KPMG

Inside Indirect Tax

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About this Newsletter

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

Announcement

KPMG Tax News Flash Newsletter on COVID-19 Measures

KPMG has set-up a dedicated TaxNewsFlash newsletter reporting tax measures adopted by countries around the globe in response to the coronavirus (COVID-19) pandemic, including indirect tax measures. We recommend readers to subscribe to this newsletter as jurisdictions adopt or amend their measures at a frantic pace. The most common indirect tax measures adopted by jurisdictions so far include: delay in VAT return filing and paying deadlines, relief from late payment interest and penalties, accelerating VAT refunds, and other targeted measures such as exempting certain medical equipment.

Global Rate Changes

- **Chad:**[1] Effective January 1, 2020, Chad introduced a new reduced rate of 9 percent that applies to cement, sugar, oil and soap as well as products of the local food industry excluding alcohol.
- **Jamaica:**[2] Effective April 1, 2020, Jamaica reduced the standard general consumption tax rate from 16.5 percent to 15 percent.
- **Kenya:**[3] Effective April 1, 2020, Kenya reduced the standard VAT rate from 16 percent to 14 percent.
- **Poland:**[4] On March 25, 2020, Poland published a regulation implementing the following reduced VAT rates on specified goods and services: 5 percent

on the purchase and import of various food products; zero percent on the import of services funded with non-returnable foreign aid, intra-EU shipping services and warehoused goods, and medical diagnostic products; and 8 percent on maintenance work on technical elements of housing and non-residential buildings, and authorized medical products.

The Americas

United States: Peer-to-Peer Car Sharing Operator Required to Collect Tax in South Carolina

The South Carolina Department of Revenue recently ruled that an operator of a peer-to-peer vehicle sharing platform was a marketplace facilitator. Priv. Ltr. Rul. No. 20-2. Under the rental program, third-party owners and lessors of vehicles listed their vehicles on the taxpayer's platform so that customers could select a vehicle to rent. After approving the rental transactions, the taxpayer collected the rental fees and any other additional charges, and remitted to the owner/lessor the receipts less its service charges. Under South Carolina law, a retailer includes a marketplace facilitator, which is defined as "any person engaged in the business of facilitating a retail sale of tangible personal property by listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and collecting or processing payments from the purchaser…." The Department held that the taxpayer was a marketplace facilitator that was required to collect and remit sales tax on peer-to-peer short term motor vehicle rentals. The taxpayer's charges were also subject to sales and use tax. For more information, click here.

Brazil: Indirect Exports not Subject to PIS and COFINS

On February 12, 2020, the Brazilian supreme court *(Supremo Tribunal Federal, STF)* published its decisions in Extraordinary Appeal 759244 *(Recurso Extraordinário 759244)* and Direct Action of Unconstitutionality 4735 *(Ação Direta de Inconstitucionalidade 47735)* regarding whether export transactions conducted by trading companies are subject to the federal social contributions *(Programa de Integração Social, PIS, and Contribuição para o Financiamento da Seguridade Social,* COFINS*)*. According to article 149(2) of the Brazilian federal constitution, the income resulting from exports is not subject to social contributions. However, administrative rules enacted by the Brazilian tax authority provide that the constitutional immunity is applicable only for direct exportation, and not for indirect exportation, as was the case for the trading companies in the cases before the STF.

The STF unanimously held that the difference between direct and indirect exportation did not create an obstacle for the constitutional tax immunity. In the STF's opinion, although the negotiations for the indirect export may occur between Brazilian taxpayers, the core goal of the business remains the sale of products in the external market, thus an export activity. The tax immunity aims to relieve and make the Brazilian products more competitive abroad. Accordingly, income from direct and indirect export transactions are equally shielded from the social contributions as they are covered by article 149(2) of the Federal Constitution. The STF recognized the "general repercussion" *(repercussão geral)* of the case. As a consequence, the decision will have an impact on other similar cases currently examined in the lower courts.

Source: Brazil - Export transactions by trading companies not subject to PIS and COFINS – STF rules (Mar. 10, 2020).

Canada: Provincial Sales Tax Refund Opportunity for Mining Companies in Saskatchewan

Saskatchewan recently announced that, effective December 1, 2019, certain drilling services related to exploration and specified mine site drilling for hard rock, potash and coal, and helium and associated non-hydrocarbon gases, are exempt from provincial sales tax (PST). Mining companies may qualify for a refund when they pay PST on drilling services that include: exploration hole drilling and specified mine site drilling, including disposal well drilling, geotechnical or observation hole drilling, shaft or surface freeze hole drilling, potash solution drilling or uranium solution drilling, water inflow related drilling, surface and underground drilling for the purposes of delineating an ore deposit. In addition, Saskatchewan announced that, effective December 1, 2019, downhole servicing and repair services are exempt from PST when directly related to potash or uranium solution mining or helium and associated non-hydrocarbon gases. Generally, service providers must collect PST on certain materials and repair parts that are incorporated or installed on-site to complete the service. However, other drilling services remain subject to PST, including: water well drilling; geothermal drilling; drilling for blasting; shaft excavation drilling; bulk mining methods, including the excavation of ore; drilling for the purpose of creating storage caverns; and other non-drilling services related to water inflow and remediation. Companies that have paid PST on these drilling services or downhole servicing or repairs provided since December 1, 2019 may apply to Saskatchewan's Ministry of Finance for a refund of the tax by submitting an application and supporting documentation. To read a report prepared by the KPMG International member firm in Canada, please click here.

Europe, Middle East, Africa (EMA)

Czech Republic: VAT Treatment of Benefit Cards Clarified

The General Financial Directorate (GFD) and the Chamber of Tax Advisors recently held a Coordination Committee meeting, during which they agreed on the VAT treatment of benefit cards. Benefit cards enable their holders to acquire pre-defined benefits from pre-defined benefit providers; however, the specific benefit and its provider are selected by the card holders themselves. In practice, benefit cards represent non-monetary components of remuneration paid to employees who, after submitting their cards, may, for instance, enter selected sports centers. The Chamber's representatives chose three model situations for assessment: (1) benefit cards intended for one type of benefit, (2) benefit cards serving as a payment tool, and (3) benefit cards giving the holder the right to draw benefits from individual providers. The GFD agreed with the Chamber of Tax Advisors and decided to consider benefit cards as vouchers pursuant to Section 15 of the VAT Act, even if no paper form is involved. If only one type of benefit can be obtained, the benefit card should be considered as a single-purpose voucher, in which case VAT is due at issuance of the benefit card. If various benefits can be drawn, the benefit card should be considered a multi-purpose voucher, in which case VAT is due upon redemption. In addition, the handing over of a benefit card to the holder, and the payment for the card by the card payer do not constitute a financial service. To read a report prepared by the KPMG International member firm in the Czech Republic, please click here.

European Union: Advocate General Clarifies VAT Treatment Applicable to Intra-EU Remote Sales of Goods

On February 6, 2020, the Court of Justice of the European Union (ECJ) published the Opinion of its Advocate General (AG) in *KrakVet Marek Batko sp. K.,* Case C-276/18, regarding the VAT treatment applicable to intra-EU remote sales of goods. In the case at hand, a Polish taxpayer sold pet food via its website to Hungarian consumers. The taxpayer offered its customers the possibility of using a shipping company, with which the taxpayer was connected, to ship the products from Poland to Hungary. The taxpayer financed the shipment cost by way of offering a discount for purchases made over a specific amount. The taxpayer received a binding ruling by the Polish tax authority, stating that the sale of the goods to Hungarian customers is sourced to Poland because the goods were shipped by or on behalf of the customers according to article 32 of the EU VAT Directive (i.e., the ship from Member State). In 2012, the Hungarian tax authority assessed VAT and imposed penalties with interest to the taxpayer because the company had exceeded the distance sales threshold. As a result, the sourcing of the sale of the goods shifted to Hungary (i.e., the ship to Member State) where the taxpayer should have been registered for VAT purposes.

The AG explained that the issue in the case at hand was to clarify the meaning of the phrase "dispatched or transported by or on behalf of the vendor" in article 33 of the EU VAT Directive. If the shipping was done by the customer, the sale of the goods should be sourced to Poland, but if the shipping was done by or on behalf of the vendor, the sale should be sourced to Hungary. In this respect, the AG highlighted that article 33 has been amended by Directive 2017/2455 to include cases in which the vendor intervenes indirectly in the shipment of the goods. However, this new amended version cannot be used to interpret article 33 as applicable in 2012 because that amendment will become effective in 2021. The AG thus concluded that, in the case at hand, article 33 of the EU VAT Directive covers only situations in which goods are shipped by or on behalf of the vendor. It does not address situations in which the vendor intervenes only indirectly in the shipment. In this respect the AG argued that if the vendor, at his initiative and choice, takes most or all of the essential steps necessary to prepare the goods for shipment, makes the arrangements for the goods to be collected and start their journey and relinquishes possession of and control over the goods, there should be a shipment by the vendor. This is also the case if the vendor either himself or through his agent physically carries out the shipping operation, or owns or controls the legal entity that does so.

