Inside Indirect Tax

December 2022

About this Newsletter

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

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KPMG Publications

KPMG *TaxNewsFlash* 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 subscribe to this newsletter as jurisdictions adopt or amend their measures at a frantic pace. The most common indirect tax measures include delays in VAT return filing and payment deadlines, relief from late payment interest and penalties, accelerating VAT refunds, and other targeted measures such as exempting certain medical equipment.

Developments Summary of the Taxation of the Digitalized Economy

KPMG has prepared a development summary to help multinational companies stay abreast of digital services tax developments around the world. It covers both direct and indirect taxes and includes a timeline of key upcoming Organization for Economic Cooperation and Development (OECD), European Union (EU), and G20 meetings where discussion of the taxation of the digitalized economy is anticipated.

Global E-invoicing & Digital Reporting Tracker

KPMG has released an Electronic Invoicing (e-invoicing) and Digital Reporting Global Tracker, providing a summary of tax administration developments relating to e-invoicing and digital reporting around the world. Tax authorities across the globe are constantly striving for visibility into a taxpayer's end-to-end sales process using technology tools that automate the tax reporting process, such as e-invoicing, digital reporting, and e-accounting. These technologies when used by tax authorities can be disruptive and require radical changes in the way taxpayers interact internally as well as with their customers, related parties, and the tax authorities.

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Overview of Indirect Tax Developments from KPMG International Member Firms

- **KPMG in Austria** published a report discussing recent VAT developments, including the implementation of the EU DAC 7 platform reporting requirements into national law, an Austrian Administrative Supreme Court decision on whether the liability of a purchaser for a VAT debt of the seller was lawful without a preceding VAT assessment (so-called "purchaser liability"), and practical tips and requirements for taking advantage of the voluntary self-disclosure procedure.
- **KPMG in Bahrain** published a report discussing an updated list of medicines subject to the VAT zero rate. The report further notes that the National Bureau for Revenue (NBR) recently invited large taxpayers in various sectors to focus group sessions to discuss the implementation of e-invoicing in Bahrain. The sessions are aimed at providing an overview of the potential e-invoicing operating model and gathering input from the industry.
- **KPMG in Belgium** published a report discussing amendments to the VAT statute of limitations rules, retention period, and applicable interest rates effective from January 1, 2023. Under the new law, the statute of limitation for late or non-filing of a periodic VAT return is extended from three to four calendar years following the one in which the VAT became chargeable. Furthermore, when an offense with fraudulent intent or with the intent to cause harm is committed, the VAT statute of limitations is extended to the tenth calendar year following the year in which the VAT became chargeable. For all other cases, the current rules of the three- and seven-year statutes of limitations remain applicable. The law extends the retention period for VAT invoices, books, and other documentation from seven to ten years to ensure alignment with the extended statute of limitation. The amended interest rates for late VAT payments and VAT refunds in 2023 are set at 8 percent per year for payable VAT amounts and 6 percent per year for refundable VAT amounts. These rates can be modified annually, but the interest rate for refundable VAT amounts will always be two percentage points lower than the interest rate for VAT payable.
- **KPMG in Belgium** published a report discussing changes to the VAT self-assessment mechanism for immovable property effective January 1, 2023. From that date, the self-assessment mechanism will apply to every taxable customer who is subject to the filing of periodic VAT returns in Belgium, including taxpayers who are established outside Belgium. To this point, the mechanism did not apply to foreign taxpayers merely holding a direct VAT registration in Belgium. Customers who are not subject to periodic VAT filings, but who do have a Belgian VAT number that they communicate to their vendors (e.g., customers who are subject to the VAT exemption regime for small businesses hold a VAT number but do not file periodic VAT returns), must notify the vendor of the fact that they do not meet the requirements for the application of the VAT self – assessment mechanism. Finally, the vendor must include a specific reference on its sales invoice for the situation in which the customer failed to mention they do not file periodic VAT returns and are therefore not entitled to benefit from the VAT self-assessment mechanism. The purpose of that invoice reference is to inform the customer of its liability for the payment of the VAT, fines, and penalty interest in such a situation. It is recommended that the vendor always include this reference on its invoice.

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- **KPMG in Canada** published a report discussing highlights of the 2022 Federal Economic Update. Among other measures, the Minister of Finance (MOF) launched a consultation on the proposal to implement the OECD Model Rules for Reporting by Platform Operators, which would require digital platforms to collect information on the income realized by taxpayers offering accommodation, transport, and personal services through platforms and to report that information to the federal tax authority. The MOF invites comments from stakeholders on these proposals through January 6, 2023.
- **KPMG in Cambodia** published a report discussing new guidance by the Cambodian General Department of Taxation (GDT). *Instruction no. 26118 GDT* provides that when issuing invoices, taxpayers must use the official daily exchange rate issued by the National Bank of Cambodia (NBC) or a market exchange rate that is not lower than the NBC rate.
- **KPMG in Costa Rica** published a report discussing amendments to the list of goods included in the "basic tax basket" for the comprehensive welfare of families (CBTBIF), which will be subject to a reduced VAT rate of 1 percent from February 1, 2023. The list of products is based on food selection criteria, nutritional components of all food groups, cleaning products, and personal hygiene products that protect the income and expenses of households in the first three deciles of economic income. The list has been amended to include tomato sauce and different types of fish and to exclude fruits such as sweet orange, soursop, "cas fruit" (or Costa Rican guava), and sweet lemon. The report further discusses the repeal of Resolution Number DGT-R-34-2022 of the General Directorate of Taxation (DGT), which established the requirements for taxpayers to credit the general sales tax paid on the import of vehicles used for the commercialization and distribution of goods. The resolution was repealed because the general sales tax was replaced by VAT.
- **KPMG in Cyprus** published a report discussing amendments to the conditions that must be satisfied for the imposition of VAT on renting buildings effective from November 11, 2022. Prior to the amendment, the renting of buildings was subject to VAT provided it occurred prior to first use by any means following its construction, including self-occupancy, own use, rental, or any other use. Under the amendment, the renting of buildings before first occupation requirement is eliminated, and the transaction will be subject to VAT in the following circumstances: (1) on the first provision of a building within five years of its completion, or (2) for renting of the same building after the first renting within five years after its completion. In both cases, the transaction will be subject to VAT only if the building has not been used continuously by a non-related party for a period of at least 24 months. Any renting of a completed building beyond the period of five years will be exempt from VAT regardless of whether it has been used or not.
- **KPMG in the Czech Republic** published a report discussing a recent decision of the Supreme Administrative Court (SAC) on whether a penalty was legitimately imposed on an entity that incorrectly filed a VAT ledger statement for a previous taxable period. The SAC concluded that the purpose of such a penalty is to deter taxpayers from not complying with their obligation to file a VAT ledger statement. Here, the company's conduct did not meet that criterion.
- **KPMG EU Tax Center** published a report discussing recent tax developments in the EU, including DAC7- related developments in Austria, Estonia, and Denmark, and windfall profit tax developments in Belgium, the Czech Republic, and Spain. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. The new rules will cover digital platforms located both inside and outside the EU and will apply from January 1, 2023.

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- **KPMG in Hungary:** published a report discussing tax measures in the draft tax amendment bill which was submitted to Hungary's Parliament on October 18, 2022. The proposed measures include the extension of the zero rate on the advertisement tax until December 31, 2023, modification of the deadline for submitting the VAT return in connection with establishing a VAT group, establishing a 5 percent reduced VAT rate on sales of new residential properties, and setting the framework for the wider use of e-invoices.
- **KPMG in India:** published a report discussing recent indirect tax developments in the country, including a recent decision of the Supreme Court on whether the doctrine of promissory estoppel could operate against a statute and recent GST-related notifications and guidance.
- **KPMG in Italy:** published a report discussing Ruling no. 417/2022 on new rules on import VAT recovery. Under current rules, purchasers must include a customs certificate (single administrative document) in their purchase VAT register to recover import VAT. Customs certificates are transmitted electronically via an "IM" message by the customs and monopolies agency to the taxpayer. This requirement has been replaced (effective November 30, 2022) by a new "recapitulative statement" (*prospetto di riepilogo*). Going forward, import VAT is recoverable by including: (1) a customs certificate documented by the current "IM" message or (2) the new recapitulative statement for imports taking place from November 30, 2022, which will be documented through a new "H" message. The new recapitulative statement is therefore required to recover import VAT effective November 30, 2022. It can be downloaded through the importer/purchaser's account on the customs and monopolies agency website.
- **KPMG in Lithuania** published a report discussing recent amendments to the VAT law allowing the recovery of VAT incurred on passenger (M1 category) electric cars of value up to EUR 50,000 ($52,693)(including VAT). For other vehicles, the VAT deduction is only permissible if the cars are sold, rented, or used for the provision of paid passenger transport services. A limitation on the VAT deduction is not applicable for passenger cars classified as special-purpose motor vehicles under legal acts governing the classification and coding of vehicles. The amendments are effective January 1, 2023.
- **KPMG in Malaysia** published a report discussing recent indirect tax developments in the country, including the postponement of the implementation of an excise duty on premixed beverages.
- **KPMG in Mexico** published a report discussing an extension of the requirement to issue electronic payroll receipts using the version 4.0 of electronic invoices (CFDI 4.0). Mexican taxpayers will be able to issue electronic payroll receipts using the current version 3.3 until March 31, 2023, extended from the previously applicable mandatory effective date of January 1, 2023. In addition, on November 25th, 2022, the Mexican Authorities issued the Second Anticipated Version of the Tenth Modificatory Resolution of the Mexican Administrative Rules, which proposes to extend the implementation deadline of version 4.0 of the sales e-invoice from January 1, 2023, to April 1, 2023. Additionally, the draft Resolution proposes that until August 31, 2023, no penalties should be levied to those taxpayers issuing incomplete or incorrect e-waybills (*complemento carta porte*).
- **KPMG in Mexico** published a report discussing an updated list of nonresident taxpayers who are compliant with the Mexican VAT on digital services rules. As of October 31, 2022, 162 taxpayers are registered under the regime.

