KPMG

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About this Newsletter

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

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Global Rate Changes

- **Argentina:** On April 17, 2019, Argentina published in the official gazette General Resolution No. 4461/2019, which increases the VAT rate on the importation of certain goods (depending on tariff classification) from 10 percent to 20 percent effective April 22, 2019. The General Resolution further clarifies that the increased VAT rate applies to taxpayers that do not demonstrate that they are exempt from VAT or are not subject to VAT, or in situations in which the imported goods are considered by the importer as fixed assets for accounting purposes. To read a report prepared by the KPMG International member firm in Argentina, please click here.
- **Portugal:**[i] Effective July 1, 2019, Portugal will apply the reduced VAT rate of 6 percent to sales of electricity and natural gas to certain consumers effective July 1, 2019. The reduced rate will apply to households that have contracted electricity power not exceeding 3.45 kVA and, and for natural gas to households that have low pressure consumption of gas not exceeding 10,000 m3 per year. A reduced rate of four percent will apply in Azores, and five percent in Madeira.

The Americas

United States: New York Introduces Sales and Use Tax Marketplace Rules

On April 12, 2019, the New York bills (A.2009C and S.1509C) that adopt certain tax changes proposed in the Executive Budget were signed into law by Governor Cuomo. On the sales tax side, effective June 1, 2019, the current sales and use tax exemption for receipts from transportation, transmission, or distribution of gas or electricity when the transportation, transmission or distribution is provided by someone other than the vendor of the gas or electricity is eliminated.

In addition, effective June 1, 2019, the bills amend the definition of "persons required to collect tax" under New York state sales tax law to include marketplace providers. A marketplace provider is defined as a person who, pursuant to an agreement with a marketplace seller, facilitates sales of tangible personal property by a marketplace seller. A marketplace seller is any person who has an agreement with a marketplace provider under which the marketplace provider will solicit sales of tangible personal property by the marketplace seller. Both of the following conditions must be met for a marketplace provider to be considered to be facilitating a sale of tangible personal property. First, the marketplace provider must provide the "forum in which, or by means of which, the sale takes place or the offer of sale is accepted, including a shop, store, or booth, an internet website, catalog, or similar forum." The second condition is that the marketplace provider must collect the receipts paid by a customer to a marketplace seller for a sale of tangible personal property (either directly or through an affiliated person), or contract with a third party to collect such receipts. A "sale of tangible personal property" does not include the rental of a passenger car, but does include a lease of a vehicle or a vessel for a term of a year or more.

The bills provide that a person is not considered a marketplace provider if the person lacks a physical presence in the state and (in the immediately preceding four quarterly periods) can establish that its cumulative total gross receipts from sales it has made or facilitated for delivery into New York did not exceed $300,000 or that the person has not made or facilitated more than 100 sales of property delivered into New York. Moreover, a marketplace provider's obligation to collect and remit sales tax on sales it facilities is limited to sales of tangible personal property. However, New York considers the sale of a license of prewritten computer software to be a sale of tangible personal property and takes an expansive interpretation of when the use of software, particularly remotely-hosted software, occurs in the state. A marketplace provider required to collect will have all the rights and obligations of a vendor, including the right to accept exemption certificates and file refund claims.

Under the bills, a marketplace seller who is a "vendor" under New York law, is relieved of its collection and remittance obligation for sales flowing through the marketplace and is not required to include receipts from such sale in its total receipts if the marketplace seller can show (typically through a certificate of collection) that a marketplace provider is registered to collect and remit applicable sales tax on such sale. Further, the marketplace seller must show that any failure by the marketplace provider to collect the proper amount of tax was not the result of the marketplace seller providing incorrect information to the marketplace provider. The bills also provide the Commissioner with discretion to "develop a standard [contract] provision, or approve a standard provision developed by a marketplace provider, in which the marketplace provider obligates itself to collect the tax on behalf of all the marketplace sellers for whom the marketplace provider facilitates sales of tangible personal property." This provision would essentially operate as a collection certificate for the marketplace seller. Lastly, assuming the parties are not affiliated, the bills provide relief to a marketplace provider if it fails to collect and remit the correct amount of tax due to incorrect information provided by a marketplace seller. For more information, please click here.

Brazil: Indirect Tax Reform Proposed

On April 3, 2019, the Chamber of Deputies (lower house of the Brazilian parliament) accepted for consideration the Bill for Amendment of the Constitution 45/2019 (Proposta de Emenda à Constituição 45/2019), which proposes a tax reform to simplify the Brazilian tax system through the unification of taxes and contributions charged on consumption. Under the proposal, the five taxes and contributions currently collected by the federal government, federal states, and municipalities would be replaced by a single VAT to be named the "single tax on goods and services" (*Imposto Único sobre Bens e Serviços* (IBS)): the federal tax on manufactured products (*imposto sobre produtos industrializados* (IPI)); the state-level VAT (*Imposto sobre Circulação de Mercadorias e Serviços* (ICMS)); the municipal tax on services (*Impostos sobre Serviços* (ISS)); and the federal social contributions (*Contribuição para o Programa de Integração Social* (PIS) and *Contribuição para o Financiamento da Seguridade Social* (COFINS)).

The IBS would be initially levied at a single rate for all goods and services (the standard rate), but the federal government, the federal states, and municipalities would have the competence to amend the standard rate. No IBS tax incentives or benefits would be granted to companies. This is expected to trigger debate, given the extensive use of such incentives in the current structure. Under the Bill, transition rules would apply to both taxpayers, federal states, and municipalities. For taxpayers, the replacement of taxes and contributions by the IBS is proposed to take effect over 10 years, as follows: (1) a trial period of 2 years in which the COFINS rate will be reduced and IBS charged at 1%; and (2) an implementation period of 8 years in which the IPI, ICMS, ISS, PIS and COFINS rates will be progressively reduced. A longer transitional period of 50 years will be necessary for the distribution of revenue among federal government, states, and municipalities. The proposal needs to be analyzed by the Justice and Constitution Commission and by the Special Commission before it is submitted for vote at the Plenary of the Chamber of Deputies and Senate.

Source: Brazil—Tax reform – bill presented to Chamber of Deputies (Apr. 8, 2019), News IBFD.

Europe, Middle East, Africa (EMA)

Bahrain: Guidance on VAT Treatment of Healthcare and Education Sector

Bahrain's National Bureau for Revenue (NBR) recently published two guides on the value added tax (VAT) treatment of education services and healthcare services. With regard to education, the guidance clarifies that education services by kindergartens, pre-primary, primary, secondary, and higher education institutions are zero-rated for VAT purposes. For these services to be zero-rated, the school or educational institution must be licensed by the Ministry of Education in Bahrain or be under its supervision and the services must be provided directly to a student who is enrolled in that school or institution. Certain education services are not eligible for zero-rating and are subject to the standard five percent rate, including professional education and vocational training, unless such vocational training is provided by a polytechnic educational institution which is licensed by the Ministry of Education in Bahrain. Goods and services that are related to the provision of qualifying education services and are mandatory are also zero-rated. This may include administration fees, required books and reading material, and student accommodation. The guide further clarifies the VAT treatment of the following payments: educational fees paid by a third party (e.g., an employer paying school fees for its employee's child); school donations and fundraising activities for charitable purposes; grants and sponsorships received; school transportation services; and online educational courses.

The healthcare guide clarifies that the provision of qualifying medical services (i.e., preventive and basic healthcare services) and associated goods and services provided to a patient during the course of his treatment by qualified medical practitioners or qualified medical institutions are zero-rated. However, the sale of cosmetic procedures or surgery is subject to VAT at the standard rate of five percent; these services are not considered qualifying medical services unless they are provided as part of treating a medical condition as determined by a qualified medical professional. In addition, the local sale and import of medicines and medical equipment listed in a decision issued by the competent medical authority in Bahrain are zero-rated. The import of necessities and equipment used by persons with special needs and those used by charities and hospitals for persons with special needs, are exempt from VAT.

Source: Orbitax, Bahrain Publishes VAT Booklet on Educational Goods and Services (Apr. 18, 2019); Bahrain—VAT treatment of education sector—booklet published (Apr. 16, 2019), News IBFD; Bahrain—VAT on healthcare—guide published (Apr.12, 2019), News IBFD.

European Union: Offshore Jackup Drilling Rigs Should Not Fall within the VAT Exemption for Sales of Vessels According to Advocate General

On April 10, 2019, the Court of Justice of the European Union (ECJ) published the Opinion of its Advocate General (AG) in *Grup Servicii Petroliere SA*, Case

C-291/18, regarding whether the sale of offshore jackup drilling rigs is covered by the term "vessels" within the meaning of the EU VAT Directive. In the case at hand, the taxpayer sold three offshore jackup drilling rigs, operating in the Black Sea in Romanian territorial waters) to certain Maltese purchasers for the purpose of carrying out drilling activities. Jackup rigs, or self-elevating units, are mobile platforms which consist of a buoyant hull which has been fitted with several movable legs. The taxpayer issued invoices, applying the VAT exemption regarding the sale of vessels used for navigation on the high seas. After the sale, the taxpayer continued to operate these platforms in the Black Sea pursuant to the terms of a bare boat charter. The Romanian tax authority determined that the evidence showed that the actual and preponderant use of the platforms occurs when they are in a parked position for the purpose of drilling and not when they navigate, which is only an activity subsidiary to drilling.

