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.

Global Rate Changes

- **Czech Republic:**[i] Effective January 1, 2019, the Czech Republic reduced the VAT rate applicable to regular mass transit of passengers from 15 percent to 10 percent.
- **Greece:**[ii] On December 31, 2018, the Ministry of Finance extended the application of the reduced VAT regime applicable in five islands (Lesbos, Chios, Samos, Kos, and Leros) until June 30, 2019. The standard VAT rates for these islands are reduced by 30 percent under the regime.
- **Philippines:**[iii] Effective January 1, 2019, the Philippines exempts from VAT the sale of numerous medicines for the treatment and/or prevention of diabetes, high cholesterol, and hypertension. Manufacturers, distributors, wholesalers, and retailers of drugs and medicines covered by the exemption are required to prominently indicate the word "VAT-Exempt" in their invoices issued for the sale of drugs and prescribed for the treatment and prevention of diabetes, high cholesterol, and hypertension.
- **Portugal:**[iv] Effective January 1, 2019, the reduced VAT rate of 6 percent applies to both traditional and electronic publications, including books, newspapers, magazines, and other periodicals (with the exception of publications that consist wholly or predominantly of video or music content); tools and equipment exclusively or mainly used for rescue and relief operations acquired by the National Institute of Medical Emergency; cleaning services and cultural interventions aimed at preventing fires; and admissions to singing, dancing, musical, theatre, bullfighting, and circus

performances. Finally, the government of Portugal is authorized to extend the scope of the 13 percent intermediate VAT rate to the sale of beverage previously excluded, such as alcoholic beverages and soft drinks.

— **Spain:** Effective January 1, 2019, the Canary Islands reduced the standard rate of the local consumer tax (*Impuesto General Indirecto de Canarias* – IGIC) from 7 percent to 6.5 percent. The Canary Islands also introduced a zero rate on deliveries of electric power created by sellers and delivered to consumers as well as certain foodstuffs (e.g., certain breads, olive oil, pasta etc.). It also enacted a new exemption for non-overseas care services, home help, day and night centers and residential care.

— **Tajikistan:**[v] Effective January 1, 2019, Tajikistan abolished the 5 percent reduced VAT rate for construction, public catering, and education services performed by legal entities. A standard rate of 18 percent now applies to such services.

— **Turkey:**[vi] Effective January 1, 2019, Turkey applies the standard VAT rate of 18 percent to sales of online newspapers, magazines, e-books, and similar publications.

— **Turkey:**[vii] Effective February 1, 2019, Turkey exempts from VAT sales of goods and services for the construction of renewable and other energy plants in organized industrial zones and small industrial estates as well as sales of books and periodicals by publishers to whom publishing certificates are granted by the Ministry of Culture and Tourism.

The Americas

United States: Hotel Operator Owed Texas Use Tax on Items Provided to Guests

The Texas Court of Appeals recently affirmed a trial court decision holding that a hotel's purchases of consumables did not qualify for a resale exemption from sales and use tax. The taxpayer, a hotel owner, provided hotel guests with various items in their rooms, such as toilet paper, soap, lotion, shampoo, and cups. Additional consumables were also provided at breakfast, during evening soda and popcorn events, and from the front desk when requested by a guest. The taxpayer charged its customers a non-itemized amount for occupancy of the room. According to the taxpayer, this amount included a charge of $1.57 that was intended to compensate the hotel for the cost of the consumables. During the period in question, the taxpayer did not pay sales tax on the items, and it did not collect sales tax from customers on the consumables. The Comptroller audited the hotel and assessed the taxpayer sales tax on the items. The taxpayer protested and after a trial court ruled in favor of the Comptroller, the taxpayer appealed.

Under Texas law, sales of tangible personal property acquired for the purpose of resale are exempt from sales and use tax. In an earlier court of appeals decision, the court ruled that a hotel's purchases of similar non-reusable, consumable items were exempt from sales and use tax under the resale exemption. In that case, the Comptroller and the taxpayer had stipulated that the hotel charged one fee for overnight lodging and that fee included the cost of the room and amenities, including in-room consumables. In the instant case, there was no similar stipulation, and the court determined that the taxpayer's purchases did not qualify for the sale for resale exemption. In the court's view, despite the $1.57 included in the room charge, the taxpayer had not proven that it purchased the items for the purpose of reselling them to hotel guests. Notably, the taxpayer's website advertised that "extras" were free and characterized the consumables at issue as "extras." Moreover, the taxpayer did not itemize the cost of the consumables nor were guests informed that they were paying for the consumables as part of the rate for the hotel room rental. Lastly, customers were not limited to the number of items provided by the hotel. For more information, please click here.

Argentina: Reverse Charge Mechanism Applicable to Services Provided by Nonresidents Clarified

On December 10, 2018, Argentina published General Resolution 4,356/2018 in the official gazette. The resolution provides terms and conditions for VAT payment obligations of substitute taxpayers on works provided by nonresidents. It is effective January 22, 2019. The concept of substitute taxpayers was introduced as part of the tax reform for 2017 and includes the recipient or beneficiary of sales, as well as administrators, agents, or other intermediaries resident in Argentina. It is essentially a reverse charge mechanism that was expanded to digital services by Decree 813/2018 of September 10, 2018.

According to the Resolution, substitute taxpayers must make VAT payments within 10 business days after the day the taxable event occurs in accordance with the time of sale provisions of the VAT law. The Resolution further establishes that final consumers or taxpayers registered in the simplified tax system (Monotributo) are not obliged to act as substitute taxpayers. Payments must be made through electronic funds transfer in accordance with the relevant regulations. The amount to be paid must be determined by applying the corresponding rate to the net price of the transaction according to the invoice or equivalent document issued by the nonresident service provider. If this amount is not known, the VAT rate must be applied to the market value of the service or construction work rendered. Where transactions are carried out through an intermediary (including a bank) or representative of the nonresident provider, such intermediary or representative is considered the substitute taxpayer responsible for VAT. In the event VAT on a transaction has been paid in accordance with the resolution prior to the time a financial entity would have otherwise collected it, the financial entity is released from the obligation to collect, provided that proof of payment is delivered. Substitute taxpayers for VAT may treat the VAT paid as an input credit in the return corresponding to the period the VAT was paid. General Resolution 4356/2018 is generally effective January 2, 2019. With respect to taxable supplies made between September 12, 2018 and the effective date of the resolution, VAT payment is due by February 15, 2019.

Source: Orbitax, Argentina Provides Substitute Taxpayer VAT Payment Rules for Digital Services Provided by Non-Residents (Jan. 3, 2019). Argentina – VAT on services and works of construction provided by non-residents within Argentine territory – regulated. (08 Jan. 2019), News IBFD.

Brazil: Overview of Recently Published PIS/COFINS Guidance

On January 2, 2019, Brazil published Private Ruling 325/2018 and Private Ruling 334/2018 in the official gazette. Both rulings address the application of the federal social contributions PIS and COFINS. The federal social contribution taxes (PIS/COFINS) are based on gross receipts from the sale of goods and services. PIS/COFINS apply also on the import of goods and on payments to nonresidents for services provided to Brazilian taxpayers, but not on the export of goods and services. Private Ruling 325/2018 clarifies that income from the provision of services to a nonresident legal entity contracted through an intermediary that, acting as a mere agent, makes the payment of the service fee to the resident service provider using amounts received from a foreign account under the name of the nonresident legal entity (i.e., the service recipient) is not subject to PIS and COFINS. Private Ruling 334/2018 clarifies that outbound payments made for registration at congresses, seminars and similar events, as well as proficiency exams, taking place abroad are not subject to PIS and COFINS.

Source: Brazil – PIS and COFINS on income from provision of services to non-residents with intermediaries involved – clarified (Jan. 10, 2019), News IBFD; Brazil – PIS and COFINS on outbound payments for registration at events occurring abroad – clarified (Jan. 10, 2019), News IBFD.

Colombia: Amendments to VAT Law

On December 28, 2018, Colombia published in the official gazette Law 1,943 of 2018 for funding the public budget. It also contains several amendments to the VAT law; the amendments are effective January 1, 2019, unless otherwise specified. According to Law 1,943 the first sale of new real estate units exceeding 26,800 tax value units (TVUs) is no longer subject to VAT. However, the sale of real estate (except for rural property) that exceeds 26,800 TVUs is subject to the new immovable property consumption tax at a two percent rate on the sale price. Moreover, services provided by restaurants and bars are excluded from VAT and subject to the consumption tax provided by article 512-1 of the Tax Code, except in the case of restaurants and bars subject to a franchise agreement, as they are subject to the general VAT regime. Restaurants and bars responsible for consumption tax that have been carrying out services under a franchising model, may elect to become subject to VAT until June 30, 2019.

In addition, the Law applies VAT throughout the supply chain of beers and sodas (previously, only the producer was obliged to apply and collect the VAT). The taxable base for beers, whether local or foreign, is the sale price less the consumption tax for beers. Moreover, the Law subjects to VAT insurance brokerage, online maintenance services for software and equipment, fees for the selling of life insurance, and beauty treatments and cosmetic surgeries other than those with a medical purpose. However, hotel and tourism services provided in regions where a special custom regime applies (i.e., Urabá, Tumaco, Guapi, Inírida, Puerto Carreño, La Primavera, Cumaribo, Maicao, Uribía, and Manaure) are not subject to VAT.

The Law further provides that foreign-based providers of digital services (e.g., audio-visual services, online advertising, online training, rights on or exploitation of intangibles, and other digital services provided to Colombian customers) may appoint financial institutions as VAT collecting agents for payments of digital services and royalties. In addition, the Law clarifies that VAT on imports from free trade zones applies to the total value of the imported product (i.e., the market price of the goods), including the customs duties.

Law 1,943 eliminates the simplified VAT regime. As a consequence, individuals who were subject to the simplified VAT regime are currently no longer responsible for collecting or invoicing VAT unless the individual decides voluntarily to apply the simple taxation system (SIMPLE) introduced by Law 1943 of 2018. A person responsible for VAT may be considered as not responsible for collecting and invoicing VAT, if the person supports that during the prior year the person complied with the conditions for being considered non-VAT responsible. (Previously, the applicable term was 3 years.) Between January 1, 2019 and June 30, 2019, a person responsible for VAT who is required to issue electronic invoices will not be subject to penalties for failure to do so, as long as the invoice is duly issued by the ordinary system, and there is evidence that shows that technical issues prevent the issuance of invoices electronically. Effective 2020, electronic invoicing will be required for applying costs, deductions and discounts, while the 2019 tax year will be considered a period of implementation.

Finally, the Law grants additional powers to the National Tax Authority (*Dirección de Impuestos y Aduanas Nacionales*, DIAN) to control tax evasion and guarantee that individuals comply with the VAT regime and registration obligations. The DIAN is now allowed to register individuals as a VAT responsible person, if they terminate a commercial establishment and set up a new commercial establishment for carrying on the same activity, and if they split the production and commercial phases of a business among the members of a single family. To read a report prepared by the KPMG International member firm in Colombia, please click here.

Source: Colombia – Law for funding public budget – VAT details (Jan. 11, 2019), News IBFD.

Costa Rica: Draft VAT Regulations Published

On January 29, 2019, Costa Rica's Ministry of Finance published the draft regulations for the implementation of the country's new VAT system. Recall, effective July 1, 2019, Costa Rica will replace its current sales tax system with a new VAT system. The draft regulations expand on the new rules, including detailed rules concerning the scope of sales subject to VAT, taxable events and time of sale, taxable basis, tax rates, registration and return requirements, and tax credits. The rules also spell out certain special regimes, including specific rules for cross-border digital services, gambling, and used goods. The draft regulations also contain certain transitional provisions for going from the sales tax system to the VAT system.