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- **KPMG in the Netherlands** published a report discussing a recent decision of the Dutch Supreme Court regarding the circumstances under which a property qualifies as "essentially a new building" for VAT purposes. In the case, the Supreme Court held that a property qualifies as "essentially a new building" when refurbishments result in a previously non-existent property, which is primarily achieved by an extensive alteration in the building's structural construction. Other factors can also play a role, but they are not decisive.
- **KPMG in the Netherlands** published a report discussing a recent decision of the Dutch Supreme Court on a bank's right of recovery on its mixed costs based on a financial analysis of the profit and loss (P&L) for each product. In the case, the bank believed that this VAT recovery method constituted an "actual use method" permitted for determining the VAT recovery right. The Supreme Court held that an actual use method must be based on objectively and accurately ascertainable data, in which the actual use of mixed costs can be objectively and accurately established. Further, all the mixed costs must be considered when deciding on an actual use method. Accordingly, the actual use method can be applied only if it is plausible that the actual use of the mixed costs as a whole is not in line with the gross receipts pro rata method. The "as a whole" implies that all the mixed goods and services used by the taxpayer must be taken into account.
- **KPMG in the Netherlands** published a report discussing a recent decision of the District Court of Overijssel on whether a floating solar park qualifies as immovable property subject to property tax. In the case, the court held that because the park was constructed to float and was not sustainably bound to the ground or shore, it must be regarded as a ship, which generally is regarded as movable property.
- **KPMG in Poland** published a report discussing an updated draft bill to implement the EU single-use plastics directive. The directive aims to reduce waste from single-use plastics by stimulating demand for recycled plastics by determining the minimum amount of recycled material in new products and introducing a fee on single-use plastic packaging. Per the applicable rules, the new regulations are to enter into force 14 days after their announcement. It is still unknown, however, when the bill will be submitted to the parliament. The European Commission called on Member States to implement the single-use plastics directive without any further delay.
- **KPMG in Poland** published a report discussing proposed amendments to the sugar fee and proposed extension of the deadline for declarations relating to special purpose cash registers effective from July 1, 2023.
- **KPMG in Poland** published a report discussing draft legislation guidelines for implementing the DAC7 requirements into national law. The new rules cover digital platforms located both inside and outside the EU and will generally apply from January 1, 2023. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. The new rules will cover digital platforms located both inside and outside the EU and will apply from January 1, 2023.
- **KPMG in Poland** published a report discussing a recent decision of the Supreme Administrative Court (SAC) dealing with cashback discounts on sales of mobile phones subject to the VAT self-assessment mechanism. It held that the output tax by the discount-granting entity cannot be reduced because tax on the sales has not been paid. The report further discusses a recent decision of a Region Administrative Court in Warsaw which held that the taxable base cannot be reduced only because a correcting invoice was issued since such a document evidences the reduction of the taxable base, but is not the triggering element of the tax base reduction.

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- **KPMG in Poland** published a report discussing a recent decision of the SAC that currency exchange transactions performed by a company could be treated as ancillary activities for VAT purposes because such activities were conducted on an occasional basis, were unplanned, and involved only very limited use of assets or personnel of the company.
- **KPMG in Poland** published a report discussing the publication on November 22, 2022, of a bill proposing to amend the SLIM VAT 3 package. Compared to the previous version, the bill postpones the effective date of the new provisions (to April 1, 2023, instead of January 1, 2023), makes changes to interim regulations, and introduces other editorial changes.
- **KPMG in Singapore** published a report discussing upcoming GST changes, the introduction of GST collection requirements for nonresident sellers of low-value goods and remote services from January 1, 2023, the increase of the GST rate from 7 percent to 8 percent from January 1, 2023 (and to 9 percent from January 1, 2024), and the removal of the zero-rate for arranging insurance and international transport and overseas accommodation for Singapore consumers.
- **KPMG in Sri Lanka** published a report discussing tax measures in the 2023 budget which includes proposals to introduce a new VAT law and to publish a list of active VAT-registered persons.
- **KPMG in Thailand** published a report discussing the recently approved VAT exemption for data center business operators recently effective November 9, 2022. The VAT exemption applies to the provision of server space and related devices for use in data storage and data processing as well as electronic data connections via internet network, and the provision of the following services to support those services: data back-up services for prevention of problems that may cause data damages, network connection services for internet or cloud service providers, system management, and information technology security services. To benefit from the VAT exemption, data center operators must apply to the Director-General of the Thai Revenue Department (TRD) within five years of the effective date (i.e., November 9, 2022).
- **KPMG in the United Arab Emirates** published a report discussing amended VAT executive regulations, which include changes to the VAT treatment applicable to sales made by independent directors and the introduction of new recordkeeping and reporting requirements for e-commerce businesses. The amended provisions are scheduled to become effective from January 1, 2023.
- **KPMG in the United Kingdom** published a report summarizing key tax proposals in the Autumn Statement. Among other measures, the report notes that the government has decided against introducing an online sales tax, the VAT registration and deregistration thresholds will be maintained through 2026, and electric cars, vans, and motorcycles will begin to pay vehicle excise duty the same way as petrol and diesel vehicles from April 2025.
- **KPMG in Vietnam** published a report discussing new information reporting obligations for e-commerce trading platforms. These taxpayers are required to provide information regarding traders on their platforms to the tax authority quarterly.
- **KPMG in Zimbabwe** published a report discussing tax measures in the 2022/2023 budget. The report notes that the VAT deferment threshold will be increased from $500,000 to $1,000,000 for the import of capital goods in specified industries, the standard VAT rate will be increased to 15 percent, the VAT registration threshold will be reduced from $60,000 to $40,000, and for income tax purposes, deductions for expenditure on goods and services acquired from VAT-registered operators will only be allowed if supported by fiscal tax invoices effective January 1, 2023.

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Global Rate Changes

- **Albania:**[i] On October 17, 2022, the Albanian parliament accepted a bill for consideration, which, if approved, would, among other things, introduce an excise tax exemption on accumulators for electric vehicles and solar panels, set a zero VAT rate on the import of electric vehicles, and gradually increase the excise duty on beer in each of the next five years.
- **Azerbaijan:**[ii] On November 16, 2022, Azerbaijan proposed to extend the VAT exemption for the import and sale of hybrid vehicles that are less than 3 years old and have an engine capacity of less than 2,500 cubic centimeters. The extension will enter into force on January 1, 2023 and will apply until December 31, 2025.
- **Belgium:**[iii] On November 22, 2022, the Belgian government submitted a bill to the parliament containing tax measures that extend the reduced 6 percent VAT rate on electricity, natural gas, and district heating through warmth distribution networks (*warmtenetten*) for residential contracts until March 31, 2023.
- **Croatia:**[iv] On November 11, 2022, Croatia published Ordinance No. 2000 establishing a reduced 5 percent VAT rate for heating from thermal stations, firewood, pellets briquettes, and wood chips, through March 31, 2023, and a zero VAT rate on the delivery and installation of solar panels on private residential buildings and other buildings used for activities of public interest. The ordinance generally enters into force on the same date.
- **Estonia:**[v] On November 23, 2022, the Estonian parliament accepted a bill for consideration to introduce a 5 percent reduced VAT rate on food, beverages, and other such raw materials intended for human consumption, including seasonings and additives, but excluding alcohol and tobacco products, compound feed and its raw materials, and industrial waste used as animal food, and restaurant and catering services.
- **Germany:**[vi] On October 28, 2022, Germany published the Eighth Law Amending the Consumer Tax Laws. Among other things, the law includes measures adopting the EU Excise tax Directives into national law, extends the application of the reduced 7 percent reduced VAT rate for restaurant and catering services (except the sale of drinks) from December 31, 2022, through December 31, 2023, and amends the VAT flat-rate program for smaller-scale agricultural and forestry operations, which includes a reduction in the general rate from 9.5 percent to 9.0 percent for sales other than specified sales.
- **Ghana:**[vii] On November 24, 2022, the Ghanaian Ministry of Finance submitted the 2023 budget statement to parliament. It proposes to increase the standard VAT rate from 12.5 percent to 15 percent, revise the taxation of cigarettes and tobacco products to align with protocols of the Economic Community of West African States (ECOWAS), increase the excise rate for spirits above that of beers, introduce an excise tax on e-smoking devices and liquids, amend customs regulations to allow the self-clearance of goods, and reduces the electronic transfer levy to 1 percent of the transaction value.
- **Greece:**[viii] On November 21, 2022, the Greek parliament accepted for consideration the 2023 budget bill. Among other measures, the budget bill proposes to extend the reduced rate of VAT of 13 percent on passenger transport, coffee, catering, non-alcoholic beverages, tourist packages, and admission to zoos, gyms, and dance schools until June 30, 2023. It further proposes to extend until June 30, 2023, the 6 percent reduced VAT rate on specific categories of public health goods and theater and cinema tickets, extend until December 31, 2024, the waiver of VAT on real estate, and permanently reduce the VAT rate on fertilizers and animal feed from 13 percent to 6 percent.

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- **Lithuania:**[ix] Lithuania has proposed to introduce a 9 percent reduced VAT rate for e-books and publications. The reduced VAT rate would not apply to publications in which advertising accounts for more than 80 percent of the entire publication or in which all or most of the content consists of music or video.
- **Maldives:**[x] On November 22, 2022, the Maldives increased the standard GST rate from 6 percent to 8 percent and increased the tourism sector GST rate from 12 percent to 16 percent. In addition, the Maldives extended the tourism sector GST to include goods and services provided by integrated tourist resorts, resort hotels, hotels, private islands, and other such establishments authorized by the Ministry of Tourism. (Currently, the tourism sector GST covers goods and services sold by tourist resorts, tourist hotels, guesthouses, picnic islands, tourist vessels and yacht marinas). The Maldives further clarified that, if the whole or part of, or a specific room or rooms or a specific bungalow of a tourist resort, resort hotel, hotel, tourist guesthouse, picnic island or private island is provided for a certain period, whether on strata basis or otherwise, GST should be calculated based on the total value of the transaction. Further, on the same date, the Maldives Inland Revenue Authority (MIRA) clarified that GST must be charged at the new rates if the transaction occurs on or after 00:00 hours on January 1, 2023.
- **Mozambique:**[xi] On November 8, 2022, the government of Mozambique proposed the following indirect tax rate measures: (1) reducing the standard VAT rate from 17 percent to 16 percent, (2) eliminating certain VAT exemptions, which will be replaced by a reduced 5 percent VAT rate, (3) introducing new excise duty rates for the 2023-2025 period, and (4) limiting ad valorem rates to a maximum of 30 percent.
- **Poland:**[xii] On November 24, 2022, the Polish Ministry of Finance released a draft regulation to amend the regulation on goods and services eligible for reduced VAT rates. The draft regulation reduces the VAT rate on microbiological fertilizing products from 23 percent to zero percent through December 31, 2022. The regulation is effective from December 3, 2022.
- **Portugal:**[xiii] On November 25, 2022, the Portuguese parliament approved the 2023 State Budget, which reduces the VAT rate applicable on the sale and repair of bicycles from 23 percent to 6 percent and introduces a reduced 6 percent VAT rate on the sale of certain goods, including preserved fish and butter.
- **Portugal:**[xiv] On November 28, 2022, the Legislative Council of Madeira (an autonomous region of Portugal) presented proposals to the Portuguese parliament to reinstate electricity, natural gas, butane, and propane to the list of goods and services to which the 5 percent reduced VAT rate applies (they were eliminated in 2011) and add, for the first time, the provision of internet access services to the same list.
- **Ukraine:**[xv] On November 10, 2022, the Ukrainian Parliament accepted for consideration a bill, which, if approved, would exempt from VAT donations and importations of goods for the restoration of energy infrastructure, including engines, generators, static electric converters, inductors, throttles, and other goods, which are considered the main integral components of power generator installations.
- **Uruguay:**[xvi] On November 19, 2022, the Uruguayan Ministry of Tourism announced that, until February 28, 2023, resident tourists will be eligible for a zero VAT rate on hotel services. The zero-rate currently applies only to nonresident tourists. The zero VAT rate benefit applies to hotels with annual income not exceeding $1.5 million.

