KPMG

Inside Indirect Tax

January 2019

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.

Announcement

KPMG 2018 Americas Indirect Tax Guide

KPMG International recently published the 2018 Americas Indirect Tax Guide. According to the guide, the indirect tax landscape has continued to grow more complex across the Americas region. The 2017 US federal tax reform has potentially far-reaching implications for cross-border dealings where indirect taxes are concerned, and state and local sales taxes in the US underwent a massive transformation with the Supreme Court's decision in *South Dakota v. Wayfair.* Meanwhile, in Latin America, pressure on tax authorities to boost collections and their increasingly sophisticated use of technology is transforming indirect tax compliance and the way companies and individuals interact with local tax authorities. The countries covered in the guide, include: Antigua, Argentina, Aruba, Bahamas, Barbados, Brazil, Bolivia, Canada, Caribbean Netherlands, Chile, Colombia, Costa Rica, Cuba, Curaçao, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Saint Lucia, Saint Vincent and The Grenadines, Saint Maarten, Suriname, Trinidad and Tobago, the United States, Uruguay, Venezuela.

Global Rate Changes

— **Albania:**[i] Effective January 1, 2019, Albania reduced the VAT rate applicable to accommodation and restaurant services, excluding beverages, provided by certified agritourist businesses from 20 percent to 6 percent.

— **Croatia:**[ii] Effective January 1, 2020, Croatia will reduce the standard VAT rate from 25 percent to 24 percent. Also, effective January 1, 2019, the intermediary VAT rate of 13 percent applies to fresh meat, fish, fruit, diapers, and vegetables.

— **Finland:**[iii] Effective July 1, 2019, Finland will reduce the VAT rate applicable to electronic publications from 24 percent to 10 percent.

— **Romania:**[iv] Effective November 1, 2018, Romania reduced the VAT rate applicable to hotel and other accommodation services as well as to catering services, including restaurant services from 9 percent to 5 percent. The VAT rate applicable to sporting and recreational facilities, such as amusements parks, was also reduced from 19 percent to 5 percent.

— **Slovakia:**[v] Effective January 1, 2019, Slovakia reduced the VAT rate applicable to accommodation services from 20 percent to 10 percent.

— **Turkey:** On October 31, 2018, Turkey published Presidential Decree No. 287 in the official gazette. The Decree implements the reduced VAT rate of 8 percent applicable to certain houses and workplaces effective December 31, 2018. Moreover, the Decree reduces the VAT rate for certain types of furniture from 18 percent to 8 percent effective December 31, 2018. The Decree further sets the VAT rate at 1 percent for goods with the following customs tariff positions: 8701.20 (road tractors for semi-trailers); 87.02 (public transport type passenger motor vehicles); 87.04 (motor vehicles for shipment of goods); and 87.05 (special purpose motor vehicles other than those principally designed for the shipment of persons or goods).

The Americas

United States: Online Software Creating and Maintaining a Screen-Sharing Connection Qualify as Taxable Sales of Prewritten Software in Massachusetts

The Massachusetts Appellate Tax Board recently ruled in *Citrix Systems, Inc. v. Commissioner of Revenue* that a taxpayer's software products were taxable sales of prewritten computer software transferred electronically. The products at issue were three suites of online software accessed over the Internet that each helped create and maintain a screen-sharing connection between a host computer and one or more remote computers. The products, which all parties agreed were software, were sold by subscription and were not customized for individual purchasers. However, customers could purchase certain upgrades (available to all customers and not individualized for any particular customer) to enhance their user experience.

Under Massachusetts law, a transfer of standardized computer software, including but not limited to, an electronic, telephonic or a similar transfer, is considered a taxable transfer of tangible personal property. A departmental regulation extends the sales and use tax to transfers of rights to use software installed on a remote server. The Board first determined that the taxpayer's products were not customized software exempt from sales and use tax. Although the software was complex and required continuous development, monitoring, and maintenance, it was not prepared to the specifications of any individual purchaser. The Board next addressed the taxpayer's argument that there was no taxable sale of software because there was no "transfer," as required under the statute, when customers accessed the taxpayer's software on its remotely located server. In the taxpayer's view, the regulation and a corresponding Technical Information Release extending the sales tax to remotely accessed software were invalid as they were beyond the scope of the statute which specifically referred to transfers of software. The Board disagreed, noting that the statute was intended to create a uniform sales tax treatment of standardized software regardless of delivery method. Furthermore, the types of software transfers to which sales tax applied included, but were not limited to, the specific types listed in the statute. The Board concluded extending this language to include the "transfer of rights to use software installed on a remote server" was reasonable. Next, the Board rejected the taxpayer's argument that it was selling services, rather than tangible personal property. Although many services went into developing and maintaining the taxpayer's products, the Board concluded that customers' "true object" in purchasing the products was to obtain access and use of the online products, not to obtain any unseen support services.

Colombia: Proposed Amendments to VAT Law

On October 31, 2018, the government of Colombia submitted to the parliament a bill intended to raise revenue in an effort to reduce the current deficit. The bill would reduce Colombia's standard VAT rate from 19 percent to 17 percent by 2021. The bill would further expand the scope of goods and services subject to VAT and eliminate exemptions and exceptions that generally have been targeted at lower-income consumers. The bill would further introduce VAT collection rules for non-residents by allowing banks to elect to withhold VAT on payments made for electronic or digital services and intangibles. Finally, the bill would allow the amount of VAT paid on capital goods to be creditable against the VAT-payer's income taxes. To read a report prepared by the KPMG International member firm in Colombia, please click here.

Costa Rica: Sales Tax to be Replaced by VAT Effective July 1, 2019

On December 4, 2018, Costa Rica published Law No. 9.635 (the Law) in the official gazette. The Law replaces Costa Rica's sales tax with a VAT effective July 1, 2019. All goods and services sold in Costa Rica will be subject to VAT at a standard rate of 13 percent, unless a reduced rate or exemption applies. [The current sales tax generally applies only to sales of goods.] The Law introduces several reduced rates: 1 percent for products in the basic consumption (canasta básica) list; 2 percent for medicines and private education services; and 4 percent for private healthcare services. Exports, sales to the government, and sales to certain exempt entities will be zero-rated, while public transportation services and books will be exempt from VAT.

In general, taxpayers will be allowed to recover VAT incurred on goods or services linked to their taxable activity. In situations in which it is not possible to identify whether the tax paid for the purchase of a good or service has been used exclusively in taxable transactions, the Law introduces apportionment recovery rules. Moreover, service providers selling services subject to a reduced rate will only be allowed to recover VAT incurred up to the rate imposed on the services.

The Law further introduces an import service regime requiring taxpayers to pay VAT on services acquired from abroad. In addition, electronic services purchased by consumers in Costa Rica from vendors established abroad will be subject to VAT in Costa Rica, and credit card processors will act as tax collectors. The Law also introduces a special regime for resellers of used goods. Finally, Costa Rica is offering a tax amnesty through March 5, 2019. The amnesty applies to certain delinquent taxes and provides for an abatement of all interest as well as a reduction in penalties and fines related to the delinquencies. To read a report prepared by the KPMG International member firm in Costa Rica, please click here.

Europe, Middle East, Africa (EMA)

Bahrain: VAT Implementation Guidance Published

The Ministry of Finance of Bahrain and the National Bureau for Taxation (NBT) recently published clarifications on the introduction of VAT in Bahrain effective January 1, 2019. (For KPMG's previous discussion on Bahrain VAT implementation, click here.) Businesses that have annual taxable revenues exceeding BHD 5 million ($13.3 million) are required to register for VAT effective January 1, 2019. The revenue computation includes all sales of goods and services subject to the 5 percent or 0 percent rate (including deemed sales and internal sales), all imports, and all services received from abroad for which the Bahraini taxpayer is obliged to self-assess VAT under the reverse charge mechanism. The computation does not include VAT exempt sales or sales that are not deemed to have taken place in Bahrain (e.g., sales of goods in other countries). Effective July 1, 2019, businesses with taxable revenues exceeding BHD 500,000 ($1.3 million) that did not choose to register earlier will be required to register for VAT, while the businesses with taxable revenues exceeding BHD 37,500 ($100,000) will be required to register for VAT purposes effective January 1, 2020. Any business operating in Bahrain with taxable revenue exceeding BHD 18,750 ($50,000) will be allowed to register for VAT at any time. The NBT further clarified that VAT grouping will not be allowed. Tax agents may be appointed to represent any taxpayer and handle VAT compliance.

Nonresidents which have or will have taxable sales in Bahrain for which they are liable to charge and remit VAT must register from the first transaction. Nonresidents are required to appoint a tax representative.

In 2019, all taxpayers will be required to file VAT returns on a quarterly basis. Effective 2020, taxpayers with annual taxable revenues exceeding BHD 3 million ($8 million) will be required to file monthly VAT returns. All other taxpayers will file quarterly VAT returns. Payment of any VAT due will follow the same frequency (payment by the last day of the month following the period).

