, Luxembourg published a law in the official gazette that implements the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; (3) establish uniform criteria in determining the VAT treatment of chain transactions; and (4) introduce a common framework for the documentary evidence required to claim a VAT exemption for intra-EU sales of goods.

— Luxembourg: On December 19, 2019, the VAT authorities announced that effective January 1, 2020, VAT returns and summary statements for intra-EU sales of goods and services must be filed electronically through the eCDF platform. This mandatory filing requirement applies to all taxpayers, regardless of whether they file returns on a monthly, quarterly, or annual basis.

— Luxembourg: On December 23, 2019, the EU published in the official journal Council Implementing Decision (EU) 2019/2210 authorizing Luxembourg to increase the VAT registration threshold to EUR 35,000 ($38,000) between January 1, 2020 and December 31, 2022.

— Malta: On November 19, 2019, Malta published the Value Added Tax (Amendment of Fifth Schedule No. 3) Regulations 2019, which clarifies the VAT exemption for education services. According to the Regulations, the provision of vocational training or retraining by a government school or institution, the University of Malta, a school or institution registered under the Education Act, or by an educational establishment recognized by the Commissioner, also falls under the exemption for education services.

— Moldova: On December 5, 2019, the Moldovan parliament various VAT amendments, most of which became effective January 1, 2020. The amendments require nonresidents to register for and collect VAT effective April 1, 2020, if they sell digital services to consumers in Moldova and those who deliver goods using an electronic interface that facilitates distance selling of goods. In addition, the amendments set the VAT tax point due date as the earlier of the date of the sale or the date of payment. VAT is due by the
25th of the month following the month in which the sale or the payment took place. Finally, the law introduces a self-assessment requirement on pledged, mortgaged, and sequestered property or for assets of business entities declared insolvent.

— Netherlands: Effective January 1, 2020, sole proprietors in the Netherlands are required to use a new VAT identification numbers (VAT ID). The new personal VAT ID, consisting of a unique series of 14 characters, must be displayed on invoices and on the proprietor’s websites. However, current VAT numbers will continue to be used for communication with the tax authorities and for VAT returns. The changes mean that traders registered for VAT in other EU Member States must include the new VAT number on invoices for all intra-EU sales to sole proprietors in the Netherlands. Tax authorities in other EU Member States have warned that failure to use the correct VAT ID on invoices could result in loss of the zero-rating applicable on intra-EU sales.

— Netherlands: The KPMG International member firm in the Netherlands has prepared a report on the VAT treatment of promotional gifts, staff benefits, and private use of cars provided free of charge or below cost.

— Nigeria: On October 3, 2019, Nigeria’s Federal High Court published its decision in Hotel Owners and Managers Association, FHC/L/CS/360/2018, in which it held that the various provisions under the federal VAT Act which deal with services consumed in hotels, restaurants and events centers are inconsistent with the Constitution. The federal VAT Act is therefore void to the extent of that inconsistency. It is within the exclusive legislative competence of a State, in this case the Lagos State government, to legislate in this area. As a consequence, the Lagos State government has powers under the Constitution to impose consumption tax on goods and services consumed in hotels, restaurants and event centers in Lagos State.

— Norway: On December 11, 2019, the supreme court of Norway (Norges Høyesterett) published its decision in Gjensidige Pensjonsforsikring AS, HR-2019–2335-A. It held that IT solutions used for the pension and insurance industries and which relate to the management of pension funds are not to be regarded as VAT exempt services related to the management of special investment funds and investment companies. The supreme court interpreted the term "investment company" as a company or other legal entity that invests in securities and where each investor is the real owner of a proportionate share of the investment portfolio. The term may also cover private equity funds, where active ownership is exercised. As the taxpayer in the case at hand is not owned by its clients, the activities of the taxpayer do not qualify for the VAT exemption.

— Oman: According to recent news reports, the Minister of Commerce and Industry in Oman confirmed that Oman would introduce VAT sometime in the beginning of 2021. The Oman Tax Authority continues with its preparations so as to be ready to implement VAT within this timeframe. To read a report prepared by the KPMG International member firm in Oman, please click here.
— **Portugal**: On December 16, 2019, the Portuguese Minister of Finances presented the Draft Bill 5/XIV. The Law would allow taxpayers to deduct electricity costs incurred with electric vehicles or hybrid plug-in vehicles. The Law would further apply the reduced VAT rate of 6 percent to: treated waste water; visits to the zoo, botanic gardens and public aquariums; services providing guided or non-guided visits to buildings classified as of national, public or municipal interest, and museums fulfilling certain requirements. Bullfighting, however, will no longer benefit from the reduced rate. The Law would also authorize the government to expand the range of goods and services subject to the 6 percent and 13 percent VAT rates. Finally, the Law would recognize as bad debt any credit that is outstanding for longer than 12 months, if there is proof of impairment and of efforts having been made for their collection.