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- **Zimbabwe:**[xvii] Zimbabwe announced in its 2023 budget an increase to its standard VAT rate from 14.5 percent to 15 percent effective January 1, 2023. It further proposed to waive customs duty on imported capital equipment by several industries, including in the agriculture, energy, or tourism sectors.

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Indirect Tax Developments and News from Around the World

The Americas

United States: Safe Rider Fee Subject to Sales Tax in Georgia

On November 1, 2022, the Georgia Tax Tribunal addressed in ***Uber Technologies, Inc. v. Crittenden*** whether a ride-sharing company was required to collect sales tax on a "safe rides fee or booking fee" that was imposed on certain trips facilitated through the company's app. The separately stated flat fee was charged to a rider and paid over to the company directly to recover the costs of improving the safety of the company's platform by conducting driver background checks, developing safety features in the app, and other efforts. The issue before the Tribunal was whether the fee was included in the Georgia sales tax base. Under Georgia law, sales tax is imposed on the "sales price" of goods and services. The definition of "sales price" is broad and generally means the total amount for which property or services are sold without any deduction for expenses. The company asserted that under a departmental regulation governing taxicabs, it was only required to collect sales tax on fares related to transportation. In addition, in the company's view, the safety or booking fee was a distinct and identifiable charge to recover costs of certain non-taxable services and was therefore not part of the sales price of a ride. The Tribunal rejected the company's assertions, noting that Georgia's definition of sales price was broad and captured fees related to non-taxable services that were part of the total consideration paid for a ride service. Further, none of the specific exclusions from the definition of sales price captured the costs the company was recovering. The issue of whether the safety or booking fee was part of the sales tax base stemmed from an earlier dispute in which the Tribunal determined that the company was considered a taxicab headquarters operator required to register as a dealer for sales tax purposes.

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Bulgaria: Overview of Recent Indirect Tax Developments

On October 31, 2022, the Bulgarian National Assembly agreed to consider a bill to harmonize domestic VAT rules with the EU VAT Directive and with judgments of the Court of Justice of the European Union (ECJ). The bill would implement EU Council Directive 2020/284 requiring payment service providers to keep sufficiently detailed records of payees and cross-border payments to aid VAT enforcement. In response to the ECJ judgment in *UniCredit Leasing*, Case C-242/18 (July 3, 2019), the bill proposes to change the VAT treatment of bad debts to ensure that businesses can adjust the VAT that must be remitted to the tax authority when a debtor defaults, where appropriate. The proposed changes are that for a debt to be rewritten off as a bad debt for VAT purposes, a credit note should be issued to the debtor, except when the debtor is announced bankrupt or after the conclusion of liquidation proceedings. However, an adjustment would not be permitted when the claim is transferred for consideration. The bill would also implement a mechanism for non-EU vendors selling goods in Bulgaria that are destined to non-EU countries to claim a zero-rate on the exports.

On November 11, 2022, the Bulgarian parliament accepted for consideration a bill implement the DAC 7 requirements into national law. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. The new rules will cover digital platforms located both inside and outside the EU and will apply from January 1, 2023.

On November 14, 2022, the European Commission approved a proposal authorizing Bulgaria to temporarily increase its VAT registration threshold from BGN 50,000 ($25,750) to BGN 100,000 ($51,506) from January 1, 2023, to December 31, 2024.

Bulgaria's National Revenue Agency (NRA) recently announced changes to the thresholds for Intrastat reporting. Intrastat declarations are required to be filed by businesses in the Member State in which they are registered if the value of any goods transferred to other EU member states (known as dispatches) or the value of any goods arriving from other EU member states (known as arrivals) exceeds that Member State's relevant threshold. For 2023, these thresholds are set at BGN 1,000,000 ($538,824) for dispatches and BGN 700,000 ($377,177) for arrivals. This is up from BGN 780,000 ($420,283) and BGN 520,000 ($280,288), respectively.

Source: Bulgaria Assembly Considers Bill to Harmonize VAT Rules With EU Directives, Court Decisions, Bloomberg Law News, November 3, 2022; Orbitax, Bulgarian Government Submits Draft Bill for Implementation of DAC7, November 17, 2022; Bulgaria Assembly Considers Bill to Implement EU Directive on AEOI for Digital Platform Operators, Bloomberg Law News, November 21, 2022; European Union; Bulgaria – European Council Authorizes Bulgaria to Exempt Certain Taxable Persons from VAT, (November 17, 2022), News IBFD; CCH, Global VAT News & Features, Bulgaria Announces 2023 Intrastat Reporting Thresholds,(Nov. 16, 2022).

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European Union: Roundup of Recent ECJ Cases

On November 10, 2022, the ECJ published the nonbinding Opinion of its Advocate General (AG) in *Gmina O.*, Case C-612/21, in which the AG opined that a municipality (public authority) should not be considered a taxpayer for VAT purposes as it is not engaging in economic activity when implementing a project concerning the installation of renewable energy source systems.

On November 10, 2022, the ECJ published the Opinion of its AG in *Gmina L.*, Case C-616/21, in which the AG opined that a municipality should not be considered a taxpayer for VAT purposes when carrying out activities such as the removal of asbestos from residential properties located within that municipality if financed entirely with public funds.

On November 17, 2022, the ECJ published its decision in *GE Aircraft Engine Services*, Case C-607/20, in which it held that at a provision of services by a business in which the business offers retail vouchers to its employees as part of a program set up by that business to reward high-performing employees does not fall within the VAT scope.

On November 24, 2022, the ECJ published its decision in *Finanzamt M (Étendue du droit à déduction de la TVA)*, Case C-596/21, in which it held that the second purchaser of goods may be denied the benefit of deducting VAT incurred if the second purchaser knew or ought to have known of the existence of VAT fraud committed by the original seller at the time of the first sale, even if the first purchaser was also aware of that fraud. Further, the ECJ held that when the goods at issue, prior to the second purchase, were the subject of a fraudulent transaction relating to only part of the VAT which the Member State is entitled to collect, the second purchaser must have the right to deduct the paid VAT refused in its entirety when that second purchaser knew or ought to have known that that purchase was linked to fraud.

On November 24, 2022, the ECJ published its decision in *IG Pannónia Életbiztosító*, Case C-458/21, in which it held that certain services provided in conjunction with an insurance claim are not covered by the exemption provided for medical care under the VAT directive. The services involved included verifying the accuracy of an insured person's diagnosis of serious illness as a means of determining the best possible health care, ensuring that when the risk is covered by the insurance contract and the insured person so requests, that the medical treatment is provided abroad.

Source: European Union; Poland – ECJ Advocate General Opines on Whether Municipality Carrying Out Renewable Energy Project Can Be Considered Taxable Person for VAT Purposes: Gmina O. (Case C-612/21) (VAT), (November 10, 2022), News IBFD; European Union; Poland – ECJ Advocate General Opines on Whether Municipality Removing Asbestos from Resident's Properties Acts as Taxable Person for VAT Purposes: Gmina L. (Case C-616/21) (VAT), (November 10, 2022), News IBFD; European Union; United Kingdom – ECJ Decides on Whether Granting Third-Party Vouchers to High-Performing Employees Qualifies As Deemed Supply of Services: *GE Aircraft Engine Services* (Case C-607/20) (VAT), (November 17, 2022), News IBFD; European Union; Germany – ECJ Decides That Right to Deduct VAT Can Be Refused to Second Purchaser for VAT Evasion in First Sale: *Finanzamt M (Étendue du droit à déduction de la TVA*) (Case C-596/21) (VAT), (November 24, 2022), News IBFD; European Union; Hungary – ECJ Decides That Medical Service Used by Insurance Company Is Not Exempted from VAT: CIG *Pannónia Életbiztosító* (Case C-458/21) (VAT), (November 24, 2022), News IBFD.

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European Union: VAT in the Digital Age Proposal

On December 8, 2022, the European Commission published its VAT in the Digital Age (ViDA) proposal. This is a set of proposals intended to modernize the EU's VAT system for technological advances, reduce VAT compliance burdens, and help combat VAT fraud. The proposal covers: (1) Digital Reporting Requirements (2) the VAT treatment of the platform economy and (3) changes to e-commerce rules and the extension of the single VAT registration mechanism.

With respect to e-invoicing, the EU will gradually move to e-invoicing as the default system. Effective January 1, 2024, the definition of e-invoice will change to mirror the definition of e-invoice in EU public procurement, and e-invoices must be issued in a structured format. The current requirement for customer acceptance of e-invoices will be removed. EU Member States may impose e-invoicing obligations. When doing so, they must allow e-invoices that comply with the European standard and may not introduce clearance models (i.e., requiring a verification token from tax authorities before e-invoices can be issued or requiring e-invoices to be issued through a tax authority platform). However, EU Member States with existing and previously approved clearance models may continue such requirements until January 1, 2028. Effective January 1, 2028, e-invoicing will be the standard. EU Member States may authorize situations in which paper invoices are allowed. However, e-invoicing will be mandatory for business-to-business (B2B) intra-EU transactions, and the deadline for issuing e-invoices for B2B intra-EU transactions will be reduced to two working days following the tax point.

ViDA will also introduce a near real-time reporting obligation for B2B intra-EU transactions (goods and services) replacing the current intra-EU reporting requirements (i.e., EU Sales Lists) effective January 1, 2028. This will be a transactional reporting requirement to be completed within two working days of the invoice date (or the last day on which the invoice is required to be issued). EU Member States may introduce a similar real-time reporting obligation for B2B domestic sales or other types of sales (e.g., business-to-consumer (B2C) sales of goods or services). Current EU Member State reporting systems must transition to the harmonized EU system by January 1, 2028.

For the platform economy, ViDA proposes to introduce a deemed vendor rule for platforms operating in the short-term accommodation rental and passenger transport sectors, effective January 1, 2025. Platform operators will be required to account for VAT on consumer-to-consumer (C2C) and consumer-to-business (C2B) transactions that they facilitate when the underlying vendor does not account for the VAT (e.g., because they are not registered for VAT or are exempt from VAT). Platform operators must keep records on other B2C and B2B sales that are not subject to the deemed seller rule. Additionally, B2C facilitation services provided by platforms will be subject to VAT when the underlying facilitated transaction takes place for VAT purposes. Finally, the VAT exemption applied in some Member States for short-term rental accommodation would be repealed.

With respect to the single VAT registration mechanism, ViDA proposes to extend the existing Union One Stop Shop (OSS) scheme for B2C intra-EU sales of goods and services. The extension includes B2C domestic sales of goods in an EU Member State when the vendor does not have a VAT identification number. A new OSS scheme will also be introduced for intra-EU movements of own stock. This scheme will be available to any taxpayer, and the existing exemption for call-off stock arrangements will end as it is no longer be needed once intra-EU movements of own stock can be reported in the new OSS scheme. The exemption for call-off stock arrangements will be effective after December 31, 2024 and will end on December 31, 2025 (allowing a 12-month period to finalize call-off stock arrangements effected prior December 31, 2024).