VAT will apply on the government levy that is added to hotel and restaurant bills. Petrol at the pump and retail gas will be zero-rated while electricity will be subject to VAT at the standard VAT rate of 5 percent. The zero rate will further apply to construction services related to new buildings, exports, international transport services of goods and passengers, local transport services (subject to certain conditions), primary and preventative healthcare services (not including cosmetic procedures unless part of a medical treatment), medicines, the sale of pearls, precious stones and investment gold, silver and platinum, education services and related services and goods, and the provision of oil and gas and derivatives. Sales and leases of any real estate (exceptions apply such as accommodation services) will be exempt from VAT, while insurance premiums will be subject to VAT except for life insurance.

VAT invoices will likely be required to include 14 items. Taxpayers will be allowed to issue simplified invoices for sales to non-registered customers or for transactions with a consideration not exceeding BHD 500 ($1,300). In addition, bank statements that include the required invoicing requirements will be considered as valid VAT invoices. Accounting records and books can be kept electronically in Arabic or English subject to conditions.

The NBT will release a readiness assessment tool which will be able to analyze 8 core preparedness areas, and all large taxpayers will have a dedicated account manager. In addition, the NBT plans to have around 100 auditors. The NBT further stated that the VAT treatment of prepaid vouchers is still to be confirmed, and that deferment of import VAT payments will be possible upon application. The NBT confirmed that basic food items will be zero-rated and will be based on a list of HS codes. Moreover, VAT refunds for nonresidents and tourists will not be launched effective January 1, 2019. The NBT further announced that the VAT system will include a system for VAT bad debts. Finally, Bahraini Customs documentation is in the process of being updated to reflect the VAT requirements.

Bulgaria: Amendments to VAT Law

On November 27, 2018, Bulgaria published amendments to the VAT Act in the official gazette. The amendments are effective January 1, 2019, unless otherwise specified. The amendments align Bulgarian VAT rules with the EU Directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019.

In addition, currently, VAT on the importation of goods must be paid to the customs authorities, while self-assessment by the taxpayer through the VAT return is allowed only in limited cases (e.g., for large investment projects). Effective July 1, 2019, the possibility of VAT self-assessment on the VAT return will be extended to importers of goods such as aluminum, nickel, sulfur, tin, lead, zinc and organic chemical products provided that each of the imported goods declared in the customs document have a customs value of at least BGN 50,000 ($29,000) and the importer has no unsettled tax and social security liabilities.

The amendments further extend the requirement for a purchaser of grain and technical crops to self-assess VAT under the reverse charge mechanism until June 30, 2022. In addition, the amendments repeal the requirement for vendors and recipients of liquid fuels to provide a minimum collateral amounting BGN 50,000. However, the requirement to provide a collateral amounting to 20 percent of the taxable sale remains in place. The amendments further extend the transactions subject to VAT at zero percent to include sales for immediate needs of qualifying vessels and aircraft and intermediary services related to international adoption under the Family Code.

The amendments repeal the requirement for mandatory VAT deregistration upon initiation of a company's liquidation proceedings. Instead, companies will have an opportunity to remain VAT registered until the end of the liquidation proceedings. Moreover, the amendments allow taxpayers to deregister within 12 months after the beginning of the year following the voluntary VAT registration (currently, this period is 24 months). Finally, online stores will be required to register in a special register to be set up and maintained by the National Revenue Agency. Online stores will be allowed to issue and send fiscal receipts electronically in cases in which there is no physical contact between the seller and the buyer.

Source: Bulgaria - Proposal to amend VAT Act gazetted (Nov. 27, 2018), News IBFD.

European Union: No VAT Recovery on Professional Fees Related to Unrealized Sales of Shares Where Costs Do Not Relate to Taxable Economic Activity

On November 8, 2018, the Court of Justice of the European Union (ECJ) published its judgment in *C&D Foods Acquisition ApS*, Case C-502/17, regarding the recovery of VAT on professional expenses for a proposed, but ultimately unrealized, sale of shares. Recall, in the case at hand, the taxpayer was a legal entity established for VAT purposes in Denmark; it was part of the international group Arovit. The taxpayer held all the shares of Arovit Holding, which in turn had all the shares of Arovit Petfood, the latter holding shares in 13 other companies established in several EU Member States. Beginning in 2007, the taxpayer provided several services subject to VAT, such as IT and administrative services, to Arovit Petfood under a management agreement. For these services, the taxpayer received remuneration in the form of wage costs, increased by a 10 percent markup. The taxpayer did not provide such services to other companies within the Arovit group. In 2009, an Iceland financial Institution (Kaupthing Bank) acquired the Arovit group and ordered consultancy and legal services to investigate the possibility of a restructuring of the Arovit group. Although the Kaupthing Bank entered into the agreements, the fees were paid by the taxpayer. Ultimately, an agreement was drafted to transfer the shares of the taxpayer in Arovit Holding and Arovit Petfood, and the fees were charged to the taxpayer. In the end, however, the shares in Arovit Holding and Arovit Petfood were not sold because of lack of a buyer. The taxpayer nevertheless deducted the VAT incurred on the legal fees; the deduction was denied by the Danish tax authority (SKAT). The ECJ's Advocate General (AG) earlier this year opined that a holding company cannot claim a deduction of VAT incurred on consultancy services which were availed of prior to a proposed disposal of shares in a sub-subsidiary if there is a direct and immediate link between those consultancy services and the intended transactions arising from the sale of the shares which are VAT exempt.

The ECJ broadly followed the opinion of its AG. It first pointed out that C&D Foods must be considered the recipient of the consultancy services and that the sale was intended to repay the loan to the bank. The ECJ further reiterated its previous case law on whether a holding company is regarded as a taxpayer for VAT purposes. A holding company only holding shares in another company cannot be regarded as such a taxpayer for VAT purposes. However, a holding company directly or indirectly involved in the management of its subsidiary is regarded as a taxpayer, insofar as the involvement entails carrying out VAT taxable transactions. Moreover, the ECJ pointed out that transactions relating to shares fall within the scope of VAT if they are: (1) carried out as part of a commercial share-dealing activity; (2) carried out to secure the direct or indirect involvement in the management; or (3) a direct, permanent and necessary extension of a taxable activity. Such a situation occurs if there is a disposal of shares by a holding company for the purposes of restructuring a group, because there is a direct link with the organization of the group's activity.

In addition, the ECJ reiterated that VAT incurred on expenditures can only be deducted if there is a direct and immediate link between the input and taxable output. For this to occur, the ECJ emphasized that the exclusive reason for the transaction at issue should be taken into account, as the reason for the transaction must be regarded as a criterion for determining the objective content of the transaction. Therefore, as regards share disposals, the direct and exclusive reason must be either the holding company's taxable economic activity or a direct, permanent and necessary extension of such activity. The latter is the case if the proceeds of that sale are allocated directly to the taxable economic activity of the holding company or the group. However, in the case at hand, where the proceeds were used for repaying the bank's debt, this was not the case. As a result, the VAT incurred on the consultancy costs could not be deducted. This conclusion was not changed by the fact that the eventual disposal of the shares would have led to C&D Foods ending its economic activities, because the intended disposal was to take place regardless of this fact, meaning the direct and exclusive reason could not be found in C&D Foods' economic activity. The conclusion was also not changed by the fact that the intended sale eventually did not take place.

Source: DK: ECJ, Nov. 8, 2018, Case C-502/17, C&D Foods Acquisition ApS v. Skatteministeriet, ECJ Case Law IBFD.

European Union: TIR Carnets Sufficient to Prove That Shipping Services Are Connected With Exportation of Goods

On November 8, 2018, the ECJ published its judgment in *Cartrans Spedition Srl*, Case C-495/17, regarding what documents constitute evidence that goods were exported outside the EU. Recall, in the case at hand, the taxpayer, a shipping services broker, provided shipping services in Turkey, Georgia, Iraq, and Ukraine. Following an audit of the taxpayer, the Romanian tax authority assessed the taxpayer arguing that the taxpayer failed to demonstrate that the goods it shipped had in fact been exported, as the taxpayer had not produced any of the following documents: a contract of carriage drawn up with the beneficiary of the service, specific documents of carriage and documents showing that the goods shipped were exported, as required by national rules. The taxpayer had merely demonstrated that it had provided certain shipping services abroad to exporters. The taxpayer challenged that assessment. In support of its request for zero-rating, it produced TIR carnets and CMR consignment notes certified by customs officials of the countries to which it had shipped the goods concerned for export for each of the seven invoices subject to VAT assessment. The ECJ's AG earlier this year opined that TIR carnets may prove that shipping services are connected with the exportation of goods and thus should be zero-rated.

The ECJ pointed out that the zero-rating provision at issue is only applicable if there is a direct connection between the service at issue and the exported goods. Based on established case law, such a connection occurs if the services contribute to the actual export transaction and the services are provided directly to the exporter or the consignee of the goods. If these latter two criteria are met, the subsequent step is to assess if Member State's tax authority can deny the application of the zero rate on the basis that no export declaration is provided to show that the goods were actually exported. The EU VAT Directive does not require any specific evidence for making this showing, meaning that it is up to the Member State to determine the conditions for applying the zero rate. However, when doing this, if should take into account the general principles of EU law, especially the principles of legal certainty and proportionality. As regards the latter principle, the Member State tax authority cannot reject the application of the zero rate if a taxpayer has not met some of the formal requirements while the substantive requirements have been met, unless there is a case of fraud or of not being able to prove that the substantive requirements are met.