According to the AG, to determine whether the sale of offshore jackup drilling rigs is covered by the exemption, it is necessary to understand what is meant by the use of the word "vessel" and what characteristics a vessel must present to fall within the scope of the exemption. The context of the VAT exemption necessarily assumes that the vessel in question must at least be capable of being navigated far from the coast, which implies that the direction of the vessel can be plotted by the navigator and that the vessel is accordingly capable of self-propulsion. Whatever the nautical qualities of the drilling rigs in question, it is perfectly clear that these rigs are not used for navigation on the high seas, precisely because they do not possess any capacity for self-propulsion.

Finally the AG examined what is meant by the concept of "high seas" in the EU VAT Directive. Since the objective pursued is to exempt transactions equated with exports, the AG considered that the concept of high seas must be understood as designating the water outside the territorial scope of the EU VAT Directive. Referring to the Treaty on the Functioning of the European Union and the United Nations Convention on the Law of the Sea, the AG considered that the territorial scope of the EU VAT Directive includes exclusive economic zone. As all the parties agreed during the hearing, the Black Sea falls entirely under one or the other exclusive economic zones of its various coastal States. It follows, therefore, that even if these rigs could be regarded as "vessels" which were "used for navigation on the high seas," their sale nonetheless cannot fall under the VAT exemption, precisely because of the location (i.e., the exclusive economic zone) where they carried out their activities immediately after they have been sold. The ECJ must now decide whether to follow the non-binding Opinion of its AG.

Source: European Union; Romania—ECJ Advocate General's opinion (VAT): Grup Servicii Petroliere (Case C-291/18) – VAT zero rate; supply of vessels; offshore jackup drilling rigs (Apr. 10, 2019), News IBFD.

European Union: VAT Charged on Transaction Subject to Domestic Reverse Charge Cannot be Deducted in VAT Return

On April 11, 2019, the ECJ published its judgment in *PORR Építési Kft.*, Case C-691/17, regarding whether VAT invoiced is deductible when the transaction is subject to self-assessment requirement under the reverse charge mechanism. In the case at hand, a taxpayer established in Hungary received invoices from Hungarian vendors for services related to the construction of a motorway. The vendors charged VAT, which the taxpayer paid and subsequently deducted in its VAT returns. The Hungarian tax authorities carried out a tax audit and assessed the taxpayer with VAT, penalties, late payment interest, and a fine for non-compliance on the basis that the services rendered to the taxpayer were construction services for which the taxpayer should have self-assessed VAT under the domestic reverse charge instead of the vendors charging VAT. As a consequence, the taxpayer should not be allowed to deduct the VAT paid to the vendors.

In its analysis, the ECJ referred to the provisions of the EU VAT Directive and its settled case law regarding the right to deduct VAT, the principle of neutrality, the reverse charge and the related substantive requirements. The ECJ highlighted that the formal requirements that relate to the issuing of invoices subject to the reverse charge mechanism were not met in the case at hand since there was no reference of the application of the reverse charge mechanism on the invoice. Moreover, the ECJ held the view that the right to deduct VAT can only be exercised in respect of amounts due. Therefore, since the VAT that should have been self-assessed, the company did not have the right to deduct the VAT charged on the invoices.

The ECJ further considered whether the tax authority should have examined the ability of the vendors to refund the unduly paid VAT to the taxpayer according to the procedures available to them or whether the tax authority should directly refund that VAT. In this regard, the ECJ recalled that, according to the principle of procedural autonomy, the procedures for the repayment of taxes, in the absence of EU rules, are a matter of domestic law of the Member States and those procedures should be in line with the principles of equivalence and effectiveness. The ECJ explained that the procedural rules for the repayment of taxes should not make it impossible or excessively difficult to exercise the rights of the taxpayers. The ECJ further stated that a system in which the vendors are allowed to reclaim unduly paid VAT from the tax authority and the recipient of the services may recover the VAT paid by bringing civil law action against its vendors is in line with the principles of neutrality and effectiveness. Hungarian government officials confirmed that both options are available in Hungary. The ECJ referred to the taxpayer's statement in the hearing procedure that one of the vendors had initiated insolvency procedures and stated that where the VAT reimbursement from the vendor is impossible or extensively difficult, the taxpayer should be able to apply for a reimbursement from the tax authority, provided that the authority has collected the VAT from the vendor. The ECJ emphasized that such an application is distinct from the claim to deduct the VAT.

The ECJ concluded that since the Hungarian system appears to allow the taxpayer to recover the VAT unduly paid to the vendors, the Hungarian tax authority is not required either to verify whether the vendors can correct the invoices according to national legislation or to order such a correction. The ECJ further stated that, in the absence of suspicion of tax evasion, the practice of the Hungarian tax authority in the case at hand is in line with the principles of fiscal neutrality and effectiveness. However, where the refund by the vendor of the unduly paid VAT is impossible or excessively difficult, such as in the case of insolvency, the taxpayer should be able to apply for a reimbursement directly to the Hungarian tax authority. To read a report prepared by the KPMG International member firm in Hungary, please click here.

Source: HU: ECJ, 11 Apr. 2019, Case C-691/17, PORR Építési Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, ECJ Case Law IBFD.

European Union: ATM Operation Services Are Not VAT Exempt According to Advocate General

On May 2, 2019, the ECJ published the Opinion of its AG in *Cardpoint GmbH*, Case C-42/18, regarding whether outsourced ATM operation services are VAT exempt. In the case at hand, the taxpayer installed in prescribed locations operational ATMs, equipped with computer software and hardware and bearing the logo of the bank operating those ATMs. The taxpayer was responsible for ensuring the functioning of the ATMs. To do this, the taxpayer was tasked, first of all, with transporting bank notes, made available by that bank, and replenishing the ATMs. The taxpayer was further required to install computer hardware in the ATMs in question, together with any particular software necessary to keep the hardware running smoothly. Lastly, it provided advice on the day-to-day running of the ATMs.

When the ATMs were used for cash withdrawal transactions, special software would read particular data from the bank card as soon as this was inserted into the machine. The taxpayer would verify those data and send an electronic request to Bank-Verlag GmbH (BBK) to authorize the transaction requested by the cardholder. Next, BBK would forward the request to the interbank network, which would in turn pass it on to the bank that issued the bank card concerned. That bank would verify whether the account holder had sufficient funds in his account and send back, via the same channels, an approval or refusal of the withdrawal requested. Upon receipt of the reply, the taxpayer would generate a data file on the cash withdrawal and, if authorized, implement the requested transaction and generate a data file on the withdrawal. Lastly, that data file would be sent as a payment order to the bank operating the ATM in question. The bank would, in turn, transmit the unedited data files to the records system of the German Federal Bank. Since only banks are entitled to hold settlement accounts with the BBK, it was the banks who transmitted the data files to the BBK's records system. That data transfer rendered legally binding the right of the bank operating the ATM to obtain reimbursement from the bank owning the account affected by the transaction and payment of any charges thereby incurred. The transfer of the data also had the immediate effect of clearing and recording the transaction between the bank operating the ATM and the bank that issued the customer's card. The taxpayer considered that its services were VAT exempt financial services, which was challenged by the German tax authority.

The AG noted that the taxpayer acknowledged in its observations that, in accordance with the judgment in *Bookit* (Case C-607/14, May 26, 2016), the capture of an ATM user's bank card data, the transmission and verification of those data and the execution of the transaction requested by the cardholder following the receipt of the authorization message from the bank that issued the card concerned cannot fall within the scope of the VAT exemption. According to the AG, it is clear that the replenishment of ATMs, the installation and maintenance of the necessary software in the ATMs and the provision by the taxpayer of advice on the operation of those ATMs are not activities that have the effect of transferring a sum of money or entail legal and financial changes resulting from or characterizing that transfer. The service provided by the taxpayer does not directly entail the act of debiting or crediting an account itself or acting by means of accounting entries in the accounts of the holder of the bank card used to make a withdrawal. The taxpayer transmits the data from the user's card and the request for authorization for the withdrawal sought by the user, but executes the transaction, in the sense of physically releasing bank notes, only if the request is approved.

According to the AG, the arguments based on the specific nature of the taxpayer's activities do not call that assessment into question. The fact that the taxpayer physically dispenses bank notes and releases them to ATM users does not hold water. Ownership of the money is transferred from the bank, and not the taxpayer, to ATM users. It is true that the banks that operate the ATMs have outsourced a large proportion of their ATM activity and that the taxpayer provides a very extensive service. While the AG agrees with the taxpayer that some of its activities are essential to the payment transactions at issue, this is not sufficient to exempt the service it provides from VAT. As the taxpayer provided only technical and administrative services, those services cannot be exempted from VAT.