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Finally, ViDA would introduce several simplifications to the EU VAT rules. For instance, B2B sales of goods and services when the vendor is not established in the country where VAT applies and the customer does have a VAT identification number in that country would be subject to the self-assessment requirement under the reverse charge mechanism, rather than having the non-resident vendor register for and collect VAT. Moreover, the existing deemed vendor rule for marketplaces facilitating B2C sales of goods will be extended. Currently, B2C sales of goods within the EU are subject to the deemed vendor rule only when the underlying vendor is located outside the EU. All sales of goods (B2C and B2B) within the EU facilitated by marketplaces will be subject to the extended deemed vendor rule. Intra-EU movements of own stock facilitated by marketplaces will also be subject to the extended deemed vendor rule, and the Import One Stop Shop (IOSS) scheme for the importation of low-value consignments into the EU will be mandatory for marketplace operators. Extension of the single VAT registration mechanism and other simplifications would be effective January 1, 2025.

To read a report prepared by the KPMG International member firm in Belgium click here, by the KPMG International member firm in the Netherlands click here, and by the KPMG International member firm in Switzerland click here.

Italy: Overview of Recent Indirect Tax developments

On November 7, 2022, the Italian Tax Authority (ITA) published Ruling Answer No. 554/2022 clarifying the application of VAT, registration tax, and mortgage tax to the sale of buildings undergoing reconstruction. In the case, the taxpayer planned to begin the demolition and reconstruction of a complex of buildings (a former hotel) and sell them to a seller to continue the work. The seller inquired as to whether the sale from the taxpayer to seller was exempt from VAT and the other taxes. The ITA clarified that the registered cadastral classification at the time of sale is the basis for determining the application of the VAT exemption, regardless of use after the sale. The VAT exemption would apply if, at the time of sale, the buildings were partially demolished, but partially used. The ITA found that the buildings were partially demolished but classified for cadastral purposes as "F /2" unusable based on objective photographic and appraisal evidence. The ITA thus held that the sale was subject to VAT at the standard VAT rate of 22 percent as well as to registration and mortgage taxes.

On November 17, 2022, the ITA published Ruling Answer No. 557/2022 clarifying the e-invoicing requirements for a nonresident company that sold goods to entities in San Marino. In the case, the company, which was identified but not established in Italy for VAT purposes, sought to clarify whether it needed to issue e-invoices for goods sold to entities established in San Marino. The ITA stated that entities established or resident in Italy are required to issue e-invoices for the sale of goods, and entities that are not established or resident in Italy, but merely identified in Italy for VAT purposes, may issue electronic or paper invoices. The same principle was confirmed in Ruling Answer No. 575/2022 (published On November 25, 2022).

On November 22, 2022, the Italian Ministry of Economy and Finance announced that the Council of Ministers has approved bills for the 2023-2025 budget years. Among other things, the bills include measures to reduce excise duties and VAT rates on fuel, reduce the VAT rate on baby and feminine hygiene products from 10 percent to 5 percent, extend the 15 percent flat tax rate to VAT taxpayers with revenues up to EUR 85,000 ($90,000).

On November 22, 2022, the ITA published Ruling Answer No.569/2022 clarifying VAT deductions following the late reassessment of VAT paid by a seller. In the case, the taxpayer sought to clarify whether it was entitled to deduct VAT paid in respect of invoices resulting from late reassessment of VAT.

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The ITA clarified that the taxpayer had the right to deduct VAT against invoices issued by the seller following the late reassessment based on the conditions existing at the time of the original transaction.

On November 22, 2022, the ITA published Ruling Answer No. 567/2022 clarifying the VAT treatment of invoices paid as rent for the commercial leasing of a property when the property was the subject of a dispute as to ownership. In the case, the tenant company, in accordance with a court ruling in the ownership dispute, paid fees to an account in place of rent until a final determination could be made regarding title to the disputed property. The ITA clarified that the tenant company may deduct VAT when the ownership dispute procedure concludes, the fees are provided to the property's owner, and the company receives a special invoice. If the company does not receive a special invoice within 30 days, the company must issue a special self-invoice and pay VAT to the treasury.

Source: Italy Tax Agency Clarifies Application of VAT, Other Taxes, to Sale of Buildings Undergoing Reconstruction, Bloomberg Law News, November 10, 2022; Italy Tax Agency Clarifies E-Invoicing Requirement for Nonresident Company Supplying Goods to San Marino, Bloomberg Law News, November 22, 2022; Italy MOF Announces Cabinet Approval of 2023-2025 Budget Bill, Bloomberg Law News, November 28, 2022; Italy Tax Agency Clarifies VAT Deductions Following Late Compensation, Bloomberg Law News, November 28, 2022; Italy Tax Agency Clarifies VAT Deductions of Rental Fee Invoices for Disputed Property, Bloomberg Law News, November 28, 2022; Italy Tax Agency Clarifies E-Invoicing Obligations of Resident, Nonresident Companies, Bloomberg Law News, November 30, 2022.

Moldova: Overview of Recent Indirect Tax Developments

The Moldovan Ministry of Finance launched a public consultation on a draft bill for the Fiscal and Customs Policy 2023. The draft bill would implement a general VAT refund mechanism for registered taxpayers from January 1, 2023. Currently, VAT refunds are limited to taxpayers with exporter status. The bill would further repeal the VAT exemptions for postal services; electric motor scooters; sales and imports of aircraft, helicopters, locomotives, and railcars for public passenger transport, as well as their parts; operational or financial leasing services for aircrafts, helicopters, locomotives, and railcars for public passenger transport; and sales and imports of waste and residues of ferrous and non-ferrous metals and industrial residues containing metals or their alloys used directly in business activities. Finally, the bill would introduce a VAT self-assessment regime for imports of services, with persons not registered for VAT required to pay VAT directly on imported services.

If approved the measures will apply from January 1, 2023, with certain measures applying from July 1, 2023.

On October 31, 2022, the Moldovan State Tax Service (STS) clarified that goods purchased and sold outside Moldova are not subject to VAT. The STS pointed out that, in accordance with the VAT law, taxable transactions include the sale of goods and services in Moldova by taxpayers within the scope of their business activities and the import of goods and services.

On October 31, 2022, the STS clarified that online video conference services are subject to VAT in Moldova under certain conditions. Nonresidents providing such services are required to register for and collect VAT if the customer in Moldova is not registered for VAT, while business customers registered for VAT in Moldova are required to self-assess VAT under the reverse charge mechanism.

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On November 7, 2022, the STS clarified that the construction and installation of wind and solar parks is VAT exempt. The VAT exemption applies to both the general contractor and its subcontractors. However, the STS clarified that services other than construction and installation related to wind and solar parks are subject to VAT. The STS further stated that materials used in the project planning and documentation for the construction and installation of wind and solar parks are subject to VAT on a general basis.

Source: Orbitax, Moldova Consulting on Fiscal and Customs Policy 2023 Including New Transfer Pricing Regime, November 23, 2022; Moldova – State Tax Service Clarifies That Goods Sold Abroad Are Not Subject to VAT, (November 14, 2022), News IBFD; Moldova – State Tax Service Clarifies When VAT Applies to Online Video Conference Services, (November 15, 2022), News IBFD; Moldova – State Tax Service Clarifies Application of VAT to Construction and Installation of Wind and Solar Parks, (November 15, 2022), News IBFD.

Poland: Guidance on New VAT Grouping Regime

On October 11, 2022, the Polish Ministry of Finance published guidelines on VAT groups. VAT groups were initially planned to be introduced from July 1, 2022, but their entry in force has been deferred until January 1, 2023. The guidelines clarify that a taxpayer must join a VAT group in full. Therefore, an organizational unit of the taxpayer cannot become part of the VAT group, except in cases involving foreign branches.

In addition, the guidelines identify when companies are considered sufficiently linked from a financial, economic, and organizational perspective to form a VAT group. First, companies are considered financially linked if one company holds directly more than 50 percent of the share capital in, holds more than 50 percent of the voting rights in, or holds more than a 50 percent participation in the profits of all other companies the VAT group. Second, companies are deemed to be linked economically if the core activity of all group members has the same nature, activities of all group members complement one another and are interdependent, or VAT group members benefit fully or to a large extent from activities of other group members. Examples of complementing and interdependent activities include the sale of components produced by one group member to another member that is a manufacturer of final goods. Examples of activities benefiting other members of a VAT group include sales of goods or services (e.g., advisory, human resources, IT, management) by one member of the VAT group to another member whose activity is not dependent on such sales (e.g., advisory, forwarding, or administrative support). Third, companies are deemed organizationally linked if they either legally, directly, or indirectly, function under joint management or their activities are organized, wholly or partly, in agreement with one another. Organizational links exist if, under entirely or partly shared management, one entity is a decision-maker within the group. The existence of such an entity can be determined by reference to such an entity's location in the hierarchical structure or its competencies to decide. This entity can impose its decisions on other entities within the group.

The guidelines further explain that members of the VAT group may carry on activities in different sectors of the economy. The core activity may be determined by reference to income, meaning that the core activity is the one that generates a significant amount of the VAT group's income. During the existence of the VAT group, certain restructurings are allowed if they comply with the requirements of the VAT group regime. Moreover, an entity may be a part of only one VAT group, and members of the VAT group must have their seat in Poland or function through a branch located in Poland. The composition of the group cannot be altered during its existence. VAT groups must be formed based on a contract concluded for at least three years.

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Once formed, the VAT group is represented by a representative member, which will be responsible for filling VAT returns and be allowed to correct a VAT return after the VAT group's dissolution.

Source: Poland – Ministry of Finance Publishes Guidelines on VAT Grouping Regime, (November 3, 2022), News IBFD.

Ukraine: Overview of Recent Indirect Tax Developments

On October 31, 2022, the Ukrainian State Fiscal Service (SFS) published guidelines in the form of FAQs on the obligations of nonresident providers of digital services to individuals located in Ukraine to register for and collect VAT. A nonresident is considered a taxpayer in Ukraine beginning with the date of its VAT registration in Ukraine. If a nonresident registers for VAT other than on the first day of a reporting period (calendar quarter), the first reporting period begins with on the date of and ends on the last day of the following reporting period (calendar quarter). Payments for transactions performed before the VAT registration, but received after the registration, are not subject to VAT. If a nonresident provides electronic services to individuals without registering, they may be subject to a penalty of UAH 195,000 ($5,250). For KPMG's previous discussion of Ukraine's VAT on digital services, please click here.

On November 1, 2022, the STS clarified that a Ukrainian taxpayer acquiring a license to use a trademark owned by another person in Ukraine without the transfer of ownership of the trademark does not incur a VAT liability. A Ukrainian taxpayer granting a right to use its trademark or transferring ownership of the trademark to another taxpayer in Ukraine incurs VAT liabilities because transactions involving the sale of goods or services in Ukraine are subject to VAT. However, a VAT exemption applies to royalties that the licensee pays to the trademark owner if those payments are in monetary form.

On November 8, 2022, the STS clarified that a VAT exemption applies to the import of goods into Ukraine for processing, if the goods are later exported in the same condition in which they were imported or in a form resulting from the processing in Ukraine.