On February 1, 2019, Costa Rica's Ministry of Finance published a draft executive decree establishing the list of "basic consumption goods" that will be subject to the reduced rate of one percent under the new VAT. The list includes several categories of goods, including: breads and tortillas; rice, cereals, flours, and pasta; cow's milk, ice cream, and cheese; meats, including beef, pork, chicken (including eggs), sausages, and fish; oils, margarine, and other fats; various fruits, legumes, tubers, and vegetables (fresh, chilled, or frozen, without any preparation); articles for personal hygiene and cleaning and home care goods; and school and office supplies.

Source: Costa Rica – New VAT regulations – discussion draft released (Feb. 4, 2019), News IBFD, Orbitax, Costa Rica Issues Draft Regulations for New VAT (Feb. 6, 2019); Costa Rica – Executive Decree establishing basic consumption goods subject to reduced VAT – discussion draft published for comments (Feb. 5, 2019), News IBFD; Orbitax, Costa Rica Draft Decree on Goods Subject to 1% Reduced VAT Rate (Feb. 8, 2019).

Europe, Middle East, Africa (EMA)

Cameroon: Amendments to VAT Law

On December 11, 2018, Cameroon published the Finance Law of 2019, amending the VAT law. The amendments are generally effective January 1, 2019. According to the Finance Law, funding agreements, including foreign and joint grants for the funding of public contracts signed effective January 1, 2019 must be concluded VAT inclusive as VAT on such contracts is no longer borne by the government of Cameroon. However, VAT on pending contracts continues to be borne in accordance with applicable laws at the times the contracts were signed.

According to the Finance Law, the exemption from VAT for all real estate operations carried on by non-professionals, as well as transfers of real estate and goodwill (fond de commerce) is now conditioned by the payment of registration fees. The Finance Law further repeals the VAT exemptions applicable to life and sickness insurance and increases the threshold for VAT exemptions on water and electricity utility services for low-income earners from 10 cubic meters/month to 20 cubic meters/month for water and from 110 kW/month to 120 kW/month for electricity.

In addition, the Finance Law clarifies that VAT withheld at source can be claimed upon presentation of an attestation of withholding. Moreover, VAT credits can be subject to a validation by the tax authority at any time, irrespective of the amount of the VAT credit. General traders can now carry forward VAT credits, irrespective of the amount, upon validation by the tax authority. VAT credits accrued to industrialists and petroleum distribution and leasing companies, are reimbursable after 3 months, provided that such persons waive their right to carry forward the credit. The 3-month period open for the reimbursement of VAT accruing on the construction of fuel stations by petroleum distribution companies has been repealed.

Finally, to facilitate the reimbursement of VAT credits, companies have been classified as high-risk, medium-risk, and low-risk, with detailed rules being applied to each class. For example, medium-risk companies must at the time of request for reimbursement, not have any tax debts or must have obtained a deferral.

Source: Cameroon – Finance Law 2019 – VAT and excise duties (Jan. 10, 2019), News IBFD.

Croatia: Amendments to VAT Law

Croatia recently passed amendments to its VAT law; they are effective January 1, 2019. According to the amendments, if the tax authority has doubt in the validity of providing a VAT identification number to a taxpayer, the tax authority can request the taxpayer to provide a guarantee of payment for up to 12 months. If the taxpayer does not provide the guarantee, the tax authority will revoke the VAT identification number. Moreover, the amendments clarify that the requirement for the purchaser to self-assess VAT under the reverse charge mechanism does not apply to sales made by VAT registered non-established companies in Croatia. As a consequence, non-established companies registered for VAT purposes in Croatia must charge Croatian VAT on domestic sales. Moreover, the amendments repeal the requirement for non-established businesses to file the electronic VAT report for all domestic sales of goods and services subject to domestic reverse charge mechanism (form INO PPO).

In addition, the amendments introduce a new requirement for taxpayers to submit a record of incoming invoices along with their VAT returns (known as U-RA – *Knjige ulaznih računa*). The U-RA should be submitted via the Croatian e-filling site ePorezna. The Croatian tax authority published an example of the U-RA in XML format on its website pointing out that taxpayers can submit the U-RA electronically effective February 1, 2019. The U-RA should be submitted until the 20th day of a reporting period. To read a report prepared by the KPMG International member firm in Croatia, please click here.

European Union: Generalized Reverse Charge Mechanism Approved

On December 27, 2018, the European Union (EU) published Council Directive (EU) 2018/2057 in the official journal. The Directive allows Member States that are most severely affected by VAT fraud to apply temporarily a generalized reversal of VAT liability. Member States are only allowed to use the generalized reverse charge mechanism for domestic sales of goods and services above a threshold of EUR 17,500 ($19,725) per transaction, and only up to June 30, 2022. To implement the generalized reverse charge mechanism, Member States must request special approval from the European Council and must meet several conditions. Specifically, a Member State must prove that 25 percent of the VAT gap (i.e., the difference between VAT collected and VAT that should have been collected) is due to carousel fraud. Among other requirements, the Member State must establish appropriate and effective electronic reporting obligations on all taxpayers, in particular those to which the mechanism would apply.

Carousel fraud finds its roots in the current exemption for intra-EU sales that allows for goods to be obtained VAT-free. A number of traders subsequently engage in tax fraud by not paying to the tax authorities the VAT received from their customers. Those customers, however, being in receipt of valid invoices, remain entitled to a tax deduction. The same goods can be sold several times over by including again exempt intra-EU sales. Similar carousel fraud can also occur when services are provided. By designating the taxpayer to whom the goods or services are sold as the person liable for payment of VAT, the derogation would remove the opportunity to engage in that form of tax fraud.

On January 16, 2019, the Czech Ministry of Finance announced that it is seeking to use the generalized reverse charge mechanism. The Czech Ministry of Finance said once the country's application has been approved, a legislative process will be launched in the Czech Republic. It is expected that, if approved, the measure would be in place effective July 1, 2020.

Source: Orbitax, EU Directive on Reverse Charge Mechanism Published (Jan. 3, 2019); CCH, Global VAT News & Features, Czech Republic Seeks To Use VAT Generalized Reverse Charge (Jan. 23, 2019).

European Union: VAT Treatment of Barter Transactions Clarified

On January 10, 2019, the Court of Justice of the European Union (ECJ) published its judgment in *A Oy*, Case C-410/17, regarding the applicable VAT treatment of barter transactions involving sales of goods and provision of demolition services. In the case at hand, the taxpayer is a company active in the real estate and construction sectors and provided demolition, dismantling, recycling and waste processing services in Finland and Sweden. The company entered into two kinds of agreements with its customers. The first agreement constituted a demolition contract requiring the taxpayer to demolish the buildings of its clients and to properly dispose of and process the materials and waste. Part of the materials and waste was composed of scrap metal and other waste materials within the meaning of the Finnish VAT legislation and was resold by the taxpayer to other parties. For these contracts, the taxpayer tried to estimate the quantity of and price likely to be obtained for such scrap metal and other materials in order to factor this into the price of the demolition services, to make its prices as competitive as possible. This estimated price was not discussed with the recipient of the demolition services. The second agreement constituted a dismantling contract under which the taxpayer purchased certain specified buildings on a factory site, including machines, equipment and other movable goods, with the obligation to dismantle those goods and dispose of the resulting waste within a specified timeframe and subject to a penalty clause. As the dismantling and disposing activities generated costs for the taxpayer, it tried to estimate those costs in order to reduce its purchase price.

To obtain clarity on the VAT treatment of the above-described activities, the taxpayer requested a preliminary decision from the Finnish tax authority. The latter held the view that, with respect to the demolition contract, the taxpayer carried out sales of demolition services, but the recipient of those services also sold goods (i.e., the scrap metal and waste material) to the taxpayer. With respect to the dismantling contract, the seller sold goods to the taxpayer, but at the same time the taxpayer provided demolition services to that seller as well. However, the Finnish tax authority did not give its opinion on determining the taxable amount for those transactions.

The ECJ first reiterated its own case law that there is only a sale for consideration if there is a legal relationship of reciprocal performance between the seller and the customer in which the price paid is the actual value for the sale at hand. In the case at hand, the ECJ concluded that, with respect to the first agreement, the taxpayer provided services to its clients. However, part of this agreement (a barter transaction) was in kind. The ECJ ruled that consideration in money or in kind is for VAT purposes the same, provided that there is a direct link between the various transactions and that the value of the latter one can be expressed in monetary terms. As a consequence, the clients also sold goods to the taxpayer. However, the ECJ admitted that whether the latter sale was for consideration should be evaluated, as that is a subjective determination. If there is no monetary value, the consideration must be the value that the recipient attributes to those goods regardless of the fact that the quantity and value are not exactly known at the time of the sale. The ECJ reiterated that any technical difficulties that could arise from this could not by themselves justify the conclusion that there was no consideration, because in this case, the value could be determined, being equal to the reduction of the price for the demolition services. The ECJ further emphasized that the taxable amount for the sales of goods at issue comprised the amount by which the price of the services were reduced, subject to the condition that that value reflected the economic and commercial reality.

Moreover, the ECJ ruled that in the case of the second agreement, the client of the demolition company sold goods to the taxpayer, but that the latter provided dismantling services to its clients at the same time, so it was possible to calculate the value of those services. The taxable amount was, according to the ECJ, the price actually paid for the purchase of those goods and the amount corresponding to the factor applied by the purchaser to reduce the proposed purchase price. Finally, the ECJ emphasized the reflection of the economic and commercial reality and added that it was up to the referring court to make sure that there was no case of abuse.

Source: FI: ECJ, Jan. 10, 2019, Case C-410/17, A Oy, intervening party: Veronsaajien oikeudenvalvontayksikkö, ECJ Case Law IBFD.

European Union: Advocate General Clarifies Concept of Admissions to Educational Events for VAT Sourcing Purposes

On January 10, 2019, the ECJ published the non-binding Opinion of its Advocate General (AG) in *Srf konsulterna AB*, Case C-647/17, regarding the concept of admissions to educational events for determining the sourcing of an educational service. In the case at hand, the taxpayer is a company established in Sweden, wholly owned by a professional association for accounting, management and salary consultants. It provides educational and vocational training to consultants in return for a fee. Among other activities, the taxpayer provides seminars with 30 hours instruction spread over five days with a one-day break in the middle. Those seminars are made available only to professionals established or having a fixed establishment in Sweden, regardless of whether they are members of the taxpayer's parent professional association. The syllabus is decided in advance and assumes that participants have prior knowledge and experience in accountancy, although it can be adapted depending on the level of competence of those who actually attend. Seminars take place in a conference facility. Participants must register in advance, pay in advance, and have been accepted before the start of the course. As a consequence, the taxpayer has access to information on participants' identity, such as their names, addresses, personal identification numbers or registration numbers. Some of the taxpayer's seminars take place in various locations in Sweden, while others are held in other EU Member States. Regarding the latter, the taxpayer requested the Swedish Revenue Law Commission to rule on whether the service should be sourced to Sweden or to the Member State in which the seminar took place. The Revenue Law Commission held that such seminars are to be regarded as provided in Sweden under the general sourcing rules and not where the event took place pursuant to the special sourcing rule for admissions to cultural, educational, and similar events. The Swedish tax authority did not agree with the grounds given in that decision and lodged appealed that ruling.