One of the substantive conditions for applying the zero rate is that the services are directly connected with the export of goods. However, the zero rate relating to export shipping services must be distinguished from the zero rate for the actual export of the goods. As a consequence, taxpayers should be able to demonstrate that the goods have actually been exported, but the requirement of providing an export declaration cannot be compulsory for proving that export. The ECJ substantiated this by the fact that the export declaration is, for customs purposes, required for exports, but not for the shipping services for which a TIR carnet is required. Therefore, providing an export declaration is not compulsory for the service provider, as an intermediary, to show a direct connection with exports. The ECJ concluded that the Member State tax authority must assess all relevant information to which it has access to determine if the goods have been exported. However, requiring such an export declaration is not in line with the principle of legal certainty. As regards the value of the TIR carnet for proving that goods have been exported, the ECJ held that this document, when properly certified, especially by the customs authorities of the third country of destination, is in principle an official document to show that the goods have been exported and have arrived at the place of destination. This may be different if there are concrete reasons for doubting the TIR carnet's authenticity or reliability. Therefore, the ECJ concluded that Member State tax authority must take into account the TIR carnet for the purposes of the zero rate, as well as all other information they possess, such as a CMR document.

Source: RO: ECJ, Nov. 8, 2018, Case C-495/17, Cartrans Spedition Srl v. Directia Generală Regională a Finantelor Publice Ploiești – Administrația Județeană a Finanțelor Publice Prahova, Direcția Regională a Finanțelor Publice București – Administrația Fiscală pentru Contribuabili Mijlocii, ECJ Case Law IBFD.

European Union: Compensation Amount for Breach of Contract Subject to VAT

On November 22, 2018, the ECJ published its judgement in *MEO – Serviços de Comunicações e Multimédia SA*, Case C-295/17, regarding whether a compensation amount paid by a customer for ending a contract is subject to VAT. In the case at hand, the taxpayer entered into agreements with its customers to provide telecommunications, Internet access, television, and multimedia services. The taxpayer entered into two kinds of agreements with its customers, one of which was a contract for a minimum duration. Under such a contract, the customer paid a monthly fee for the services. However, if the taxpayer cancelled such an agreement before its expiry (e.g., in a case of non-payment by the customer), the customer was eventually required to pay an amount equal to the monthly fee multiplied by the remaining months as set out in the agreement (compensation payment). The customer no longer received services. The taxpayer charged VAT on the monthly fees for which it actually provided its services to the customers. However, the taxpayer did not charge VAT on the compensation amount for the period during which it did not provide services. The Portuguese tax authority did not agree with this treatment. After a tax audit, it imposed a VAT assessment, holding the view that the compensation payments should have been subject to VAT.

The ECJ first reiterated its case law holding a service is considered to be provided for consideration if there is a direct link between the service provided and the received payment. As regards this direct link, the ECJ held in *Air-France KLM and Hop!-Brit Air*, Cases C-250/14 and C-289/14 (Dec. 23, 2015), that in cases in which flight tickets are not used by passengers and for which no reimbursement was possible, the service consisted of the passenger having the right to make use of the execution of the contractual obligations, regardless of whether the passenger actually did so. The payment made by the customer was, therefore, regarded as a consideration for that service and as such subject to VAT, even if the flight ticket was not used. In the case at hand, the taxpayer received the same amount regardless of whether the contract was ended, meaning that the economic reality of the contract between the taxpayer and the customer did not change whether or not the contract was ended. The ECJ concluded that the compensation payment made by the customer was consideration for the right to use the execution of the contract by the taxpayer, regardless of whether a customer did not want or could not use this right because of its own actions. The ECJ emphasized that if this amount was regarded as a compensation payment for any damages, customers would be treated differently on the basis of whether or not the customer decided to use the taxpayer's services. The ECJ further emphasized that the services and amounts to be paid were already determined at the time the agreements were signed and, thus, the compensation payment in the event of termination was an integral part of the total price payable by the customer.

Source: PT: ECJ, Nov. 22, 2018, Case C-295/17, MEO – Serviços de Comunicações e Multimédia SA v. Autoridade Tributária e Aduaneira, ECJ Case Law IBFD.

European Union: VAT Committee Publishes Guidance on Syndicated Loans

On November 20, 2018, the European Commission published an updated list of the nonbinding guidelines agreed upon by the VAT Committee. The Committee has an advisory role in interpreting specific questions relating to the application of the European VAT system. The new guidelines address the VAT treatment of certain services provided regarding syndicated loans. In a syndicated loan arrangement, the banks that are creditors in the transaction manage loan, for which they receive remuneration. The entity involved in such activities is typically referred to as the credit or facility agent. The VAT Committee considered only arrangements in which one of the banks offering the syndicated loan was the credit or facility agent managing the credit guarantees.

The VAT Committee almost unanimously concluded (24-27 Member States) that the service of managing the syndicated loan should be seen to be a single sale for VAT purposes. The credit agent should not be seen as providing two separate services: managing the syndicated loan it is providing, and managing the remaining portion provided by other syndicating banks. Such activities are so closely linked that they form, objectively, a single, indivisible economic sale which it would be artificial to split.

In addition, the VAT Committee almost unanimously agreed that the service of managing the syndicated loan provided by the credit agent should constitute a provision of services falling in the scope of VAT, regardless of whether the beneficiary of the service is the borrower, the syndicated banks, or both. However, it also almost unanimously agreed that such a service should be exempt because the service qualifies as management of credit by the person granting it, given that the credit agent is one of the creditors of the loan.

The VAT Committee further almost unanimously agreed that where credit guarantees have been provided for a syndicated loan, and such guarantees are being managed as a whole by only one of the syndicated banks in exchange for consideration paid by the borrower, the service consisting of the management of the credit guarantees is also a single sale for VAT purposes.

Likewise, the VAT Committee almost unanimously agreed that the service managing the guarantees credit guarantees provided by the guarantee agent is a provision of services falling within the scope of VAT, regardless of whether the beneficiary of the service is the borrower, the syndicated banks, or both, but that such a sale is exempt because it qualifies as management of credit guarantees by the person granting the credit, given that the guarantee agent is one of the creditors of the loan (i.e., one of the syndicator banks).

Source: CCH, Global VAT News & Features, EU VAT Committee Releases Guidelines On Syndicated Loans (Nov. 28, 2018).

Hungary: Amendments to VAT Law

Hungary recently passed amendments to its VAT law that are effective January 1, 2019, unless otherwise specified. The amendments align Hungarian VAT rules with the EU Directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019. The amendments also introduce a 50 percent limitation on the deduction of VAT incurred on car rental services. However, taxpayers may continue to apply a higher deduction rate if they can document the relationship of the rental service to the actual use and exploitation for their taxable activities.

Effective January 1, 2020, the standard VAT rate of 27 percent will apply to the sale of new residential property. The reduced VAT rate of 5 percent will apply until December 31, 2023 to the sale of residential property the construction of which a final building permit has been granted or construction has been declared in accordance with the rules of simplified notification procedure on or before November 1, 2018.

The scope of employee leasing services to which the reverse charge mechanism applies will be reduced effective January 1, 2021. The amendments clarify that the reverse charge mechanism will still apply to employee leasing for all types of construction or construction-related assembly works (including if no construction permit is required).

Finally, the amendments increase the VAT registration threshold from HUF 8 million ($28,000) to HUF 12 million ($42,000) and increase the scope of the special mechanism for travel agents to situations in which the buyer intends to resell the services. Opting for taxation based on the "designated position number-based method" will no longer be available for travel agent services effective January 1, 2020. To read a report prepared by the KPMG International member firm in Hungary, please click here.

Germany: Amendments to VAT Law

On November 23, 2018, the German Federal Council (upper house of parliament – Bundesrat) approved the Law for the Prevention of VAT Revenue Losses from Trading with Goods over the Internet and Amendment of Further Tax Provisions (Annual Tax Law 2018). The Tax Law aligns German VAT rules with the EU Directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019.

In addition, the Tax Law introduces new requirements for online marketplaces to track and collect information on all third-party sales to German residents. (For KPMG's previous discussion on the new online marketplaces requirements, click here.) Effective October 1, 2019, electronic marketplaces will be required to collect the following information for each taxable transaction made on their platforms: name and address of the selling merchant; German tax number or VAT identification number of the merchant; country from which the goods originate; and time and amount of sales. Moreover, electronic marketplace operators will be liable for any unpaid German VAT by vendors using their digital platform, especially if the operator cannot document the merchant's German VAT registration to the tax authority. Electronic marketplaces may not be liable for German VAT if they record the above mentioned information from merchants, and comply with the new VAT due diligence requirements. Finally, the Tax Law introduces a 10-year record retention requirement for electronic marketplaces.

Source: Robert Sleds, German Parliament Advances Legislation to Introduce VAT on Digital Sales, Thomson Reuters (Nov. 21, 2018); Orbitax, German Parliament Approves Annual Tax Law 2018 (Nov. 30, 2018); Bloomberg Law News, Germany VAT Bill Targets Chinese Traders, Ensnares E-Giants (Nov. 26, 2018).

Italy: Updated Guidance on VAT Grouping

On October 31, 2018, the Italian Tax Authority published Circular No. 19/E/2018, which clarifies various provisions of the VAT grouping regime that was introduced in 2017. The Circular clarifies that a head office and a branch will only be considered separate taxpayers if one of the two belongs to a VAT group in a different EU Member State effective January 1, 2018. As a consequence, there will be no retroactive application of the rule.