The AG further examined whether the Hungarian tax authority could penalize the taxpayer for abusive practice. According to established case law, when taxpayers have to choose between two transactions, they are not required to choose the one which involves paying the highest amount of VAT. However, there is an abusive practice if the taxpayer's transactions (1) accrue a tax advantage that is contrary to the purpose of the provisions; and (2) are essentially aimed at obtaining a tax advantage. While the AG confirmed that, in the case at hand, the taxpayer had obtained a significant financial advantage by applying the lower Polish VAT rate, there was no abusive practice because there was no indication that the company had artificially arranged its business structure with a sole purpose to gain such advantage. In addition, the AG highlighted that the taxpayer had sought guidance from the Polish tax authority. As a result, the sanctioning by the Hungarian tax authority should be contrary to the principle of legitimate expectations as the Hungarian tax authority should have taken into account the binding guidance that taxpayer had obtained by the Polish tax authority.

Source: European Union; Hungary - ECJ Advocate General's opinion (VAT): KrakVet Marek Batko (Case C-276/18) – cooperation between Member States' authorities for VAT purposes; distance selling; abusive practice – details (Feb. 12, 2020), News IBFD

European Union: Renting Activity Linked to Main Activity Should be Included in Computation of VAT Registration Threshold

On February 6, 2020, the ECJ published the Opinion of its AG in *AJFP Caraş-Severin and DGRFP Timişoara,* Case C-716/18, on whether the renting of immovable property should be considered as an ancillary transaction for purposes of computing the VAT registration threshold. In the case at hand, a Romanian taxpayer received income from exercising several professions (professor, tax consultant, accountant, insolvency practitioner and lawyer) from January 2011 to June 2016. In addition, the taxpayer received income from renting an immovable property to a company of which it was a shareholder and a director. The taxpayer did not include the income from renting the property in its annual gross receipts threshold because the taxpayer considered this activity as ancillary. As a result, the taxpayer did not exceed the VAT registration threshold and was therefore exempt from VAT. In 2012, the Romanian tax authority found that the taxpayer had exceeded the exemption threshold and assessed VAT. In that year, the taxpayer obtained 69 percent of its total income from its activity as insolvency practitioner, 17 percent from renting the property, and 14 percent from activities as an accountant and tax consultant. The Romanian tax authority did not consider it as an ancillary transaction, and therefore it should be included in the annual gross receipts threshold.

According to the AG, the purpose of the exemption for small businesses in the EU VAT Directive is to simplify the administration for Member States. While the exemption should be interpreted strictly, the definition of real estate transactions in that article is broad and includes the letting of immovable property. In the AG's view, an activity that is a direct, permanent and necessary extension of a business activity cannot be incidental or ancillary to that business activity. With respect to the real estate transactions referenced in the exemption for small businesses, the AG expressed the opinion that an activity exceeding the exemption threshold cannot be considered ancillary because it is not sufficiently minimal. In addition, ancillary transactions do not have a close link to the main economic activity of a taxpayer if they are non-recurring exceptional activities beyond the actual object of the business; and they do not entail the use of goods or services of the business, but are considered separately. In the case at hand, the taxpayer uses the rented property for its business activity as an insolvency practitioner and as a shareholder and director of the company to which the property is rented out. For these reasons, the AG stated that there is a strong link to the taxpayer's main economic activities; therefore the renting out of the property should not be considered as an ancillary transaction.

Source: European Union; Romania - ECJ Advocate General's opinion (VAT): AJFP Caraş-Severin and DGRFP Timişoara (Case C-716/18) – special scheme for small enterprises; calculation of turnover; letting of immovable property; ancillary transactions – details (Feb. 11, 2020), News IBFD.

European Union: Data Reporting Obligations for Payment Service Providers Introduced

On March 2, 2020, the European Union published Council Directive (EU) 2020/284, which amends the EU VAT Directive to introduce certain requirements for payment service providers and Council Regulation (EU) 2020/283 amending Regulation (EU) No 904/2010 relating to measures to strengthen administrative cooperation to combat VAT fraud. The measures enable Member States to capture the records provided electronically by the payment service providers (e.g., banks) in a uniform manner. In addition, a new central electronic system, the Central Electronic System of Payment information (CESOP), will be created for the storage of payment information and further processing of this information by national anti-fraud units. The amendments to the EU VAT Directive will require payment service providers to keep records on cross-border payments in connection with electronic trading. This data will then be made available, under strict conditions, including data protection, to the national tax authorities. These amendments to the regulation on the cooperation of administrative authorities set out the details of how national tax authorities will cooperate in this area to detect VAT fraud and control compliance with VAT obligations. The new measures will apply effective January 1, 2024. On March 18, 2020, the European Commission published a survey to collect feedback from the payment service provider industry on this new reporting obligation.

Source: European Union - European Commission publishes survey regarding VAT data reporting obligation for payment service providers (Mar. 23, 2020), News IBFD; European Union - New rules on VAT data reporting obligation for payment service providers – published (Mar. 2, 2020).

European Union: Update on Infringement Procedures against Member States

On February 12, 2020, the European Commission sent a letter of formal notice to Germany for failing to have its IT systems ready for the exchange of information relating to the call-off stock simplification that became effective January 2020 as part of the EU VAT Quick Fixes. The exchange of information between Member States is important to fight VAT fraud and is an obligation of Member States under Council Regulation 904/2010. If Germany does not act within two months, the Commission may send a reasoned opinion to the German authorities.

On February 12, 2020, the European Commission sent an additional letter of formal notice to Malta for using a distance-based method, instead of a time-based method, for calculating the effective use and enjoyment of a yacht outside the European Union. Malta had changed its legislation relating to the leasing of yachts after receiving a letter of formal notice by the Commission on March 8, 2018. If Malta does not reply within two months, the Commission may address a reasoned opinion to Malta.

On February 12, 2020, the European Commission closed the infringement procedure against the UK relating to the sale and installation of "energy-saving materials." The Commission had referred the UK to the ECJ for applying the reduced VAT rate to the sale and installation of such materials and the ECJ issued a decision against the practice of the UK in Commission v. United Kingdom. Case C-161/14 (June 4, 2015). As a consequence, the UK issued an order in 2019 restricting the scope of the application of the reduced VAT rate for energy-saving materials in accordance with the decision of the ECJ.

On April 2, 2020 the European Commission closed the infringement procedure against Austria regarding the VAT treatment of royalties paid on works of art. The Commission had referred Austria to the ECJ for applying VAT on royalties paid for the resale of works of art, and the ECJ issued a decision against the practice of Austria in *Commission v. Austria*. Case C-51/18 (Dec. 19, 2018). As a consequence, Austria changed its legislation.

On April 2, 2020, the European Commission closed the infringement procedure against Belgium, Luxembourg, and France, regarding their failure to implement the EU VAT Quick Fixes because the Member States have amended their legislation. Member States were required to implement a set of VAT amendments concerning call-off stock arrangements, triangular transactions and substantive conditions for applying the VAT exemption to intra-EU sales of goods by January 1, 2020.

On April 2, 2020, the European Commission closed the infringement procedure against Latvia regarding its application of the domestic VAT self-assessment requirement on sales of construction products, consumer electronics, and electrical household appliances between businesses because Latvia amended its legislation effective January 1, 2020.

On April 2, 2020, the European Commission closed the infringement procedure against Romania, regarding the application of a split payment mechanism because Romania amended its legislation. According to the

Commission, the split payment mechanism, whereby customers pay the net amount to their vendors and the VAT amount to a dedicated bank account, created a major administrative burden for compliant companies. As a consequence, Romania abolished the mechanism effective February 1, 2020.

Source: European Union; Germany - European Commission sends letter of formal notice to Germany for not being ready to exchange information in framework of call-off stock simplifications (Feb. 13, 2020), News IBFD; European Union; Malta - European Commission sends Malta additional letter of formal notice for calculation of VAT on leasing of yachts (Feb. 13, 2020), News IBFD; European Union; United Kingdom - European Commission closes infringement procedure against United Kingdom regarding application of reduced VAT rate for supplies of energy-efficient products in houses (Feb. 13, 2020), News IBFD; European Union; Austria - European Commission closes infringement procedure against Austria regarding VAT treatment of resale rights of works of art (Apr. 3, 2020), News IBFD; European Union; Belgium; France; Luxembourg - European Commission closes infringement procedure against Belgium, Luxembourg and France regarding failure to implement quick fixes (Apr. 3, 2020), News IBFD; European Union; Latvia - European Commission closes infringement procedure against Latvia regarding VAT reverse charge mechanism (Apr. 3, 2020), News IBFD; European Union; Romania - European Commission closes infringement procedure against Romania regarding implementation of VAT split payment mechanism (Apr. 3, 2020), News IBFD.