According to the AG, educational services are by definition essentially intellectual and thus intangible in nature. It might therefore perhaps be possible to regard such services as being economically "consumed" by taxpayers where those taxpayers are established. The concept of an educational "event" is not defined in the EU VAT Directive. However, the Implementing Regulation refers in general terms to "educational and scientific conferences and seminars," which suggests that the legislature intended the scope of that concept to be relatively broad. According to the AG, an event must be planned in advance. Naturally, an activity having a predefined agenda and specific subject matter is more likely to qualify as an event than an open-ended activity providing only a general framework for an educational service. Furthermore, an event should be construed as a gathering of persons to observe or participate in an activity over a period of time. Time is also a significant factor. The duration of a service should normally enable one to distinguish between educational events and other educational activities. A conference or seminar typically lasts from several hours to several days; whereas a university course is likely to run for a significantly longer period (for example three weeks, a month, a semester, an academic year). The AG felt that the former will likely fall within the special sourcing rules for admissions to educational events.

The AG further analyzed the term "admission." The Implementing Regulation explains that only the services "of which the essential characteristics are the granting of the right of admission to an event" fall within the scope of the special sourcing rule. According to the AG, only some educational activities constitute educational events and only some services related to such events can be classified as being essentially 'in respect of admission to educational events." The key to interpreting the special sourcing provision lays in the emphasis that that provision places on individual attendees. That position is confirmed indirectly by the Implementing Regulation, which refers to transactions involving "a person attending an event." Thus, the essential feature of the services falling within the scope of the special sourcing rule is granting an individual the right of access to the premises where an educational event is held. The price can be said to have been charged in return for granting a given number of individuals the right of admission to a given event. In practical terms therefore, as soon as the organizer of an event controls the number of individuals able to gain access and charges a taxpayer a fee for their admission, such an event is likely to fall within the special sourcing rule for admissions to educational events.

Here, the AG opined that there is nothing in the file before the ECJ to suggest that those seminars do not fall within the concept of "event" construed in the light of the conclusion set out above. Those services are five-day seminars on accountancy with a one-day break in the middle; they take place in a specified location and their program is defined in advance. It further appears to the AG that the very nature of the taxpayer's services is to provide to its taxable customers the right for individuals to be admitted to the premises at which a specific seminar actually takes place thereby enabling them to take part in those seminars.

Source: SE: Opinion of Advocate General Sharpston, Jan. 10, 2019, Case C-647/17, Skatteverket v. Srf konsulterna AB, ECJ Case Law IBFD.

European Union: Advocate General Considers that Time Limit to Answer Information by Tax Authority is not Mandatory

On January 17, 2019, the ECJ published the non-binding Opinion of its AG in *Sea Chefs Cruise Services GmbH*, Case C-133/18, regarding the legal time limit for an EU-established taxpayer to file a nonresident refund claim in another EU Member State. In the case at hand, the taxpayer applied to the French tax authority for the refund of a VAT credit. The taxpayer's claim was dismissed in its entirety due to its failure to reply to a request for additional information sent to it by the French tax authority.

The AG noted that despite the parallels that have been drawn in the ECJ case law between the right to deduct VAT and the right to a refund of VAT, the rules in the Refund Directive on the information that a refund application must contain and the time limits for the submission of a refund application are much more detailed than those for deduction of VAT contained in the EU VAT Directive. According to the AG, unlike the September 30 time limit to submit a refund claim, it is not clear whether the time limit of one month to reply to an information request from the refunding Member State is mandatory. Terms such as "no later than" or "at the latest" are absent from the relevant provision. The AG considered that this omission clearly suggests that the European legislature did not seek to lay down a mandatory time limit. Given the fundamental nature of the right to a VAT refund in the context of the common system of VAT and the principle of neutrality which is central to that system, the establishment of mandatory time limits leading to the forfeiture of that right must be done in a clear and unequivocal manner by explicit language contained in the directive itself. The AG concluded that the time limit prescribed to answer an information request from the tax authority for a nonresident refund claim filed by an EU-established taxpayer is not mandatory in the sense in which it has been applied by the French tax authorities in the present case.

Source: FR: Opinion of Advocate General Hogan, Jan. 17, 2019, Case C-133/18, Sea Chefs Cruise Services GmbH v. Ministre de l'Action et des Comptes publics, ECJ Case Law IBFD.

European Union: Recovery Right on Basis of Cross-Border Use Costs

On January 24, 2019, the ECJ published its judgment in *Morgan Stanley & Co International plc*, Case C-165/17, regarding the VAT recovery of costs incurred by a fixed establishment that when the costs are also used for the activities of a foreign head office. Recall, Morgan Stanley has its head office in the United Kingdom (UK head office) and a branch in France (French fixed establishment). The French fixed establishment performs taxable banking and financial services for its French clients as it has opted to tax financial services as permitted under the French VAT law. In addition, the French fixed establishment performs activities for the UK head office, which are not subject to VAT because a branch is not considered a separate legal entity from its head office. The French fixed establishment fully recovered the VAT on the costs it incurred, including those costs incurred and used for activities of the head office. Morgan Stanley believed that the activities for the UK head office had to be ignored, which meant that for the purposes of calculating the right to VAT recovery, only the French-sourced gross receipts remained, which allowed them to recover VAT incurred on expenditures because they were subject to VAT. The French tax authority argued that the French fixed establishment's VAT recovery on costs must be corrected insofar as these costs also included those used for activities performed by the UK head office. However, the UK head office does not have full VAT recovery entitlement, but applies an apportionment of its VAT recovery right. The ECJ's AG opined last year that the branch must apply a cross-border VAT recovery apportionment computation.

The ECJ held the view that where there is a direct and immediate link of the purchase transactions with the taxable sales transactions, the taxpayer has the right to deduct the VAT incurred even if the purchase transactions took place in a Member State (i.e., branch's registration) other than the sales transactions did (i.e., its principal's establishment). The ECJ explained that for the taxpayer to exercise its right to deduct VAT in such a case, the transactions must satisfy a double-layered condition: the transactions that entail the cost of the purchased goods and services should be taxable in both the Member State of the principal's establishment and the Member State of the branch's registration. Here, the branch had opted in for taxation where it was registered (i.e., France).

The ECJ further explained, by reference to its previous judgments, that a branch and its principal are the same taxpayer for VAT purposes, provided that the branch does not carry out any independent economic activity (i.e., it does not bear any economic risk). In such a case, the ECJ noted that in the absence of any legal relationship between the branch and its principal, any reciprocal performance between them does not constitute a taxable sale, but an internal flow of funds. Consequently, the ECJ held, that for the branch to deduct VAT on costs incurred in France, there must be a direct and immediate link of those costs with the taxable transactions performed by the principal in the United Kingdom. Moreover, these transactions are subject to the double-layered condition (i.e., the transactions that are taxable in the United Kingdom would also give rise to deduction had they been performed in France). The ECJ further described the elements of the fraction of the VAT recovery apportionment that should apply in the case at hand. The denominator of the fraction should consist of both taxed and VAT-exempt transactions made by the principal in the place of establishment (i.e., the United Kingdom), that entail the costs of the expenses made by the branch in France. The numerator should include the turnover of the principal's taxable transactions that are directly linked to the expenses of the branch, subject to the above mentioned double-layer condition.

The ECJ subsequently addressed what should be the deductible proportion used for transactions carried out by both the branch in a Member State and by its principal established in another Member State. The ECJ determined that the numerator of the apportionment computation should include the taxable transactions carried out by the branch in France as well as the taxable transactions carried out by its principal in the United Kingdom, provided that the transactions include in their price the general costs made by the branch and the transactions would be taxable had they been carried out in France. The denominator of the fraction should consist of the transactions carried out by both the branch and its principal. To read a report prepared by the KPMG International tax member firm in the Netherlands, please click here.

Source: FR: ECJ, Jan. 24, 2019, Case C-165/17, Morgan Stanley & Co International plc v. Ministre de l'Économie et des Finances, ECJ Case Law IBFD.

European Union: VAT Committee Addresses Importance of VAT Identification Number for Vendors of Electronic Supplied Services

On January 8, 2019, 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 significance of the VAT identification number when a nonresident vendor provides electronic supplied services to customers in the EU. Since January 2015, both business-to-business (B2B) and business-to-consumer (B2C) transactions involving electronic supplied services have been generally subject to the VAT rules and rates in a customer's country. For B2B transactions, the VAT liability typically transfers to the customer, who must account for VAT under a reverse charge mechanism. However, vendors are liable to account for VAT on B2C sales. The VAT Committee unanimously recognizes that the holding of a VAT identification number is not a prerequisite to become a taxpayer and therefore the absence of such a number may not automatically be taken to mean that a person does not have the status of a taxpayer. At the same time, the VAT Committee unanimously confirms that for the purposes of a customer providing proof of his status as a taxpayer, the VAT identification number of that customer must be seen as a very important piece of evidence for the vendor. The VAT Committee unanimously acknowledges that the VAT Implementing Regulation provides various factors on which a vendor can rely in making a case that it made sufficient efforts to verify the status of his customer as a taxpayer or as a non-taxpayer.

The VAT Committee further unanimously underlines that the vendor of electronic supplied services can treat the customer as a non-taxpayer if that customer does not provide his VAT identification number and can do so without any additional checks. At the same time, the VAT Committee unanimously acknowledges that the vendor is not obliged to treat a customer who did not provide his VAT identification number as a non-taxpayer. In the latter case, the VAT Committee almost unanimously agrees (i.e., 24-27 Member States) that the burden of proof is on the vendor, and to avoid liability, the vendor must hold sufficient information to substantiate the status of his customer being a taxpayer.

In addition, the VAT Committee almost unanimously agrees that if the vendor of such services wants to treat the customer who did not provide his VAT identification number as a taxpayer, he must have strong indications showing that the customer is a taxpayer. It is the almost unanimous view of the VAT Committee that these indications need to be of a material and not purely formal nature – a mere clause in a contract will not be sufficient. In case of contradiction between contractual arrangements and the economic reality, the VAT Committee almost unanimously agrees that the latter shall prevail.

Finally, the VAT Committee almost unanimously agrees that to be seen to be acting in good faith, the vendor of electronically supplied services in assessing the status of the customer must collect evidence from the customer and perform appropriate checks within the range of his possibilities. If because of the lack of customer cooperation, the vendor does not have sufficient evidence of the customer's status, and this is relevant in determining who is liable for VAT, the VAT Committee almost unanimously agrees that the vendor must charge the tax to be considered as acting in good faith. The VAT Committee almost unanimously concurs that any corrections should be possible only after proper cooperation of the customer in providing sufficient evidence.

European Union: Update on VAT Infringement Proceedings Open Against Member States

On January 24, 2019, the European Commission published its latest update on infringement proceedings open against Member States for non-compliance with the EU VAT Directive. The Commission decided to refer Germany to the ECJ for rejecting certain applications for VAT refunds from businesses in other Member States. Specifically, Germany refuses in some cases to refund VAT without asking for additional information from the refund applicant if it considers that the information provided on the nature of the goods and services provided is insufficient for coming to a decision on the application. This practice leads to situations in which a VAT refund is denied to applicants that fulfil the substantive requirements and violates the right to a VAT refund established under the EU rules.

The Commission also referred the UK to the ECJ for extending the scope of a VAT measure which allows VAT derogations for certain commodity markets. Currently, the UK zero-rates transactions carried out on certain commodity markets in the UK. Since this derogation was notified to the Commission in 1977, the UK has extended the scope of the measure considerably, meaning that it is no longer limited to trading in the commodities originally covered. Under EU rules agreed to by all Member States, this type of "standstill" derogation cannot be extended in scope. It also generates major distortions of competition to the detriment of other financial markets within the EU.