Source: Ukraine- Ukraine Clarifies VAT Obligations for Non-Residents Supplying Electronic Services, (November 22, 2022), News IBFD Taxnotes, Ukraine Clarifies VAT Treatment of Trademark Licensing, Imports, November 11, 2022; Ukraine – Ukraine Clarifies VAT Treatment of Leased Goods and Assets, (November 23, 2022), News IBFD

United Kingdom: Overview of Recent Indirect Tax Developments

On November 7, 2022, the UK's First-Tier Tribunal (FTT) published its decision in *York Burton Lane Club and Institute Ltd. & Ors*, [2022] UKFTT 406 (TC), regarding whether the UK tax authority (HMRC) can deny VAT recovery claims for companies without an active appeal pending. The case is related to long-running litigation involving the Rank Group and Gala Lesiure Ltd, which are VAT groups that operated slot machines in bingo clubs, casinos, and gaming arcades from December 2005 to January 2013. The Rank litigation concerns the application of fiscal neutrality to the VAT treatment of gaming machines. In 2006, HMRC acknowledged in *Business Brief 20/06* that many businesses believed they overdeclared VAT on profits from their gaming machines, and it issued refunds for overdeclared VAT. However, HMRC changed course after a defeat at the High Court and issued *Revenue and Customs Brief 11/10*, which advised that HMRC would pay any valid claims submitted by businesses in respect of the net amount of VAT paid on gaming machine takings during the period to December 6, 2005. That brief also indicated that protective assessments would be issued, which would allow HMRC to recover the money if its appeal was successful. In 2014, HMRC prevailed at the Court of Appeal.

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In 2016, HMRC tried to claw back VAT refunds from taxpayers that submitted claims but did not appeal their protective assessments. However, the FTT allowed two of the three companies appealing to amend their previous appeals and include an appeal against the protective assessments to continue litigation. In 2020, HMRC i*ssued Revenue and Customs Brief 5/2020* and announced that it would settle claims with taxpayers before the relevant deadlines. In this case, the appellants claim that the decision in 2006 effectively allowed an out-of-time appeal because the companies could amend both their original claims and appeal the protective assessments. Here, the taxpayer was arguing that taxpayers without an original appeal were excluded, while other companies were able to make out-of-time appeals, creating a discriminatory difference between similarly situated companies. In the case, the taxpayer is the owner of several public houses that contained gaming machines. In 2006, he submitted a claim for overpaid VAT in accordance with *Brief 20/06*. Several years later, he received a repayment of the VAT claimed. In 2014, HMRC demanded the repayment of the VAT and interest under its protective assessment, and the taxpayer complied. In 2020, the taxpayer requested repayment for VAT periods up to December 2005, but was informed that he did not have a valid outstanding appeal, as required by *Brief 5/2020*. The statutory period for appeal in this situation is 30 days, and the appellants failed to act until more than eight years later. In the taxpayer's case, it was nearly 10 years. The FTT held that statutory time limits must be respected, and it could not allow an appeal to proceed well after the deadline had passed. Further, it also rejected the appellants' discrimination argument, finding that the two types of taxpayers were not similarly situated. The taxpayers with appeals had potentially been confused by HMRC, and as a result, were granted more time. Taxpayers that did not appeal are thus not entitled to an exception.

On November 11, 2022, HMRC published updated VAT Notice 701/19 on the VAT treatment of the various measures that provide both domestic and non-domestic customers of energy providers with a level of relief from the rapidly rising costs of energy. The guidance clarifies the VAT treatment for all three measures providing relief: the Energy Bill Relief program, the Energy Price Guarantee; and the Energy Bills Support programs. The first program is for non-domestic customers, and the latter two are for domestic customers. Under the first two programs, providers will be compensated for the reduced prices they are charging. The payments received in compensation are to be treated as grants and are outside the scope of VAT. VAT incurred in the operation of the programs will relate to the taxable sale of energy and will be fully recoverable. The Energy Bills Support program gives domestic customers a non-repayable contribution to help them meet their energy bills. The payments are to be treated as part of a payment for the sale of energy, and VAT is to be accounted for on them. The programs run from October 1, 2022, to March 31, 2023.

On November 17, 2022, the UK's Upper Tribunal (Tax and Chancery Chamber) published its decision in *GB Fleet Hire Ltd. (GBFH)*, UT/2021/000103, regarding whether HMRC was right in rejecting a taxpayer's application for VAT registration over its alleged engagement in abusive tax practices years earlier. In September 2017, HMRC informed GBFH that it would assess VAT for the periods between January 2016 and March 2017. After its assessment, HMRC sent GBFH a letter in October 2017 stating that it was canceling the company's VAT registration because the company was "using its VAT registration principally or solely for abusive purposes." HMRC claimed the company was facilitating fraud, saying that GBFH did not have supporting evidence of its exports and that the company refused to provide relevant bank statements. GBFH did not appeal HMRC's decision to cancel its

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VAT registration. In July 2020, GBFH applied to register for VAT because its 2020 sales exceeded the registration threshold of GBP 85,000 ($104,000). In August 2020, HMRC rejected GBFH's application and said that the company's previous VAT registration number had been used for abusive tax purposes. GBFH appealed HMRC's determination, and HMRC applied to strike out the appeal. In April 2021, the FTT allowed HMRC's application, and the company appealed to the Upper Tribunal. In its determination, the FTT concluded that the case passed the "no reasonable prospect of success" test. It explained that HMRC's entitlement to protect U.K. revenue collection from tax abuse supersedes GBFH's entitlement to register for VAT. The FTT said that HMRC rejected the company's VAT registration in 2020 for the same reason it did in 2017, which GBFH said "was insufficient to explain why any alleged risk which justified de-registration in 2017 remained present in 2020." The Upper Tribunal rejected the crux of the FTT's analysis, saying that HMRC has the burden to prove that a risk of abuse exists and to prove why the sales made by GBFH in 2020 did not justify VAT registration. The Upper Tribunal added that GBFH is not responsible for proving any material changes to its tax practices between that period as the FTT had contended. It held that the FTT, in reaching its conclusion on the 2020 registration did not explain whether, let alone why, the 2017 risks were said by HMRC to persist in 2020, and to outweigh GBFH's right to register based on the 2020 sales.

The UK Parliament's Public Accounts Committee is reviewing the digital services tax (DST). The tax was introduced in April 2020 and imposes a 2 percent tax on the revenues of search engines, social media platforms and online marketplaces that derive value from UK users. The committee intends to consider the nature of the DST, lessons learned from introducing the tax, the impact of implementing the forthcoming OECD reforms, and preparedness of the HMRC and UK treasury replacing the DST with the OECD pillar one tax proposals, which is scheduled to take place in December 2023.

Source: Taxnotes, U.K. Tribunal Rejects Delinquent VAT Reimbursement Claim, November 15, 2022; United Kingdom – Tax Authority Clarifies VAT Treatment of Energy Bill Relief, (November 15, 2022), News IBFD; Taxnotes, U.K. Tribunal Restores Trial in VAT Registration Rejection Dispute, November 29, 2022; United Kingdom Parliamentary Committee Reviews Digital Services Tax (November 3, 2022), News IBFD.

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Australia: Consultation for Recipient Created Tax Invoices

On November 17, 2022, the Australian Tax Office launched a consultation on Draft Legislative Instrument No. LI 2022/D15, which would set out the rules regarding the issuance of recipient-created tax invoices. The Legislative Instrument would replace numerous pieces of industry-specific guidance issued between 2014 and 2017.

In most cases, tax invoices are issued by a seller. However, in special cases, the purchaser or the recipient of the goods or services may issue a tax invoice, known as a recipient-created tax invoice (RCTI). The Legislative Instrument would provide that RCTIs may be issued by government-related entities and large business entities. A large business entity would be defined as an entity that meets the large business entity tax gross receipts requirement, including members of eligible GST groups, eligible GST group members, and joint venture operators that meet the large business entity gross receipts requirement. The large business entity gross receipt requirement is based on an entity's GST gross receipts, modified to include taxed sales. The Legislative Instrument would build on the existing rules regarding when an RCTI may be issued. Most notably, both seller and recipient must be registered for GST, and the two parties must agree that the seller will not issue a tax invoice and that the recipient instead will generate a RCTI.

In addition, the Legislative Instrument would prescribe that a written agreement between the recipient and the seller must specify the taxable sales to which it relates, be current when an RCTI is issued, contain acknowledgments from the seller and the recipient that each is registered for GST when it enters into the agreement, and include the following conditions: (1) the recipient can issue RCTIs for the sales; (2) the seller will not issue tax invoices for the sales; (3) the seller will notify the recipient if it ceases to be registered for GST; and (4) the recipient will notify the seller if it ceases to be registered for GST. Where an agreement between the recipient and the seller is embedded in the RCTI, it must contain this statement: *"The recipient and the seller declare that this agreement applies to sales to which this tax invoice relates. The recipient can issue tax invoices in respect of these sales. The seller will not issue tax invoices in respect of these sales. The seller acknowledges that it is registered for GST and that it will notify the recipient if it ceases to be registered. The recipient acknowledges that it is registered for GST and that it will notify the seller if it ceases to be registered for GST. Acceptance of this recipient created tax invoice (RCTI) constitutes acceptance of the terms of this written agreement. Both parties to this sale agree that they are parties to an RCTI agreement. The seller must notify the recipient within 21 days of receiving this document if the seller does not wish to accept the proposed agreement."*

Source: CCH, Global VAT News & Features, Australia Sets Out New Rules For Recipient Created Tax Invoices (Nov. 21, 2022), November 21, 2022.

New Zealand: Collection of Information from Payment Service Providers

On November 14, 2022, the New Zealand government passed the Tax Administration (Regular Collection of Bulk Data) Regulations 2022. The regulations allow the New Zealand Inland Revenue to regularly collect bulk datasets about electronic transactions from payment service providers. The data will be used to verify business income of merchants, particularly those operating in the digital economy. Covered payment service providers include businesses in a payment system that facilitate payments; entities, such as banks, that provide access to a payments system that enables the clearing and settling of

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funds used in transactions; and entities that provide switch services, settlement services, online payment gateways, and alternative payment methods. The issuing of credit cards and the provision of payment service hardware are excluded.

According to the regulations, payment service providers must provide certain data on the merchants for whom they process payments to Inland Revenue every six months. The information required includes: merchant name and other identity information; merchant bank account numbers; contact information regarding the merchant and its intermediaries; and the total number and value of all payments processed in each month of the relevant 6-month period in each payment category (i.e., credits, cash-outs, reversals, and refunds).

The service provider must file a structured formatted electronic file of the monthly datasets within 1 month and 7 days after the end of each 6-monthly reporting period (March 31 and September 30). Inland Revenue may grant exemptions for service providers when a duplication of information arises in certain circumstances. The regulations are effective from December 15, 2022, and the first reporting period begins on April 1, 2023.

Source: New Zealand- New Zealand Issues Regulations for Collection of Information from Payment Service Providers, (November 22, 2022), News IBFD.