European Union: Special Sector Gross Receipts Taxes in Line with EU Law

On March 3, 2020, the ECJ published three decisions dealing with whether certain special sector gross receipts taxes are in conformity with EU law, which may be of importance when considering the validity of the gross receipts-based digital services tax that several EU Member States have introduced in recent months. In *Google Ireland Limited,* Case C-482/18, the ECJ reviewed the validity of Hungary's advertisement tax. Recall, Hungary's advertisement tax, first introduced in 2014, applies to taxable advertising revenue earned by companies regardless of their country of residence. Taxable activities include digital advertising if the advertisement or the website on which it appears is primarily in the Hungarian language. The taxpayer has thus far failed to satisfy its obligation to register for Hungarian advertisement tax purposes. As a consequence, the Hungarian tax authority imposed an initial fine of HUF 10 million ($33,000) for failure to comply with the obligation to register, followed by a daily fine for failure to comply which tripled the amount of the earlier fine, bringing the total amount of the fine to HUF 1 billion ($3.3 million). The ECJ's Grand Chamber held that the principle of the freedom to provide services laid down in Article 56 of the Treaty on the Functioning of the European Union (TFEU) does not preclude Hungarian legislation which imposes an obligation to submit a tax declaration on vendors of advertising services established in another Member State to satisfy their liability for the Hungarian tax on advertising. That is the case despite the fact that vendors of such services established in Hungary are exempt from that obligation on the ground that they are subject to obligations to submit a tax declaration or to register on the basis of liability to all other taxes applicable in Hungary. However, the ECJ held that the principle of the freedom to provide services precludes Hungarian legislation which fines such vendors for non-compliance with the obligation to submit a tax declaration in a series of fines issued within several days capable of amounting to several million euros, without the competent authority giving those vendors the time necessary to comply with their obligations or the opportunity to submit their observations, or having itself examined the seriousness of the infringement, before adopting its final decision fixing the total amount of those fines.

In *Vodafone Magyarország Mobil Távközlési*, Case C- 75/18, and in *Tesco-Global Áruházak Zrt.,* Case C-323/18, the ECJ reviewed the validity of Hungary's gross receipts tax on special sectors, including retail trade telecommunications activities and sale of energy. The taxpayers challenged the fact that the tax burden of this tax overly applies to nonresidents. In both cases, the ECJ held that articles 49 and 54 TFEU must be interpreted as not precluding the legislation of a Member State that establishes a progressive tax on gross receipts, the actual burden of which is mainly borne by undertakings controlled directly or indirectly by nationals of other Member States or by companies that have their registered office in another Member State, due to the fact that those undertakings achieve the highest gross receipts in the market concerned. Moreover, in Vodafone, the ECJ further held that Article 401 of the EU VAT Directive must be interpreted as not precluding the introduction of a tax that is based on the overall gross receipts of the taxpayer and that is levied periodically, and not at each stage of the production and distribution process, without there being a right to deduct tax paid at an earlier stage of that process.

Source: Orbitax, CJEU Holds Hungarian Advertising Tax is Compatible with EU Law but Penalty Regime is Not (Mar. 10, 2020); European Union; Hungary - ECJ decision: Google Ireland Limited v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vámigazgatósága (Case C-482/18) – advertisement tax; registration obligation; non-discrimination (Mar. 3, 2020), News IBFD; HU: ECJ, Mar. 3, 2020, Case C-75/18, Vodafone Magyarország Mobil Távközlési Zrt. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, Case Law IBFD; HU: ECJ, Mar. 3, 2020, Case C-323/18, Tesco-Global Áruházak Zrt. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, Case Law IBFD.

European Union: Aphrodisiacs Are Not Foodstuff for VAT Purposes According to Advocate General

On February 27, 2020, the ECJ published the Opinion of its AG in *Staatssecretaris van Financiën v.X*, Case C-331/19, regarding whether aphrodisiacs may be subject to the reduced VAT rate applicable for foodstuff. In the case at hand, a Dutch taxpayer sold capsules, drops, powders and sprays for oral use, which are of natural origin and are used as aphrodisiacs. The taxpayer applied the reduced VAT rate arguing that the products are classified as foodstuffs. The Dutch tax authority disagreed with the VAT treatment and assessed additional tax at the standard VAT rate.

The AG stated that the EU VAT Directive does not provide a definition of "food for human consumption." According to the AG, such food for human consumption should include all processed and unprocessed products that provide the human organism with nutrients and that are consumed to receive those nutrients. The application of this definition does not depend on whether the products include additional substances other than nutrients, but depends on the purpose for which the product is consumed. For example, chewing gums or magic mushrooms are not consumed to provide nutrients to the human body and should not be subject to the VAT rate for foodstuff. The AG added that the presence of individual components like nutrients are not sufficient to classify aphrodisiacs as foodstuffs, because the combination of all the components of such products intends to enhance a consumer's sexual drive, but do not provide nutritional value. The AG further observed that alcoholic beverages are excluded from the application of the reduced rate because they satisfy needs other than the need for food, similar to aphrodisiacs in the main proceedings. The AG added that, according to the VAT neutrality principle, aphrodisiacs in the case at hand cannot benefit from the reduced rate for foodstuffs solely because they are in direct competition with similar products (i.e., other aphrodisiacs that are subject to the standard VAT rate). Finally, the AG observed that the definition of the concept of food in article 2 of Regulation 2002/178 laying down the general principles and requirements of food law cannot be used in the case at hand because its purpose is to protect public health with regard to food and is different from the purpose of the EU VAT Directive.

Source: European Union; Netherlands - ECJ Advocate General's opinion (VAT): Staatssecretaris van Financiën (Case C-331/19) – reduced rate on foodstuffs – details (Mar. 3, 2020), News IBFD.

European Union: Health Consulting Services over the Phone May be VAT Exempt

On March 5, 2020, the ECJ published its judgment in *X-GmbH v. Z Tax Office,* Case C-48/19, regarding whether the provision of medical care consulting services over the phone is VAT exempt. In the case at hand, a German taxpayer provides medical consulting services to patients over the phone, on behalf of social security institutions of Germany. The taxpayer employs nurses and medical assistants, who are trained as health coaches, to answer insured patients' calls about their medical status, diagnosis, methods of treatment, and put forward suggestions for changing ways of behavior and alternative therapy methods. In one third of the cases, doctors intervene to give insured patients a second opinion, clarifications, or instructions. The taxpayer considered that its services are exempt from VAT. The German tax authority disagreed arguing that the services were not medical services and, thus, should be subject to VAT.

According to the ECJ, the decisive factor to assess if the services of the taxpayer are VAT exempt "provision of medical care" is to examine whether the services have a therapeutic objective. The ECJ found that such objective must not be interpreted strictly by Member States. The ECJ highlighted that the absence of a doctor's prescription before the consultation with the patient or the absence of a specific medical treatment after the consultation do not suffice to preclude the application of the VAT exemption. The ECJ further clarified that the consultation services consisting of the assessment of medical conditions, the explanation of possible treatments, and the modification of existing treatments provide valuable information to patients and therefore can have a therapeutic objective. On the other hand, services like the provision of general information about medical conditions and treatments are not considered as having a therapeutic objective because they cannot protect, preserve, or restore the health of patients. The same applies to the provision of information of an administrative nature, like information about doctors or dispute resolution bodies. In any case, the ECJ stated that the referring court has to assess the therapeutic objective of the services in the case at hand.

With respect to the other requirement of the EU VAT Directive exemption regarding the professional qualifications of the persons providing the consultation services by phone, the ECJ observed that Member States have to ensure that two requirements are met. First, that the exemption applies to medical care services of a sufficient quality level, regardless of the communication means chosen to provide the service. In this regard, Member States may define that qualified professionals need to have additional skills and qualities to provide medical services by phone. Second, Member States must ensure that the same VAT treatment applies to similar services. In this respect, the same VAT treatment should apply if professionals providing medical care services by telephone are able to ensure, by virtue of their professional qualifications, that such services are of a quality equivalent to that of services provided by other service providers using the same means of communication. The ECJ stated that the referring court must assess if the two requirements are met in the case at hand.

Source: DE: ECJ, Mar. 5, 2020, Case C-48/19, X-GmbH v. Z Tax Office, Case Law IBFD.

France: Draft Digital Services Tax Regulations

On March 23, 2020, the French tax authority released a draft guidance on the scope of the digital services tax (DST) that was introduced last year with retroactive effect of January 1, 2019. BOI-TCA-TSN-10-20200323. Recall, the three percent DST applies on annual revenues derived from (1) intermediary services provided through a digital interface and (2) targeted advertising services. The tax only applies to companies with annual revenues from the taxable services of at least EUR 750 million ($817 million) on a worldwide basis and EUR 25 million ($27.2 million) in France. The draft guidance provides certain clarifications on the scope of the French DST, but does not address certain major open issues and may also give rise to new questions. Taxpayers may send comments on the draft guidance until May 23, 2020.