Finally, the AG made the point that the purpose of the exemption, namely to alleviate the difficulties connected with determining the tax base and the amount of VAT deductible and to avoid an increase in the cost of consumer credit do not invalidate the analysis. Since the tax base for the sale of services by the taxpayer can easily be determined by reference to the invoices for that sale, the first purpose cannot justify the exemption. Regarding the second purpose of the exemption, the taxpayer is of the view that, in the event that a cardholder overdraws his account, that withdrawal immediately creates a credit relationship between the cardholder and the bank that issued the card, and that consumer credit cannot be subject to VAT. It is true that, in a situation in which a bank authorizes a withdrawal despite the absence of sufficient funds in the bank account in question, the account holder effectively owes the bank money. This does not, however, constitute consumer credit, but a short-term overdraft authorization. The ECJ must now decide whether to follow the non-binding Opinion of its AG.

Source: Summary, C-42/18 Cardpoint, IBFD (May 6, 2019).

European Union: Transfer of Debt Held in an Enforcement Proceeding May Be Subject to VAT According to Advocate General

On May 2, 2019, the ECJ published the Opinion of its AG in *Paulo Nascimento Consulting*, Case C-692/17, regarding whether the transfer of debt held in an enforcement proceeding is subject to VAT or qualifies as VAT exempt financial service. In the case at hand, the taxpayer, a real estate company established in Portugal, provided real estate services to another company, which then refused to pay the fee for the services. The taxpayer subsequently brought its debtor to court, which recognized a total debt of EUR 170,859.62 ($191,000) owed to the taxpayer. The Portuguese Court of First Instance issued an enforceable Judicial Order and credited to the taxpayer real estate property of the debtor in an amount of EUR 606,000 ($677,000). Under the proceeding, the taxpayer was to return the excess amount (the credited value less the recognized debt plus execution costs) to the executional body assigned by the court. The taxpayer transferred the rights deriving from its position in the enforcement proceedings to another company for an amount of EUR 351,619.90 ($393,100). The taxpayer accounted for VAT on the value of the real estate services provided (EUR 125,000) and remitted the VAT to the tax authority. The taxpayer classified the remaining amount (EUR 200,369.90) as "other non-specified income" and did not calculate any VAT in this regard. The Portuguese tax authority assessed VAT to the taxpayer for the full amount received (EUR 351,619.90) plus interest as it considered that the transfer of the rights which derived from the enforcement proceedings was part of the taxable economic activity of the taxpayer, and the transaction should not be exempt from VAT.

The AG took the view that the transaction in the case at hand is a transfer of immovable property subject to VAT. The AG juxtaposed the facts in the case at hand with the facts in *GFKL*, C-93/10 (Oct. 27, 2011), in which the ECJ held that a transfer of rights pertaining to bad debts was outside the scope of VAT. The AG found that, contrary to the facts in *GFKL*, the price paid to the taxpayer is higher than the value of the debt it was owed. Moreover, the AG held the view that the debt purchaser bore no risk because it bought the rights of the taxpayer deriving from an enforcement proceeding, which was near its conclusion, and the payment of the debt was secured. The AG stated that the taxpayer had been transferred immovable property that secured the repayment of the debt owed to it. As a result, there was no debt to be transferred in practice. The AG reasoned the high price paid to buy the taxpayer’s rights deriving from the enforcement proceeding signifies that purchase was one of immovable property rather than an assumption of debt. As a transfer of immovable property, the transaction falls under the definition of sale of goods under the EU VAT Directive. If the transaction could not be classified as a sale of goods, it would fall under the definition of a sale of services; therefore, the transaction between the two companies is a sale subject to VAT.

The AG further analyzed whether the transaction should fall within the VAT exemption for the granting, negotiation and management of credit. The AG highlighted that the classification made in the agreement between the two companies as "assigning of credit" does not reflect the economic reality of the transaction. The AG also stated that the transaction did not meet the definition of the management and administration of credit developed by the ECJ as the taxpayer was neither a mediator nor was its main activity granting loans. The AG further addressed whether the transaction at issue could qualify as VAT exempt transaction concerning debts, but excluding debt collections. According to the AG, the granting of rights in the transaction is a transfer of tangible property rather than the transfer of debt; therefore, the transaction should be classified as a service subject to VAT. The ECJ must now decide whether to follow the non-binding Opinion of its AG.

Source: European Union; Portugal—ECJ Advocate General's opinion (VAT): Paulo Nascimento Consulting (Case C-692/17) – exemption for financial services; transfer of debt – details (May 6, 2019), News IBFD.

Italy: Overview of Recently Published VAT Guidance

On March 9, 2019, the Italian Tax Authority (ITA) published Resolution No.38/E regarding the application of the financial transaction tax (FTT) on sales of shares between companies with common control. The resolution addresses a case involving the sale of an Italian entity by a Dutch holding company to a UK holding company, both of which are owned by two other Dutch and UK entities in the same proportion (50 percent each). The sale is part of a reorganization for simplification purposes. The resolution provides that this transaction qualifies as an exempt reorganization for FTT purposes because the corporate structure, percentage ownership, and governance rules are all maintained, and there was no speculative intent in relation to the share transfer.

On April 5, 2019, the ITA published Ruling Answer No. 99/2019 in which it clarified the VAT rules applicable to a foreign company providing services to an Italian race team, including the organization, planning, and promotion of events. According to the ITA, a nonresident without a permanent establishment is not required to register or file VAT invoices and the domestic purchaser is required to self-assess VAT on such transactions.

On April 9, 2019, the ITA published Ruling Answer No. 104 which further clarifies the mandatory electronic invoicing requirement that was introduced effective January 1, 2019. (For KPMG's previous discussion on the mandatory electronic invoicing requirement, click here.) The ITA confirmed that the new rules on mandatory electronic invoicing apply only to sales between qualifying taxpayers established in Italy. Consequently, a nonresident taxpayer registered in Italy for VAT purposes through appointment of a VAT representative may choose to issue the required self-invoice in either paper or electronic format when removing qualifying goods from a VAT warehouse.

On April 9, 2019, the ITA published Law Principle No. 14, which clarifies the habitual exporter regime under which exporters are entitled to purchase VAT-free services and goods up to the amount of the zero-rated sales made in the preceding calendar year or in the previous12 months (i.e., the plafond). The ITA clarified that a taxpayer qualifying as habitual exporter is not entitled to use the plafond for the purchase of an immovable property and related installation services which are subject to the self-assessment requirement under the reverse charge mechanism.

On April 18, 2019, the ITA published the implementing rules for mandatory electronic invoicing in public procurement.

On April, 29, 2019, the ITA issued Protocol No. 107524, amending Protocol No. 89757/2018 regarding the issuance and receipt of electronic invoices. According to Protocol No. 107524, electronic invoices must be issued and received through the ITA SdI (*sistema di interscambio*) system. Effective May 31, 2019 (previously, May 3, 2019), qualifying taxpayers and their representatives may consult and download issued and received electronic invoices through a specific online service available on the ITA website, provided that they explicitly adhere to such service by September 2, 2019.

On May 8, 2019, the ITA published Resolution No. 47/E providing clarification on the electronic storage and transmission of data on daily considerations. The obligation applies effective July 1, 2019 for retailers with annual gross receipts higher than EUR 400,000 ($447,000). The ITA clarified that the relevant annual gross receipts is the overall gross receipts of the qualifying retailer, calculated in accordance with the general principles provided by article 20 of the VAT Act (i.e., the overall gross receipts originated from all the activities carried on by the taxpayer). Moreover, the ITA clarified that reference should be made to the overall gross receipts for fiscal year 2018. Consequently, qualifying retailers whose business activities only started in 2019 are automatically not required to comply with the new obligation in 2019.

Source: Orbitax, Italy Clarifies Exemption from Financial Transaction Tax on the Sale of Shares Between Companies with Common Control (Apr. 9, 2019); Bloomberg Law News Apr 11, 2019, Italy Tax Agency Clarifies VAT Treatment of Foreign Suppliers of Sporting Event Services; Italy—Electronic invoicing – clarifications issued (Apr. 29, 2019), News IBFD; Italy—Habitual exporter regime – clarifications issued (Apr. 29, 2019), News IBFD; Italy—Electronic invoicing in public procurement – implementing rules issued (Apr. 29, 2019), News IBFD; Italy—Electronic invoicing – implementing rules amended (May 6, 2019), News IBFD; Italy—Electronic storage and transmission of data on daily considerations – resolution published (May 14, 2019), News IBFD.