Singapore: Overview of Recent Indirect Tax Developments

The Inland Revenue Authority of Singapore (IRAS) recently set forth new benefits for taxpayers using "seamless filing from software" that will be offered for assessment years 2023-2025. According to the IRAS, taxpayers that adopt seamless filing from software will be able to enjoy up to 95 percent time-savings and improved compliance, as their tax computations and returns will be automatically generated and filed from their software. Particularly for GST filers, the IRAS will grant an extension to the GST filing due date of two weeks upon request if software issues or errors are encountered when filing the GST F5 or F8 returns. The extension request must be made at least three working days before the GST filing due date. The IRAS has further committed to waiving penalties for errors in returns by taxpayers unfamiliar with the software.

On October 28, 2022, the IRAS updated its FAQ guide on the 2023 GST rate change to include an additional question on construction services, which were completed before the rate change date but the retention sum for which is to be released in November 2023. Based on the general time of sale rule, the sale for the retention sum will be triggered at the earlier of when the taxpayer issues an invoice or receives the payment for the retention sum. As both events are after January 1, 2023, when taxpayers issue a tax invoice for the retention sum in November 2023, the GST rate of 8 percent should apply. However, as the taxpayer already completed the performance of the construction services before January 1, 2023, the taxpayer can choose to charge GST at 7 percent on the retention sum.

On November 7, 2022, the Singaporean Ministry of Finance presented the second reading speech of the GST Amendments Bill 2022 which was later approved by parliament. Among other things, the bill proposes to increase the GST rate from 7 percent to 8 percent effective January 1, 2023, and from 8 percent to 9 percent, effective January 1, 2024. In addition, the bill would expand the current requirement for nonresident digital services providers to register for and collect VAT on all remotely provided services to consumers in Singapore and would require nonresident vendors of consignments to consumers of less than SGD 400 ($296) to register for and collect GST. To read KPMG's previous discussion of the measures in the bill, please click here.

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On November 11, 2022, the IRAS released a new guide explaining the income tax and GST rules that apply to the transfer of businesses by insurers. The guide is intended to explain changes being made to ensure parity in the tax treatment of companies in the insurance business with others. The guide provides that the GST implications for transfers of business by licensed insurers have special rules. For other types of business transfers, the prevailing GST rules will apply. The guide further provides that, as an administrative concession, when both insurers in the transfer are GST-registered, the transfer of business will automatically qualify as a zero-rated transfer of a going concern (TOGC), except when the transferee is or will be a member of a GST group. For the latter, the transferee will be required to self-assess whether the prevailing conditions set out in the GST (Excluded Transactions) Order can be satisfied. As the GST registration status is non-transferable, the prevailing rules for GST registration will continue to apply. When the transferee is already GST-registered prior to the business transfer, its GST registration number will be retained after the transfer has taken place. If the transferor ceases to exist on the transfer date, its GST registration status will be terminated. GST group registration status is non-transferable. When the transferee is already part of a GST group prior to the business transfer, it will have to review its eligibility for group registration and apply for withdrawal if it can no longer satisfy the eligibility conditions (e.g., control requirements) after the business transfer. When necessary, the transferor that ceases to exist on the transfer date will need to be deregistered from its GST group. Moreover, the guide reminds taxpayers that the Major Exporter Scheme (MES) status is also non-transferable. The MES allows businesses to import non-dutiable goods with GST suspended rather than pay GST on those imports. When the transferee has already obtained MES status prior to the business transfer, it will need to review its eligibility for MES upon the business transfer and notify the IRAS if it can no longer satisfy the MES. For such cases, the IRAS may terminate the MES status of the transferee or impose additional conditions. All GST liabilities, obligations, and entitlements (including GST returns, payments, penalties, and refunds) due to the transferor will be automatically transferred to and assumed by the transferee on the date of the transfer. Finally, the guide discusses issues relating to bad debt relief, repayment of VAT paid previously claimed by the transferor, and transitional rules regarding invoices and VAT recovery claims.

On November 23, 2022, the IRAS published GST rules that apply to transactions involving carbon credits with effect from November 23, 2022. Before November 23, 2022, only the issuance, transfer, or sale of carbon credits by the National Environment Agency (NEA) was subject to GST, and carbon credits purchased from overseas exchanges or vendors constituted a provision of taxable services to the recipient and fell within the scope of imported digital services, potentially subject to GST under the GST self-assessment or overseas vendor registration regimes. Effective November 23, 2022, the issuance, transfer, or sale of any carbon credit is an excluded transaction is not regarded as a sale. Carbon credits purchased from overseas exchanges or vendors fall outside the scope of imported services and likewise are not subject to GST.

Source: CCH, Global VAT News & Features, Singapore To Offer Perks To Businesses Adopting 'Seamless Filing', (Nov. 4, 2022); Singapore Tax Agency Updated FAQs on GST Rate Change for Specific Services, Bloomberg Law News, November 8, 2022; Singapore MOF Publishes Second Reading Speech on GST Amendment Bill, Bloomberg Law News, November 10, 2022; CCH, Global VAT News & Features, Singapore Explains Income Tax, GST Rules On Insurance Business Transfers (Nov. 14, 2022); CCH, Global VAT News & Features, Singapore Says Carbon Credit Transactions Outside Scope Of GST,(Nov. 29, 2022).

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European Union: Report on Customs 2020 Program

On November 7, 2022, the European Commission published a report containing an evaluation study of the Customs 2020 program, an EU financing program that supported cooperation between national customs administrations. The program ran from 2014 to 2020 and funded the development, maintenance, and operation of the European Information Systems for customs, collaborative activities, and training. The study identifies the following lessons learned to complement the recommendations from the mid-term evaluation and, in some cases, build on some ongoing measures: (1) continue exploring innovative ways of developing the European Information Systems (EIS) for customs; (2) improve understanding and level of engagement of the stakeholders involved in the program; (3) further refine the definition and use of expert teams; (4) optimize the use of online collaboration and communication tools, online meetings, and face-to-face meetings; and (5) ensure continuity of the EIS for customs when transitioning from one programming period to another.

Source: European Union – European Commission Amends Customs Legislation Related to Binding Tariff Information and Proof of Origin Procedures, (November 30, 2022), News IBFD.

European Union: Amendment to Binding Tariff Information and Proof of Origin Procedures

On November 29, 2022, the European Commission amended the Union Customs Code Implementing Act (2015/2447) regarding the application of monitoring decisions relating to binding tariff information (BTI) and to introduce flexibility in the procedures for issuing or completing proof of origin documents. The amendments related to the application of monitoring decisions refer to cases in which customs formalities are being fulfilled by or on behalf of the holder of BTI for goods covered by a BTI decision, and this should be indicated in the customs declaration by stating the BTI decision reference number. However, since this obligation was established only for specific data elements, the relevant provisions of the Union Customs Code Implementing Act (2015/2447) was amended to now indicate the reference number of the decision in the customs declaration to all decisions relating to BTI.

The amendments to issuing or completing proof of origin consist in entering into force of 13 bilateral protocols providing transitional rules of origin and introducing more relaxed rules to facilitate the qualification of the preferential originating status for goods. Consequently, the Union Customs Code Implementing Act (2015/2447) was amended to introduce the possibility for EU exporters to apply for the issue of a movement certificate or to complete an origin declaration based on the seller's declarations made in the context of the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM Convention). In addition, relevant annexes to Union Customs Code Implementing Act (2015/2447) are amended accordingly because they are used for products not having preferential originating status and may be produced only by using non-originating materials.

Source: European Union -European Commission Amends Customs Legislation Related to Binding Tariff Information and Proof of Origin Procedures, (November 30, 2022), News IBFD.

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In Brief

- **Argentina:**[xviii] On November 10, 2022, Argentina published General Resolution No. 5282/2022, amending the requirements for the VAT exemption regarding interest on loans for the purchase, construction, or improvement of a home in which the borrower will reside. The resolution includes measures increasing the loan threshold from ARS 1,500 ($8.90) to ARS 200,000 ($1,187), requiring taxpayers to file sworn statements for pending construction or improvements, and increasing the loan threshold from ARS 20,000 ($119) to ARS 2.7 million ($16,027) for taxpayers to submit full certifications for completed construction or improvements. The Resolution further clarifies the procedure for taxpayers to pay the remaining taxes and interest on any change of their property's use in accordance with the applicable regime, and specifying the tax treatment for non-categorized registered VAT payers.
- **Argentina:**[xix] On November 7, 2022, the Argentina Ministry of Finance published Resolution 795/2022, setting out rules for VAT refunds related to purchases and imports of fixed assets. The VAT law authorizes the refund of VAT incurred on the purchase, manufacturing, construction, or import of fixed assets (except for automobiles), when it has not been offset by VAT collected on sales after six months. The maximum annual refund amount is established by the national budget. Taxpayers must specify the amount of VAT to be reimbursed and request the refund from the tax authority. The Resolution provides that the refund will be made based the date from which the taxpayer has accumulated the VAT, with priority given to requests with the earliest accumulated paid VAT (*antigüedad de los saldos acumulado*s).
- **Aruba:**[xx] On November 11, 2022, the Aruba Minister of Finance and Culture proposed extending the gross receipts tax to imports effective from June 1, 2023. Currently, the gross receipts tax operates alongside 3 other indirect taxes (i.e., tax on business gross receipts (BBO), health tax (BAZV), and Public Private Partnership projects additional funding tax (BAVP)). While the taxes are charged on the retail sale of goods, they do not apply to imported goods. Under the proposal, the gross receipts tax would apply to imported goods, with a right of deduction for businesses that resell the goods. However, industries such as hotels, restaurants, and construction companies that do not buy and sell commercial items, will not be able to claim the BBO/BAVP/BAZV assessed at import. The government of Aruba also included a measure to require nonresident providers of digital services to consumers in Aruba to register for and collect the gross receipts tax in the draft bill submitted to the parliament that contains the import proposal. If adopted, these rules would be effective January 1, 2023.
- **Austria:**[xxi] On November 22, 2022, the Austrian Federal Ministry of Finance posted online a finance court decision clarifying the right of nonresident telecommunications companies incurring costs in Austria to claim VAT refunds. In the case, a Hong Kong-based company submitted several VAT refund claims. The tax authority rejected the reimbursement claims stating that the taxpayer made domestic taxable sales in Austria and was thus required to collect and remit VAT on such domestic sales before claiming any VAT refunds on costs incurred in Austria. The tax authority calculated an additional VAT liability and imposed late payment penalties on the taxpayer for not filing VAT returns. On appeal, the finance court held that the taxpayer submitted tax returns for all the disputed years after deducting paid VAT and making corrections due to discounts. The court ruled that the tax authority must consider the returns when estimating the tax base for VAT owed. It also ruled that the late penalty charges were wrongly levied, because although the taxpayer's filings were incorrect, they were submitted on time and based on a justifiable legal position.