Moreover, according to the VAT grouping provisions, all VAT group members must be taxpayers established in Italy and bound by financial, economic, and organizational links. As a consequence, passive holding companies, whose sole activity is the ownership of shares, are ineligible to join, but mixed holding companies, which not only own shares but provide other services to their subsidiaries, can join the VAT group. The Circular clarifies that taxpayers having a legal form that does not enable them to satisfy the control requirement can only join a VAT group as controlling companies and not as controlled companies. Moreover, a VAT group may be set up between Italian subsidiaries of a foreign entity as long as the foreign entity is based in a country that has an exchange of information agreement with Italy.

The Circular further states that the Italian split payment regime will not apply to sales made to the VAT group, even if one or more members of the VAT group is subject to the split-payment rules. In addition, the VAT group inherits the VAT-free purchase limits that the VAT group members might have accrued in the year before joining the group. Once a VAT group becomes effective, the VAT registration numbers of the individual members will be suspended for the duration of the VAT group and removed from the EU VAT identification number database (VIES). The VAT group will obtain its own VAT number and must register with the VIES database in order to carry out intra-EU transactions.

According to the Circular, the main responsibilities for VAT compliance rest with the VAT group representative. Other obligations, such as e-invoicing and VAT bookkeeping can be discharged centrally by the representative or separately by each group member. All members of the group are jointly and severally liable for VAT debts, interests and penalties. To read a report prepared by the KPMG International member firm in Italy, please click here.

Russia: Overview of Recently Published VAT Guidance

On September 17, 2018, the Ministry of Finance of Russia (MOF) issued Guidance Letter 03-07-08/66314 in which it held that if a foreign legal entity is registered with the Russian tax authority, the VAT due on goods, works, or services sold by that nonresident legal entity in Russia must be remitted by the foreign entity itself. As a consequence, Russian buyers of the goods, works, or services are not required as tax agents to calculate and remit the VAT due on the transactions.

On November 19, 2018, the MOF issued Guidance Letter 03-07-08/83198 in which it held that if a legal entity contributes previously imported assets to another legal entity's capital it must repay the VAT it originally deducted on the imported assets.

On November 15, the MOF issued Guidance Letter 03-07-14/82255 in which it held that if a Russian legal entity or individual entrepreneur acquires rental services involving movable assets in Russia from a nonresident that is not registered in Russia, , the Russian entity must act as a tax agent and pay to the government the VAT due on those services. However, if a Russian legal entity purchases services from a nonresident individual and Russia is considered to be the place of provision of those services, the Russian entity toned not withhold and pay VAT on those services as a tax agent if the nonresident does not qualify as an individual entrepreneur under Russian law.

Source: Tax Analysts, Russia Issues Corporate Tax, VAT Guidance Letters (Nov. 14, 2018); Tax Analysts, Russia Issues Guidance Letters on VAT, Personal Income Tax (Dec. 10, 2018).

Switzerland: Guidance on Registration for Mail-Order Businesses

On November 15, 2018, the Swiss Federal Tax Administration (FTA) published guidance on the new VAT registration obligations for mail-order businesses. Recall, effective January 1, 2019, any person making sales of low value goods and achieving in 2018 a minimum revenue of CHF 100,000 ($100,200) from these sales must register for VAT purposes if the person expects to reach the same revenue threshold in 2019. Low value goods are goods that are exempt from import VAT due to the insignificant import tax amount (i.e., less than CHF 5.00 ($5.01) in tax). If in 2019, a person starts making sales of goods that are imported from abroad and if those sales are exempt from import VAT due to the insignificant import tax amount, those sales will be deemed to remain outside the Swiss territory as long as the CHF 100,000 threshold is not reached. From the beginning of the month following the month in which the threshold is reached, the low value goods sales will be deemed carried out in Switzerland. If this occurs, the mail-order-business must register for VAT purposes in Switzerland.

According to the FTA, mail-order businesses registering online for VAT purposes in Switzerland must indicate if they are active in the area of mail-order and give their express consent if they wish to be included on a corresponding list. It is, however, in their interest to do so to ensure that the import VAT is not wrongly invoiced to the client. The FTA provides a list of mail-order businesses that are registered for VAT purposes in Switzerland. The aim of the list is to help clarify for those involved in customs clearance whether the recipient of the parcel or the mail-order business should be charged import VAT. This list can be made available in XML format to the persons responsible for customs clearance formalities.

Mail-order businesses with sales below CHF 100,000 may choose to waive the exemption from tax liability and register voluntarily using the so-called declaration of subordination. Under this procedure, a business has authorization from the FTA to import goods in its own name and, if the other conditions are met, can deduct the import VAT as deductible VAT in its VAT returns. The subsequent sale of goods made to the recipient is then considered made in the Swiss territory. The main advantage of applying the declaration of subordination is that a mail-order business can plan ahead its transition towards a mandatory VAT liability under the new provision for mail-order sales.

Source: Switzerland - Federal Tax Administration announces VAT registration rules for mail-order businesses (Nov. 21, 2018), News IBFD.

United Kingdom: Brexit Update

On November 14, 2018, the negotiators of the European Commission and the United Kingdom reached an agreement on the withdrawal of the UK from the EU. The Withdrawal Agreement aims to ensure that the withdrawal will happen in an orderly manner, and offers legal certainty once the Treaties and EU law cease to apply to the UK. The Withdrawal Agreement covers the following areas: citizen's rights; separation issues; ensuring a smooth winding-down of current arrangements and providing for an orderly withdrawal; a financial settlement; the overall governance structure of the Withdrawal Agreement; the terms of a legally operational backstop to ensure that there will be no hard border between Ireland and Northern Ireland; a protocol on the Sovereign Base Areas (SBA) in Cyprus, protecting the interests of Cypriots who live and work in the Sovereign Base Areas following the UK's withdrawal from the Union; and a Protocol on Gibraltar, which provides for close cooperation between Spain and the UK regarding the implementation of citizens' rights provisions of the Withdrawal Agreement in Gibraltar. The Withdrawal Agreement further includes a transition period, during which the EU will treat the UK as if it were a Member State, with the exception of participation in the EU institutions and governance structures. The transition period will end on December 31, 2020; however, the Agreement also allows a possible extension of the transition period. Once the Withdrawal Agreement is endorsed by the European Council, and before it can enter into force, it must be ratified by the EU and the UK. For the EU, the Council of the European Union must authorize the signature of the Withdrawal Agreement, before sending it to the European Parliament for its consent. The United Kingdom must ratify the agreement according to its own constitutional arrangements.

In addition, the UK tax authority (HMRC) has written to all businesses that trade only in the EU and are registered with HMRC for VAT purposes to ask them to take the following three actions now: (1) register for a UK Economic Operator Registration and Identification (EORI) number; (2) decide whether they will use a customs agent to make import and/or export declarations or will make the declarations themselves using special software; and (3) contact the organization that moves their goods (e.g., a haulage firm) to determine if they will need to provide additional information to complete safety and security declarations, or whether they will need to submit these declarations themselves.

HMRC further published (or updated) a number of other related documents. These are published in one location on the HMRC website and provide further detail on obtaining an EORI number, customs procedures and declarations, and the movement of goods through roll-on/ roll-off ports and the Eurotunnel. HMRC have also published a summary of the relevant "no deal" regulations, explanatory memoranda and an impact assessment, setting out the implications of no deal on Brexit on the movement of goods.

Finally, HMRC have now opened up the application of grant schemes to help support training and IT improvements for customs intermediaries and traders that complete customs declarations in case no deal is reached between the UK and the EU. Eligible businesses may apply for one of two grants, with funding available for: (1) training that helps employees to complete customs declarations and processes; and (2) IT improvements to help businesses complete customs declarations more efficiently (available to small and medium enterprises only). To read a report prepared by the KPMG International member firm, please click here.

Source: Orbitax, European Commission Announces Agreement Reached with the UK on Brexit (Nov. 16, 2018).

Asia Pacific (ASPAC)

India: GST Compliance Update

On December 7, 2018, the Central Board of Indirect Taxes and Customs of India (CBITC) extended the due date for filing goods and services tax (GST) annual returns (GSTR-9, GSTR-9A, and GSTR9C) from December 31, 2018 to March 31, 2019. To read a report prepared by the KPMG International member firm in India, please click here.

On November 5, 2018, the CBITC published Notification 61/2018 – Central Tax, which amends Section 51 of the Central GST Act requiring the deduction of tax at source at a rate of two percent of the value of the sale in cases in which the value of such purchase exceeds INR 250 000 by certain public bodies. The Notification clarifies that sales between public bodies, whether or not they are distinct persons, are excluded for the tax deduction at source mechanism effective October 1, 2018. To read a report prepared by the KPMG International member firm in India, please click here.