Russia: Companies Allowed To Recover VAT Incurred in Relation to Exports of Services Effective July 2019

On April 15, 2019, Russia published Federal Law No. 63-FZ introducing changes to the recovery of VAT for "exporting" services, effective July 1, 2019. The Federal Law provides for the right to recover VAT related to services deemed sold outside Russia. Effectively, companies "exporting" work and services and having projects outside Russia in the following will be able to recover VAT incurred in relation with such services: information technology (e.g., some types of electronic services, development, adaptation and modification of software for foreign customers); infrastructure companies (e.g., construction outside Russia, engineering services for foreign customers); mechanical engineering and industrial products (e.g., maintenance and repairs outside Russia); professional services (e.g., advisory, legal, marketing services for foreign customers); transport (e.g., transportation outside Russia); leasing certain types of equipment. However, the new rules do not apply to recovery of VAT related to services or work exempt from VAT (e.g., transfer of rights to use software under a license agreement to a foreign company not carrying out activities in Russia).

The changes allow companies to increase the amount of VAT recovery when they "export" services and work. As a consequence, companies should review the current methodology of VAT allocation and separate accounting between taxable and non-taxable activities. Moreover, the increase in the amount of recoverable VAT may lead to VAT refunds from the Russian tax authority. It will thus be more important to have documentary evidence confirming that the services are not sourced to Russia (e.g., the place of the buyer's activities is outside Russia), especially in light of recent cases in which the Russian tax authority was able to prove that certain services were sourced to Russia. Improper structuring of contractual relations may result in competitive disadvantages or lower profitability (e.g., if existing contracts do not allow recovery of VAT in case of "exporting" services under the new rules as opposed to competitors). To read a report prepared by the KPMG International member firm in Russia, please click here.

Russia: Overview of Recently Published VAT Guidance

On March 10, 2019, the Ministry of Finance of Russia (MOF) published Guidance Letter No. 03-07-08/10373 in which it clarified that services provided electronically (e-services) are defined as services that are provided through an information and telecommunications network and automated on the basis of information technology. An "information and telecommunications network" is defined as any technological system designed for the transmission of information. Access to such system can be provided using computers. The definition of information and telecommunications network covers the Internet as well as other networks with limited access. The MOF clarified that sales of e-services are subject to VAT in Russia if they are sourced in Russia, meaning the recipient of the services carries on its business activities in Russia.

The MOF recently published Guidance Letter 03-07-08/24055 regarding the VAT liability of nonresident electronic services providers. Effective January 1, 2019, nonresidents that provide electronic services in Russia must register for VAT purposes regardless of whether the recipient of the services is a taxpayer or a final consumer. According to the Russian Tax Code, electronic services include granting the right to use computer programs and databases online, including updates and additional functionalities; providing online advertising services and space; posting offers to purchase or sell goods, works, or services and property rights online; providing technical, organizational, information, and other opportunities online for the purpose of establishing contracts, and concluding transactions between sellers and buyers; providing and maintaining a commercial or personal presence online, supporting users' electronic resources (websites and pages), and granting access to those resources (including the ability to modify them) to other users; storing and processing information for online access to the provider; providing computing capacities to store information in real time; providing domain names and hosting services; administering information systems and websites; providing services that are performed automatically online upon the input of data by the purchaser, automated services involving request-based data search and selection, and online data resources; granting the right to use e-books and other publications; informational and educational materials; graphic images; musical works with or without text; and audiovisual works online; searching for and providing information on potential buyers; providing access to internet search systems; and maintaining statistics online. The MOF held that if a nonresident provides to a Russian customer not only the electronic services mentioned above, but also other services, including consulting services, that are considered to have been rendered in Russia, the nonresident is required to determine and remit the VAT due on those other services.

The MOF recently published Guidance Letter 03-07-08/25341 in which it clarified that the VAT exemption on the rental of premises in Russia to foreign legal entities applies only to the states listed in a joint order of the Russian MOF and Ministry of Justice (No. 6498/40n, dated May 8, 2007). According to that order, the VAT exemption applies to services involving any rental of premises to citizens and entities registered in the Isle of Man, with the exception of rentals done by entities rendering financial services.

On April 24, 2019, the Russian Federal Tax Service (FTS) issued Letter No. SD-4-3/7937@ concerning the extension of VAT to business-to-business (B2B) electronic services provided by nonresidents effective January 1, 2019. According to the FTS, all nonresident sellers of B2B electronic services to Russian customers must register for VAT with the Russian tax authorities, or be subject a penalty of RUB 10,000 ($155) plus 10 percent of any income derived from sales in a period. Where nonresident electronic services sellers are registered for VAT and make sales other than electronic services in Russia, the Russian customer is not responsible for withholding VAT on such other sales. Although Russian customers have no obligation to withholding VAT, if a customer has withheld and paid VAT, the foreign seller is relieved of its VAT obligation on the sale and the foreign seller should include a nil value for the sale in its VAT return.

Source: Russia—VAT treatment of e-services – MoF clarifications (Apr. 8, 2019), News IBFD; Iurie Lungu, Russia Releases Guidance on Cross-Border Issues, TaxAnalysts (May 2, 2019); Iurie Lungu, Russia Explains VAT Treatment of Foreign Online Service Provider (May 8, 2019); Orbitax, Russian Tax Service Issues Letter on VAT Obligations for E-Service Supplies (May 9, 2019).

Saudi Arabia: Guidance on VAT Treatment of Transfer of Business

Saudi Arabia's General Authority of Zakat and Tax (GAZT) recently published a guidance clarifying the VAT treatment applicable to the transfer of a business. According to the guidance, a business may be transferred either through the direct transfer of its tangible and intangible assets (goods and services) or the transfer of the shares of the company operating it. Article 17 of the VAT Regulations sets out the conditions under which the transfer of goods and services is considered a transfer of an economic activity (i.e., a business). It specifies that a taxpayer's transfer of tangible and intangible assets that form a part of their economic activity is not considered a taxable sale of goods and services if the assets can be operated as an economic activity in their own right and the recipient, immediately after the transfer, uses the assets to carry out the same economic activity as the transferor. A transfer of an economic activity is not subject to VAT if (1) the transferee is a taxpayer or becomes a taxpayer as a result of the transfer (The transferee should already be registered for VAT purposes or will be required to register for VAT purposes to carry out the transferred business.) and (2) the transferor and transferee agree in writing that they want the transfer to be viewed as the transfer of an economic activity.

The guidance further explains that the above-mentioned VAT treatment is optional and that the parties to the transaction may elect to apply the standard VAT rules and collect VAT on the transferred assets. This would generally occur if the parties to the transaction are not sure that all the requirements can be met. In addition, the guidance clarifies the VAT treatment of the transfer of an economic activity within a tax group. In such circumstances, the tax group is recognized as a single taxpayer; therefore, the transfer of assets within the same tax group is considered outside the scope of VAT. Moreover, the transfer of shares by a transferor carrying out an economic activity is considered a VAT-exempt sale of financial services. If the transferor of the shares is not carrying out an economic activity, the transaction is considered to be outside the scope of VAT.

Source: Slim Gargouri, Saudi Arabia Details VAT Rules for Transfer of Economic Activity, TaxAnalysts (Apr. 15, 2019).

Saudi Arabia: Guidance on VAT Treatment of Islamic Financial Services

Saudi Arabia's GAZT recently published a guidance clarifying the VAT treatment applicable to Islamic financial services. According to the guidance, Islamic financial services provided to Saudi residents are generally exempt from VAT. The exemption applies specifically to financial service providers whose primary activity is financing and that impose an implicit profit margin or bear the actual risk for the provision of the financial services. Financial service providers usually do not charge explicit fees to customers. In an exception to that general rule, VAT is levied on all financial services provided in Saudi Arabia by a VAT-registered taxpayer if the remuneration for the service is payable in the form of an express fee, commission, or trade discount. The guidelines explain that the provision of financial services is subject to VAT if it is possible to determine the value of the sale (that is, the fee imposed for a financial service that has an explicitly specified value). This is generally the case for persons providing financial intermediation services that are not the main providers of the financial products, but rather are usually limited to arrangement or brokerage services. Generally, the consideration paid for those services is an explicit fee or commission, and the provider does not bear the financial risks of the financial product.

The guidance further clarifies that Islamic finance products that are under contract simulate the intention and effectively achieve the same result as financial products that are not Shariah-compliant. Such Islamic finance products should be treated in the same manner as the equivalent non-Shariah financial product for the purpose of applying the VAT exemption. In this respect, the guidance explains that murabaha (i.e., credit sales) transactions involve three persons and two purchase-sale contracts. Because the financing entity purchases the assets in its own name, the ownership is fully transferred from the original vendor to the financing entity. That transfer is considered a sale of goods that is subject to VAT. The original vendor should issue a VAT invoice in the name of the financing entity. The subsequent provision of financing services is also subject to VAT on the principal amount only (i.e., the acquisition price of the good). Accordingly, the financing entity is entitled to deduct the VAT incurred on the acquisition of the asset from the original vendor. A deduction is also available for VAT incurred on other expenses incurred in connection with the sale of operations that are subject to VAT. The date of sale for VAT purposes will correspond to the earliest of the following: the date of the ownership transfer from the financing entity to the finance recipient; the date of issuance of the first invoice to the finance recipient; or the date of the first payment by the finance recipient. The financing entity should issue the invoice to the finance recipient in connection with the sale of the asset. The profit made by the financing entity in connection with the operation is exempt from VAT.