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- **Azerbaijan:**[ii] On November 16, 2022, the Azerbaijan parliament agreed to consider a bill that would require nonresident vendors of digital services to customers in Azerbaijan to register for and collect VAT effective January 1, 2023. Such sales would no longer be subject to the VAT self-assessment mechanism if the bill is approved.
- **Bulgaria:**[xxiii] Following the European Commission's authorization allowing Bulgaria to temporarily increase its VAT registration threshold from BGN 50,000 ($25,750) to BGN 100,000 ($51,506) between January 1, 2023, and December 31, 2024, the National Revenue Agency (NRA) clarified that taxpayers who registered for VAT under the lower threshold may cancel their VAT registration by submitting a deregistration application.
- **BES Islands:**[xxiv] The islands of Bonaire, Sint Eustatius, and Saba (BES Islands) recently expanded their new online tax portal, MijnCN, to enable the filing of the collective wage statement (VZLS), annual accounts, and profits tax return (OPB). The new portal allows taxpayers to authorize a third party to represent them in tax matters without providing their login details.
- **Chile:**[xxv] On November 15, 2022, the Chilean Internal Revenue Service (IRS) issued Letters Nos. 3311 and 3312, clarifying that the VAT exemption for outpatient health services, benefits, and procedures, (excluding accommodations or food) provided by trained professionals of a professional society effective January 1, 2023, also applies to dental services and consultations by external doctors to hospitalized patients, unless provided by the same institutional provider that delivers the hospital services.
- **Costa Rica:**[xxvi] The Costa Rican Legislature recently agreed to consider Draft Bill 23415. If approved, the bill would: (1) introduce a technical definition for crypto assets, blockchain, wallets, smart contracts and activities in connection to such assets; (2) classify crypto assets based on their use, including payment tokens, utility tokens, security tokens, and hybrid tokens; (3) authorize public entities to accept crypto assets as a means of paying taxes, fees or any other obligation from citizens; (4) introduce a VAT exemption for acquisitions (including mining and airdrops), custody or transfers of crypto assets provided the transaction does not represent a transfer of goods and services in the Costa Rican territory; (5) deem the use of crypto assets as private virtual currency and thus as exempt financial services; and (6) clarify that crypto asset operations do not give a right to VAT credits.
- **Costa Rica:**[xxvii] On November 22, 2022, the Costa Rican Legislature accepted for consideration, Bill No. 23478, which would introduce a VAT exemption on the 13 percent annual, mandatory automobile insurance premium (SOA).
- **Croatia:**[xxviii] On November 15, 2022, the tax authority of Croatia clarified the application of the VAT zero rate for delivery and installation of solar power plant equipment in cases in which advance payments were made and invoices were issued prior to the introduction of the VAT zero-rate on October 1, 2022. According to the tax authority, when an advance payment on which VAT was calculated at a rate of 25 percent, but the delivery and installation of solar panels occurred when it was subject to zero percent VAT, the vendor must issue an invoice zero-rating the entire transaction and cancel the advance payment invoice.
- **Czech Republic:**[xxix] On November 24, 2022, the Czech Ministry of Finance announced that the Czech Senate has approved a proposal to, among other things, increase the VAT registration threshold from CZK 1 million ($43,280) to CZK 2 million ($86,561) effective January 1, 2023.

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- **Denmark:**[xxx] On November 14, 2022, the Danish tax authority published Tax Court Decision No. SKM2022.549.LSR, explaining a company's inability to recover VAT on certain land purchases and construction expenses. In the case, the taxpayer incurred expenses for the purchase and construction of buildings, which the taxpayer then used for VAT-exempt leasing of residential buildings. The tax authority rejected the taxpayer's claim for VAT recovery and increased the taxpayer's liability for the period in question. The National Tax Court upheld the decision and found that the properties were built for the purpose of VAT-exempt leasing. As a consequence, the taxpayer was not entitled to recover the VAT on those purchases, and the taxpayer did not prove it had an original or subsequent intention to carry out taxable sales for which the deduction could be claimed.
- **Ecuador:**[xxxi] On November 10, 2022, Ecuador published amendments to its VAT law. According to the amendments, the tax authority will determine which taxpayers must file their VAT returns semi-annually through a general resolution that it will publish in the future. Moreover, micro, small and medium-sized enterprises, which have been granted more than one month to pay their taxes, must file their VAT returns within one month and pay the tax owed to the tax authority within three months as from the issuance of the invoice. Any other taxpayer must file their VAT return within one month and pay the tax within two months as from the issuance of the invoice. The amendments further clarify that the requirement for service exporters to receive payment from abroad to be granted the VAT refund is also met if the foreign payment is made through a local bank account with the account holder being a non-resident person. Finally, the amendments reduce the minimum amount of a sale that obliges a taxpayer to issue specialized VAT invoices from $200 to $50.
- **El Salvador:**[xxxii] El Salvador enacted a legislation to empower the tax authority to introduce e-invoicing requirements. Taxpayers who are already authorized to issue e-invoices may continue to do so, but must adapt to the new requirements once issued.
- **European Union:**[xxxiii] On November 9, 2022, the EU's Group on the Future of VAT (GFV) published the minutes of its 39th meeting discussing the VAT treatment of the travel and tourism sector. The GFV discussed the policy options that the European Commission is considering in light of the current sectoral VAT regime. The discussion includes options for VAT rules on passenger transport, the special VAT regime for travel agents, and the VAT refund program for tourists and duty-free shops. In addition, the European Commission provided an update on VAT rules on e-commerce, the VAT in the digital age proposal, and the VAT exemptions related to the COVID-19 pandemic and to mitigate the humanitarian impacts of the crisis in Ukraine. On November 29, 2022, the EU Commission published a report discussing these policy options for VAT rules regarding the travel and tourism sector. The report notes that final studies on the topics will be presented and discussed with Member States and businesses in a joint meeting to be held in February 2023.
- **Fiji:**[xxxiv] On November 10, 2022, the Fiji Revenue and Customs published the country's consolidated VAT Act 1991, as of August 1, 2022.
- **Finland:**[xxxv] On November 9, 2022, Finland published Decision No. KHO:2022:128, clarifying the VAT treatment of services provided by a group's parent company to subsidiary companies. The taxpayer, a Finnish parent company, provided its subsidiaries with financial and insurance services, along with administrative services. The taxpayer sought to clarify whether it could fully deduct VAT included in its general expenses. The Supreme Administrative Court held that the taxpayer could not fully deduct the VAT included in its general expenses because the financial and insurance services are separate from the administrative services provided to the subsidiaries and must be treated separately for tax purposes. Making loans and arranging insurance for group companies are VAT-exempt sales, meaning they must be excluded when determining the scope of the company's right to deduct VAT.

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- **Finland:**[xxxvi] Effective January 1, 2023, Finland will increase the Intrastat reporting thresholds to EUR800,000 ($843,000) for arrivals and EUR800,000 for dispatches. Further, new Intrastat declarations for 2023 can no longer be submitted through Posti's TYVI Pro service after December 31, 2022. Intrastat declarations for 2023 can be sent through only the Finnish Customs Intrastat Declaration Service or direct message exchange. Intrastat declarations previously submitted in 2022 via the TYVI Pro-Service can be corrected until August 12, 2023.
- **Germany:**[xxxvii] The German government recently proposed to introduce a single-use plastic levy from Spring 2025. Under the proposed regime, manufacturers will pay a single annual fee depending on the volume of plastics contained in products sold in the previous period. The levy is targeted at tobacco products with filters containing plastic as well as drink and food containers.
- **Germany:**[xxxviii] On November 10, 2022, the German parliament approved a draft bill to implement DAC7 requirements into national law. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. The new rules will cover digital platforms located both inside and outside the EU and will apply from January 1, 2023.
- **Greece:**[xxxix] On November 7, 2022, Greece published Decision No.1152 explaining the VAT registration procedures for taxpayers not established in the EU that intend to register in Greece under the Union OSS regime. The decision explains the procedures for granting a VAT registration number to specified taxpayers not registered in the EU; taxpayer obligations; the procedures for informing and declaring relevant information about changes, terminations, and suspensions of taxable transactions; and declaration forms.
- **Guatemala:**[xl] On October 17, 2022, the Guatemalan Tax Administration published Resolution No. SAT-DSI-1350-2022, instructing small taxpayers to adhere to the e-invoicing regime (*Régimen de Factura Electrónica, FEL*) by March 31, 2023. Any invoice document issued after such date by companies or individuals registered in the small taxpayers' regime will not be valid.
- **Hungary:**[xli] On November 4, 2022, Hungary published Lax XXXIX of 2022 which implemented the DAC7 requirements into national law. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. The new rules will cover digital platforms located both inside and outside the EU and will apply from January 1, 2023.
- **India:**[xlii] On November 10, 2022, India published FAQs on its e-invoicing regime. The guidance covers the e-invoicing requirement for the export of services; the requirement and process to generate an e-waybill; the applicability of e-invoices to specific documents, sale processes, and transactions; the procedure to follow if a taxpayer breaches the sales threshold triggering the e-invoicing requirement during the current year; and e-invoice reporting and filing procedures.
- **India:**[xliii] On November 10, 2022, the Indian Central Board of Indirect Taxes and Customs (CBIC) published Circular No. 181/13/ 2022-GST, clarifying the procedure for refunds of unutilized GST credits when the GST rate incurred on purchases is higher than the GST rate on sales. The circular explains that the updated formula for calculating refunds of unutilized credits applies only to refund applications filed on or after May 7, 2022, and the refund restrictions for unutilized ITCs on certain goods identified in an earlier issued notification apply only to refund applications filed on or after July 18, 2022.

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- **Ireland:**[xliv] On November 21, 2022, the Irish Revenue published Revenue eBrief No. 197/22, clarifying the VAT treatment of sales for emergency accommodation and ancillary services. According to the guidance, the provision of emergency accommodation in state-owned property is outside the scope of VAT. Moreover, the provision of residential accommodation and of hotel or guesthouse accommodation contracted to a state agency as emergency accommodation is VAT exempt. The guidance further clarifies the VAT treatment applicable to ancillary services and catering services. Finally, the guidance discusses VAT recovery rules and the adjustment requirements concerning VAT incurred under the capital goods regime.
- **Isle of Man:**[xlv] The Isle of Man released new tax forms in PDF format, including VAT forms. Available forms include VAT registration, application for VAT group treatment, changing the representative member of a VAT group, notifying an option to apply VAT on otherwise VAT-exempt sales, and deregistering for VAT.
- **Jersey:**[xlvi] On December 16 2022, Jersey published Regulation No. 112/2022 approving the 2023 budget law. Among other things, the law modifies the recent changes (which are not yet in force) relating to offshore retailers such that Goods and Services Tax (GST) is charged at the point of sale in all cases, regardless of the GST status of the purchaser. This change is intended to ensure there are no additional complexities, for retailers or for Customs, in implementing the new regime. The requirement for offshore retailers to register for GST comes into force on July 1, 2023.
- **Kyrgyzstan:**[xlvii] The Kyrgyzstan State Tax Service announced that all taxpayers engaged in the sale of goods will be required to issue e-invoices from January 1, 2023. The regime has been introduced in phases, beginning May 15, 2022, for taxpayers involved in the sale of oil and oil products, and from July 1, 2022, for taxpayers engaged in the sale of goods included in the list approved by the Eurasian Economic Commission. Registration of e-invoices is carried out through the taxpayer account on the website of the tax authorities.
- **Latvia:**[xlviii] On November 21, 2022, the Latvian State Revenue Service (SRS) clarified the VAT treatment of online purchases of goods from outside the EU. According to the SRS, non-EU sellers registered on the Import One-Stop-Shop (IOSS) can include VAT in the price of goods, payable to the country receiving the shipment. Sellers must clearly indicate VAT charged at the time of purchase on their e-commerce platform, and only natural persons can purchase goods from e-commerce platforms that use the IOSS regime. For non-EU sellers not registered for the IOSS, VAT must be paid at the time of customs clearance.
- **Lithuania:**[xlix] On November 21, 2022, the Lithuanian State Tax Inspectorate published draft rules and FAQs for implementing the DAC7 requirements into national law. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. The new rules will cover digital platforms located both inside and outside the EU and will apply from January 1, 2023.
- **Malta:**[l] On November 11, 2022, the Maltese tax authority clarified that taxpayers who purchase goods in their own name, and subsequently sell them to end consumers for consideration via third-party online websites (e-commerce operators) are required to register for VAT and are subject to income taxes on any profits made from such activities. Non-compliance with these obligations may result in administrative (and possibly criminal) proceedings. If the goods to be sold locally are imported from outside the EU, the importer would be required to provide their VAT number to customs to be registered for customs purposes. The importer would then be obliged to file import declarations through a customs clearing agent appointed by the importer.