The draft guidance first clarifies the notion of "interaction." Digital intermediation exists when a digital interface is made available, by means of electronic communications, which allows users to contact and interact with each other. The French tax authority states that contact and interaction between users refers to the reciprocal exchange of information between users (publication of content, exchanges, transactions, etc.). It does not matter whether these exchanges are anonymous or impersonal, or whether each user addresses other users generally rather than another identified user. In addition, interactions with the operator of the digital interface, including the possibility of contacting the operator, do not constitute interactions between users. In that respect, the French tax authority expressly indicates that the publication of announcements by the interface operator (e.g., job postings) does not constitute a digital intermediation service when users only have the possibility to comment on these announcements to the operator without making them available to other users. It may, however, constitute a targeted advertising service.

The French tax authority further provides a non-exhaustive list of marketplaces that may be performing taxable services and that notably includes marketplaces allowing travel agencies to book travel services or issue travel tickets. The tax authority further provides a non-exhaustive list of intermediation services that includes the provision of a digital interface allowing for implementation of the services allowing users to play together. The French tax authority specifies that all online multiplayer games are taxable services, regardless of the access mode (by streaming, download, DVD, cartridge, etc.), as are all services allowing access to the online multiplayer mode of a game that is not in its basic version.

The guidance also clarifies that the following criteria must all be met to characterize a sale as targeted advertising services for DST purposes: (1) the positioning in the economic chain, (2) the placement of advertising messages, and (3) the targeted nature of the advertising messages. The draft guidance notably considers that it includes services downstream in the value chain of the programmatic advertising sector that provides technological solutions allowing to: (1) buy advertising space in real time (demand-side platforms), (2) the dynamic display of advertising messages on these spaces ("ad server" on the demand side), (3) access data collected from users of digital interfaces to target the purchase of advertising space (data management platform), and (4) measure in real time the performance of advertising messages, in particular to verify they are broadcasted on the selected target and actually seen by the internet users (ad verification). Moreover, taxable targeted advertising services also include services that do not fall within the programmatic advertising sector but that fall within any of the following: (1) websites comparing commercial offers, goods or services, as long as they are remunerated by those promoting these offers and that these offers are presented to the user of the digital interface according to data that user has provided; (2) announcements sites or directories, as long as they are remunerated by those publishing these announcements or appearing in these directories and that these announcements are presented to the user of the digital interface according to the data that this user has provided; and (3) any other service that is remunerated by persons for the placement of internet links to sites operated by these persons, provided that these links are presented to the user of the digital interface according to data that this user has provided.

The draft guidance further provides details on rules governing the territoriality of the taxable services. A taxable service is considered provided in France if, during the year, at least one user of the digital interface is located in France according to specific rules applying to each of the four sub-categories of taxable digital services. A user is deemed to be located in France when that user accesses the digital interface from a terminal (e.g., computer, tablet, mobile, etc.) that is itself located in France. The location of the terminal in France is determined by any means, including by its identifier on electronic communications networks, in particular the IP address (internet protocol) or its geo-location data. Nevertheless, the French tax authority admits that the location in France can be established by using a bundle of clues with a high level of probability—such as data of the customer account of a digital interface. Thus, the IP address of the user is not the unique criterion. However, the nationality of the user is never a relevant criterion.

Finally, the draft guidance includes a tolerance measure regarding the monthly conversion rate to be used. In principle, for taxable receipts denominated in a foreign currency other than euro, the taxpayer must convert them using the exchange rate published in the official gazette of the European Union and known on the first day of the month during which the taxable receipts are collected. The French tax authority introduced a tolerance measure by which a taxpayer that uses several currencies and converts all of them into the same currency ("common currency") for accounting purposes, the conversion is deemed made for French digital services tax purpose only if it is performed based on the exchange rate corresponding to the common currency and not the one corresponding to each of the currencies used.

However, the draft guidelines also raise new questions or add some confusion regarding certain concepts, including: narrowing the exclusion for intragroup taxable services, the lack of clarity as to which category of taxable services the metasearch websites belong, and the requirement to appoint a tax representative for a DST consolidation group. At this stage, some issues also remain unresolved and are not addressed by the French tax authorities in the draft guidelines. Moreover, the draft guidelines do not address double taxation resulting from the French digital services tax and a digital services tax in another country. To read a report prepared by the KPMG International member firm in France, please click here.

France: Public Consultation on Joint Liability of Online Platforms

The French tax authority recently launched a public consultation concerning the joint liability of online platform operators for the payment of VAT owed by certain defaulting users of the platform in France. BOI-TVA-DECLA-10-10-30-20-20200323. The consultation is open until May 31, 2020. France introduced measures to address tax fraud, and in particular joint liability for online platform operators for the payment of VAT owed by certain defaulting users in 2018. Companies subject to the VAT joint liability procedures are online platform operators, operating in France, and subject to special reporting obligations. (For KPMG's previous discussion on the online platform reporting obligations, please click here.) The joint liability, which is effective January 1, 2020, applies with respect to VAT reporting and payment obligations relating to periods prior to 2020 when there are presumptions that a taxpayer using a platform was non-compliant with its VAT obligations relating to sales of goods or services made to final consumers that are taxable in France and imports of goods taxable in France.

The joint liability for VAT can only be applied after a procedure initiated by the

French tax authority. First, the French tax authority notifies (and provides a report to) the platform operator that there are presumptions of the platform user's non-compliance with the user's VAT obligations. This reporting will be expected to be simplified, given the information provided to the French tax authority by the platforms. Following this notification, the online platform operator must undertake all necessary measures to enable the noncompliant taxpayer to regularize the situation and then the platform operator must notify the French tax authority of the measures taken. If, after a one-month period, the French tax authority considers that the VAT situation of the defaulting user has not been regularized, the tax authority will issue a formal notice to the platform operator to take additional steps or to exclude the noncompliant taxpayer from its platform. A platform operator that receives two such formal notices in less than a 12-month period could be placed on the list of non-cooperative platform operators. A failure to implement the additional measures or exclude the user at the end of a one-month period renders the platform operator as jointly liable for payment of the VAT due by the defaulting user. To read a report prepared by the KPMG International member firm in France, please click here.

Russia: Overview of Recent Indirect Tax Developments

On January 20, 2020, the arbitration court of the Kemerovskaya District issued its decision in case No. A27-12352/2018 regarding the deduction of VAT relating to services of rating agencies. In the case at hand, a Russian coal mining company (RusCo) and an Irish Company (IrishCo) belonged to the same multinational group. IrishCo issued bonds on behalf of the whole group to foreign investors on the Irish Stock Exchange. In addition, a loan agreement was concluded between IrishCo and RusCo. The interest rate and amount to be paid by RusCo were the same as those included in the terms of the bonds sold to foreign investors. Moreover, RusCo purchased services of two rating agencies from their Russian branches and subsidiaries. These services were directly related to the bonds issued by IrishCo. During a tax audit, the tax authority challenged the deductibility of the VAT related to the purchase of these services. The arbitration court supported the tax authority's position claiming that the VAT is not deductible because the purchase of the services of the rating agencies does not directly relate to the business activities of RusCo, but relates to the bonds issued by IrishCo. RusCo did not issue the bonds and was only bound to pay interest under the loan agreement with IrishCo. In addition, the arbitration court mentioned that the purchase of the services was not included into expenses by RusCo for tax on the profit of the organizations purposes.

On February 21, 2020, the Ministry of Finance of Russia (MOF) opened a public consultation on draft law no. 02/04/02-20/00099775, which, if approved, would exempt from VAT goods and services realized, manufactured or acquired in the course of business activities carried on after the taxpayer has been declared insolvent.

On February 25, 2020, the supreme court of Russia published its decision in case no. 5-KA19-66 in which the supreme court held that the inclusion of VAT in the market value of immovable property is contrary to the provisions of the legislation on the valuation of real estate and the tax legislation. However, as a general rule, the sale of non-residential premises at market value may be subject to VAT.

On March 3, 2020, the Russian parliament accepted for consideration draft law no. 912724-7, which, if approved, would zero rate electronic equipment manufactured in Russia between July 1, 2020 and July 1, 2030.

On February 14, 2020, the MOF published Guidance Letter no. 03-07-14/10377 in which it clarified that if marketing and advertising services are provided by a Russian company to a nonresident company, such services are deemed to be provided outside of Russia and are thus not subject to VAT.

On March 11, 2020, the Russian parliament accepted for consideration draft law no. 918286-7, which, if approved, would gradually decrease the standard VAT rate from 20 percent to 18 percent effective 2021, to 15 percent effective 2023, and to 12 percent effective 2025.

On February 28, 2020, the MOF published Guidance Letter 03-07-14/14418 in which it clarified that the granting of an option to conclude a contract for the purchase and sale of stakes in the capital of a legal entity is subject to VAT in accordance with the general established procedure. The VAT base is the market value of the right to conclude one or more contracts envisaged by the option.