In the case of ijara (i.e., leasing contracts), the guidance explains that two cases are to be considered. In the case of ijara with no intent to transfer ownership, the sale of the asset to the financing entity by the original vendor is subject to VAT. The original vendor should issue a VAT invoice to the financing entity, which will be entitled to credit the VAT incurred. Rental installment payments for which invoices have been issued by the financing entity are treated as consideration for services provided to the finance recipient and are subject to VAT. In ijara with the intent to transfer ownership, the sale of the asset to the financing entity by the original vendor is subject to VAT. The original vendor should issue a VAT invoice to the financing entity, which will be entitled to deduct the VAT incurred. Payments made by the finance recipient are subject to VAT on the principal amount corresponding to the sale of the asset, but not on the profit made by the financing entity.

Source: Slim Gargouri, Saudi Arabia Details VAT Treatment of Islamic Financial Services, TaxAnalysts (Apr. 17, 2019).

Saudi Arabia: Guidance on VAT Treatment of Oil and Gas Sector

Saudi Arabia's GAZT recently published a guidance on the VAT treatment for various operations relating to the oil and gas sector. According to the guidance, all domestic sales of oil or gas within Saudi Arabia are subject to VAT at the standard rate of 5 percent. All sales of oil and gas that are not made through the distribution channel via pipelines (such as the sale of barrels, tanks, or other containers or ships or products pumped directly to a car or machine) are subject to the standard sourcing rules. The guidance points out that sales of goods without shipment are sourced where the goods are located on the date they are placed at the customer's disposal. Sales of goods that involve transportation or dispatch are sourced to where the goods are located when the shipment starts. The sale of oil and gas, as long as it is sourced in Saudi Arabia, will be subject to VAT regardless of whether the customer is a taxpayer or not. The sourcing for oil and gas through the pipeline distribution system by a taxpayer who is established in a Gulf Cooperation Council (GCC) member state to a taxable trader established in another member state is the place where the taxable trader is established. Moreover, all imports of goods into

Saudi Arabia from outside the GCC are subject to VAT, based on the customs declaration on the import of such goods submitted to Saudi Customs.

Companies operating in oil and gas exploration must sign a concession agreement with the Saudi government to obtain exploration and production rights in a particular area. Oil and gas exploration is considered an economic activity for VAT purposes. Assuming that the exploration company also has the right to extract, or produce, the oil and sell it to consumers, the guidelines specify that this economic activity is considered a taxable sale of oil and gas. Therefore, the exploration activities entitle the company to the right to deduct the VAT incurred on any imports or purchases made by that company during the exploration process. The guidance further clarifies that the exploration activity is considered an economic activity even if it does not result in a feasible business project related to extraction or commercial production. In such cases, no retroactive adjustment is required regarding a VAT deduction already recorded by GAZT during the exploration phase (with the original aim to extract and make taxable sales of oil or gas). Finally, the guidance states that in the case of an exploration project originally intended to extract and make taxable sales of oil and gas, the right to deduct VAT will also cover VAT payable on any costs incurred when cancelling the exploration operation.

Source: Slim Gargouri, Saudi Arabia Clarifies VAT for Oil and Gas Sector, TaxAnalysts (Apr. 24, 2019).

United Arab Emirates: Guidance on VAT Refund for Foreign Businesses

The Federal Tax Authority (FTA) of the United Arab Emirates (UAE) recently published a guidance clarifying the eligibility conditions for foreign businesses seeking to claim a VAT refund. According to the FTA, VAT refunds are available to foreign businesses that meet the following conditions: (1) they have no place of establishment or fixed establishment in the UAE; (2) they are not registered or required to register for tax purposes under VAT law in the UAE; (3) they are not operating a business in the UAE; and (4) they are operating a business and are registered with the competent authority in the jurisdiction in which they are established. An establishment is defined as the place where a business is legally established in a country, or in which significant management decisions are made and central management functions are conducted. A fixed establishment refers to any fixed place of business, other than the place of establishment, in which a person operates a business regularly or permanently and where sufficient human and technological resources exist to enable the person to sell or acquire goods or services. This includes a person's branches.

VAT refunds are not available in the following cases: (1) the foreign business makes sales in the UAE (unless the recipient is required to account for VAT under the reverse charge mechanism); (2) the VAT incurred on the goods or services is non-recoverable under UAE VAT legislation (e.g., on entertainment and motor vehicles available for personal use); (3) the foreign business is a nonresident tour operator; or (4) the foreign business is from a country that does not provide VAT refunds to UAE entities in similar circumstances. This condition does not apply to businesses residing in any Gulf Cooperation Council (GCC) state that is not considered an implementing state under UAE tax legislation. Appendix A of the guidance includes the following list of countries with reciprocal arrangements as provided by the UAE Ministry of Finance: Austria, Bahrain, Belgium, Denmark, Finland, France, Kuwait, Iceland, Isle of Man, Lebanon, Luxembourg, Namibia, Netherlands, New Zealand, Norway, Oman, Qatar, Saudi Arabia, South Africa, Sweden, UK, and Zimbabwe.

The guidance states that refund claims will cover a period of 12 calendar months (except in the case of applicants resident in GCC states that are not implementing states) and the minimum amount of VAT for which a claim may be submitted is AED 2,000 ($544). Refund applications must include, inter alia, the following: proof of incorporation such as a certificate of incorporation or registration with the competent authority; a tax registration certificate; relevant tax invoices with proof of the payment being claimed for a refund; a copy of the passport of the authorized signatory; and proof of authority of the authorized signatory. If the applicant is undertaking exempt or nonbusiness activities in its country of establishment that do not give it the right to fully recover VAT, the applicant must provide a letter or alternative evidence from its tax administration indicating the amount of VAT the applicant is eligible to recover.

Source: Slim Gargouri, UAE Clarifies VAT Refund Regime for Foreign Businesses, TaxAnalysts (Apr. 17, 2019).

United Kingdom: Non-Owners of Imported Goods Cannot Recover Import VAT Effective July 15, 2019.

On April 11, 2019, The UK's tax authority (HMRC) published Revenue and Customs Brief 2 (2019), which sets out the import VAT deduction rules that apply to taxpayers who do not own the relevant goods. The guidance is aimed at non-owners who have reclaimed import VAT on goods imported into the UK, toll operators, and advisers or agents dealing with businesses that import goods to the UK. HMRC said it has become aware of incorrect treatment by businesses in which import VAT has been incorrectly deducted by non-owners of the goods. It notes that toll operators (which all operate a similar business model) import goods (e.g., pharmaceutical goods), process them, and distribute them within the UK for clinical trials. The guidance notes that the toll operator does not take ownership of the goods and does not resell them. They may, however, distribute the goods onward at the instruction of the owner (their customer). The only sale by the toll operator is of its services to its client (i.e., the owner of the imported goods). Title to the goods at all times remains with their overseas customers (the owners). However, the toll operator acts as "importer of record" on UK import declarations, pays the import VAT to HMRC and receives the import VAT certificate (C79). According to HMRC, there is no provision in UK law for the toll operator to deduct the VAT as the owner of the goods should be the importer of record and reclaim the import VAT.

Effective July 15, 2019, HMRC will only allow claims for VAT deduction made using the correct procedures. This allows an appropriate transitional period for businesses to make any necessary changes to ensure the correct procedures are used going forward. HMRC recognizes that, in the case of toll operators, if the correct procedures had been followed there would be full recovery of VAT by overseas customers, so the net revenue position would have been nil. In some cases import VAT relief (e.g., temporary importation relief) would have been available at the time of importation, if claimed. HMRC further notes that the time limit for making nonresident VAT refund claims is within six months of the "prescribed year" in which the VAT was charged. For some earlier periods, Thirteenth Directive claims are no longer possible, meaning that any action to correct the position would lead to a VAT cost for the UK toll operators or their customers.

In the case of owners taking ownership just before to importation, if the correct procedures had been followed, the owners would have been entitled to recover the import VAT as input tax (subject to the normal rules). HMRC accepts that as previous guidance was not clear on the correct procedure, businesses in these situations have been acting in good faith. HMRC will not pursue historical VAT deduction where the VAT could have been recovered in full by the owner of the goods at the time of importation as long as there is no risk of duplicated claims. In this context historical means deductions made before July 15, 2019. According to HMRC, this will apply to any affected businesses that meet all the qualifying criteria: VAT deductions were made in genuine error, through misinterpretation of the legislation or guidance; the owner of the goods would have been entitled to full import VAT recovery; and HMRC is satisfied that there has been no VAT deduction by another person.

CCH, Global VAT News & Features, UK Sets Out Rules On Input VAT Claims By Non-Owners Of Goods (Apr. 15, 2019).