Moreover, the Commission decided to send a complementary letter of formal notice to Hungary to confirm that its requirements of a road shipment control system do not comply with EU VAT law and to request that they be changed. Under the Electronic Trade and Transport Control System (EKAER) system, companies are obliged to provide the Hungarian tax authorities with detailed information for VAT purposes on certain business-owned shipments that use public roads. The Commission confirms that the EKAER requirements infringe on VAT rules as they primarily affect cross-border EU transactions and introduce administrative formalities connected with the crossing of borders. Moreover, the Commission considers that the Hungarian legislation breaches the principles of neutrality and proportionality, as well as the freedom to conduct a business guaranteed by the Charter of Fundamental Rights of the EU. If Hungary does not act within the next two months, the Commission may send a reasoned opinion to the Hungarian authorities.

Finally, the Commission decided to send a letter of formal notice to Poland to amend its VAT rules which require consignees providing clearance services for excise goods (e.g., fuel) for their customers to pay VAT not only on the services provided by the consignee itself, but also on the amount of excise duty and fuel charge collected on the fuel. This is required even though they do not carry out intra-EU acquisitions of fuel within the meaning of current EU rules on VAT. This can also lead to double taxation as the clients of those companies are also obliged to pay VAT for intra-EU acquisition of this fuel. If Poland does not act within the next two months, the Commission may send a reasoned opinion to the Polish authorities.

Source: Tax Analysts, EU Commission Reviews January Tax Infringements (Jan. 24, 2019).

Italy: Overview of Recently Published VAT Guidance

The Italian Tax Authorities (ITA) recently published Ruling Answer No. 60/2018 providing clarifications on the VAT treatment of transfer pricing adjustments. The ITA held that transfer pricing adjustments may fall within the scope of VAT only where: (1) there is a consideration (i.e., a payment either monetary or in kind); (2) the specific sale of goods or services to which the consideration refers is identified; and (3) there is a direct link between the sale of goods or services and the consideration. In the case at issue, a company purchased goods from another company belonging to the same group, and in accordance with an agreement concluded between the two companies, subsequently paid an adjusted consideration to cover operational losses and reflect the correct arm's length remuneration. The ITA stated that such consideration falls outside the scope of VAT. In particular, the ITA determined that the consideration could not qualify as a consideration for a specific sale of services separate from the sale of goods covered by the agreement. In addition, the ITA determined that the consideration could not qualify as an adjustment of the original sales price of the goods, since there was no direct link between such consideration and the sale of goods.

The ITA recently published Ruling Answer No. 69/2018 providing clarifications on the VAT treatment of emission allowance transfers within gas tolling agreements (GTAs) and sub-tolling agreements (SGTAs). The ITA clarified that transfers of emission allowances qualify as sales of intangible rights and constitute sales of services under the Italian VAT Law. Consequently, they are generally subject to the standard VAT rate (currently 22 percent) and to the requirement for the purchaser to self-assess VAT under the reverse charge mechanism. The same also applies where the emission allowance qualifies as financial instrument. However, in the case at issue, based on the analysis of the specific GTAs and SGTAs, the transfers of emission allowance constituted part of the overall consideration, together with the tolling fee. Therefore, they fell outside the scope of VAT where the purchaser was not established in Italy. Finally, the ITA accepted the relevant taxable amount to be calculated based on the market value of the emission allowance available 20 days before the transfer deadline set in the relevant GTAs and SGTAs.

On November 22, 2018, the ITA published Ruling Answer No. 77/2018 in which it clarified the VAT treatment of sales of goods and services related to immovable property. According to the ITA, sales of services qualifying as ancillary to a sale of services related to an immovable property are also sourced where the property is situated. In the case at issue, a taxpayer managed and rented out a villa and related buildings for exhibitions and other events. The taxpayer intended to provide the following mandatory additional services: assistance in the events' organization, heating and air conditioning and waste disposal. The consideration for these additional services would be part of the consideration paid for the leasing of the immovable properties. In addition, the company would provide optional additional services, such as audio and video services, floral decorations and catering. These optional additional services would be subcontracted to third parties and the consideration would be charged separately. The ITA clarified that both the mandatory and optional additional services qualified as services ancillary to the main sale, the granting the right to use the immovable properties, and were, therefore, provided where the property was situated.

The ITA further published Ruling Answer No. 96/2018 providing clarifications on administrative obligations related to sales of electronic services. In the case at issue, an Italian company provided the following services to individual customers resident or established in Italy: (1) Instagram Collaboration (i.e., the management of Instagram profiles for marketing purposes); (2) #hashtag the definitive guide (i.e., an e-book to better understand how to post on Instagram); and (3) IG Likes (i.e., a service, ancillary to the Instagram Collaboration, aimed at increasing visibility of certain qualifying Instagram profiles). The ITA clarified that the Italian company was allowed to issue a receipt at the time it received the credit card payment from the customer and register the corresponding amount in the daily cash register (*foglio dei corrispettivi giornalieri*). The fact that the receipts were sent via email was not relevant, provided that they met all requirements under the applicable VAT Act. However, the ITA also highlighted that taxpayers are not required to issue invoices or receipts with respect to sales of telecommunications, radio/television broadcasting and electronic services to individual customers, resident or established in Italy, that do not exercise an entrepreneurial activity, art or profession.

On January 18, 2019, the ITA published Ruling Answer No. 8/2019 clarifying that the reduced VAT rate of 10 percent applies to sales of qualifying food supplements falling under TARIC code 2106. Moreover, on January 28, 2019, the ITA published Ruling Answer No. 12/2019 in which it clarified that the standard VAT rate (currently 22 percent) applies to sales of energy gels and protein drinks falling under TARIC codes 2202.9919 and 2202.9991.

Source: Italy – VAT treatment of transfer pricing adjustments – clarifications issued (Jan. 8, 2019), News IBFD; Italy – VAT treatment of emission allowance transfers (Jan. 9, 2019), News IBFD; Italy – Supplies of services related to immovable property – clarifications issued (Jan. 10, 2019), News IBFD; Italy – Supplies of electronic services – clarifications issued (Jan. 10, 2019), News IBFD; Italy – Application of VAT rates – clarifications issued (Jan. 29, 2019), News IBFD.

Poland: Guidance on When Transfer of Commercial Real Estate May Qualify as Transfer of Business not Subject to VAT

On December 11, 2018, the Minister of Finance of Poland issued an explanation setting out the circumstances in which a commercial real estate sale should be classified as a sale of an enterprise or an organized part of an enterprise ("OPE"); which is not subject to VAT. According to the Minister of Finance, the following factors should be taken into account when assessing whether the sale of assets constituting commercial real estate should be classified as a sale of an enterprise or an OPE: (1) the intention to continue the seller's business activities with the set of assets within the transaction limits, and (2) the actual ability to continue the business activity with the components being the subject of the transaction. At the same time, the assessment of whether assets should be considered as an enterprise or an OPE should be performed at the time of the transaction.

According to the explanation, the transfer of commercial real estate may be treated as a sale of an enterprise/OPE outside the VAT scope, if all of the following conditions are met: (1) the assets which are the subject of the transaction allow the purchaser to continue the business activities of the seller and it is possible to continue these activities solely on the basis of the assets acquired, and (2) the purchaser intends to continue the business activities of the seller with the assets acquired in the course of the transaction. Thus, if for the purpose of continuing the seller's business activity, the purchaser needs to engage assets that were not subject to the transaction or to undertake additional factual or legal actions (e.g., concluding agreements), it is not possible to conclude that in a given case the set of assets constitutes an enterprise or an OPE.

To determine whether the set of components transferred to the purchaser allows for the continuation of the seller's business, it is necessary to determine whether, in addition to the transfer to the purchaser of standard elements typical for VAT transactions in immovable property (such as movable property, technical infrastructure and rental rights and obligations), elements such as the following are transferred to the purchaser: (1) rights and obligations emerging by the virtue of the agreements under which debt financing was granted to the seller for the purpose of execution, acquisition, modernization, adaptation or reconstruction of the transferred real estate; (2) property management agreements, (3) asset management agreements; and (4) claims of a pecuniary nature related to the transferred property.

However, to assess whether a group of assets constitutes an enterprise or an OPE, it is not necessary to transfer all of the above mentioned elements, but the minimum necessary to allow for the continuation of the seller's business activity. For the purpose of assessing whether the purchaser of commercial real estate intends to continue the seller's business, it is necessary to take into account all the circumstances surrounding the transaction under assessment at the time the transaction is concluded, and in particular, whether the purchaser has taken action confirming its intention to continue the seller's previous business.

The explanation further includes a list of elements which, while forming an integral part of a commercial property sale, should not be taken into account when assessing whether a sale of a property constitutes a sale of goods subject to VAT or a sale of a business or an OPE outside of the VAT scope. These elements include: movable property used in the building; rights from securities for proper performance of obligations resulting from lease agreements established by tenants (e.g., rights from bank guarantees, deposits, declarations of voluntary enforcement submission); rights from the guarantee of proper performance by contractors of works connected with construction/repair works carried out in the building; and rights and obligations resulting from maintenance contracts, including, among others, contracts concerning the provision of security services, cleaning, real estate services (the so-called facility management agreement). To read a report prepared by the KPMG International member firm in Poland, please click here.

United Kingdom: Tribunal Clarifies VAT Deduction Right in Loyalty Scheme

On January 24, 2019, the UK Upper Tribunal (Tax and Chancery Chamber) published its decision in *Tesco Freetime Ltd.*, [2019] UKUT 18 (TCC), in which it held that a taxpayer was entitled to recover VAT incurred in paying third-party vendors (called deal partners) that honor rewards towed to loyalty program members. In the case at hand, Tesco Stores Ltd., The principal retail member of the Tesco PLC group, operates a club card program through which members purchasing goods from Tesco stores or partner retailers receive points. After a member has accrued sufficient points, they are converted at quarterly intervals into vouchers, which can be used against the cost of Tesco purchases made at brick-and-mortar stores or online. The appeal concerned a specific program feature known as the Partner Boost scheme in which members may exchange their vouchers for reward tokens from Tesco Freetime, which is a separate member of the Tesco group. Tesco Freetime was managed as an independent operation and operated Partner Boost with a substantial degree of autonomy. Club card members can use the tokens to acquire rewards in the form of goods or services from deal partners such as museums, cinemas, or restaurants. Tesco Freetime compensates the deal partners with a fee calculated as a percentage of the face value of the reward tokens redeemed.

The Upper Tribunal observed that the analysis of whether payments to deal partners constituted consideration for a provision of services to Tesco Freetime hinged on the terms of contractual agreements and the economic reality of arrangements. According to the Upper Tribunal, the contractual arrangements in this case do indeed reflect economic reality. The whole purpose of the Partner Boost scheme is to benefit Tesco Stores by promoting customer loyalty. Noting that Tesco Freetime operates the Partner Boost scheme separately, the Upper Tribunal explained that Tesco Freetime's business consists of securing deal partners to provide rewards in return for reward tokens. Tesco Freetime's procurement of deal partners is necessary to satisfy its contractual obligations to Tesco Stores.

The Upper Tribunal highlighted the network of contractual agreements forming the backbone of the loyalty program, including contracts that Tesco Freetime entered into with both Tesco Stores and the deal partners. Under the contract with Tesco Stores, Tesco Freetime was obligated to provide order fulfillment services. Such services are defined as services provided to Tesco Freetime by third-party vendors under an agreement requiring the vendors to provide rewards to club card members. Tesco Freetime was required to enter into arrangements with deal partners under which deal partners would provide rewards to clubcard members. Moreover, Tesco Freetime's invoices to Tesco Stores included VAT, which Tesco Stores deducted as input tax and Tesco Freetime accounts as output tax.