Malaysia: Amendments to Sales and Service Tax

On December 29, 2018, Malaysia passed the Finance Act 2019, which amends the country's sales and services tax (SST) effective January 1, 2019, unless otherwise specified. According to the Finance Act, imported services such as architecture, graphic design, information technology (IT) and engineering design services are subject to service tax to ensure a level playing field for domestic vendors. Moreover, SST exemptions are granted to specific services provided by registered businesses to other registered businesses. A credit system is introduced for sales tax to avoid double taxation and to lower business costs. Small manufacturers who purchase materials from importers instead of registered factories are entitled to a special tax cut credit system. Finally, nonresident vendors of online services such as software, music, videos or any digital advertising to Malaysian consumers will be required to register with the Malaysian Customs Department, effective January 1, 2020. To read a report prepared by the KPMG International member firm in Malaysia, please click here.

Source: Malaysia - Budget for 2019 – indirect taxation (Nov. 2, 2018), News IBFD; Malaysia - Budget 2019 proposals enacted (Jan. 4, 2019), News IBFD.

Trade & Customs (T&C)

Australia: Trans-Pacific Partnership Ratified

On October 31, 2018, Australia became the sixth country to ratify the Comprehensive Progressive Agreement for the Trans-Pacific Partnership (TPP11), joining Canada, Japan, Mexico, New Zealand, and Singapore, thus signaling a likely commencement of the TPP-11. Yet to ratify the Agreement are Brunei, Chile, Malaysia, Peru and Vietnam.

The ratification will allow two phases of duty reduction for signatories to occur within two days. Once all countries have ratified, the TPP-11 will cover 14.4 percent of global world trade, 6.7 percent of the world's population and a GDP of $10.6 trillion opening a suite of benefits including tariff reductions for goods of a country of origin of TPP-11 members, access to services in the education, financial, professional, shipping, mining health, telecommunications and e-commerce sectors, and commitments on regulations on foreign investment.

While a number of the members of the TPP-11 have bilateral and/or regional free trade agreements in place, the benefit of the TPP-11 is that there is only one set of rules of origin required to be assessed to access preferential duty rates when exporting to TPP-11 members. However, it is also important that exporters review the applicable phasing duty rates that will apply under the TPP-11 for each of the importing countries, as the duty benefits may not currently be as great as the benefits under other existing free trade agreements. To read a report prepared by the KPMG International member firm in Australia, please click here.

China: State Council Updates E-Commerce Policy

On November 21, 2018, the Ministry of Finance of China reported on its website that the State Council had decided to extend and improve the policy on the import of retail goods through e-commerce. Effective January 1, 2019, the current administrative policy on import through e-commerce, which is not subject to import permits, registration or filing, will be continued. Such imports will continue to be treated, administratively, as imports made by individuals for personal use. The current policy will be extended from 15 cities to 22 cities, including Beijing, Shenyang, Nanjing, Wuhan, Xian and Xiamen. Other cities may introduce the same policy for import through direct purchase. In addition, the number of goods eligible for zero customs duty, and partial exemption from import VAT and consumption tax will be increased by 63 products, with the current tax incentives being amended. At present, import VAT and consumption tax are imposed on 70 percent of the taxable amounts, with import duty being zero if the value of a single import transaction does not exceed CNY 2,000 ($290) and the annual amount of total transactions conducted per person is less than CNY 20,000 ($2,900). These limits will be increased to CNY 5,000 ($724) and CNY 26,000 ($3,765), respectively. The Ministry of Finance further announced that export through e-commerce will be promoted further, and the related VAT refund on export will be studied in more detail.

Source: China (People's Rep.) - Changes to tax policy on e-commerce (Nov. 28, 2018), News IBFD.

China: AEO Mutual Recognition Agreement with Japan

On October 26, 2018, China's General Administration of Customs (GAC) and Japan's Customs Authority signed the Agreement on Mutual Recognition of China Customs Enterprise Credit Management System and Japan's Authorized Economic Operator (AEO) Program. According to the Mutual Recognition Agreement, AEO enterprises in China and Japan can enjoy the following four facilitation measures for trade in goods: (1) AEO qualification will be given adequate consideration when conducting risk assessment to reduce inspection and supervision; (2) physical inspection of goods will be expedited to the greatest extent possible; (3) customs liaison officers will be designated to solve problems encountered by AEO enterprises during the customs clearance process; and (4) customs clearance will be expedited for goods imported from AEO enterprises to the greatest extent possible after major infrastructure returns to normal operation from trade disruptions. To read a report prepared by the KPMG International member firms in China and Hong Kong, please click here.

In Brief

— **Albania:**[vii] On October 31, 2018, the Council of Ministers of Albania presented proposed amendments to the country's VAT law to the parliament; if approved, the amendments would be effective January 1, 2019. The proposal would introduce a reduced VAT rate of 6 percent for audiovisual media advertising services and a reduced rate of 10 percent for sales of electric buses for public transport. In addition, the proposal would exempt from VAT the sale of agricultural machinery from the list provided by the Council of Ministers; the sale of services relating to the inward processing regime (i.e., processing of foreign goods for re-exportation); and the import of raw materials used in the pharmaceuticals industry.

— **Australia:**[viii] On November 26, 2018, the Australian Taxation Office (ATO) published a guidance on the application of the GST margin regime for residential property purchases. According to the guidance, if the margin regime applies, purchasers of new residential property need to withhold GST in the amount of seven percent of the contract price. In addition, the business activity statement (BAS) reporting remains unchanged under the regime. Persons who are in business and registered for GST may be eligible for the margin regime. Finally, the guidance clarifies that persons with property transactions that exceed the GST threshold of AUD 75,000 ($54,000) may be regarded as an enterprise and required to register for GST.

— **Austria:**[ix] The Supreme Administrative Court of Austria (Verwaltungsgerichtshof) recently held that the accommodation of employees and the sale of work equipment from a construction company to its subcontractor do not qualify as construction service. VwGH 25.04.2018, Ro 2017/13/0003. As a consequence, the requirement for the purchaser to self-assess VAT under the reverse charge mechanism for construction services is not applicable. The fact that both companies refer the Austrian VAT guidelines, which state that in case of doubt services may be treated as construction services, does not prevent the application of the above-mentioned view as the VAT guidelines are not binding for courts.

— **Austria:**[x] The Federal Tax Court of Austria (Bundesfinanzgericht) recently held that a rental contract between a joint owner association (marital community) and one of the joint owners (the wife who acts as a doctor and thus as a separate taxpayer) may be acceptable for VAT purposes, provided that the contractual terms are those that would have been agreed by unrelated third parties under the same or similar circumstances, notwithstanding that there are no other rental contracts between the parties. BFG 19.0.2018, RV/7101477/2010. Consequently, the joint owner association can deduct VAT incurred on construction costs and renovation works as there is a connection with a taxable renting service.

— **Bolivia**:[xi] On November 20, 2018, the National Tax Service of Bolivia issued Normative Resolution 10800000026 introducing a new electronic invoicing regime effective March 1, 2019. According to the Resolution, taxpayers are allowed to issue debit and credit notes to correct invoices within three months of the issuance of the original invoice. The Resolution introduces a new "conciliation note," a document allowing taxpayers to adjust VAT inputs and outputs for telecommunications and oil and gas operators, as well as a new "tax-exempt fiscal note" for the trading, security and provision of food. The Resolution further establishes a new "synchronized invoicing system" to standardize specific types of information, such as product and service codes, related country, and type of currency, among other things. The Resolution includes processes for the management of contingencies when issuing invoices, such as power cuts, Internet service cuts, computer viruses, etc. Invoicing options will include online electronic invoicing, online computerized invoicing, web portal invoicing, manual invoicing, and pre-valued invoicing. Finally, the resolution includes an appendix listing 234,697 taxpayers that must adapt their invoicing systems in line with the schedule announced in the resolution.

— **Brazil:**[xii] On November 21, 2018, the Federal Revenue Service of Brazil published Ordinance 1,788/2018 in the official gazette; it introduces the blockchain taxpayer's number (blockchain do cadastro de pessoa física (bCPF)). The bCPF is a government to government solution to make the information exchange between authorities safe, more integrated and efficient. Data sharing through the use of blockchain, which is expected to be implemented within six months, will also facilitate Brazil's exchange of information with foreign tax authorities.

— **Canada:** On January 1, 2019, Quebec implemented the second stage of the phase-out of the input tax refund (ITR) restrictions. Currently, a "large business" that qualifies to claim ITRs and that incurs Quebec sales tax (QST) on a property or a service subject to the ITR restrictions can claim only 25 percent of related ITRs for such QST. In general, a large business is defined as a business with more than CAD10 million ($7.47 million) in annual revenues, including revenues from associated entities, as well as most financial institutions. With the change, certain large businesses will be able to claim 50 percent of the QST that becomes payable on goods and services subject to the ITR restrictions. In general, these ITR restrictions are expected to be fully phased out as of January 1, 2021. To read a report prepared by the KPMG International member firm in Canada, please click here.

— **Chile:**[xiii] On October 31, 2018, the Internal Revenue Service of Chile (IRS) issued Ruling No. 2278 in which it clarified that tour operator activities should be considered brokerage activities, and that in its character as a broker, the tour operator would be subject to VAT for any services rendered to Chilean residents. In the case of services rendered to nonresident persons, if certain requirements are met, a VAT exemption could be applicable. Moreover, the IRS added that in the case of export services, a taxpayer may be entitled to apply for a refund of the VAT incurred on goods and services required for the exporting activities, provided that the company has been characterized as a service exporter by the Chilean Customs Agency.