United Kingdom: Making Tax Digital Guidance Updated

On May 3, 2019, HMRC updated VAT Notice 700/22, which explains the rules for Making Tax Digital (MTD) for VAT and the digital information businesses must keep. MTD is mandatory for non-deferred businesses above the VAT threshold for VAT return periods commencing on or after April 1, 2019. The notice includes new information and rules on the use of seller statements, petty cash transactions, and charity fundraising events. The guidance on the gross receipts test, following the rules when exempt from MTD, digital links, and sales made and received by third party agents has also been updated. Regarding the use of seller statements, the notice clarifies that these can be used instead of individual invoices as long as all sales on the statement relate to the same VAT period, and the total VAT charged at each rate is shown. With respect to petty cash transactions, the notice states that individual purchases with a VAT-inclusive value below GBP 50 ($63) can be batched into a single entry in the digital records. The entry may not however exceed a VAT-inclusive value of GBP 500 ($635). Moreover, the notice clarifies that, for charity fundraising events, all sales made can be treated as covered by one invoice for the event, and the same for event purchases. In addition, the notice clarifies that digital links could be a transfer or exchange of data within a business (e.g., between 2 systems) or a transfer of data to a tax agent in order that they can prepare a VAT Return or make a calculation (e.g., a Partial Exemption calculation). To read a report prepared by the KPMG International member firm in the UK, please click here.

Asia Pacific (ASPAC)

India: Overview of Recently Published GST Guidance

The Central Board of Indirect Taxes and Customs (CBIC) recently issued several notifications addressing the requirement for taxpayers to issue e-way bills and the filing process of goods and services tax (GST) returns in specific circumstances. In Notification No. 22/2019 – Central Tax dated April 23, 2019 and Notification No. 74/2018 – Central Tax dated December 31, 2018, the CBIC clarifies that taxpayers who have failed to submit GST returns for two consecutive filing periods are not allowed to use the e-way bill system. However, the Jurisdictional Commissioner may allow the creation of e-way bills provided sufficient cause is shown.

On April 23, 2019, the CBIC issued Notification No. 20/2019 – Central Tax in which it requires taxpayers whose order for cancellation of registration has been revoked to file returns from the date of the cancellation order until the date of the revocation order. If the registration has been cancelled retroactively, returns should be submitted from the effective date of cancellation of the registration until the date of order of revocation. The returns must be filed within 30 days from the date of the revocation order. Moreover, the CBIC issued on April 23, 2019 Order No. 5/2019-GST, which allows taxpayers to file by July 22, 2019 an application for revocation of the order for cancellation if their registration has been cancelled due to the failure to reply to a notice issued by the tax authorities.

Notification No. 20/2019 further requires taxpayers subject to the composition scheme (i.e., the GST flat rate scheme for small businesses) to submit quarterly statements (Form GST CMP-08) providing details on the payments of self-assessed GST by the 18th of the month following the quarter. In addition, these taxpayers are required to file an annual GST return (Form GSTR-4) by April 30 following the end of the financial year. To read a report prepared by the KPMG International member firm in India, please click here.

India: Late Payment Interest Payable on Gross GST Liability According High Court

The High Court of Telangana recently published its judgment in *Megha Engineering & Infrastructure Ltd* regarding whether late payment interest for late filing of GST returns should be computed based on the net tax liability (i.e., after deducting GST incurred on purchases) or on the gross GST liability (i.e., only on the GST collected on sales). In the case at hand, the taxpayer is engaged in the manufacturing of mild steel pipes and the execution of infrastructure projects. The taxpayer had delayed the filing of its GST return for the period from October 2017 to May 2018. The taxpayer paid its tax liability (net of GST credits) along with interest computed on the net tax liability at the time it filed the GST return. The tax authority subsequently issued a letter requesting interest to be computed on the gross tax liability.

The High Court observed that until a return is filed, the taxpayer has no entitlement to GST credits, and no actual entry of GST credits in the electronic credit ledger takes place. As a consequence no payment can be made using such a credit entry. GST paid on purchases becomes a GST credit only when a claim is made in the returns filed, which then generates a GST credit in the electronic ledger. It is only after a credit is entered in the electronic credit ledger that payment could be made, even though the payment is only made by way of paper entries. As a consequence of the delay in filing the returns, the payment of the tax liability, partly in cash and partly in form of GST credits, was made beyond the period prescribed and thus the liability to pay interest on the gross tax liability arose automatically. To read a report prepared by the KPMG International member firm in India, please click here.

Indonesia: Services Qualifying as Zero Rated Exported Services Expanded

The Minister of Finance of Indonesia recently issued Regulation No. 32/PMK.010/2019 ("PMK-32") regarding "Limitation of Activities and Types of Export of Taxable Services which are Subject to VAT," which replaces the previous regulation No. 70/PMK.03/2010 ("PMK-70") effective March 29, 2019. PMK-32 broadens the types of services subject to zero percent export VAT to include the following services used offshore: freight forwarding services related to exporting goods; technology and information services that include computer system analysis services, computer system design services, IT security services, contact center services, etc.; research and development services; rental of transportation equipment (airplanes and ships) for international shipping and air transportation services; business and management consulting services that include legal consultancy services, architectural and interior design services, marketing services, accounting and bookkeeping services, financial statement audit services, tax services, etc.; trading services (i.e., identifying domestic sellers to export their goods); and interconnection services, satellite and/or communication/data connectivity services (e.g., international call and short messages to offshore cellular service providers, satellite transponder services, etc.).

To qualify for the zero percent export VAT rate, the services must be provided to offshore customers who are nonresidents and do not have a permanent establishment in Indonesia. Moreover, the service providers must have written contracts with their offshore customers, which clearly state the type of services to be provided, the detail of activities performed onshore to be utilized offshore and the value/fees for these services. Finally, the service providers must have valid proof of payments received from the offshore customers. If these conditions are not met, the transactions are deemed to be a local sale, and the standard 10 percent VAT rate will apply. When qualifying transactions are recorded or accrued as revenue, the service providers must issue a VAT invoice in the form of a Notification of Export of Taxable Services (following the template provided in PMK-32) and must report these exported services (and goods from contract manufacturing services) in the monthly VAT returns. To read a report prepared by the KPMG International member firm, please click here.

Trade & Customs (T&C)

Canada: Customs Audits of Importers of all Goods Subject to Surtax

Effective July 1, 2018, Canadian companies that import certain goods from the U.S. are facing a 10 percent surtax. The following is a non-exhaustive list of U.S. origin imports subject to surtax: steel and aluminum and certain products of steel and aluminum; orange juice, coffee, whisky; wood furniture, bedding and bedroom linens; plastic packaging and plastic household articles; motorcycles, refrigerators and washing machines; confectionary and chocolates; spices and seasonings; and other specified goods. The Canada Border Services Agency (CBSA) recently looked at the amount of surtaxes collected on these US goods and have come to the conclusion that the volume of imports of these products against the amount of surtax collected does not balance. As a consequence, the CBSA has begun to audit importers of all goods subject to surtaxes. Currently, there are over 100 such audits underway in the greater Toronto Area and many more across Canada. To read a report prepared by the KPMG International member firm in Canada, please click here.

In Brief

— **Australia:**[ii] On April 5, 2019, the Australian Taxation Office (ATO) opened a consultation on a draft ruling on the application of GST to securitization arrangements (GSTR 2004/4DC1). The ruling explains how GST applies to the sale of a right to a payment stream arising from the following types of transactions: loan portfolios, finance and operating leases, hire purchase agreements, residential or commercial property leases, royalty agreements, and credit card receivables. This ruling also explains debt factoring and typical securitization arrangements. However, the ruling does not cover circumstances in which there is only a redirection of a payment from one entity to another or a substitution of an existing agreement that gives rise to a payment stream.

— **Belarus:**[iii] On April 18, 2019, the President of Belarus signed Edict No. 151, which re-introduces the deferral of the VAT deduction on imports from April 23, 2019 until December 31, 2019. According to the Edict, VAT on imported goods may be deducted in the reporting period that is 30 days after the customs clearance of the goods. Between January 1, 2019 and April 22, 2019, the VAT incurred on imports may be deducted without deferral.

— **Belgium:**[iv] On May 6, 2019, Belgium published in the official gazette a Law amending the VAT Code to exempt charitable donations of non-food goods effective May 17, 2019.

— **Bolivia:**[v] On April 22, 2019, the tax authority of Bolivia (*Servicio de Impuestos Nacionales* (SIN)) issued Resolution 101900000006 (the Resolution), which amends Resolution 10800000026 regarding the implementation of a new electronic invoicing system. The Resolution provides rules on the cancellation of invoices issued through the online electronic invoicing system, the computerized invoicing system and the

SIN's website invoicing system. Taxpayers may cancel invoices issued through the above-mentioned systems until the 8th day of the month following that in which the relevant transaction occurred. The Resolution further repeals the provisions relating to the conciliation note, which was introduced by Resolution 10800000026 in order to adjust VAT credits and liabilities with respect to services rendered by telecommunications operators and oil and gas companies.