Under individual contracts with deal partners, Tesco Freetime paid them in exchange for their agreement to provide fulfillment services. This arrangement demonstrated that Tesco Freetime received services from the third-party vendors in return for payment. According to the Upper Tribunal, the contract with Tesco Stores imposes a contractual obligation on Tesco Freetime to enter into arrangements with deal partners. Therefore, Tesco Freetime makes taxable sales by agreeing to ensure that rewards are honored, which points toward the conclusion that it should obtain credit for VAT it incurs in paying deal partners to honor rewards.

Source: Tax Analysts, VAT Credit Allowed for Loyalty Program, U.K. Court Holds (Jan. 28, 2019).

United Kingdom: VAT Regulations and Guidance Regarding Withdrawal from the EU Published

On January 15, 2019, the UK published the Value Added Tax (Finance) (EU Exit) Order 2019 (S.I. 2019/43), which amends Group 5 of Schedule 9 to the Value Added Tax Act 1994 (exemptions: finance) to extend the VAT exemption to the management of what are termed "recognized pension funds" and remove the restriction on the type of assets in which a close-ended collective investment undertaking can invest and still have its management qualify for exemption. This amendment ensures that the scope of the UK's exemption for the management of pension funds is consistent with the scope of the exemption as provided for in EU law pursuant to UK tax policy.

On January 17, 2019, the UK published the Value Added Tax (Tour Operators) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/73), which seeks to replicate the existing VAT treatment for sales of travel services. When the UK leaves the EU, UK-based businesses will no longer have access to the EU tour operator margin scheme (TOMS). The Regulation implements a UK TOMS which is consistent with the government's approach to continue to keep systems and processes as close as possible to what they are now. Currently, the margin on travel services enjoyed in the EU (including the UK) is standard-rated, and the margin on travel services enjoyed in the rest of the world is zero-rated. When the UK exits the EU, the margin on all travel services enjoyed outside the UK will be zero-rated. This means that travel services enjoyed in the EU will be treated in the same way as travel services enjoyed in the rest of the world. According to the Regulation, UK tour operators will continue to apply the scheme for sales of travel services to be enjoyed in the UK.

On January 21, 2019, the UK published the Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/59), which makes consequential changes to 18 statutory instruments, including the VAT Regulations, and revokes 6 instruments that relate to intra-EU arrangements that will no longer relevant after the UK leaves the EU. In general the changes remove language related to membership of the EU such as "acquisitions," "intra-Community" and "other Member States." In particular, the specific treatment of, and processes for, acquisitions (EU imports) are removed and the rules applicable to imports are applied. Terminology in relation to the UK's new stand-alone customs regime is also introduced. In addition, legislation relating to the exchange of information with the EU is removed as the UK will no longer have access to EU computer systems. Information exchanges affected include the EC sales lists, the EU VAT refund system for VAT registered businesses and the simplified mechanism for vendors of broadcasting, telecommunications and electronically supplied services to consumers (known as the mini one-stop shop). Finally, the Payment on Accounts Order is amended to reflect the fact that import VAT has been extended to goods imported from the EU, and as a consequence there will be postponed accounting for import VAT.

On January 21, 2019, the UK published the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/60), which introduces a postponed import VAT accounting in case the UK leaves the EU without an agreement. Under the EU Single Market rules, business to business sales of incoming goods from an EU country are treated as acquisitions in the UK. Any VAT due is accounted for by the purchaser on their VAT return and where applicable, simultaneously reclaimed. Goods from non-EU countries are treated as imports, with any VAT due either being paid on import or, where a business has an agreement with HMRC to defer payment, by the 15th of the following month. If the UK withdraws from the EU without a negotiated arrangement, the EU rules will no longer apply and goods entering the UK from an EU Member State will be treated in the same way as imports from the rest of the world. If the current import VAT accounting rules are retained this would create a significant cash-flow impact for VAT registered businesses that bring goods into the UK from the EU. Postponed accounting has the same effect as the current acquisition treatment. Instead of paying import VAT on, or soon after, importation businesses will be able to simultaneously account for and recover it on their VAT returns. Postponed accounting will be allowed for all imports by VAT-registered businesses (i.e., those from EU Member States and those from the rest of the world, apart from postal imports with a value of GBP135 ($174) or less).

On January 24, 2019, the UK published the Taxation (Cross-border Trade) Act 2018 (Value Added Tax Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/105), which make a number of transitional provisions to deal with some of the issues that will arise when amendments are made to the VAT law in consequence of the withdrawal of the UK from the EU, including determining for certain types of transactions if they are going to be performed prior or after Exit day.

On February 4, 2019, the UK published the Value Added Tax (Input Tax) (Specified Supplies) (EU Exit) Regulations 2019 (S.I. 2019/175), which amends the UK legislation to ensure that the term "specified supplies" (i.e., those sales of financial services for which VAT on the costs incurred may be reclaimed) continues after the UK leaves the EU to apply only to sales made to persons located outside both the UK and the EU, or to those that are sold in connection with exports of goods to persons located outside both the UK and the EU. As a consequence, the Regulation ensures that, after the UK exits the EU, businesses will, as is the case now, be unable to reclaim VAT paid on the costs of making sales of certain VAT-exempt financial services when those services are provided to a UK or EU customer. Moreover, on February 28, 2019, the UK published the Value Added Tax (Input Tax) (Specified Supplies) (EU Exit) (No.2) Regulations 2019 (SI 2019/408), which ensures that a Partial Exemption Special Methods (PESM) agreed before the UK exits the EU will be interpreted in accordance with the VAT treatment that will apply under the Specified Supplies Order after the UK exits the EU. This avoids increased administrative burdens on both business and HMRC as, otherwise, businesses would need to apply for a new method which would require approval from HMRC. The instrument also allows specific businesses that provide financial services alongside their main business activity to apportion VAT on supplies of such services in accordance with the VAT treatment that will apply under the Specified Supplies Order after the UK exits the EU.

On February 4, 2019, HMRC announced Transitional Simplified Procedures (TSP) for customs, should the UK leave the EU without a deal. The TSP will make importing easier for an initial period of one year in an effort to allow businesses time to prepare for usual import processes. Once businesses are registered for TSP, they will be able to ship goods from the EU into the UK without needing to make a full customs declaration at the border, and will be able to postpone paying any import duties. The new procedures reduce the amount of information importers need to give in an import declaration when the goods are crossing the border by allowing importers to defer: (1) giving a full declaration until after the goods have crossed the border and (2) paying any duty until the month after import. If tariffs apply to the goods that businesses import, and they want to use the TSP, they will need to defer paying any import duties by setting up a direct debit. HMRC is also reminding businesses to obtain an Economic Operator Registration and Identification (EORI) number if they do not already have one. This number will be crucial to the ability to engage in trade post-departure if the UK leaves the EU without a deal. Businesses can register for TSP effective February 7, 2019 if they have an EORI number, are established in the UK, and are importing goods from the EU into the UK.

On February 6, 2019, HMRC published a guidance on VAT IT system rules and processes if the UK leaves the EU without a deal. According to the guidance, the main changes for businesses will be to the processes for obtaining VAT refunds from EU countries and how to report sales of digital services to EU consumers. Unless Brexit is postponed, after March 29, businesses must claim VAT refunds from EU Member States by using the relevant Member State's existing process for businesses based outside the EU. This includes outstanding claims that relate to 2018 expenses, and claims relating to 2019. Those wishing to use the EU VAT refund electronic system to submit a refund claim for 2018 will need to do so by 5pm on March 29, 2019. The guidance says businesses must familiarize themselves with the process for each EU Member State which can vary across countries. For example, the deadline for making a claim may be different, taxpayers may need to provide a certificate of taxable status to support their claim, and taxpayers may need to appoint a tax representative in the EU Member State of refund. The guidance further explains that vendors of electronic services to EU consumers will no longer be able to use the UK's mini one stop shop scheme to simplify their compliance arrangements. The guidance further notes that, when the UK leaves the EU, all sales of digital services to consumers in EU Member States will become liable for VAT in the consumer's Member State. The GBP 8,818 annual threshold for cross border sales of digital services to EU consumers will no longer apply, meaning that businesses will charge VAT at the rate in the jurisdiction in which the customer is based and declare those sales to the relevant EU member state. To declare the VAT charge, the business must register for VAT in each EU member state where sales are made or register for the VAT MOSS non-Union scheme in an EU member state of their choice. Businesses can use the UK's VAT MOSS to declare sales of digital services to consumers in the EU only up until the first quarter of 2019.

On February 14, 2019, HMRC published VAT Notice 1003 regarding import VAT on parcels sold to UK buyers. It clarifies the new rules applicable to imports of parcels containing goods valued at GBP 135 ($174) or less if the UK leaves the EU without a deal, including registration requirements for nonresidents, online marketplace rules, and sales made to VAT-registered businesses. (For KPMG's previous discussion on the new rules for imports of low value parcels, click here.) In addition, on February 28, 2019, the UK published the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019 (SI 2019/397) which provides that postal operators will be considered as relevant data holders required provide information to HMRC. Subsequent regulations will be introduced to set out in detail the type of data that postal operators hold which they may be required to provide to HMRC in connection with the delivery of parcels covered by the scheme.

On February 28, the UK published the Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) (Amendment and Revocation) (EU Exit) Order 2019 (SI 2019/404), which clarifies that post Exit Day, the sourcing rules for the digital services will be where the customer belongs. If the digital services are sourced is the UK, then standard rated VAT will be due in the UK; if the digital services are sourced in another country, then no VAT is due but there may be a requirement to account for local VAT or equivalent in that country. When the UK leaves the EU, UK businesses that sell digital services to customers in one or more EU member States may need to register in an EU Member State for their version of VAT Min One Stop Shop mechanism. Otherwise they will need to register in each EU Member State where they have customers.

On March 7, 2019, the UK published the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/513), which introduces miscellaneous changes to the UK VAT legislation in case the UK leaves the EU, including introducing additional transitional rules.

Finally, on March 14, 2019, the UK House of Commons voted to ask the European Council for an extension of the Exit Date (originally scheduled for March 29, 2019). The European Council is scheduled to meet on March 21 and 22 and should likely issue a decision on if it will agree to an extension and for how long the extension should be for.

Source: United Kingdom; European Union – Brexit referendum: The Value Added Tax (Finance) (EU Exit) Order 2019 (S.I. 2019/43) made (Jan. 18, 2019), News IBFD. United Kingdom; European Union: Brexit referendum: The Value Added Tax (Input Tax) (Specified Supplies) (EU Exit) Regulations 2019 (S.I. 2019/175) made (Feb. 7, 2019), News IBFD; Orbitax, United Kingdom-European Union – UK Announces Simplified Customs Procedures in Case of No-Deal Brexit (Feb. 6, 2019); CCH, Global VAT News & Features, UK Warns Businesses To Prepare For VAT Process Disruptions (Feb. 11, 2019).

Ukraine: Overview of Recently Published VAT Guidance

On November 12, 2018, the State Fiscal Service of Ukraine (SFS) issued Letter 4793/6/99-99-15-03-02-15/IPK, in which the SFS held that the transfer of a taxpayer's goods for storage by another taxpayer is not subject to VAT. If, however, after the expiration of the storage period established by the contract, the custodian does not return the goods to the taxpayer, those goods will be considered sold for VAT purposes and the sale will be subject to VAT. The VAT base for transactions involving the sale of goods or the provision of services should be determined based on their contractual value. However, the VAT base for transactions involving the sale of goods or the provision of services cannot be lower than the acquisition cost of such goods or services.