— **Romania**: On November 27, 2019, the European Commission decided to send a letter of formal notice to Romania for failing to correctly implement EU rules on the VAT treatment of used objects containing precious metals or stones. EU law prescribes special arrangements for VAT designed to facilitate trade of second-hand goods for these items. The Romanian rules exclude all used objects containing precious metals, precious stones or semi-precious stones from the special VAT mechanism and create difficulties for businesses in this sector. If Romania does not act within the next two months, the Commission may send a reasoned opinion to the Romanian authorities.

— **Romania**: Effective February 1, 2020, Romania abolished its VAT split payment system. The split payment system was first introduced on a voluntary basis in October 2017, and then on a mandatory basis in March 2018, but only for certain taxpayers. However, the mandatory requirement was removed after Romania’s request to derogate from EU rules with the split payment system was rejected due to concerns with the administrative burden for affected businesses.

— **Slovenia**: Effective January 1, 2020, Slovenia amended its VAT law to adopt the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; (3) establish uniform criteria in determining the VAT treatment of chain transactions; and (4) introduce a common framework for the documentary evidence required to claim a VAT exemption for intra-EU sales of goods. The amendments further modify the forms for the VAT return and EC-Sales List due to implementation of the new reduced VAT rate and additional reporting of transactions in relation for call-off stock. Finally, the amendments modify the penalty regime for minor tax offences, serious tax offences, and particularly serious offences. To read a report prepared by the KPMG International member firm in Slovenia, please click [here](#).

— **South Africa**: On December 12, 2019, the South African Revenue Service published a VAT guide for vendors, which includes largely non-technical information on numerous aspects of South Africa’s VAT regime.

— **South Africa**: The KPMG International member firm in South Africa has prepared a special report on the new draft regulations issued for allowances affecting the new carbon tax.
St Lucia: On October 29, 2019, ST Lucia’s parliament amended the second schedule of the VAT Act implementing a VAT relief for locally produced educational materials. The amendments define educational materials as a sale of printed material as defined under Customs Tariff Heading 49:01–49:05. This includes newspapers, trade catalogues and advertising matter, magazines, books, patterns and samples of no commercial value. Under the amendment, the printing of educational materials would be zero-rated. The effective date of amendment is to be determined.

Sweden: On December 10, 2019, the Swedish tax authority updated its guidance on the VAT treatment of shared workplaces to reflect a recent tax tribunal assessment. According to the guidance, a membership granting companies access to an activity-based workplace with various other services available is a leasing transaction and therefore exempt from VAT. The workplaces remain VAT exempt even if the premises are used jointly by other customers.

Sweden: On December 19, 2019, the Swedish tax authority issued clarification No. 202 516960-19/111 on the VAT treatment of SWAP transactions (i.e., a derivative contract through which two parties exchange the cash flows or liabilities from two different financial instruments). According to the guidance, when two parties exchange goods or services, the VAT treatment of those transactions must be assessed separately for each party. This assessment includes the determination of whether a taxable sale of goods or services is made. If a good is exchanged for a service, this service constitutes the fee for the goods sold, while the goods constitute the fee for the services provided. This means that two different sales have taken place which must be assessed separately. The compensation is the subjective value that the seller has actually received. For barter transactions, this means that the taxable amount is what the buyer of the good or service is willing to pay for it.

Switzerland: On November 28, 2019, the Swiss Federal Tax Administration published a general VAT guide, addressing the following topics: (1) VAT exemptions; (2) group taxation; (3) mixed goods and services contracts; (4) VAT deductions; and (5) refunds, payments, and the recovery of taxes.

Tunisia: On December 27, 2019, Tunisia published in the official gazette the Finance Law for 2020 (Law No. 78–2019), which introduces a 3 percent digital tax on the sale of computer applications and digital services by non-resident companies. Moreover, the Finance Law applies VAT on sales of medicines and pharmaceuticals effective January 1, 2020. Finally, the VAT rate increase for sales of residential property by property developers is postponed to January 1, 2024.

United Kingdom: The UK’s Upper Tribunal recently issued its decision in News Corp UK and Ireland Limited (News UK), [2019] UKUT 404 (TCC), in which it held that digital newspapers could be zero rated despite the EU law provision that said digital services may not be subject to a reduced rate. Although News Corp. won its recent appeal over the VAT rate for its online publications, HMRC confirmed in Revenue and Customs Brief 1 (2020) that the VAT treatment of sales of digital newspapers and other digital
publications remains unchanged and are thus subject to VAT at the standard rate. To read a report prepared by the KPM International member firm in the United Kingdom, please click here.