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- **Namibia:**[li] On November 3, 2022, the Namibian Parliament agreed to consider a bill, to amend the VAT Act, 2000. The bill would allow a person carrying on a taxable activity but not yet making taxable sales to be registered for VAT. Moreover, the bill would clarify the conditions for claiming VAT credits and zero-rate feminine hygiene products. Finally, the bill would allow the tax authority to determine how a tax return or notice of assessment may be furnished or served and apply interest if the tax authority fails to pay refund on the due date for payment.
- **Netherlands:**[lii] On November 10, 2022, the Dutch parliament approved a bill to implement DAC7 requirements into national law. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. The new rules will cover digital platforms located both inside and outside the EU and will apply from January 1, 2023.
- **Netherlands:**[liii] On November 23, 2022, the European Commission published a proposal authorizing the Netherlands to continue applying an annual VAT registration threshold of EUR 25,000 ($26,346) until December 31, 2024.
- **New Caledonia:**[liv] On November 9, 2022, the government published proposed changes to the VAT regime. The government proposes to adjust the VAT rates in 2023 and to have only three rates instead of four. Moreover, the proposal would reduce progressively over three years the annual VAT registration threshold from XPF 25 million ($220,782) in 2022 to XPF 10 million ($88,312) in 2025 for companies selling goods, and from XPF 7.5 million ($66,234) in 2022 to XFP 4 million ($35,325) in 2025 for companies providing services. In addition, the proposal would remove exemptions on the sale of goods, such as the non-application of VAT on the sale of books. The government further proposes to amend some specific tax regimes such as the mining sector regime with a limitation of the exemption scope to only operations made by mining companies that contribute to the realization of the delivery of raw ore or metals resulting from transformation. Finally, the practice of granting a VAT exemption to a subcontractor when importing specific equipment for a mining company would be formalized.
- **New Zealand:**[lv] On November 23, 2022, the New Zealand Inland Revenue launched a consultation on a draft guidance, Exposure Draft No. PUB00428, on the GST treatment of sales of properties by landlords to organizations for use in the Ministry of Housing and Urban Development's Transitional Housing Program. The draft guidance includes measures that would clarify the types of properties used for transitional housing purposes, establish the scope of commercial dwelling and sales of properties exempt from GST, provide relevant definitions and examples, and establish a procedure to determine if the sale is exempt from GST. The consultation is open for comments through January 31, 2023.
- **OECD:**[lvi] On November 10, 2022, 22 jurisdictions signed the multilateral competent authority agreement (MCAA) for the automatic exchange of information under the OECD Model Rules for Reporting by Digital Platforms. The agreement will allow jurisdictions to automatically exchange information collected by operators of digital platforms established in their jurisdictions with respect to transactions and income realized by platform sellers in the sharing and gig economy and from the sale of goods through such platforms. The annual exchange of this information will assist tax administrations and taxpayers to ensure the correct and efficient taxation of such income.

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- **OECD:**[lvii] On November 30, 2022, the OECD published the Consumption Tax Trends 2022 report. The report provides cross-country comparative data on consumption taxes, specifically on VAT/GST and excise duty rates in OECD member countries. It further illustrates the evolution of consumption taxes and documents the variations in the design and implementation of consumption tax regimes across OECD countries. The report notes that consumption taxes account for 30 percent of the total tax revenue in OECD countries, on average, and that taxes on specific goods and services accounts for less than 10 percent of total taxes. Finally, the report explores the OECD policy framework for addressing the VAT challenges of digital trade.
- **Paraguay:**[lviii] On November 7, 2022, the Paraguayan tax authority published Decree No. 8175, clarifying the VAT deduction rules for independent personal and professional service providers purchasing specific products and services. The Decree allows such professionals to recover VAT of up to 30 percent for food, including non-alcoholic beverages, up to 50 percent on the office lease property put to private use subject to the inclusion in the sales receipt, up to 50 percent on utility services, and up to 30 percent for vehicles destined for the provision of the relevant service. The Decree further allows for the VAT recovery on the following expenses: healthcare; training or specialization relevant to the service provided; office maintenance, remodeling or refurbishment; office supplies, furniture and equipment, servers, computer and telecommunications equipment, professional equipment, and tools, including their maintenance; clothing appropriate to the exercise of the profession or trade, such as suits, overalls, special footwear, and safety protectors; advertising and marketing services; subcontracting of professional services intended to provide the taxable service; and spare parts, lubricants, maintenance, repairs, and insurance for vehicles used to provide the service. These measures entered into force on November 9, 2022.
- **Philippines:**[lix] On November 14, 2022, the Philippines House of Representatives approved a bill, which would require nonresident providers of digital services to register for and collect VAT if their gross sales exceed or are expected to exceed PHP 3 million ($53,614) in 12 months. The bill would simplify the invoicing and registration requirements for affected nonresident digital service providers and require nonresident digital services providers to designate a representative office or agent (that must be a registered, resident corporation) to assist in compliance. The bill provides a 180-day transition period from the effective date to enable the Bureau of Internal Revenue to prepare. The bill must now be approved by the Senate.
- **Poland:**[lx] On November 3, 2022, the European Commission published Council Decision (EU) No. COM(2022) 569 which proposes to authorize Poland to extend until December 31, 2025, the 50 percent VAT recovery limit on the VAT incurred on purchases, intra-EU acquisitions, importations, hire or leasing of certain motor vehicles, and related expenditures not used exclusively for business purposes. For KPMG's previous discussion of this derogation, please click here.
- **Romania:**[lxi] The Romanian tax authority launched a consultation on the layout and content of the form "Request for Fiscal Registration" concerning filing instructions to be submitted when setting up a company. Currently, newly established legal entities and individuals during the initial "Trade Registry" procedure cannot register for VAT purposes but must file a separate VAT registration. The proposed changes would allow newly established legal entities/individuals to immediately request registration for VAT purposes as part of the trade registry procedure.

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- **Russia:**[lxii] On October 10, 2022, the Russian tax authority published a guidance letter clarifying that nonresident entities providing digital services to persons other than individual entrepreneurs and legal entities must calculate and pay the VAT due on those services. Nonresident digital services providers do not need to calculate and pay VAT when providing digital services in Russia to legal entities or individual entrepreneurs registered with the Russian tax authorities. In those cases, the VAT due must be calculated and paid by the buyer of the services acting as a tax agent unless the digital services are provided through a Russian intermediary, who must act as the tax agent.
- **Seychelles:**[lxiii] On November 4, 2022, the Seychelles Minister of Finance presented the 2023 budget statement to parliament. It includes several indirect tax measures. The budget would introduce an environmental levy that would apply to visitors to the country based on the size of the hotel room occupied and would also apply to yacht charters, effective April 1, 2023. The budget would further introduce a two-percent tax on the gross receipts of medium and large hotels from January 1, 2023.
- **South Africa:**[lxiv] On October 31, 2022, the South African Revenue Service (SARS) opened a consultation on a draft binding general ruling addressing the VAT treatment of rounding differences in cash transactions. The draft ruling sets out the circumstances and conditions under which a seller is not required to issue a credit note, clarifies the VAT recovery consequences for a recipient business when a rounding difference occurs as a result of a cash transaction, allows the recipient business to use the tax invoice issued by the vendor to deduct VAT, allows the VAT deduction on the adjusted amount for cash transactions only, and requires the recipient business to do a reasonable split to recover VAT on the acquisition of goods and services charged with different tax rates.
- **Sri Lanka:**[lxv] On November 14, 2022, the Sri Lankan president presented the 2023 budget. If adopted, it would require the publication of a list of active VAT registered persons on the tax authority website, introduce a new VAT Act to consolidate amendments introduced from 2002 to 2022, and rationalize the VAT exemptions. The budget would further expand the definition of "bookmaker" and "gaming/casino" to accommodate online gaming and betting under the betting and gaming levy.
- **Switzerland:**[lxvi] On November 21, 2022, the Swiss Federal Supreme Court issued Decision No. 2C_563/2022, clarifying the VAT obligations for rental and accommodation services. The taxpayer, a Swiss tenant company, sublet a chalet to its U.K.-based parent company. The taxpayer invoiced the subletting to the parent company at the special VAT rate as accommodation services but did not invoice the stay of the family members of the beneficial owner. Upon inspection, the tax authority imposed an additional VAT liability on the taxpayer. The taxpayer appealed the tax authority's decision, and then the administrative court's decision. On its further appeal, the supreme court held that the taxpayer's services to the parent company should be treated as rental services and therefore should be taxed at the standard 8 percent VAT rate, and the unpaid stays of the family members of the beneficial owner should be taxed at the special 3.8 percent VAT rate because the taxpayer provided accommodation services to the beneficial owner.
- **Trinidad and Tobago:**[lxvii] On November 16, 2022, the Trinidad and Tobago Inland Revenue published FAQs regarding a new tax amnesty program for 2023. The program runs from November 14, 2022, through February 17, 2023, and applies to a wide range of taxes including VAT. Taxpayers who apply under the program and pay off all outstanding debts may obtain a full waiver of penalties and interest.

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- **Uganda:**[lxviii] On November 8, 2022, the Ugandan Revenue Authority published FAQs on the nonresident VAT digital services regime. Among other things, the guidance clarifies that nonresident taxpayers are required to register for and collect VAT if they meet the registration threshold of UGX 37.5 million ($10,018). It further provides that while taxpayers are not required to collect VAT on sales made to business customers, they are required to provide transaction details of those sales. As a reminder, the VAT obligations of nonresident digital services providers are effective July 1, 2022.
- **Venezuela:**[lxix] On September 29, 2022, the Venezuela tax authority published Administrative Guidance 0055 of 2022, which eliminates the obligation for manufacturers, artisan producers, and importers of alcoholic beverages to act as VAT collection agents. Previously, alcoholic beverage manufacturers, producers, and importers were obligated to collect 100 percent of the VAT on the sales, computed on the difference between the sales price to the public and the total price invoiced by the collection agent.

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