Source: Russia - Arbitration Court denies deduction of input VAT relating to services of rating agencies (Feb. 17, 2020), News IBFD; Russia - Zero VAT on Russian electronic equipment – draft law submitted to parliament (Mar. 16, 2020), News IBFD; Russia - VAT exemption for realization of goods and services by insolvent entities - draft law open for consultation (Mar. 23, 2020), News IBFD; Russia - Supreme Court: cadastral value of immovable property not to include VAT (Mar. 24, 2020), News IBFD; Russia - VAT on advertising and marketing services provided to nonresident companies - MoF clarifications (Mar. 24, 2020), News IBFD; Russia - VAT rate amended - draft law submitted to parliament (Mar. 26, 2020), News IBFD; Iurie Lungu, Russia Issues CFC, VAT Guidance Letters (Mar. 26, 2020).

Spain: Digital Services Tax Proposal

On February 28, 2020, a panel of the lower house of the Spanish parliament published draft legislation to introduce a three percent DST. The DST is viewed as a transitional (and unilateral) measure until there is an EU Directive for the taxation of digital services or until a consensus for the taxation of digital services is reached by the Organization for Economic Cooperation and Development (OECD) and the G20 countries.

Companies that operate globally and have a “significant digital footprint” in Spain would be subject to the proposed DST if the following two thresholds are satisfied (at the consolidated group level): (1) gross receipts of more than EUR 750 million globally and (2) total revenues from taxable provision of digital services in Spain of more than EUR 3 million ($3.3 million). The DST would be levied on the following digital services rendered in Spain (i.e., the services involve users located in Spain): (1) online advertising services targeted at users, (2) online intermediary services, and (3) data transmission services. Online advertising services targeted at users would consist in the placement by an entity on its own or on a third-party digital interface, of advertising targeted at the users of that interface. Online intermediary services would be those made available to users of a multi-sided digital interface that facilitates either the underlying sale of goods or services directly between users, or the locating of and interaction with other users (digital platforms). Data transmission services would include the transmission of data collected about users generated by the activities of users on digital interfaces. The draft DST law also would address various situations that would not be taxable, and many of these would coincide with those situations contained in the EU's proposed directive.

The provision of digital services would be deemed to take place in the country where any of its users are located. The term "user" would be broadly defined to apply to any person or entity using a digital interface. A user would be deemed to be located in Spain under various rules, all of which have in common the fact that the critical factor would be where the device enabling the services (e.g., a mobile phone) is located at each moment. There would be a general assumption that a particular user device would, in principle, be deemed to be located based on its internet protocol (IP) address. Nonetheless, evidence to the contrary could be allowed to disprove this assumption.

The DST would be self-assessed by taxpayers on a quarterly basis. In 2020, the total income from taxable digital services would be calculated based on the effective date of the legislation and measured until the end of the assessment period, then afterwards annualized. Moreover, taxpayers would have to settle their DST liability by no later than December 20 this year for quarters once the law is effective (expected to be three months after publication in the official state gazette).

Taxpayers would be subject to certain formal obligations, including: a reporting obligation (either periodically or at the request of the authorities) of information concerning taxable digital services; a requirement to appoint a representative to meet relevant obligations of taxpayers from a non-EU country; recordkeeping obligation to establish proof of where the taxed digital service was sold; requirement to translate into Spanish (or any other official language) any supporting documentation regarding digital services deemed to have been sold in Spain; and requirement to have systems, mechanisms or arrangements enabling to determine whether the user devices are located in the tax territory of Spain. To read a report prepared by the KPMG International tax member firm in Spain, please click here.

Ukraine: Overview of Recent Indirect Tax Developments

Effective February 1, 2020, Ukraine introduced new criteria for the evaluation of risk factors for registering VAT invoices. As a consequence, the tax authority does not register VAT invoices if one of the following has occurred: (1) the taxpayer has been registered (re-registered) on the basis of invalid (lost, destroyed) or forged documents; (2) the taxpayer has been registered (re-registered) at the state registration bodies by individuals with no intention to carry on business activities or exercise powers; (3) the taxpayer is conducting business activities without the knowledge or consent of its founders and legally appointed executives;

(4) the taxpayer has not opened any accounts with banking institutions, with the exception of accounts at treasury bodies; (5) the taxpayer has not filed any VAT returns for the last two reporting tax periods; (6) the taxpayer, if subject to corporate income tax, has not filed the financial statements for the last reporting period; or (7) the tax authority has obtained information indicating risky transactions pertaining to transactions specified in the VAT returns submitted.

The Ukrainian parliament recently began considering two bills that, if approved, would reduce the standard VAT rate. Bill No. 2757 would decrease the standard VAT rate from 20 percent to 17 percent effective January 1, 2021 while Bill No. 2757-1 would decrease the standard VAT rate over five years: to 19 percent effective 2021; 18 percent effective 2022; 17 percent effective 2023; 16 percent effective 2024; and 15 percent effective 2025.

On February 17, 2020, the State Fiscal Service of Ukraine (SFS) published Guidance Letter 642/6/99-00-07-02-02-06/IPK, in which it clarified that if a payment made by a nonresident to resident is not compensation for the cost of goods or services, or is classified as a royalty, then the transaction is not subject to VAT.

On March 3, 2020, the SFS issued Guidance Letter 894/6/99-00-07-03-02-06/IPK in which it clarified that personnel training services that are provided by a resident entity to a nonresident are considered to be provided in Ukraine and are thus subject to VAT, regardless of where the services are actually rendered.

Source: Ukraine - Risk analysis criteria for VAT invoice registration purposes amended (Feb. 12, 2020), News IBFD; Ukraine - New VAT rate proposed – draft law submitted to parliament (Feb. 17, 2020), News IBFD; CCH, Global VAT News & Features, Ukraine Considering 5pc Value-Added Tax Cut (Feb. 24, 2020); Iurie Lungu, Ukraine Clarifies Taxation of Royalty Payments to Nonresidents (Feb. 25, 2020); Iurie Lungu, Ukraine Explains VAT Treatment of Corporate Spinoffs, Training (Mar. 17, 2020).

Asia Pacific (ASPAC)

India: Equalization Levy Expanded to E-Commerce Transactions

On March 27, 2020, India enacted the Finance Act for 2020. Among other things, the Act expanded the application of its Equalization Levy to tax consideration received by nonresident e-commerce operators from e-commerce sales or services at a rate of two percent effective April 1, 2020. By way of background, India introduced an Equalization Levy in the Finance Act for 2016. The levy was applied at a rate of six percent on certain "specified services"—such as online advertisement and any provision for digital advertising space or any other facility or service for the purpose of online advertisement. Indian business purchasers of such advertising services are required to deduct the amount of the Equalization Levy on payments made for such specified services and to remit the amounts to the government.

Under the expanded scope of the Equalization Levy, an "e-commerce operator" is defined as a nonresident that owns, operates, or manages a digital or electronic facility or platform for online sale of goods or the online provision of services. The "e-commerce sales or services" on which the levy applies are: (1) online sale of goods owned by the e-commerce operator; (2) online provision of services provided by the e-commerce operator; (3) online sale of goods or provision of goods facilitated by the e-commerce operator (i.e., when the operator provides a platform for others to sell goods or provide services); and (4) any combination of the above.

The levy is applicable when the goods or services are provided / facilitated by the e-commerce operator to (1) a person resident in India; (2) a nonresident (for sale of advertisements targeted at persons resident in India or using an IP address in India); and (3) a person who buys goods or services using an IP address located in India. However, there are certain situations when the Equalization Levy is not applicable. For instance, the levy does not apply when the nonresident has a permanent establishment in India and the e-commerce transactions are effectively connected to such permanent establishment nor when the Equalization Levy at six percent on "specified services" (as defined above) applies to such services. Moreover, the levy does not apply to taxpayers with gross receipts below INR 20 million ($260,000).

Unlike the Equalization Levy on specified services in which the Indian customer is responsible for withholding the Equalization Levy, the e-commerce operator is responsible for declaring and paying the Equalization Levy directly on a quarterly basis. To read a report prepared by the KPMG International member firm in India, please click here.

Indonesia: Nonresident Digital Service Providers Required to Register for VAT

On March 31, 2020, the Indonesian government issued Government Regulation in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang/ Perppu) No.1 Year 2020, which introduces new measures for the digital economy. The regulations seek to apply 10 percent VAT to the provision of intangible goods and services through an e-commerce system by nonresidents for consumption in Indonesia. The obligation to register and account for VAT will apply to foreign e-commerce providers (including foreign platforms, foreign individuals, and digital companies). Foreign e-commerce providers will be entitled to appoint a representative in Indonesia to fulfil their tax obligations.

The VAT regulations are currently unclear as to whether they will apply to both business-to-business (B2B) transactions and business-to-consumer (B2C) transactions, though it is possible that they would not apply to B2B transactions given the existence of a self-assessment requirement. It is similarly unclear whether there is a minimum gross receipts threshold applicable to foreign e-commerce providers, whether a simplified VAT registration will apply, and whether tax invoices must be issued. The mechanism by which to determine whether a liability falls on the foreign e-commerce provider or to a foreign platform is similarly unclear at this stage.