On December 6, 2018, the SFS issued Letter No. 5132/6/99-99-15-03-02-15/ІПК in which it clarified the VAT liability in instances in which one taxpayer has made a prepayment to another taxpayer under an agreement for the sale of goods and/or services, but the goods and/or services have not actually been provided. If the first taxpayer decides to offset the prepayment against the payables for other goods and/or services purchased from the second taxpayer (that received the prepayment). This second taxpayer should make the respective VAT adjustment and decrease the VAT liability. The adjustment may take place based on the document providing the possibility to offset the first prepayment against the payables for the second sale.

On December 19, 2018, the SFS issued Letter 5304/6/99-99-15-03-02-15/IPK, in which it held that if a taxpayer's fixed production or nonproduction assets are liquidated at its will, the liquidation should be classified as a taxable sale of the fixed assets carried out at regular prices, but not lower than the book value of the assets at the time of the liquidation. However, there is no taxable sale if the taxpayer's main production or nonproduction assets are liquidated as a result of their destruction in a force majeure event or if the liquidation is carried out without the consent of the taxpayer.

On December 22, 2018, the SFS issued Letter No. 5367/6/99-99-15-03-02-15/IPK, in which it clarified that when a corporate taxpayer sells land and records it on its balance sheet in a separate account as a separate fixed asset, the sale is VAT exempt.

On December 22, 2018, the SFS issued Letter 5386/6/99-99-15-03-02-15/IPK in which it held that if a Ukrainian resident taxpayer provides personnel services to a nonresident, including work on the recipient's premises, those services will not be subject to VAT in Ukraine because the services are considered to be delivered outside Ukraine.

Source: Ukraine – VAT treatment in case of offset of obligations – SFS clarifications (Jan. 17, 2019), News IBFD; Tax Analysts, Ukraine Issues 3 VAT Guidance Letters (Jan. 10, 2019); Tax Analysts, Ukraine Issues Guidance on Cross-Border Taxation Issues (Jan. 29, 2019).

Asia Pacific (ASPAC)

India: Increase Made Above Denial of Tax Credit Amounts to Profiteering

The Indian National Anti-Profiteering Authority (NAPA) recently held that a company can increase its prices only to the extent of the denial of the goods and services tax (GST) credit. Any increase over and above the GST credit denial would amount to a denial of the benefit of tax reduction. When India implemented its GST system in 2017, it also introduced anti-profiteering rules requiring any reduction in the rate of tax on any sales of goods or services or the benefit of GST credit be passed on to the recipient by way of commensurate reduction in prices. In the case at hand, the taxpayer had been selling 393 products both before and after the reduction in GST rate. After the tax rate was reduced, the base price of 314 items were increased. The taxpayer argued that it had revised the prices as a normal business decision arising out of various factors including inflation, non-availability of GST credits, and the rise of employee cost.

The NAPA did not agree with the taxpayer's arguments, stating that the taxpayer had no reason to coincide the increase in price with the date of rate reduction. Such action shows that the taxpayer was acting in bad faith. On examination of the taxpayer's financial statement, profits for the quarter at issue had gone up by 406 percent in comparison to the same quarter a year before while sales had only increased by 27 percent. The NAPA thus concluded that the increase in profits was attributable to the increase in the base prices. The taxpayer's claim of having suffered losses due to the denial of GST credits was not supported by the financial statements. During the period at issue, the taxpayer had increased the base prices between 5.75 percent and 84.55 percent while denying a GST credit has about a 5.6 percent impact on profit. According to the NAPA, the company could increase its prices only to the extent of the denied GST credit, and any increase beyond that should be considered a denial of the benefit of tax reduction. To read a report prepared by the KPMG International member firm in India, please click here.

India: Overview of Recently Published GST Guidance

On January 29, 2019, the Central Board of Indirect Taxes and Customs (CBIC) issued Notification No. 1/2019 and Notification No. 2/2019, which implement the provisions of the Central Goods and Services Tax (Amendment) Act 2018 effective February 1, 2019, unless otherwise provided.

The Notifications include in the scope of GST as taxable, sales of imported services from related persons even if they are received by unregistered persons. Before the amendments, only imports of services received by taxpayers were considered taxable sales. In addition, the following transactions have been included in Schedule II of the CGST Act regarding transactions that are not treated as either sales of goods or services: sales of warehoused goods to any person before clearance for home consumption (in-bond sale); sales of goods by the consignee to any person, by the endorsement of documents of title to the goods, after the goods have been shipped from the port of origin located outside India but before clearance for home consumption (high seas sales); and goods sold from a place in a non-taxable territory to another place in a non-taxable territory without goods entering India (out and out sale). In addition, the amendments limit the requirement for customers to self-assess GST under the reverse charge mechanism on sales made by non-registered vendors to only a notified class of registered customers and only to specified categories of goods or services. The amendments further increase the threshold for taxpayers to apply the composition scheme from INR 10,000,000 ($140,220) to INR 15,000,000 ($210,330). The composition scheme is a simplified GST compliance mechanism, which allows small taxpayers to pay GST at a fixed rate of their gross receipts. Moreover, the amendments allow taxpayers to credit GST incurred on expenditures according to the bill-to ship-to model for sales of services.

The amendments further clarify that for purposes of determining the amount of GST credit attributable to taxable activities, the value of the following exempt sales should not be included: out and out sales, in-bond sales, high seas sales, and actionable claims, other than lottery, betting, and gambling. Moreover, the amendments enhance the eligibility of GST credits. Taxpayers are allowed to credit GST incurred on passenger transportation motor vehicles with a seating capacity exceeding 13 as well as vessels and aircrafts used for conveyance when they are used for providing specific taxable sales. Taxpayers are further allowed to credit GST incurred on general insurance, servicing, repairs and maintenance where passenger transportation motor vehicles with a seating capacity exceeding 13, vessels, or aircrafts are used for providing specified taxable sales, and the taxpayer is engaged in the manufacturing of these vehicles or sells general insurance services in respect of such vehicles. Moreover, the amendments allow taxpayers to recover GST incurred on goods and services that an employer must provide to its employees. The amendments further allow taxpayers to utilize the GST credit available for integrated GST (IGST) fully before utilizing the credit of the central GST (CGST), and state GST (SGST) toward payment of IGST, CGST, and SGST.

Moreover, the amendments limits the compulsory registration requirement for e-commerce operators to those operators who are required to collect tax at source under the CGST Act. The amendments further clarify that businesses can now obtain a registration on the basis of their place of business. Businesses can now have multiple registrations within states in respect of multiple places of business located within such state and have a mandatory separate registration for the units in the specific economic zone (SEZ) or SEZ developer and other units located outside the SEZ. In addition, the amendments allow taxpayers to issue consolidated debit and credit notes with respect to multiple invoices issued during the financial year. Moreover, the amendments clarify that services will be considered as exported even if payments are received in Indian rupees wherever permitted by the Reserve Bank of India. The amendments further clarify that services are sourced outside of India if they relate to shipment of goods performed outside or work on goods temporarily imported into India. Finally, the amendments include procedural changes regarding the filing of appeals. To read a report prepared by the KPMG International member firm in India, please click here.

Singapore: Nonresident Vendors of Digital Services Required to Register for GST Effective 2020

On December 28, 2018, Singapore published in the official gazette the Goods and Services Tax (Amendment) Act 2018, which introduces a GST collection mechanism for imported digital services from nonresident vendors effective January 1, 2020. The Act introduces a requirement for the purchaser to self-assess goods and services tax (GST) for business-to-business (B2B) imported services. In addition, the Act introduces an Overseas Vendor Registration (OVR) regime for business-to-consumer (B2C) imported services; the regime requires overseas vendors and electronic marketplace operators making significant sales of digital services to local consumers to collect GST on their B2C sales of digital services.

Digital services include the following: any digital product; any software or software update; any image, text or information, or the making available of any database; any music, film or game; any distance teaching through any prerecorded medium or e-learning; any website sale, web hosting, or automated or digital maintenance of any program; any service providing or supporting a business or personal presence on any electronic network;

any search engine or automated helpdesk service; any listing service for the right to put goods or services for sale on any online market or auction house; any live streaming service; any advertising service on any intangible media platform, where the tax authority is satisfied that the advertisement is intended to be substantially promulgated in Singapore; and any support service performed, through electronic means, for arranging or facilitating the completion of underlying transactions. Digital services do not include any telecommunication service (as defined in the Fifth Schedule to the Goods and Services Tax (International Services) Order), or any advertising service on any intangible media platform, if the Comptroller is satisfied that the advertisement is intended to be substantially promulgated outside Singapore.

In general, foreign vendors are required to register and account for GST if at the end of the year 2019 or any subsequent calendar year (1) the total value of all taxable sales, and sales outside Singapore that would have been taxable sales if made in Singapore, has exceeded SGD 1 million ($735,250); and (2) the total value of digital services sales to Singaporean consumers (B2C) has exceeded SGD 100,000 ($73,500). Vendors should also register if it is expected that those thresholds will be met in a 12-month period effective January 1, 2020. The Act also includes other changes aimed at improving compliance and enforcement. They include measures to improve multi-agency information sharing; enhance the ability of enforcement authorities to challenge the unauthorized collection of GST; and require that government agencies withhold GST on fraud-prone sales made by private-sector entities under a reverse charge. Finally, the Act provides that documents or items seized during a GST investigation must not be retained if a case is dropped.

Source: Orbitax, Singapore 2018 Budget GST Measures Enacted Including for Digital Services (Jan. 10, 2019); CCH, Global VAT News & Features, Singapore Enacts Law For GST Changes (Jan. 14, 2019).

Trade & Customs (T&C)

European Union: EU to Impose Definitive Safeguards on Steel Imports

On January 4, 2019, the European Commission announced its intention to impose definitive safeguard measures against imports of certain steel, under which a duty will apply if the level of imports exceeds historic norms. In March 2018, the US announced a 25 percent tariff on steel imports and a 10 percent tariff on aluminum imports. In response, the European Commission launched a safeguard investigation into imports of 26 steel product categories entering the EU. Under World Trade Organization (WTO) rules, safeguard measures may be applied if there is evidence that a product is being imported in such increased quantities, and under such conditions, as to cause or threaten to cause serious injury to domestic producers. In July, the EU imposed provisional safeguard measures on imports of certain steel products. Provisional measures can remain in place for a maximum of 200 days.

In its announcement, the European Commission said that its investigation has shown that imports of steel products into the EU have increased significantly in recent years and are likely to increase still further. It stated that the situation has been aggravated by the diversion by foreign exporters of their products from the US to the EU market in response to the US tariff measures. The Commission further argued that the EU's steel industry has not fully recovered from the global steel crisis and remains exposed to further increases of imports and downward pressure on prices. The Commission has therefore proposed that safeguard measures be imposed against 26 steel product categories. The EU will apply a tariff-rate quota, under which a duty of 25 percent will apply when the level of traditional trade flows is reached. The measures will apply against imports from all origins and will expire on July 1, 2021.

Source: CCH, Global Daily Tax News, EU To Impose Definitive Safeguards On Steel Imports (Jan. 8, 2019).