- **Brazil:**[vi] On April 29, 019, Brazil published Private Ruling 146/2019 in the official gazette. The Ruling clarifies, among other things, that payments of royalties to nonresident persons for a simple license or trademark without the provision of services do not qualify as service fees and are therefore not subject to the federal social contributions levied on imports (PIS and COFINS). However, if the amounts are not clearly identified in the transaction documents, the full payment is considered a payment for the rendering of services and therefore subject to those contributions.
- **Bulgaria:**[vii] On April 11, 2019, the European Commission announced that it had closed the infringement procedures against Bulgaria regarding the requirement imposed on fuel traders to provide a guarantee deposit and regarding the calculation of the taxable amount in the case of private or non-business use of business assets.
- **Canada:** The KPMG International member firm in Canada has prepared a report on the indirect tax compliance obligations of financial institutions that can be found here.
- **Chile:**[viii] On April 15, 2019, the Internal Revenue Service of Chile (IRS) issued Ruling 1034 in which it clarified that housing activities carried on by hotels and similar establishments are subject to VAT. In addition, the IRS specified that, although not involving hotel activities, the rental of furnished rooms, cabins or cottages is subject to VAT under the general definition of "services" of the VAT Act.
- **Chile:**[ix] On April 15, 2019, the IRS issued Ruling 1036 in which it clarified the VAT treatment applicable to the exploitation of immovable property. In the case at hand, the taxpayer rented an immovable property to nonresident persons (e.g., tourists) for short time periods. Under the VAT Act, housing services offered by hotels and equivalent establishments to nonresidents are exempt from VAT. The IRS explained that the duration of the rental agreement is not relevant for the purpose of establishing whether the service provided is the mere rental of furnished immovable property or services similar to hotel activities. According to the IRS, the relevant factor for distinguishing between simple rental of immovable property and hotel services is whether the complementary services offered by hotels (e.g. cleaning, food, laundry) exist. As a consequence, the mere short-term rental of immovable property to tourists does not fall within VAT exemption available for hotels and similar establishments unless the taxpayer also provides complementary services such as cleaning, food, and laundry.

- **Czech Republic:**[x] On April 30, 2019, the Ministry of Finance of the Czech Republic announced plans to introduce a digital services tax (DST). The Ministry is expected to present the proposed DST Bill (the Bill) by the end of May 2019. If adopted, the Bill would likely apply from mid-2020. According to the Ministry's press release, the Bill would introduce a new tax on selected internet services provided in the Czech Republic by companies with worldwide revenues exceeding EUR 750 million ($838 million). To ensure that the DST affects companies that are active in the Czech market, the tax would apply only to companies whose revenues from the Czech Republic exceed a certain threshold to be specified in the Bill. The DST would apply at a rate of seven percent to revenues from targeted advertising on a digital interface, transmission of data about users and generated from users' activities on digital interfaces, and the making available to users of a multi-sided digital interface which may facilitate the provision of sales of goods and services between the users. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

- **Denmark:**[xi] On April 3, 2019, the Danish Customs and Tax Administration published tax board Answer No. SKM2019.196.SR on the VAT treatment applicable to the use of intellectual property rights by the seller during a two-year transition period is not subject to VAT. The board further explained that the transaction is not sourced to Denmark because the transferred rights are predominately used by the buyer in the U.S., the seller is using the rights on behalf of the buyer, and the product from the use of the rights is not for the Danish market.

- **Ecuador:**[xii] On April 5, 2019, the Ecuador Internal Revenue Service (SRI) issued Resolutions NAC-DGERCGC19-00000015 and NAC-DGERCGC19-00000016 regarding the refund of VAT and remittance tax (ISD) for exporters in connection with the law to promote production, investment, and employment. With respect to VAT, the Resolutions clarify that exporters are allowed to request a refund on a monthly basis in one of four ways: (1) a provisional automatic refund based on information recorded by the SRI, in which case a refund is made within 20 days of request; (2) a provisional refund through the automatic offset of VAT withheld; (3) a refund based on analysis by the SRI based on information on prior transactions carried out by exporters; or (4) an exceptional refund, such as in cases including special customs regimes, VAT on fixed assets, or VAT accumulated under a merger or acquisition. With respect to ISD, the Resolutions clarify that exporters are allowed to request a refund on a monthly basis, provided that (1) a refund request is submitted once the goods are effectively exported; (2) the refund is only for amounts not already offset through a tax credit or deduction; and (3) the refund is proportional to the foreign income obtained from the export. In addition, the Resolutions clarify that the refund of ISD is not available for hydrocarbon and non-renewable resource activities. For both VAT and ISD refunds, requests may be made to SRI only through the use of official forms and all relevant documentation must be included. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

— **Ethiopia:**[xiii] On April 1, 2019, the Ministry of Revenue of Ethiopia issued Directive No. 148/2011 simplifying the procedure for obtaining VAT refunds. The Directive consolidates VAT refund procedures to make the refund procedure more efficient and taxpayer friendly. The statutory period set to obtain the refund amount after the taxpayer files an application for a refund is reduced from 60 to 45 days.

— **European Union:**[xiv] On April 10, 2019, the ECJ published its judgment in *H.W.*, Case C-214/18, in which it held that the fees charged by Polish law court enforcement officers may be treated as VAT inclusive where the officers carry out a taxable activity, in respect of the principles of VAT neutrality and proportionality.

— **European Union:**[xv] On March 15, 2019, the European Commission published a report of the Group on the Future of VAT on the VAT treatment of financial and insurance services. Most financial and insurance services are exempt from VAT based on one of the exemption rules regulated in the EU VAT Directive. These exemptions deny the right to deduct VAT to institutions providing such services therefore VAT incurred on expenditures becomes a cost of the business. To reduce the amount of costs relating to non-deductible VAT, financial institutions applied the special rules of VAT grouping or cost-sharing arrangements to their inter-company transactions. The report recognizes that the exemption rules have generated much litigation, much uncertainty and high administrative and regulatory costs. Furthermore, with technological advancement new financial products appear, the qualification of which is becoming increasingly difficult under the current rules. To understand the economic implications of the existing issues and to evaluate possible solutions, the Commission intends to carry out a study with the assistance of external experts.

— **European Union:**[xvi] According to recent reports, some progress is being made on the initiative for the introduction of a Financial Transactions Tax (FTT) in the EU. The FTT has been pursued by a number of EU Member States through the enhanced cooperation procedure following the European Council's inability to reach unanimity on an FTT proposal in 2012. Currently, 10 Member States (i.e., Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia, and Spain) are taking part in negotiations with the focus shifting to the introduction of an FTT based on the existing FTT in France, which primarily applies to transactions involving shares in companies headquartered in France with a market capitalization exceeding one billion euros. The French FTT rate is currently 0.3 percent, with a lower rate being considered by the participating Member States. One of the main issues that remains, especially for smaller Member States, is that the amount of tax revenue that could be obtained from such a FTT may not be sufficient to offset the cost of actually implementing the FTT. To address this, a revenue pooling mechanism is being considered that would be used to reduce the participating Member States' contributions to the EU budget, with larger Member States compensating smaller Member States through a calculation based on GDP.

- **European Union:**[xvii] On April 24, 2019, the European Commission published a Proposal for a Council Directive amending the EU VAT Directive and the Excise Directive relating to defense efforts within the EU framework. Both the EU VAT Directive and the Excise Directive provide exemptions for sales made to armed forces of NATO countries taking part in a common defense effort outside state of the seller. However, these exemptions do not cover sales linked to a common defense effort carried out within the framework of the European Union. The currently proposed rules are aimed at mirroring the exemptions applicable to NATO forces and making them applicable to armed forces of other Member States taking part in defense efforts carried out for the implementation of an EU activity under the common security and defense policy (CSDP).

- **European Union:**[xviii] On May 2, 2019, the ECJ published its judgment in *Jarmuškienė*, Case C-265/18, in which it held that where the threshold of the special scheme for small enterprises is exceeded, due to the sale of two separate immovable properties under a single agreement, the VAT liability should be computed on the entire value of both properties even if the calculation of the value of each property taken separately would not result in exceeding the threshold.

- **European Union:**[xix] On May 2, 2019, the ECJ published its judgment in *Budimex S.A.*, Case C-224/18, in which it held that the EU VAT Directive must be interpreted as not precluding the acceptance of a service as being deemed to have occurred as the time that the service was provided, if an invoice relating to the performance of construction services is not issued or is issued late if the Member State provides that VAT is to become chargeable on expiry of a time limit running from the day the service was provided. This applies provided, first, that the formality of acceptance was stipulated by the parties in the contract that binds them according to contractual terms reflecting the economic and commercial realities in the field in which the service is provided and, second, that that formality constitutes the actual completion of the service and determines the amount of consideration due.

- **Finland:**[xx] On April 17, 2019, the Finnish tax authority announced that effective May 1, 2019 foreign businesses must register for VAT purposes if they purchase construction services in Finland, which can be subject to a reverse charge. They must also register if they import goods in addition to tax-free sales and acquisitions. The announcement further clarifies when foreign traders must register as a VAT taxpayer or a duty-holder.