The regulations also seek to deem foreign e-commerce providers with a significant economic presence in Indonesia as having a permanent establishment under local law and therefore being subject to domestic tax. When this conflicts with a treaty entered into by Indonesia with another contracting state, the regulation subjects foreign e-commerce providers to an Electronic Transaction Tax (ETT) on sales in Indonesia. It is unclear whether this ETT will be a form of gross receipts tax similar to a DST, or something else entirely.

In terms of enforcement, the regulations indicate that a failure to comply may result in denial of access to the Indonesian market, presumably by some form of geo-blocking or cancellation of ".com.id" addresses. It is unclear, however, whether the regulations are effective March 31, 2020 in terms of transactions taking place from that date, or whether the commencement date will await the release of the implementing regulations. To read a report prepared by the KPMG International member firm in Indonesia, please click here.

Source: Indonesia - COVID-19 pandemic: government regulation in lieu of law issued (Apr. 3, 2020), News IBFD.

Malaysia: Overview of Recent Indirect Tax Developments

On February 28, 2020, the Royal Malaysian Customs Department (RMCD) published Service Tax Policy No. 7/2020 regarding the accounting of Service Tax for the following persons exempt from payment of such tax: persons who, in carrying on their business, acquire digital services from foreign registered persons; and persons who provide information technology services that acquired information technology from a person outside of Malaysia. Service Tax Policy No. 7 provides that taxpayers are not required to declare the imported taxable service in the SST-02 Form (Sales Tax /Service Tax Return) and that persons other than taxpayers do not need to declare SST-02A form of declaration (Imported Taxable Services Declaration by Persons other than Taxable Persons).

On February 28, 2020, the RMCD published Service Tax Policy No. 8/2020 regarding the group relief for services provided to a company within the same group of companies. Service Tax Policy No. 8 states that Effective from January 1, 2020, the group relief facility is enhanced whereby group relief is granted even though taxable service is provided to a third party subject to the condition that the total value of the taxable service to the third party does not exceed an amount equal to five percent of the total value of the same taxable service within twelve months. A registered person may use the past twelve-month business transaction data as the basis in determining the percentage of the total value of services sold to third parties to determine whether the service tax should be charged to the group members. When the value of a taxable service that will be provided to third parties cannot be ascertained to be less than or equal to five percent of the total service for a period of twelve months, the taxpayer should charge service tax to the group members for the taxable service provided. Service Tax Policy No. 8 also includes that the provision of taxable services to group members and third parties before January 1, 2020 is subject to service tax even if the value of services to third parties does not exceed five percent of the total value of services. Moreover, the group relief facility under the policy only applies to taxable services provided by taxpayers in Malaysia and does not apply to imported taxable services acquired from group members located outside Malaysia.

On March 1, 2020, the RMCD published Service Tax Policy No 9/2020 regarding the exemption from payment of service tax for any person receiving services provided by accommodation premises operators registered for service tax; and the exemption for registered accommodation premises operators from charging service tax on accommodations and other related services. Services granted the exemption include: the provision of accommodation premises; the provision of any other taxable service specified in other Groups of the First Schedule, Service Tax Regulations 2018; the provision of other services within the accommodation premises; and the provision or sale of tobacco products and alcoholic and non-alcoholic beverages. The exemptions are applicable March 1, 2020 to August 31, 2020.

Source: Orbitax, Malaysia Publishes Three New Service Tax Policies (Mar. 6, 2020).

Trade & Customs (T&C)

United Kingdom: Consultation on Global Tariff Post Brexit Transition Period

The UK Department for International Trade recently launched a consultation on the UK Global Tariff, its own Most Favored Nation (MFN) tariff schedule that will be implemented as a result of the UK exit from the EU. As a consequence, the Department for International Trade is preparing the UK's first independent tariff policy in almost fifty years. It will be effective January 1, 2021, unless the post-Brexit transition period is extended. The tariffs will apply to all goods imported into the UK, unless an exception such as a preferential arrangement or tariff suspension applies. In particular, this tariff will not apply to goods coming from developing countries that benefit under the Generalized Scheme of Preferences, or to goods originating from countries with which the UK has negotiated a free trade agreement (FTA). The Northern Ireland/Ireland Protocol in the Withdrawal Agreement provides for certain specific arrangements for Northern Ireland.

In setting the tariff rates, the government will have regard to take into consideration the principles set out in the Taxation (Cross-border Trade) Act 2018, namely: the interests of consumers in the UK, the interests of producers in the UK of the goods concerned, the desirability of maintaining and promoting the external trade of the UK, the desirability of maintaining and promoting productivity in the UK, the extent to which the goods concerned are subject to competition. The government will also seek to balance strategic trade objectives, such as the delivery of the UK's trade ambitions and FTA trade agenda, with maintaining the government's commitment to developing countries to reduce poverty through trade.

Source: Orbitax, UK Launches Consultation on the Global Tariff, February 11, 2020.

In Brief

- **Algeria:**[5] On January 15, 2020, the Algerian tax authority published a public statement regarding the various measures introduced under the Finance Law 2020, which are effective January 1, 2020. Among other things, the Finance Law 2020 exempts start-up companies from VAT and corporate income tax. The requirements necessary for applying for those exemptions will be determined by yet-to-be-released regulations. Moreover, the advance payment input refund procedure is reduced from 50 percent to 30 percent.
- **Australia**:[6] On February 10, 2020, Australia published a legislative instrument on the waiver of the tax invoice requirement for corporate cardholders under the GST regime. The instrument relieves qualifying taxpayers of the obligation to hold a tax invoice for creditable acquisitions and includes the requirements for obtaining relief from holding a tax invoice; The instrument further clarifies how to compute GST adjustments and outlines reimbursement requirements.
- **Bahrain**:[7] On February 21, 2020, the National Bureau for Revenue issued a guide on procedures for taxpayers to change the frequency of their VAT return filings. The guide includes information on the eligibility criteria to move between monthly and quarterly filing frequencies and the procedure to update the tax authority on elected changes.
- **Brazil**:[8] On March 4, 2020, Brazil's National Congress established a Joint Tax Reform Commission, comprising members of the Chamber of Deputies and the Senate. The Joint Commission is tasked with preparing legislation for the indirect tax reform in Brazil, taking into account the different proposals that have been put forward in each chamber of the National Congress. Both reform proposals have the same objective, which is to simplify Brazil's current indirect tax system. Currently, Brazil's indirect tax system comprises several different indirect taxes levied at federal, state, and municipal levels. Both reform proposals would replace existing taxes with a VAT-type tax on goods and services (IBS) and a selective tax on certain goods and services. There are differences between the proposals that are to be resolved by the Joint Commission, including the taxes that will be replaced.
- **Bulgaria**:[9] On February 19, 2020, the Bulgarian parliament approved amendments to the VAT Act, which subject sales of greenhouse gas emission allowances to the requirement for the purchaser to self-assess VAT until June 30, 2022. The amendments also provide that, in cross-border situations in which a Bulgarian person is engaged in emissions trading with a taxpayer established in another country, the general VAT rules will be applicable.
- **Bulgaria**:[10] On February 18, 2020, Bulgaria published an amendment to the VAT Act, which clarifies that, in the context of call-off stock simplification rules, when goods are sold to a person other than the taxpayer for whom they were intended initially, it must be noted that, immediately before such a transaction, the vendor is deemed to make an intra-EU sale in its country of establishment. In the country of the customer, an intra-EU acquisition is deemed to take place.

- **Bulgaria**:[11] On March 20, 2020, Bulgaria published amendments to the regulations for the application of the VAT Act, which, among other things, introduce changes to the format and technical requirements for e-filing of the main VAT reporting documents and to the forms for application for VAT registration and deregistration. The amendments further introduce new registers and electronic filing requirements for goods under the recently introduced call-off stock simplification. The amendments introduce specific rules for declaring the call-off stock arrangement in the monthly VAT return and the sales and purchases ledger.
- **Canada**: The KPMG International member firm in Canada has prepared a report on the new New Brunswick provincial carbon pricing system that is effective Aril 1, 2020.
- **Chad**:[12] On December 31, 2019, Chad published the Finance Law for 2020 (Law 043/PR/2019), which, among other things, amends its VAT law effective January 1, 2020. The Finance Law exempts from VAT: aircraft refueling for national flights; public drinking water and electricity provided by independent producers; services related to renewable energy materials and equipment; and interest on loans financing renewable energy. Moreover, the Finance Law introduces a VAT withholding requirement on companies listed by the tax administration.
- **China**:[13] On February 18, 2020, China's Ministry of Finance and State Taxation Administration (SAT) issued Circular [2020] No. 12, which temporarily exempts the bonded delivery of commodity futures between November 30, 2018 to November 29, 2023 from VAT. If the commodity futures actually delivered are imported or exported, the current import and export tax treatment applies. The physical delivery of futures of non-bonded commodities is still subject to rules as prescribed in the Public Notice "Specific measures for the collection of VAT on commodity futures" (SAT Public Notice [1994] No. 244).
- **China**:[14] Effective March 20, 2020, China's Ministry of Finance increased export tax rebates for almost 1,500 items, including agricultural and processed goods, to relieve pressure on domestic businesses and encourage foreign trade. The rebates are increased to 13 percent for 1,084 products, including porcelain sanitary appliances, and to 9 percent for another 380 products, including plant growth regulators.
- **Cyprus**:[15] On December 27, 2019, the tax authority of Cyprus issued decree 427/2019 clarifying the VAT obligations for artistic events. The decree obliges a person who intends to organize an art event to notify the tax authority no later than one month in advance prior to the intended event. The decree broadly defines "art event" to mean any artistic activity with the contribution of an artist and/or artist group in Cyprus, conducted with or without consideration from the public. Moreover, Cyprus published a notice to provide a specific form (IF Form 2007/2020) for notifying the intention to organize an art event to the tax authorities. The contract signed between the organizer and the artist or his/her agent must be attached to IF Form 2007/2020. Once IF Form 2007/2020 and supporting documentation have been submitted, the tax authority will compute the amount of VAT due that should be paid by the organizer. The VAT paid will be deemed a prepayment toward the total VAT due from the event.