In Brief

- **Argentina:**[viii] On December 4, 2018, Argentina published Law 27467 in the official gazette, amending the VAT law effective January 1, 2019. The Law exempts construction services for social housing. The Ministry of Home Affairs, Public Works and Housing will provide a definition of "social housing" and introduce benefit limits. Providers of construction services are allowed to offset the related VAT on purchases with VAT on sales from other taxable activities. The Law also exempts shipping equipment (trains, signaling systems, spare parts, etc.) and goods for construction, maintenance and improvement of port facilities. Shipment of exempt items must start before December 31, 2019. The exemption applies if imported goods are new and not available from domestic manufacturers. Finally, the Law extends the VAT exemption on books, papers, and magazines to the complete supply chain necessary to produce books, papers and magazines. Related VAT credits may be offset with VAT collected from other taxable events of the respective taxpayer or otherwise with other federal tax liabilities.
- **Argentina:**[ix] On December 8, 2018, the tax authority of Argentina published General Resolution 4392/2018, which establishes a new VAT reimbursement procedure for manufacturers and importers of capital goods included in VAT Law (i.e., hardware and telecommunications equipment) effective January 2, 2019. The procedure aims to provide reimbursement of VAT that cannot be offset against VAT collected on sales because the VAT rate on these products is 10.5 percent (i.e., 50 percent of the standard VAT rate) while most of the VAT incurred is based on a 21 percent VAT rate. General Resolution 4392 modifies the procedure to include electronic filing and to reflect the modifications made by Resolution 17/2018 of the Secretary of Industry regarding the conditions for manufacturers and importers to request reimbursement.

— **Australia:**[x] On January 23, 2019, the Australian Treasury Department issued a consultation paper on proposals to require sharing economy platform providers to report information to the Australian Tax Office (ATO). The paper follows the Government's 2018/19 Budget announcement that it will consult taxpayers on how it could implement the Black Economy Taskforce recommendation for a sharing economy reporting regime. The consultation paper discusses existing arrangements for reporting sharing economy information and seeks views on the possible design characteristics of a reporting regime, including the scope of proposed information reporting requirements.

— **Austria:**[xi] The Austrian Government recently issued a proposed tax reform plan. It addresses the taxation of the digital economy and includes a 3 percent tax on revenue from online advertising. In addition, Austria proposes to repeal the EUR 22 ($25) threshold for packages imported into Austria free of VAT. The Government also proposes to impose stringent reporting requirements on online intermediary platforms, including a requirement that platform operators in the sharing economy send information that is relevant to revenue collection to the tax authorities. Platform operators will be held liable if they fail to comply. Finally, the tax reform would reduce the VAT rate on electronic publications to 10 percent and would provide tax relief for individuals and SMEs effective 2020.

— **Bolivia:**[xii] Bolivia recently extended the 0.30 percent financial transactions tax until December 31, 2023. The tax is mainly levied on financial deposits and transfers and is withheld by the relevant bank or financial institution. In addition, the law provides a corporate tax exemption for creditors in relation to interest on public debt issued through securities in external capital markets.

— **Bulgaria:**[xiii] On January 7, 2019, the National Revenue Agency (NRA) published an official announcement on its website notifying online traders of their obligation to declare their online stores by March 29, 2019. The obligation applies to all traders using their own or rented online stores as well as publicly available online sales platforms which receive cash payments and payments via bank cards. Declarations must be submitted by online traders, individuals in Bulgaria and legal entities currently performing online sales, as well as all e-traders commencing online sales in the future. Declarations must be filed by all persons trading online. Individuals performing incidental sales of their personal belongings are not subject to the new obligation. Declarations must be filed electronically using an e-signature through the NRA's e-portal. The e-portal has accepted declarations since December 28, 2018.

— **China:**[xiv] Effective January 1, 2019, China increased the VAT exemption threshold for "small-scale taxpayers" from monthly gross receipts of CNY 30,000 ($4,500) to CNY 100,000 ($14,800).

— **Colombia:**[xv] On January 3, 2019, the National Tax Authority of Colombia (DIAN) issued Administrative Regulation 000002 providing the following list of taxpayers that are required to invoice electronically: individuals, companies and any other entity qualified as large taxpayer under Administrative Regulation 010 of 2018; and individuals, companies and any other entity that, in the past 6 years, requested DIAN to have numbering authorization for invoicing electronically under Decree 1929 of 2007 and Administrative Regulation 072 of 2017. Administrative Regulation 000002 further provides that, in the case of technical problems relating to the issue of invoices, taxpayers may invoice by using traditional means (e.g., receipt book or computer).

- **Czech Republic:**[xvi] Effective January 1, 2019, the Czech Republic introduced amendments to the VAT Law clarifying when VAT is due. Where a taxable sale sourced in the Czech Republic is provided for more than 12 months, the taxable sale is deemed to have been made, and VAT is due no later than the last day of the calendar year following the calendar year in which the taxable sale started. This rule does not apply to services provided based on a law or based on the decision of a public authority to a third party, where the provision of that service is paid by the state.

- **Ecuador:**[xvii] On December 19, 2018, Ecuador published Resolution No. NAC-DGERCGC18-00000431 in the official gazette. The Resolution requires certain taxpayers to submit withholding vouchers, sales receipts, and complementary documents electronically. The Resolution also sets deadlines for complying with these requirements, which vary according to specific cases between January 1, 2019 and January 1, 2023.

- **Egypt:**[xviii] On December 23, 2018, the Egyptian Tax Authority announced the obligation for companies to submit electronic income tax returns corresponding to the fiscal year ending December 31, 2018 and VAT returns effective January 2019 via the Egyptian Tax Authority website.

- **European Union:**[xix] On January 17, 2019, the ECJ published the non-binding Opinion of its AG in *EN.SA. Srl*, Case C-712/17, in which it opined that the EU VAT Directive does not preclude, in case of non-existing transactions, that a tax liability arises because an invoice has been issued and at the same time the right to deduction is refused. It is, however, a condition that the liability may be discharged as soon as any risk of loss of tax revenue is excluded. In such a case, a sanction may be imposed for having wrongly issued an invoice, but a sanction corresponding to the full amount of the tax on the fictitious transactions at issue, which may not be deducted, is disproportional if the corresponding VAT on the non-existing sales has been paid and accordingly there has not been any risk of loss of tax revenue.

- **European Union:**[xx] On January 17, 2019, the ECJ published its judgment in *Dzivev and Others*, Case C-310/16, in which it held that evidence, such as an interception of telecommunications, that was not obtained according to the national procedural provisions applicable at that time cannot become admissible evidence before a national court deciding a VAT fraud case, even if that is the only evidence that would lead to the conviction of the accused person.

- **Estonia:**[xxi] Effective January 1, 2019, Estonia aligned its VAT law 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.

Moreover, Estonia simplified the conditions which grant a taxpayer an option to declare and deduct the import VAT in the VAT return. In particular, two requirements were abolished: (1) the proportion of zero-rated sales to total sales being at least 50 percent in the previous 12 months and (2) the submission of VAT returns only electronically during the previous 12 months. Finally, fuel importers may declare and deduct their import VAT in their VAT returns if they have provided a security under the Liquid Fuel Act.

— **France:**[xxii] On December 26, 2018, the French tax authority published an updated administrative doctrine regarding the VAT exemption for the sale of human blood. According to the guidance, the sale of human blood, including the delivery of plasma, may benefit from the VAT exemption if such sale directly contributes to activities of general interest (i.e., where the plasma is directly used for care or for therapeutic purposes). However, the sale of plasma obtained from human blood does not benefit from the VAT exemption if the plasma is not intended for direct therapeutic use, but is exclusively intended for the manufacturing medicinal products.

— **Germany:**[xxiii] On January 28, 2019, the Ministry of Finance of Germany issued an official guidance on the application of the newly introduced record-keeping obligations for operators of online marketplaces effective January 1, 2019. Operators of online marketplaces must keep records of resident and non-resident sellers' German VAT registration certificates or have digital confirmation from the German federal tax authorities of the sellers' accurate VAT compliance. Germany further introduced a joint and several VAT liability for operators of online marketplaces with respect to VAT not collected by vendors, including those not registered with German tax authorities.

— **Ghana:**[xxiv] On December 3, 2018, the Minister of Finance of Ghana presented the Value Added Tax (Amendment) (No. 2) Bill 2018 to Parliament; it would amend the VAT law effective January 1, 2019. The Bill would include the sale of locally manufactured textiles in the list of zero-rated sales for a period of 3 years provided that the local manufacturer must be approved by the Ministry of Trade and Industry. The Bill would further enable the Commissioner General to refund excess credit attributable to locally manufactured textiles during the 3-year moratorium upon the receipt of an application for a refund of the excess credit.

— **Greece:**[xxv] On December 31, 2018, the Greek tax authority published document ΔΕΑΦ Δ 1190552, providing clarifications on the recording and issuance of invoices in currencies other than euros. According to the document, companies' accounts must be kept in euros. However, amounts stated in invoices issued by companies may be expressed in any official currency, provided that the VAT due is expressed in euros.

— **Greece:**[xxvi] On December 31, 2018, the Greek tax authority published Circular 1230, which introduces a new application form for VAT refunds to taxpayers not established in the EU. The form is available in both English and Greek and is accompanied by an explanatory memorandum with guidance for the completion of the form.

- **Greece:**[xxvii] On January 9, 2019, the Greek tax authority published document E.2002 in which it clarified that the super-reduced rate of six percent applies not only to the tickets of theatrical performances, but also to concert tickets. Furthermore, the document clarifies that the super-reduced rate applies effective January 1, 2019 and only to tickets of concerts in which no other service is provided. Therefore, the super-reduced rate does not apply to tickets of musical bands that perform in catering centers.
- **Hungary:** Effective January 1, 2019, taxpayers must submit Intrastat reports via the KSH-ELEKTRA data collection system. Besides manual completion of the Intrastat forms, uploading data files is also possible in the KSH-ELEKTRA system, but their format is different from the previously used ones. Moreover, the data elements "mode of shipment" and "delivery terms" have been abolished from the dispatches and arrivals reports, while the "country of destination outside EU" has been abolished from the reporting of dispatches. The Intrastat dispatches report now covers two new data elements, "country of origin" and "partner ID number." The provision of these two data elements is voluntary in 2019, but their collection is expected to be obligatory as from 2020.
- **India:**[xxviii] India's cabinet recently approved the creation of the National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT), which will be situated in New Delhi. The GSTAT will be the forum of second appeal in GST law matters, and the first common forum of dispute resolution in GST disputes between the center and states and between states. It is intended to ensure that there is uniformity in how GST disputes are settled across India. The GSTAT will be presided over by the President and will feature one technical member from the center and one from a state.
- **India:** The Calcutta High Court recently held that service tax audits are permissible for tax years that are still open, notwithstanding that the GST law was effective from July 2017. To read a report prepared by the KPMG International member firm in India, please click here.
- **Indonesia:**[xxix] On January 11, 2019, Indonesia's Directorate General of Taxation published new regulations on the taxation of e-commerce, which are effective April 1, 2019. The regulations are mainly focused on sales of goods and services via online marketplace platforms, although sales via other channels are also covered, including through online retail and social media. According to the regulations, e-commerce sales are subject to VAT at a rate of 10 percent where gross receipts exceeds IDR 4.8 billion (standard VAT threshold), as well as sales tax on luxury goods where applicable. Income from e-commerce sales is subject to income tax in accordance with statutory provisions. Moreover, the regulations introduce new reporting requirements for both sellers and online marketplace platforms. However, the regulations do not address the tax treatment applicable to activities of foreign based companies in Indonesia. Click here for an English-language release from the Ministry of Finance on the new regulations. To read a report prepared by the KPMG International member firm in Indonesia, please click here.