— **Chile:**[xiv] On November 19, 2018, the Chilean IRS issued Ruling 2,395 regarding the utilization of VAT credits related to goods and services acquired by a construction company which are not directly connected with the construction of goods, but in a subsequent stage will form part of the company's assets (e.g., private roads, safety services, portable toilettes and facilities for workers). Under Chilean law, VAT credits accumulated in a company's accounting records can be credited against any income tax liability, even against withholding taxes, or any other tax due. Moreover, the taxpayer can directly apply for a refund of such credits, provided that: (1) the taxpayer is either subject to VAT or qualifies as an exporter; (2) any excess credits are recorded in the company's accounts for a period of no less than six consecutive months; and (3) such credits derive either from the acquisition of movable or immovable property which is to form part of the company's assets, or from the acquisition of services which are to be included in such assets' cost determination. The IRS clarified the scope of the latter requirement by stating that services will only trigger the benefit if the acquisition of such services generated direct consequences in the determination of company asset cost. Under the IRS reasoning, this is only possible if the respective services had a direct impact on the acquisition or construction of the relevant asset, which in general terms refer to assembly services, services required for installation and set-up, and are related to making the asset ready for use or exploitation.

— **China:**[xv] On October 22, 2018, China's Ministry of Finance and the State Administration of Taxation jointly issued Circular [2018] No. 123 announcing the new VAT refund rates for the export of certain products; the new rates are effective November 1, 2018. The Circular increases the VAT refund rate to 16 percent for photographic paper and film, plastic products, bamboo flooring, wild vetch knitting, tempered safety glass and lamps. The Circular further increases the VAT refund rate to 13 percent for lubricants, aircraft tires, carbon fiber and some types of metal products. Moreover, the Circular increases the VAT refund rate to 10 percent for some types of agricultural products, bricks, tiles and fiberglass. In addition, the Circular repeals the VAT refunding for the export of bean pulp. Finally, the Circular increases the VAT refund rates for products other than those referred to above as follows: for products to which a refund rate of 15 percent applied before November 1, 2018, to 16 percent; for products to which a refund rate of 9 percent applied before November 1, 2018, to 10 percent; and for products to which a refund rate of 5 percent applied before November 1, 2018, to 6 percent.

— **Colombia:**[xvi] On November 28, 2018, Colombia published Decree No. 2179, which provides that nonresident providers of electronic services to final customers in Colombia are required to file VAT returns for the July-August, September-October, and November-December, 2018 periods by January 15, 2019. (For KPMG's previous coverage of the new nonresident VAT obligations in Colombia, click here).

— **Colombia:**[xvii] The Constitutional Court of Colombia recently held that applying a five percent VAT on feminine hygiene products is contrary to the Colombian constitution as it is discriminatory because it affects only a specific group of the population.

— **Congo:**[xviii] On November 16, 2018, the parliament of Congo passed the Finance Law 2019, which, among other things, amends the country's VAT law effective January 1, 2019. The Finance Law exempts from VAT the importation and purchase of equipment and chemical products used for mining or petroleum production. Moreover, exporting mining and petroleum companies and companies having made important investments during their preparation phase are considered subject to VAT for the purchase of their goods and services. Finally, VAT charged by a person required to use the VAT electronic system will not be deductible if the invoice is issued outside that system effective January 1, 2020. Any fraud of the VAT electronic system will be subject to a fine of CDF 5 million ($3,183), which is increased to CDF 15 million ($9,551) in the case of a second and subsequent offense.

- **Croatia:**[xix] On November 6, 2018, the European Commission published a proposal authorizing Croatia to limit the VAT deduction right on the purchase or leasing of passenger cars, including the related purchase of all goods and services, to 50 percent for the period January 1, 2019 - December 31, 2021. This rule would apply in situations where a passenger car is not used exclusively for business purposes. The proposal defines passenger cars as vehicles designed for the transportation of a maximum of nine persons (including the driver). The following vehicles and services would be excluded from the limitation: vehicles used for driver training, vehicle testing, repair service, economic activity of transporting passengers and goods, transport of deceased, and vehicles purchased for the purpose of resale.
- **Croatia:**[xx] On November 30, 2018, Croatia published a law amending the country's VAT law in the official gazette. The law aligns Croatian VAT rules with the EU Directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services, effective January 1, 2019.
- **Ecuador:**[xxi] On November 23, 2018, the Internal Revenue Service of Ecuador published Administrative Resolution NAC-DGERCGC18-00000423 in the official gazette; the Resolution establishes the procedural rules for filing requests for the refund of credits originating from the withholding of VAT which could not be offset in the taxpayers' return. The Resolution clarifies the banking requirements for taxpayers for each type of transaction to which the request for refund relates. Moreover, it is no longer necessary to submit certified copies of the means of payment to verify the amounts derived from the covered transactions in each refund request. The tax authority may request additional information to verify that the requirements to receive the VAT credit are met and that the supporting documentation is accurate.
- **European Union:**[xxii] On November 12, 2018, the EU officially published Council Directive (EU) 2018/1695 amending the EU VAT Directive regarding the periods during which a purchaser may utilize the option to self-assess VAT under the reverse charge mechanism on sales of certain goods and services susceptible to fraud and of the quick reaction mechanism (QRM). Both schemes are intended to enable Member States to tackle domestic VAT fraud in certain sectors of the economy. According to the amendment, both the optional reverse charge mechanism and the QRM will be available to Member States until June 30, 2022. With the planned reform of the VAT system, certain elements of these mechanisms will no longer be relevant and will from that point on be more limited.

- **European Union:**[xxiii] On November 21, 2018, the ECJ published its judgement in *Fortunata Silvia Fontana*, Case C-648/16, in which it held that if a taxpayer did not declare its total gross receipts, the national tax authorities may rely on sectoral studies to extrapolate the taxpayer's gross receipts, as long as the taxpayer's VAT deduction right and right of defense are guaranteed.
- **European Union:**[xxiv] On November 21, 2018, the ECJ published its judgment in *Lucrețiu Hadrian Vădan*, Case C-664/16, in which it held that an expert report commissioned by a national court is in itself not sufficient for a taxpayer to substantiate its right to deduct VAT when such a person cannot show the original VAT invoices. However, when not being able to provide VAT invoices, such a report may supplement other evidence provided or reinforce its credibility.
- **European Union:**[xxv] On November 29, 2018, the ECJ published its judgment in *Harry Mensing*, Case C-264/17, in which it held that a taxable dealer within the meaning of the margin mechanism for works of art can opt to apply that mechanism to sales of works it had previously acquired in an intra-EU transaction, because the works of art were sold to the dealer by their creators or successors in title in a zero-rated intra-EU sales in another EU Member State.
- **European Union:**[xxvi] On November 29, 2018, the ECJ published its judgment in *Baumgarten sports & more GmbH*, Case C-548/17, in which it held that in cases in which a sports agency service provider receives a commission fee, paid in installments, for successfully placing a football player with a football club, the VAT on the payments becomes due at the time of receiving the payments, and not on the total amount of the commission at the time of providing the agency service.
- **European Union:**[xxvii] On December 7, 2018, the EU published in the official journal the following pieces of legislation introducing quick fixes to the European VAT system; they are effective January 1, 2020: (1) Council Directive (EU) 2018/1910 amending Directive 2006/112/EC with regard to the harmonization and simplification of certain rules in the value added tax system for the taxation of trade between Member States; Council Implementing Regulation (EU) 2018/1912 amending Implementing Regulation (EU) No. 282/2011 regarding certain exemptions for intra-Community transactions; and Council Regulation (EU) 2018/1909 amending Regulation (EU) No. 904/2010 concerning the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements. (For KPMG's previous discussion on the EU's VAT Quick Fixes, click here.)
- **France:**[xxviii] On October 23, 2018, the French National Assembly adopted the first part of the Finance Bill for 2019, which would amend the VAT regime applicable in Martinique and Guadeloupe. The French law provides for a specific mechanism entitled "non-recoverable VAT," which leads to a subvention mechanism allowing taxpayers to benefit from a VAT

deduction regarding new goods acquired or imported which are VAT exempt. The Finance Bill proposes to repeal this specific mechanism for all sales and imports of goods ordered before January 1, 2019. A transitional mechanism is currently being debated by the National Assembly to allow the non-recoverable VAT regime to apply if the goods have been ordered before January 1, 2019 and a deposit regarding these goods has been made before December 31, 2018.

— **Ghana:**[xxix] On November 15, 2018, the Ghanaian government presented the Budget for 2019 which, if approved, would amend the country's VAT law. The Budget announces a crackdown on tax evasion practices, including: the deliberate undervaluation of imports; the removal of imports from bonded warehouses without prior payment of customs taxes; sales suppression; the non-issuance of VAT receipts to registered VAT businesses; and the diversion of goods cleared as transit goods into the domestic market. The government further announced that it will challenge those businesses failing to adhere to requirements concerning use of a Tax Identification Number. Finally, the government stated that it will seek to curtail smuggling and counterfeiting in the textile industry, extend the tax stamp policy to the industry and zero-rate VAT on the sale of locally made textiles for three years.

— **Greece:**[xxx] On October 4, 2018, Greece published Circular 1177 in the official gazette. It, defines the term "exercise of activity in the high seas" for VAT purposes and lays down the conditions for the applying a zero rate to the delivery and import of vessels that will be used for navigation in the high seas.