— **Dominican Republic**:[16] On January 9, 2020, the Directorate General of Internal Revenue (DGII) issued General Rule 01-20120, which regulates the issuance and use of electronic fiscal invoices. The General Rule sets out the conditions and administrative procedures required for becoming an authorized e-CF issuer.

— **European Union**:[17] On February 13, 2020, the European Union published Commission Implementing Regulation (EU) 2020/194 laying down detailed rules for the application of Council Regulation (EU) No. 904/2010 as regards the special mechanisms for taxpayers selling services to final consumers (B2C), making distance sales of goods and certain domestic sales of goods as set out in the VAT e-commerce package. Effective January 1, 2021, the VAT e-commerce package will expand the scope of the mini-one-stop-shop (MOSS) mechanism. Taking into account the fact that a wider scope of transactions will be reported through the MOSS mechanism (not only telecommunication, broadcasting and digital services, but other B2C services, and B2C sales of goods), the amount of information collected and exchanged by Member States during the registration of taxpayers applying the mechanism, and collected in the MOSS VAT returns, needed to be expanded as well. Commission Implementing Regulation (EU) 2020/194 identifies these sets of information separately for the non-EU mechanism (for non-EU vendors), the EU mechanism (for EU vendors) and the import scheme (for situations in which either the vendor or the intermediary is liable for the compliance obligations).

— **European Union**:[18] On March 2, 2020, the European Union published Council Directive (EU) 2020/285, which amends the EU VAT Directive relating to the special mechanism for small enterprises and Regulation (EU) No 904/2010 relating to the administrative cooperation and exchange of information for monitoring the correct application of the special mechanism for small enterprises. The purpose of the special mechanism is to reduce the VAT compliance burden for small enterprises. The special mechanism is currently only available to taxpayers operating in the domestic market of a Member State. According to the newly adopted rules, the special mechanism will also be made available to small enterprises performing cross-border transactions to other Member States. For that reason, the new rules will include, in addition to a domestic threshold, a consolidated EU-wide gross receipts threshold under which taxpayers may apply the special scheme. The new rules will apply effective January 1, 2025.

— **European Union**:[19] On February 10, 2020, the European Commission published a report assessing the invoicing rules under the EU VAT Directive. The report discusses the extent to which the Second Invoicing Directive achieved the following objectives: the reduction of the administrative burdens on businesses; the reduction of VAT frauds/impact on control activities; the proper functioning of the Internal Market; and the promotion of small and medium enterprises. The report further identifies the following shortcomings of the current rules: (1) the concept of business controls that create a reliable audit trail is still complex and interpreted by tax authorities differently; (2) fragmented regulation of invoice archiving; and (3) multiple unilateral e-reporting rules in Member States. Regarding the BCAT, the Commission suggests further clarification via Explanatory Notes, taking into account the many different business processes employed by companies. Regarding the archiving rules, an EU solution would be difficult, but the Commission sees future possibilities for developing an EU standard for the cloud storage of invoices. Regarding tax controls, the Commission understood from Member States feedback that further regulation of invoicing rules is not necessary, and Member States are toward real-time reporting.

— **European Union**:[20] The European Commission recently published the VAT Committee's Working Paper No. 984 on cash accounting. The Working Paper was released following the consultation initiated by Croatia in connection with increasing the threshold for using the cash accounting mechanism. The Croatian proposal would exceed the threshold provided by article 167a of the EU VAT Directive. In the Working Paper, the VAT Committee invites Croatia and other Member States to submit their opinions on this matter.

— **European Union**:[21] On March 3, 2020, the ECJ published the Opinion of its AG in *Stichting Schoonzicht*, Case C-791/18, in which the AG concluded that a national adjustment regime for capital goods that provides that in the year in which the goods enter into use the total amount of the initial deduction may be adjusted in a single step if, upon entry into use, it turns out that that initial deduction deviates from the deduction to which the taxpayer is entitled on the basis of the actual use of the capital goods are in line with the EU VAT Directive.

— **European Union**:[22] On March 5, 2020, the ECJ published its judgment in IDEALMED III – *Serviços de Saúde, S.A.*, Case C-211/18, in which it held that a company that opted for taxation of medical care services for a minimum period of five years is not allowed to deduct VAT because the social conditions of providing the services changed. The particular change occurred when the taxpayer entered into agreements with the public sector for fixed prices. The result of this change is that the services are exempt from VAT as medical services. The fact that the period of five years has not lapsed is not relevant to the tax treatment of the services, which is line with the principle of legal expectations and VAT neutrality.

— **Georgia**:[23] The Ministry of Finance of Georgia recently announced that it has finished drafting legislation to overhaul the country's VAT law to align it with the framework of the European Union. The Georgian government previously said that it hopes by adopting European best practices in the area of VAT, it will reduce the compliance burden on Georgian businesses operating in the EU and vice versa. The government is also seeking to simplify the process for EU businesses to obtain a VAT refund as a means of encouraging investment. Its plans to follow the jurisprudence of the ECJ which will alleviate the workload of Georgian courts and provide more tax certainty to indigenous and EU businesses.

— **Ghana**:[24] Effective January 1, 2020, Ghana exempts the following from VAT: (1) the import of plant and machinery for use in the automobile industry by registered automobile manufacturers or assemblers; (2) the import of knocked-down components ("kits") for the manufacture of automobiles by registered automobile manufacturers or assemblers (also exempted from Special Import Levy); and (3) management fees charged by local fund managers for the management of a licensed private equity fund, venture capital fund, or mutual fund.

— **Greece**:[25] On February 7, 2020, Greece published Decision No. A1018 explaining the VAT treatment for the cross-border leasing of professional leisure boats. The decision clarifies the application of the standard 24 percent VAT rate and the taxation of sailing in international waters or in waters outside the EU. The decision further clarifies the requirements for the proof of residence and proof of distance traveled in non-EU waters, the electronic application process for determining taxes payable; and the audit process.

— **Kyrgyzstan**:[26] On January 22, 2020, the Ministry of Economic Affairs launched a consultation on a proposal to exempt passenger vehicles imported by individuals for personal use from VAT. The exemption will apply from January 1, 2020 to December 31, 2022.

— **Moldova**:[27] On February 21, 2020, the Moldovan State Tax Service issued FAQs on rules to claim VAT deductions, which clarify: (1) the invoices that must be registered by vendors, or purchasers that must submit supporting documentation on an invoice to claim a VAT deduction; (2) the registration requirements for entities receiving exempt goods and services, without the right to deduct; (3) the computation rules for prorated deductions on goods and services that are partially taxable with deduction rights and partially exempt without deduction rights; and (4) the requirement to claim deductions only for the current tax year.

— **Nigeria**:[28] On March 10, 2020, the Federal Inland Revenue Service of Nigeria (FIRS) issued a public notice confirming the roll-out of its automated VAT collection system for branded shops, superstores, general supermarkets, standard restaurants and eateries. The system enables efficient and seamless collection and remittance of VAT on transactions in the wholesale and/or retail sector subject to VAT. The system will also enable direct audit and reconciliation of all VAT transactions to ensure compliance with relevant laws. The system should be activated on April 1, 2020, and all categories of taxpayers covered by this initiative are expected to contact the nearest FIRS office to connect to the FIRS eVAT platform.

— **Norway**:[29] On February 6, 2020, the Norwegian tax authority published a tax appeals board decision on the VAT treatment of IT platform and software license services provided by a subsidiary of an association. In the case at hand, the association paid investment and operating grants to the subsidiary for the development and operating of the IT system, which was relevant for use by the association's members. The majority of the board (3-2) concluded that the grants paid represent VAT liable remuneration.