- **Israel:** The Israeli tax authority recently published a circular in which it clarifies the requirements that must be met for services related to a conference in Israel that are provided to International Organizations to be zero-rated. According to the tax authority, the zero rate applies if the service recipient is an international organization that meets one of the two definitions: (1) a union that has incorporated as a "non-profit organization" or a company that carries out business activities or (2) an international sport organization which organize international competitions. Moreover, the conference must meet the following conditions: (1) the conference is being held in Israel and the activities in the framework of the conference lasts at least two consecutive days; (2) at least fifty tourists participate in the conference; and(3) most of the conference is dedicated to lectures and technical discussions around the purposes of the international organization.
- **Ivory Coast:**[xxx] Effective January 1, 2019, the Ivory Coast introduced electronic invoicing requirements for electronic vendors of goods and services;
- **Luxembourg:**[xxxi] On January 18, 2019, the Land Registration and Estate Department of Luxembourg published Circular 790 regarding the VAT treatment applicable to transactions conducted between closely related parties. Closely related parties are broadly defined, including close personal ties, management, ownership, membership, financial or legal ties, including a relationship between an employer and employee or the employee's family, or any other closely connected persons. When calculating the VAT base for transactions conducted between closely related parties, the fair market value is applicable by the Luxembourg VAT authority in specific situations. The fair market value is the full amount that a customer would have to pay in order to obtain goods or services, under conditions of fair competition, from a vendor at arm's length within the territory of the Member State in which the sale is subject to tax. The fair market value rule will be applied in the following situations: (1) the consideration agreed by the parties is lower than the fair market value and the recipient does not have a full VAT deduction right; (2) the consideration agreed by the parties is lower than the fair market value and the vendor does not have a full VAT deduction right while the sale itself is VAT exempt; and (3) the consideration agreed by the parties is higher than the fair market value.
- **Luxembourg:**[xxxii] On January 28, 2019, the Luxembourg Land Registration and Estate Department of Luxembourg posted a notice analyzing the consequences of a no-deal Brexit in the field of VAT for EU Member States as from the withdrawal date, March 29, 2019 at 0:00 Brussels time (CET). The notice clarifies that sales of goods between the EU and the UK will be subject to the VAT rules applicable to imports and exports. In addition, taxpayers should examine whether new liability rules apply to sales of services. Moreover, the notice introduces an obligation for taxpayers to submit the recapitulative statements of intra-EU sales of goods (including triangular operations) and intra-EU sales of services for which the recipient is liable to VAT for the period from January 1 to March 29, 2019. Moreover, the notice, encourages taxpayers established in the EU to request refunds

on VAT paid in the UK until December 31, 2018 in accordance with Council Directive 2008/9. As Council Directive 2008/9 will no longer be valid in the UK after the withdrawal date, taxpayers established in the EU will be required to follow the procedural UK rules for taxpayers established in third countries when requesting VAT refunds from the UK. Taxpayers established in the UK must follow the procedure provided under the Thirteenth VAT Directive (86/560) to request refunds of VAT paid in an EU Member State from January 1 to March 29, 2019.

— **Madagascar:**[xxxiii] Effective January 1, 2019, Madagascar increased the VAT registration threshold from MGA 100 million ($27,840) to MGA 200 million ($55,680). Moreover, Madagascar clarified that for purposes of the VAT refund rules, export sales will correspond to sales made abroad as well as sales made between companies based in free zones under specific conditions.

— **Moldova:**[xxxiv] On December 15, 2018, the Moldovan State Tax Service (STS) clarified that the reduced VAT rate of 10 percent on services and food sold by entities providing hotel and restaurant services is applicable also to any other activities than the activities mentioned in section I of the Classifier of economic activities of Moldova.

— **Moldova:**[xxxv] On January 17, 2019, the STS published an FAQ explaining that effective July 1, 2019 vendors must submit electronic invoices to purchasers for the delivery of goods.

— **Peru:**[xxxvi] On December 28, 2018, Peru published Law 30899 in the official gazette. The Law extends until December 31, 2019 the validity of the following: (1) the VAT exemption on goods listed in Annexes I and II of the VAT Law; (2) the VAT refund applicable to taxpayers acquiring goods funded through foreign donations and imports made by diplomatic missions and mining and hydrocarbon companies during the exploration phase; and (3) the VAT exemption granted to electronic money institutions on the issuance of electronic money.

— **Poland:** Effective January 1, 2019, Poland aligned its VAT law 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. Moreover, Poland amended its VAT bad debt rules, reducing the time a debt is considered irrecoverable from 150 days to 90 days. After a debt is considered irrecoverable, the purchaser is required to correct the amount of VAT originally deducted and the creditor has the right to decrease the amount of VAT collected. The new rule applies also to VAT receivables that arose before January 1, 2019 if the 90 days deadline elapsed after December 31, 2018. To read a report prepared by the KPMG International member firm in Poland, please click here.

— **Russia:**[xxxvii] On December 24, 2018, the Russian Ministry of Finance issued Guidance Letter 03-07-08/93825 in which it held that an eligible international organization that acquires services in Russia from a nonresident that is not registered with the Russian tax authority is not required to self-assess VAT on those services.

— **Russia:** The KPMG International member firm has prepared a report on the new VAT registration requirements for nonresident businesses selling digital services to business established in Russia.

— **Slovakia:**[xxxviii] Effective January 1, 2019, Slovakia introduced a 2.5 percent gross receipts tax on food retailers. The tax does not apply to the country's smallest retailers or those making only nominal sales of food as a proportion of their total sales. To read a report prepared by the KPMG International member firm in Slovakia, please click here.

— **Slovenia:**[xxxix] On January 16, 2019, the Slovenian Financial Administration issued a guidance on VAT refunds. The guidance covers VAT exemptions; repayment conditions and application procedures; deadlines and periods for repayment and refunds; procedures for nonresidents to obtain a VAT identification number; FAQs; and penalties for reimbursements obtained by fraud.

— **Spain:**[xl] On December 29, 2018, Spain published Royal Decree 1512/2018 in the official gazette; it includes amendments to the Spanish VAT Regulations and Invoicing Regulations effective January 1, 2019. The Royal Decree allows taxpayers to opt into the voluntary application of the real time reporting regime (Immediate delivery of invoices data (SII)) at any time during the entire fiscal year. Taxpayers making this election are required to submit the electronic VAT books from the beginning of the year in which the option is exercised. The option takes effect on the first settlement period after exercising it. The Royal Decree further requires taxpayers to inform the tax authority electronically of the reimbursements made to travelers under the travelers' scheme for exports. The deadline to submit this information ends on the 16th day of the month following the settlement period in which the taxpayer rectified its due VAT to recover it from the tax administration. Moreover, the Royal Decree repeals the invoicing exemption for sales of goods and services rendered by political parties in order to obtain financial support. Finally, the Royal Decree introduces technical amendments both in the Spanish VAT Regulations and Invoicing Regulations to update references to other rules and also to correct their adaptation to the EU Directives.

— **Turkey:**[xli] On December 31, 2018, in the official gazette, Turkey published a communique increasing the VAT refund threshold from TRY 11,400 ($2,150) to TRY 14,100 Turkish lira ($2,560) for 2018 transactions that were subject to a reduced VAT rate.

— **Uzbekistan:**[xlii] On December 12, 2018, Uzbekistan published Decree No. UP-5596 which extends until January 1, 2020, the VAT exemption for sugar manufacturers with respect to sugar made from imported crude sugar. Moreover, the Decree extends the customs duty exemption on imported sugar to crude sugar without flavoring additives and coloring agents.

— **Uzbekistan:**[xliii] On December 24, 2018, the President of Uzbekistan signed Law ZRU-508, which amends the VAT law effective January 1, 2019. The Law introduces a new VAT exemption for a taxpayer's own agricultural products and food items produced in Uzbekistan in accordance with a government-approved list. Moreover, the Law introduces a simplified procedure for the calculation and payment of VAT for legal entities with annual turnover of up to UZS 3 billion (about $356,000), except for those that manufacture excisable goods and extract mineral resources. Eligible entities may voluntarily switch to the simplified procedure, which will apply until January 1, 2021. Taxpayers using the simplified procedure are subject to the following reduced VAT rates: 8 percent for construction companies; 6 percent for companies involved in retail or wholesale trade or a combination of both; 10 percent for catering and hotel companies; 15 percent for legal entities providing professional services (auditing services, tax consulting services, brokerage services, etc.); 4 percent for legal entities engaged in the sale of agricultural products, except for products of their own production; and 7 percent for other legal entities.

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.

i. Orbitax, Czech Republic Reduces VAT Rate on Passenger Transit (Jan. 23, 2019).

ii. Greece – Extension of application of reduced VAT rates regime to five islands (Jan. 7, 2019), News IBFD.

iii. CCH, Global VAT News & Features, Philippines Exempts Medicines From VAT (Jan. 3, 2019); CCH, Global VAT News & Features, Philippines Finalizes List Of VAT Exempt Medications (Jan. 28, 2019).

iv. Orbitax, Portugal 2019 Budget Law and Budget Decree for Madeira (Jan. 16, 2019).

v. Orbitax, Tajikistan Abolishes Reduced VAT Rate for Construction, Public Catering, and Education Services (Jan. 22, 2019).

vi. Tax Analysts, Turkey Enacts VAT, Withholding Tax on Digital Transactions (Jan. 31, 2019).

vii. Turkey – Omnibus Law 7161 gazetted – indirect tax measures (Jan. 25, 2019), News IBFD.

viii. Argentina – Budget 2019 – tax measures (Jan. 3, 2019), News IBFD.

ix. Argentina – VAT reimbursement to manufacturers and importers of capital goods – procedure amended (Jan. 22, 2019), News IBFD.

x. CCH, Global VAT News & Features, Australia Considers Sharing Economy Reporting Regime (Jan. 30, 2019).

xi. Orbitax, Austria's Tax Reform Plans Include Taxation of the Digital Economy (Jan. 16, 2019).

xii. Orbitax, Bolivia Extends Financial Transactions Tax to 2023 and Provides Tax Exemption on Public Debt Interest (Jan. 23, 2019).

xiii. Bulgaria – Online traders to declare online stores (Jan. 8, 2019), News IBFD.

xiv. CCH, Global VAT News & Features, China Approves Tax Relief Measures For Small Businesses (Jan. 16, 2019).

xv. Colombia – Taxpayers obliged to invoice electronically – administrative regulation issued (Jan. 24, 2019), News IBFD.

xvi. Czech Republic – VAT rules for continuous supplies – amended (Jan. 28, 2019), News IBFD.

xvii. Ecuador – Electronic submission of supplemental tax documentation – resolution issued (Jan. 16, 2019), News IBFD.

xviii. Orbitax, Egypt Introduces Electronic Return Requirements (Jan. 4, 2019).

xix. European Union; Italy – ECJ Advocate General's opinion (VAT): EN.SA. (Case C-712/17) – VAT consequences of non-existent transactions – details (Jan. 23, 2019), News IBFD.

xx. BG: ECJ, Jan. 17, 2019, Case C-310/16, Petar Dzivev, Galina Angelova, Georgi Dimov, Milko Velkov, ECJ Case Law IBFD.

xxi. Estonia – Amendments to VAT rules enter into force (Jan. 21, 2019), News IBFD.

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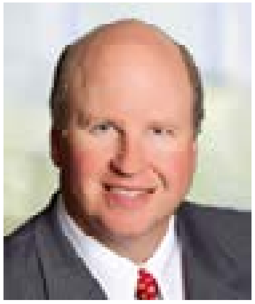

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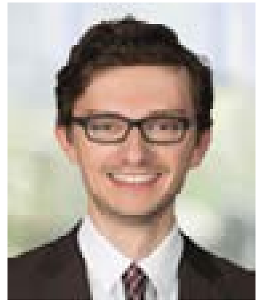

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