— **Isle of Man:**[xxxi] On November 8, 2018, the European Commission sent a letter of formal notice to the UK in which it held that the current VAT rules of the Isle of Man for aircraft are incompatible with the EU VAT Directive. The Isle of Man currently allows purchasers of aircraft, including aircraft leasing services, meant expressly for private use can receive a VAT refund. According to the Commission, the UK has not taken sufficient action against this VAT practice in the Isle of Man, the latter's legislation generating VAT evasion in the yacht and aviation sectors and being featured heavily in the coverage of the "Panama Papers." The Commission stated that if the UK does not act within the next two months, it may send a reasoned opinion to the UK tax authority.

— **Italy:**[xxxii] On November 8, 2018, the European Commission sent a letter of formal notice to Italy in which it held that the Italian VAT legislation that currently allows a reduction in the VAT rate applied to the sale of fuel based on the proximity of the refueling station i Switzerland (the closer the lower the rate) is not compatible with the EU VAT Directive and distorts competition. The Commission stated that if Italy does not act within the next two months, it may send a reasoned opinion to the Italian tax authorities.

— **Italy:**[xxxiii] On November 8, 2018, the European Commission sent a letter of formal notice to Italy in which it held that the Italian VAT legislation that currently considers the size of a yacht in estimating the amount of a lease considered to take place in EU waters (the larger the yacht, the less considered to be in EU waters) is not compatible with the EU VAT Directive and distorts competition. The Commission stated that if Italy does not act within the next two months, it may send a reasoned opinion to the Italian tax authorities.

— **Italy:**[xxxiv] On November 2, 2018, the Italian Tax Authority (ITA) published Ruling Answer No.59 clarifying application of the requirement for the purchaser to self-assess VAT under the reverse charge mechanism on energy shipping services. According to Italian law, the reverse charge mechanism applies to sales of gas and electricity to a qualifying, taxable reseller (i.e., a taxpayer established in Italy and whose principal activity with respect to the purchase of gas, electricity, heat and refrigeration is the resale of such goods). The ITA clarified that sales of energy shipping services carried out by the same company selling gas and electricity to the qualifying taxable reseller qualify as ancillary sales and are thus also subject to the reverse charge mechanism.

— **Italy:**[xxxv] On November 12, 2018, the ITA published Ruling Answer No. 66 in which it held that taxpayers who are erroneously charged VAT on an incomplete transaction must submit an application of reimbursement to the tax authority to claim their refund. Taxpayers cannot request a note of variation from the seller to deduct the payment from periodic VAT because if the transaction was completed, then the VAT charge would be accurate.

— **Italy:**[xxxvi] On November 19, 2018, the ITA published Ruling Answer No. 69 in which it held that sales of emission allowances by tollers and sub-tollers are considered sales of intangible assets and are subject to the standard VAT rate (currently 22 percent). The tax base for emission allowance sales and transfers is determined by the market price on April 10 each year, and sub-tollers are subject to penalties for incorrect documentation.

— **Italy:**[xxxvii] On November 22, 2018, the ITA published Ruling Answer No. 76 in which it held that the VAT exemption for services related to the sale of satellites to state agencies requires a functional connection between the design activities and the eventual realization of a satellite system or its ground-based components. Therefore, design activities that are ultimately used in the realization of technologies other than satellites are subject to VAT.

— **Mexico:**[xxxviii] Mexico's Chamber of Deputies is currently discussing a proposal to introduce a three percent digital services tax which would apply to profits of Mexican residents (both individuals and legal entities) and non-residents with a permanent establishment in Mexico providing the following digital services exceeding MXN 100 million ($4.96 million), regardless of the place where such profits are realized: advertising in a digital interface targeted at the users of such an interface; providing a multifaceted interface that allows users to locate other users and interact with them, and that facilitates the delivery of goods or rendering of underlying services among those users; and -transmission of user data generated from the activities carried on in digital interfaces by such users.

— **Latvia:**[xxxix] On October 31, 2018, the Latvian Ministry of Finance published a draft bill, which would amend the country's VAT Law if approved. The draft bill would align Latvian VAT rules with the EU Directive on the VAT treatment of vouchers as well as EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019. In addition, the draft bill would establish a unified regime for application of VAT to transactions relating to building construction; require the purchaser to self-assess VAT under the reverse charge mechanism on sales of ferrous and non-ferrous metal semi-finished products; and clarify the VAT exemption applicable on certain transactions as well as the VAT registration rules.

— **Netherlands:**[xli] On November 20, 2018, the Netherlands published Decree No. 155014 in the official gazette; it amends the conditions under which sales of seagoing vessels and aircrafts may be zero-rated. Effective January 1, 2019, the zero rate for seagoing vessels will apply only if: (1) the vessels are effectively used at least 70 percent for navigation on the high seas; and (2) they are used entirely (i.e., 100 percent) for commercial activities. To read a report prepared by the KPMG International member firm in the Netherlands, please click here

— **Nigeria:**[xli] The Federal Inland Revenue Service of Nigeria (FIRS) recently announced that it started issuing VAT certificates to all taxpayers registered for VAT collection purpose. The FIRS requires all VAT collectors to display the VAT certificates at their business premises and requires taxpayers to report VAT collectors who fail to adhere to this directive. To read a report prepared by the KPMG International member firm in Nigeria, please click here.

— **Poland:**[xli] On November 9, 2018, the Ministry of Finance of Poland proposed that e-books and e-magazines would be subject to the reduced VAT rate of five percent effective April 1, 2019. In addition, the Ministry proposes that the following items should be subject to the reduced VAT rate of five percent effective April 1, 2020: (1) basic foodstuffs including tropical fruits, all types of bread and cakes, soups and broths, diet foods, and spices; (2) baby products, including food, pacifiers, diapers, and car seats; and (3) feminine hygiene products.

— **Romania:**[xlii] On November 8, 2018, the European Commission sent a letter of formal notice to Romania in which it held that the VAT split payment mechanism introduced in Romania effective January 1, 2018 is not compatible with the EU VAT Directive and with the freedom to provide services. The Commission stated that if Romania does not act within the next two months, it may send a reasoned opinion to the Romanian tax authorities.

— **Romania:**[xliii] On November 19, 2018, the Romanian President signed a decree converting into national law an emergency ordinance combating VAT and excise tax fraud. The law establishes a database and registration rules for intra-EU sellers of goods and services subject to VAT; strengthens the competent authority's investigative powers; increases rules for the validation of excise goods; and amends VAT and excise tax exemptions.

— **Saudi Arabia:**[xliv] On November 25, 2018, the Saudi General Authority of Zakat (GAZT) announced that businesses with annual gross receipts exceeding SAR 40 million ($10.7 million) must file mandatory VAT returns by the last day of the month following the end of the tax period at issue. The tax authority also clarified that failure to comply with the filing deadlines results in penalties of 5 - 25 percent of the value of unpaid tax. Taxpayers can correct previously submitted returns by alerting the tax authority within 20 days of discovering the error. Finally, the GAZT stated that taxpayers can change between monthly and quarterly reporting periods through the online government portal.

— **Slovakia:**[xlv] Effective January 1, 2019, Slovakia introduced a new Insurance Premium Tax (IPT) law. Under the new law, the current levy of eight percent on received non-life insurance premiums will be abolished, while the levy of eight percent on received insurance premiums from the mandatory contractual liability insurance for liability arising from the use of land-based motor vehicles remains in effect. Non-life insurance policies are subject to the new IPT if the insurance risk is located in the Slovak Republic. The IPT further applies on all insurance agreements, regardless of the date that the agreement was concluded, if the insurance period lapses after December 31, 2018. In general, the IPT is due from insurance companies. However, the IPT may be due from the policyholder if the policyholder pays the premium to a third-country insurance undertaking that does not have a branch in the territory of the Slovak Republic, or to a legal person to which the costs of such insurance are recharged. The new IPT applies at a rate of zero percent on insurance premiums from the mandatory contractual liability insurance for liability arising from the use of land-based motor vehicles. The tax base is the amount of the premium received less tax if a person obliged to pay the IPT is the insurer. If a policyholder or person to whom insurance costs are recharged is liable to pay the tax, the tax base is the amount of the premium.

— **Tunisia:**[xlvi] On October 15, 2018, the Tunisian government submitted the Finance Law 2019 to the parliament. If approved, the law would reduce the VAT rate applicable to landline phone subscriptions and housing Internet subscriptions to increase access to Internet; imported solar panels; and imported cars (with an engine capacity not exceeding 1200 cc). Moreover, the Finance Law would exempt from VAT specific medical items used by breast cancer patients.

— **Ukraine:**[xlvii] On October 26, 2018, the State Fiscal Service of Ukraine (SFS) issued Guidance Letter No. 4359/6/99-99-15-03-02-15/IPK in which it clarified that if a payment is made to a sub-licensee for the right to use computer software, such payment is regarded as a royalty and is not subject to VAT, provided that there are no use restrictions as specified in the Ukrainian Tax Code. In addition, if the right to use the software products is granted to end users by providing them with an access key, including through the Internet, and the payment for such use is not deemed a royalty, such transaction is exempt from VAT.