— **Peru**:[30] On January 28, 2020, the Tax Administration of Peru *(Superintendencia Nacional de Administración Tributaria,* SUNAT*)* published Administrative Guidance 202-2019-SUNAT/7T0000, which clarifies the tax treatment of food testing services provided by a nonresident company to a resident company. According to the Guidance, a nonresident company conducted food testing activities abroad. A resident company then applied the results of the food testing in the manufacture of products in Peru. Such products were traded in Peru and abroad. The SUNAT held that food testing services are characterized as technical assistance services for tax purposes. The provision of such services is by a nonresident is an import of services for VAT purposes and, therefore, it is subject to VAT in Peru. The taxpayer is the resident company since it is the recipient of the services.

— **Peru**:[31] On February 13, 2020, the SUNAT published Administrative Guidance 011-2020-SUNAT/7T0000, which clarifies the application of the zero-rating for exports of services. The Guidance analyses a case in which a company domiciled in Peru provides services to a nonresident company. Such services aim to facilitate the sale of products outside Peru (e.g., client recruitment, drafting a product catalogue, negotiating with customers). The products are acquired by clients in Peru. The nonresident company remunerates the Peruvian company on the basis of a percentage of the profits obtained from the sale of such products. In this case, the SUNAT concluded that the services are characterized as an export of services and are not subject to VAT. The Guidance further analyses a case in which a company domiciled in Peru provided services to a nonresident company. For that purpose, both companies concluded a mandate agreement without representation according to which the company domiciled in Peru was in charge of the definitive import and the delivery of products sold abroad by the non-domiciled company to clients in Peru. As a consequence of the mandate agreement, the property of the products was transferred to the company domiciled in Peru, which delivered the products to the clients in Peru on behalf of the nonresident company. The SUNAT concludes that the transaction mentioned above is not characterized as an export of services because the use, exploitation and advantage of the services by the recipient (i.e. the nonresident company) did not take place outside Peru.

— **Portugal**:[32] On February 3, 2020, the Portuguese tax authority issued Circular Letter no. 30218/2020, which clarifies the zero-rating for intra-EU transactions following the implementation of the EU VAT Quick Fixes, which has not been incorporated into Portuguese law yet. The Circular Letter clarifies the evidence necessary to show that a shipment of goods under an intra-EU sale may benefit from the zero-rating (e.g. documents relating to the shipment of goods, such as a signed CMR consignment note, bill of lading, an invoice of air freight, an invoice issued by the carrier of the goods).The Circular further provides information on the adoption of an internal register, both by taxpayers transferring the goods and by those to whom they are delivered, for the application of the simplified regime of consignment sales. The registers must state, among other things, the VAT numbers of the parties concerned, the taxable amount, the quantity and description of the goods and the relevant dates of dispatch and arrival. Together with the Circular Letter, the tax authority also issued a statement on the amendments to be introduced to the returns to include the reporting of the aforementioned operations. The short statement clarifies that, until the updated forms are in force, the current VAT returns remain applicable, with the consignment sales being reported therein as an intra-EU sale of goods.

- **Romania**:[33] On January 31, 2020, Romania published Government Ordinance No. 6 implementing, among other things, incorporates into Romanian law the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; and (3) establish uniform criteria in determining the VAT treatment of EU chain transactions.

- **Spain**:[34] On February 5, 2020, Spain published Royal Decree Law 3/2020, which incorporates into Spanish law the EU VAT Quick Fixes which (1) provide for a simplified and uniform treatment for call-off stock arrangements; (2) require the identification number of the customer as well as the proper fulfilment of a VAT recapitulative statement to become an additional condition for the zero-rating of intra-EU sales of goods; and (3) establish uniform criteria in determining the VAT treatment of EU chain transactions.

- **Turkey**:[35] On March 20, 2020, Turkey published a communique amending the recently introduced DST, which is effective March 1, 2020. (For KPMG's previous discussion on Turkey's DST, click here.) The communique includes language defining the services and entities subject to the digital service tax; providing conditions, documentation requirements, and limits for an exemption; setting the 7.5 percent rate for the DST; determining the tax base and procedure for calculating and declaring the tax; and establishing the taxation period and declaration deadline.

- **Turkey**:[36] On March 27, 020, the Turkish Revenue Administration issued a notice postponing the effective date of the accommodation tax from April 4, 2020 to January 1, 2021.

- **United Arab Emirates**:[37] On February 9, 2020, the Federal Tax Authority of the United Arab Emirates (FTA) launched the first edition of the "Basic Tax Information Bulletin." Future editions of the Bulletin will address sector-specific VAT treatment through periodic detailed tax information. The first edition of the Bulletin focuses on the VAT treatment of the education sector, including schools, pre-schools and nurseries. The Bulletin explains that the provision of educational services, including printed or digital reading material, is zero rated where both the curriculum and educational institutions are recognized by the competent federal or local government. The services of transporting students to and from the educational institutions are treated as exempt sales. The standard VAT rate of five percent applies to the following: sales made to persons who are not enrolled to the educational institutions; uniforms, electronic devices, food and beverages; field trips unrelated to curriculum; extra-curricular activities provided at an additional charge; and sales provided by a business that is not an educational institution. The Bulletin further states that educational institutions making exempt sales or zero-rated sales are required to register for VAT purposes if the value of sales has exceeded the mandatory registration requirement threshold of AED 375,000 ($102,000) in the past 12 months, or if the value is expected to exceed this threshold in the next 30 days. The educational institutions are eligible for VAT recovery, with the exception of certain items such as certain entertainment services and purchased, leased or rented motor vehicles that are available for personal use. The Bulletin also provides clarifications on certain specific issues in the education sector.

— **United Arab Emirates:**[38] The FTA recently published the Refund of VAT paid on goods and services connected with Expo 2020 Dubai Guide for Official Participants. The guide provides that the offices of the Official Participants are able to reclaim VAT incurred on the import and acquisition of the following five categories of goods or services without the need to use them for making taxable sales: (1) goods and services in direct connection with the construction, installation, alteration, decoration and dismantlement of their exhibition space; (2) goods and services in direct connection with the works and activities of organizing and operating the Official Participant's exhibition space and any presentations and events within the Expo 2020 site; (3) goods and services relating to the actual operations of the Official Participant provided that the value of each goods and services, for which the Office of the Official Participant makes a claim, is not less than AED 200 ($54); (4) all operations, services and activities provided for the purpose of participation in Expo 2020 Dubai, whether located within or outside the boundaries of the Expo 2020 Dubai site; and (5) import of goods for personal use of the Official Participant's Section Commissioner-General, Section Staff and the Beneficiaries. Official Participants are entitled to obtain a VAT refund whether they are VAT registered or not. Those who are VAT registered may claim the refund on their regular return. Those who are not registered may apply for the VAT refund using a special refund application process within the following time frame: (1) within 15 days of the end of the calendar month in which the total VAT value to be claimed is AED 10,000 ($2,700) or more; and (2) within 15 days of the end of the calendar quarter where the total VAT value to be claimed is less than AED 10,000.

— **United Arab Emirates:**[39] On March 9, 2020, the FTA updated the list of designated zones by modifying the names of 2 designated zones. The Emirate of Dubai: the "Free Zone Area in Al Qusais" is changed to "DAFZA Industrial Park Free Zone – Al Qusais"; and the Emirate of Ras Al Khaimah: the "Ras Al Khaimah Free Trade Zone" is changed to "Ras Al Khaimah Port Free Zone."

— **United Kingdom:**[40] On March 3, 2020, the United Kingdom published the Value Added Tax (Finance) Order 2020 (S.I. 2020/209). Effective April 1, 2020, the Order extends the VAT exemption to the management of what are termed "qualifying pension funds." The Order further removes the restriction on the type of assets that a close-ended collective investment undertaking can invest in and still allow its management to qualify for exemption.

— **Uzbekistan**:41 On February 21, 2020, the State Tax Committee of Uzbekistan (STC) announced that all taxpayers will be able to claim a VAT refund effective July 1, 2020 rather than only exporters. The VAT amount will be fully refunded within 7 working days.

— **Uzbekistan**:[42] On February 11, 2020, Uzbekistan published Resolution of the Cabinet of Ministers no. 76 which provides that instead of a VAT exemption, importers of goods and services may be granted a 120-day VAT deferment. The automated VAT deferment system is expected to be implemented by October 1, 2020. To opt for a VAT deferment, a taxpayer must file an application with the customs authorities. The deferment will be granted or denied within 5 working days.

About Inside Indirect Tax

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

Footnotes

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3. Kenya - COVID-19 pandemic: emergency tax measures - VAT rate reduced (Apr. 15, 2020), News IBFD.
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9. Bulgaria; European Union - Amendments to VAT Act – approved by parliament (Feb. 25, 2020), News IBFD.
10. Bulgaria; European Union - Call-off stock simplification rules amended (Feb. 24, 2020), News IBFD.
11. Bulgaria - Amendments to regulations for application of VAT Act – details gazetted (Mar. 24, 2020), News IBFD.
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18. European Union - New rules on VAT scheme for small enterprises – published (Mar. 2, 2020), News IBFD.
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31. Peru - Export of services – VAT treatment clarified (Feb. 28, 2020), News IBFD.

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