— **Uruguay**\(^4\): On October 9, 2019, Uruguay issued Decree No. 297/019, which grants a VAT credit for goods and services necessary to produce audio-visual content. The Decree defines audio-visual content as any work that is expressed in a creative and productive process of moving images, of any duration, that can be incorporated in any means known or that can be created for use in the future and will result in the final product of a feature film, short film, series or documentary. To enjoy the VAT credit, taxpayers must comply with all of the following requirements: (1) be registered with the National Cinema and Audiovisual Directorate (ICAU); (2) prove that it is up to date with contractual labor obligations; and (3) the final use of the contents must be exhibited to the public (advertisings will not be considered as exhibition to the public.).

— **Uzbekistan**: On November 7, 2019, Uzbekistan published Resolution No.ПП-4508, which introduces a simplified customs duty procedure for online purchases (goods purchased for own use). Based on the Resolution, effective January 1, 2020, if the customs duty exemption threshold is exceeded, the customs duty, VAT, and excise duty amounts are replaced by a single customs payment at a rate of 30 percent of the customs value, but not less than $3 per kilogram. This rate will apply to all categories of goods, regardless of the country of origin.

— **Zambia**\(^4\): On January 1, 2020, Zambia amended its VAT law. The amendments zero-rate the following sales: copper cathodes; capital equipment and machinery purchased by mining companies; and gas stoves, other gas cookers and gas boilers. The amendments further reduce the VAT recovery limit on diesel used by mining companies from 90 percent to 70 percent and on used electricity by mining companies from 100 percent to 80 percent. Moreover, the amendments disallow the VAT recovery on stationery, lubricants and spare parts. Finally, taxpayers are required to use electronic fiscal devices.

— **Zimbabwe**: Effective January 1, 2020, Zimbabwe amended its VAT law. The amendments require nonresident vendors of radio, television, and digital services to consumers in Zimbabwe to register for and collect VAT. Moreover, the definition of the tax point date has been extended to be the earliest of any one of the following: (1) invoice date, (2) payment date, (3) when goods are removed from their place of sale, (4) when the recipient takes possession of an immovable property; or (5) when the service is performed. To read a report prepared by the KPMG International member firm in Zimbabwe, please click here.

### 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

2. Orbitax, Slovenia Introduces New 5% Reduced VAT Rate for Printed and Electronic Publications (Dec. 27, 2019).
7. Orbitax, Armenia Clarifies Increase in VAT Registration Threshold (Dec. 17, 2019).
8. Australia—GST ruling on supplies connected with Australia finalized (Dec. 12, 2019), News IBFD; Orbitax, Australia Publishes Final GST Ruling on Intangibles (Dec. 17, 2019).
13. Colombia—National Tax Authority pronounces on VAT applicable to services provided by parent company under franchise agreement with subordinate companies (Dec. 12, 2019), News IBFD.
18. DE: ECJ, Dec. 19, 2019, Case C-715/18, Segler-Vereinigung Cuxhaven e.V. v. Finanzamt Cuxhaven, Case Law IBFD.
19. RO: ECJ, Dec. 19, 2019, Case C-707/18, Amări Land Investment, Case Law IBFD.
20. European Union; Czech Republic—ECJ Advocate General’s opinion (VAT): AGRIBET CZ, s.r.o. v. Finanční úřad pro Stredočeský kraj (Case C-446/18)—excess input VAT; assessment and payment conditional upon completion of procedure (Dec. 20, 2019), News IBFD.
25. France—Digital services tax—payment of single instalment postponed (Feb. 11, 2020), News IBFD.
28. Iceland—Bill to amend VAT exemptions on green vehicles gazetted (Jan. 3, 2020), News IBFD.
30. Lesotho—Registered taxpayers to complete and submit standardized VAT schedules—public notice issued (Nov. 7, 2019), News IBFD.
33. Luxembourg—VAT Administration issues notice on mandatory electronic VAT filing for EU intra-Community supplies and services (Dec. 27, 2019), News IBFD.
34. European Union; Luxembourg—Council Implementing Decision authorizing Luxembourg to extend application of higher VAT registration threshold—published (Dec. 23, 2019), News IBFD.
35. Malta—Exempt without credit supplies under VAT Act—extended (Nov. 26, 2019), News IBFD.
38. Nigeria—Federal High Court rules on applicability of hotel consumption tax (Dec. 17, 2019), News IBFD.
39. Norway; Denmark—Norwegian Supreme Court rules on applicability of VAT exemption for services relating to the management of pension funds (Jan. 2, 2020), News IBFD.
43. St. Lucia—VAT exemption for locally produced educational supplies (Nov. 11, 2019), News IBFD.
46. Orbitax, Tunisia Finance Law for 2020 Approved and Published (Dec. 31, 2019).
47. Uruguay—Tax benefits for activities of audio-visual sector (Nov. 25, 2019), News IBFD.
48. Uzbekistan—Customs duty on online purchases—resolution adopted (Nov. 14, 2019), News IBFD.