— **Ukraine:**[xlviii] On November 6, 2018, the SFS issued Guidance Letter 4718/6/99-99-15-03-02-15/IPK in which it held that engineering services that a resident provides to a nonresident are not subject to VAT in Ukraine because they are considered to be provided in the place in which the recipient is registered as a business entity or, in the absence of that registration, the place of its permanent or predominant residence.

— **United Arab Emirates:** The United Arab Emirates Federal Tax Authority recently issued a VAT guide on real estate, focusing on farm houses and farm land and a VAT guide on the sale of vehicles for use in public transportation.

— **United Kingdom:**[xlix] On November 7, 2018, the UK tax authority (HMRC) published a draft statutory instrument, together with a policy paper and a guidance note, introducing a requirement for the purchaser to self-assess VAT for certain building and construction services effective October 1, 2019. The reverse charge will apply to sales between sub-contractors and contractors, as defined by Construction Industry Scheme (CIS), unless the sale is to a contractor who is an end user.

— **United Kingdom:**[l] On November 19, 2018, the UK published the Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 which aligns the UK VAT rules with the EU rules intended to simplify VAT matters for small vendors of electronic services effective January 1, 2019.

— **Uzbekistan:**[li] On November 19, 2018, the Ministry of Finance Uzbekistan published proposed revisions to the country's tax code for public consultation; the proposals are to take effect from January 1, 2019. The bill would allow businesses with annual gross receipts of no greater than UZS 1 billion ($120,000) to opt to be taxed under the VAT regime. The bill would further expand the VAT credit rules for various goods and services.

---

i. Bloomberg Law News, Albania Gazettes Law Reducing VAT Rate for Agritourism Services (Nov 29, 2018).

ii. Bloomberg Law News, Croatia Gazettes Law Amending VAT Act (Dec. 7, 2018); CCH, Global VAT News & Features, Croatia Enacts VAT Rate Cut Law (Dec. 10, 2018).

iii. CCH, Global VAT News & Features, Finland Prepares To Cut VAT On E-Books (Nov. 5, 2018).

iv. CCH, Global VAT News & Features, Romania Introduces VAT Cuts (Nov. 16, 2018).

v. Slovak Republic - Reduced VAT rate for accommodation services – signed by president (Nov. 13, 2018), News IBFD.

vi. Turkey - VAT rates reduced for certain products (Nov. 1, 2018), News IBFD.

vii. Albania - Fiscal package for 2019 sent to parliament (Nov. 13, 2018), News IBFD.

viii. Bloomberg Law News, Australia Tax Agency Clarifies Application of GST Margin Regime for Residential Property Transactions (Nov. 28, 2018).

ix. Austria - Supreme Administrative Court rules on VAT in connection with construction works (Nov. 6, 2018), News IBFD.

x. Austria - Federal Tax Court rules on input VAT deduction (Nov. 6, 2018), News IBFD.

xi. Bolivia - New electronic invoicing system introduced (Nov. 28, 2018), News IBFD.

xii. Brazil - Data sharing by tax authorities through blockchain – regulated (Nov. 26, 2018), News IBFD.

xiii. Chile - IRS clarifies VAT treatment of tour operator activities (Nov. 16, 2018), News IBFD.

xiv. Chile - VAT treatment of services acquired for construction clarified (Nov. 30, 2018), News IBFD.

xv. China (People's Rep.) - VAT export refund rates adjusted (Nov. 14, 2018), News IBFD.

xvi. Orbitax, Colombia Sets Initial VAT Return Deadline for Non-Resident Service Providers (Dec. 13, 2018).

xvii. Colombia - Constitutional Court considers VAT on sanitary towels to be contrary to Constitution (Nov. 22, 2018), News IBFD.

xviii. Congo (Dem. Rep.) - Draft Finance Law 2019 adopted by National Assembly and Senate (Dec. 12, 2018), News IBFD.

xix. European Union; Croatia - European Commission publishes proposal authorizing Croatia to allow 50% deduction of input VAT on purchase or lease of passenger cars (Nov. 6, 2018), News IBFD.

xx. CCH, Global VAT News & Features, Croatia Enacts VAT Rate Cut Law (Dec. 10, 2018).

xxi. Ecuador - Simplified procedure for reimbursement of VAT – published (Nov. 28, 2018), News IBFD.

xxii. European Union - Council Directive extending application periods of optional reverse charge mechanism and quick reaction mechanism – published in Official Journal (Nov. 12, 2018), News IBFD.

xxiii. IT: ECJ, Nov. 21, 2018, Case C-648/16, Fortunata Silvia Fontana v. Agenzia delle Entrate – Direzione provinciale di Reggio Calabria, ECJ Case Law IBFD.

xxiv. RO: ECJ, Nov. 21, 2018, Case C-664/16, Lucrețiu Hadrian Vădan v. Agenția Națională de Administrare Fiscală - Direcția Generală de Soluționare a Contestațiilor and Direcția Generală Regională a Finanțelor Publice Brașov - Administrația Județeană a Finanțelor Publice Alba, ECJ Case Law IBFD.

xxv. DE: ECJ, Nov. 29, 2018, Case C-264/17, Harry Mensing v. Finanzamt Hamm, ECJ Case Law IBFD.

xxvi. DE: ECJ, Nov. 29, 2018, Case C-548/17, Finanzamt Goslar v. baumgarten sports & more GmbH, ECJ Case Law IBFD.

xxvii. European Union - New rules introducing quick-fixes to VAT system published (Dec. 7, 2018), News IBFD.

xxviii. Guadeloupe; Martinique - Finance Bill for 2019 calling for repeal of specific non-recoverable VAT regime (Nov. 22, 2018), News IBFD.

xxix. Global VAT News & Features, Ghana Amends Mining Tax Regime In 2019 Budget (Nov. 21, 2018).

xxx. Greece - Activities in high seas for VAT exemption purposes – circular released (Nov. 6, 2018), News IBFD.

xxxi. European Union; United Kingdom; Isle of Man - European Commission sends United Kingdom letter of formal notice for Isle of Man's VAT rules for aircraft (Nov. 8, 2018), News IBFD.

xxxii. European Union; Italy - European Commission sends Italy letter of formal notice regarding reduction in VAT rate for fuel in Lombardy region (Nov. 8, 2018), News IBFD.

xxxiii. IBFD, Commission follows up on illegal tax breaks for yachts – VAT rate – Italy (November 12, 2018).

xxxiv. Italy - Application of reverse charge mechanism to energy transport services – clarifications issued (Nov. 9, 2018), News IBFD.

xxxv. Bloomberg Law News, Italy Tax Agency Clarifies Reimbursements for Erroneously Charged VAT (Nov 26, 2018).

xxxvi. Bloomberg Law News, Italy Tax Agency Clarifies VAT Treatment of Energy Production

Services Under Tolling, Sub-Tolling Contracts (Nov 26, 2018).

xxxvii. Bloomberg Law News, Italy Tax Agency Clarifies VAT Exemption for Satellite Design Services (Nov 29, 2018).

xxxviii. Mexico - Proposal for taxation of digital economy under discussion (Nov. 8, 2018), News IBFD.

xxxix. Bloomberg Law News, Latvia MOF Seeks Comments on Draft Bill to Amend Certain VAT Provisions (Nov 13, 2018).

xl. Bloomberg Law News, Netherlands Gazettes Decree Amending Zero-Rate VAT on Supply of Seafaring Vessels, Aircraft (Nov 26, 2018).

xli. CCH, Global VAT News & Features, Poland To Cut VAT On Numerous Goods (Nov. 14, 2018).

xlii. European Union; Romania - European Commission sends Romania letter of formal notice regarding VAT split payment mechanism (08 Nov. 2018), News IBFD.

xliii. Bloomberg Law News, Romania President Signs Decree Combating VAT, Excise Tax Fraud (Nov 26, 2018).

xliv. Bloomberg Law News, Saudi Arabia Tax Agency Announces Deadlines, Penalties for Mandatory VAT Filing (Nov 28, 2018).

xlv. Slovak Republic - Insurance premium tax effective from January 1, 2019 (Nov. 13, 2018), News IBFD.

xlvi. Tunisia - Draft Finance Law 2019 submitted to parliament – indirect taxation (Nov. 6, 2018), News IBFD.

xlvii. Ukraine - VAT treatment of software sublicence – SFS clarifications (Nov. 13, 2018), News IBFD.

xlviii. Tax Analysts, Ukraine Clarifies Taxation of Rent Income, Engineering Services (Nov. 19, 2018).

xlix. United Kingdom - VAT reverse charge for building and construction services: draft legislation, policy paper and guidance (Nov. 8, 2018), News IBFD.

l. United Kingdom - The Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 made (Nov. 20, 2018), News IBFD.

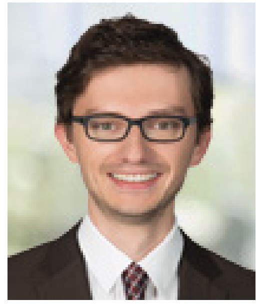
li. Global VAT News & Features, Uzbekistan Releases Tax Reform Plans For Consultation (Nov. 28, 2018).

About Inside Indirect Tax

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

Kent Johnson
Partner
Seattle

Frank Sangster
Principal
Philadelphia



Philippe Stephanny
Senior Manager
Washington, D.C.