- **Hungary:**[xxi] On April 15, 2019, the Hungarian tax authority provided clarifications on the 50 percent VAT deduction applicable to passenger vehicle rentals for business activity that is effective January 1, 2019. According to the tax authority, the deduction is not applicable to VAT due on December 31, 2018, when the right to deduct arose after December 31, 2018. It is also not applicable to the proportion of private use of the vehicle.

- **India:**[xxii] On April 23, 2019, the Indian Central Board of Indirect Taxes and Customs (CBIC) posted online the consolidated Central GST Rules 2017, current as of the same date.

- **India:**[xxiii] On May 7, 2019, the CIBC released a compilation of frequently asked questions (FAQ) regarding the new GST rate structure for the real estate sector which came into effect April 1, 2019.
- **Kuwait:**[xxiv] According to recent reports, Kuwait's Ministry of Finance is currently planning to implement an excise tax regime on tobacco products, energy and carbonated drinks, effective April 1, 2020. This would be followed by a VAT regime for these products, effective April 1, 2021. As a GCC member state, Kuwait was meant to have implemented both regimes in 2018.
- **Mexico:**[xxv] According to recent reports, Mexico is considering introduction of a digital services tax (DST) as part of the 2020 Budget. The DST is to be introduced on an interim basis until a consensus-based solution can be agreed to at the OECD. As first proposed in September 2018, the DST would be imposed at a rate of 3 percent on total revenue from digital service activities where a user accesses the service via a device in Mexico.
- **Netherlands:**[xxvi] On April 18, 2019, the Dutch Ministry of Finance opened a consultation on a draft bill to extend the reduced VAT rate of 9 percent to the sale or lending of electronic publications effective January 1, 2020. The reduced rate would apply to electronic books, newspapers, and magazines, However, the reduced rate would not apply to publications that primarily advertise or contain music or video content.
- **Poland:**[xxvii] On April 5, 2019, the Polish Ministry of Finance issued a guidance explaining the VAT invoicing rules for taxpayers including, including the invoicing procedure, the entities required to issue invoices, the information required in each electronic invoice, the filing deadlines, and the correction of invoice errors. The guidance further clarifies that the invoicing rules are controlled by the EU Member State in which delivery takes place unless the reverse charge mechanism applies or the sales are subject to taxation outside the EU. If one of these exception applies, the invoicing rules are determined by the Member State where the seller is established.
- **Poland:**[xxviii] According to recent press releases, Poland is considering implementation a digital services tax based on the European Commission proposal issued last year. (For KPMG's previous discussion on the EU's digital services tax proposal, please click here.)
- **Qatar:** On April 4, 2019, Qatar published Decision 5/2019 in the official gazette. The Decision implements the regulations for the country's new excise tax regime introduced earlier this year. (For KPMG's previous coverage, please click here). Under the excise tax, taxpayers are required to register 30 days before commencing certain activities, including the import and production of excisable goods and the operation of a warehouse. The information required and the registration form from the General Tax Authority (GTA) have been published by the General Authority of Customs in English. Excise tax returns and payment are generally due within 15 days following the taxable period, which is the calendar quarter. However, the new regulations provide for an extension of the due date by up to 30 days if there are circumstances beyond the taxpayer's control making it impossible to file by the standard deadline (e.g., natural disaster, fire, or theft). The regulations also provide for extended payment in installments of up to four

months, provided a taxpayer demonstrates current financial difficulties and the ability to pay in installments without delay. The taxpayer must also have not committed any tax crimes in the past three years. Lastly, the regulations specify the required books and records, require that they be retained for a minimum of five years and be provided in Arabic or English (or other language as approved by the GTA).

— **Saudi Arabia:**[xxix] On April 14, 2019, Saudi Arabia's GAZT released a notice clarifying that directors' fees do not fall under the scope of VAT. According to the notice, board members of companies, government bodies, and institutions who are not completely independent of the companies they represent are not required to register for tax purposes or to issue tax invoices for the performance of their functions as directors. The exemption is retroactive to January 1, 2018, the initiation of the VAT in Saudi Arabia.

— **Seychelles:** On March 29, 2019, the Seychelles Ministry of Finance issued the Excise Tax (Imposition of Sugar Tax on Drinks) Regulations 2019, which implements a sugar beverages tax effective April 1, 2019 at a rate of SCR 4 ($0.29) per liter on drinks with sugar content in excess of 5 grams per 100ml. Drinks subject to the tax are specified in the schedule included as part of the regulations, with a specific exemption provided for fresh local fruit drinks without any additives and plain milk.

— **Slovakia:** The Slovak Parliament recently repealed the special levy on supermarket chains. (For KPMG's previous discussion on Slovakia's supermarket levy, click here.) The repeal is a response to the interim measure of the European Commission which has suspended application of the special levy. Following the cancellation, the transitional provision of the Slovak Income Tax Act stipulates that the special levy on supermarket chains paid before April 4, 2019 should be deducted in the income tax base. To read a report prepared by the KPMG International member firm in Slovakia, please click here.

— **Spain:**[xxx] On April 2, 2019, the tax authority of Spain (Agencia Estatal de Administración Tributaria (AEAT)) announced the introduction of a new electronic accounting system (SILICIE) for products subject to excise duties. The AEAT announcement (1) defines accounting entries, procedures and deadlines for submission through SILICIE; (2) clarifies that transaction reports are not to be submitted when the electronic bookkeeping is performed through SILICIE; (3) defines the entities subject to SILICIE (factories, tax warehouses, tax stores, receiving warehouses and vinegar factories); and (4) establishes that SILICIE will be used on the disclosure of bookkeeping for products subject to excise duties (and raw materials used on their obtainment) effective January 1, 2020.

— **Thailand:**[xxxi] On March 25, 2019, Thailand enacted the Tax Amnesty Act of 2019 that waives penalties, surcharges, and criminal charges for small and medium-size businesses with unpaid corporate income tax, VAT (for the period January 2016 and February 2019), specific business tax, or stamp duties. To benefit from the tax amnesty, a taxpayer's annual taxable income cannot exceed THB 500 million (about $15.7 million). The taxable income is determined during the latest 12-month accounting period ending on or before September 30, 2018. Eligible taxpayers should have submitted their corporate income tax returns for that accounting period by March 25, 2019. Applicants must file their tax returns and settle their unpaid or underpaid taxes by June 30, 2019. Moreover, applicants must file tax returns electronically for the above-mentioned taxes for the period July 1, 2019 to June 30, 2020, unless they can prove that doing so is impracticable. Applicants that fail to meet the conditions will forfeit the waiver of penalties and surcharges granted under the tax amnesty scheme. Taxpayers that have received a notice of tax assessment or have violated the criminal code in connection with false tax invoices issued or used by March 25, 2019 are ineligible for the program.

— **Ukraine:**[xxxii] On March 25, 2019, the State Fiscal Service of Ukraine (SFS) published Letter No. 1228/6/99-99-15-03-02-15/ІПК in which it clarified that the sale of medical devices allowed for production and/or import in Ukraine or of devices that qualify as medical devices according to the requirements adopted by the Cabinet of Ministers, as well as any sale of auxiliary equipment for such devices, is subject to VAT at the rate of seven percent in Ukraine.

— **United Kingdom:**[xxxiii] The UK government recently launched a consultation on a draft legislation that would amend the scope of the reduced rate for energy-saving materials to ensure UK rules are consistent with EU law. The UK applies a reduced rate of VAT to "energy-saving materials" (ESMs) that are installed in housing or that are sold for installation in housing. The European Commission had challenged the measure, arguing that it contravenes the EU VAT Directive. In *Commission v. United Kingdom*, Case C-161/14 (June 4, 2015), the ECJ held that the UK cannot apply, with respect to all housing, a reduced rate of VAT to the sale and installation of ESMs, since that rate is reserved solely for transactions relating to social housing. The proposed amendments would maintain the reduced rate on installations of ESMs in residential accommodation for recipients who are aged 60 or over or receiving certain benefits and for housing associations; remove the reduced rate for the installation of wind and water turbines; and maintain the reduced rate for all other installations in residential accommodation where the cost of the materials does not exceed 60 percent of the total cost of installation.

— **United Kingdom:** On April 23, 2019, the UK First Tier Tribunal published its judgment in Pearl Chemist Limited, [2019] UKFTT 0264 (TC). The Tribunal held that the UK zero rating does not cover prescriptions written by non-UK doctors as they are not within the definition of "registered medical practitioner." Consequently, the sales must be standard rated in the UK.

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

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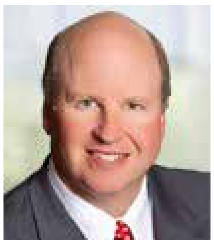

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Seattle

Frank Sangster
Principal
Philadelphia

Philippe Stephanny
Senior Manager
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