Inside Indirect Tax

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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

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.

Overview of Indirect Tax Developments from KPMG International Member Firms

- **KPMG in Austria** published a report discussing recent tax developments, including several VAT judgments of the Court of Justice of the European Union (ECJ) and revisions of the Austrian VAT guidelines.
- **KPMG in Bangladesh** published a report on the tax system of Bangladesh including the latest tax amendments of the Finance Act 2022.
- **KPMG in Belgium** published a report discussing changes to the procedure for deducting VAT based on the actual use of taxpayers performing taxable and exempt activities (i.e., mixed taxpayers). The actual use method implies that (1) a 100 percent VAT deduction is applied for costs exclusively intended for activities that grant the right to deduct VAT; (2) no VAT deduction is allowed for costs that are exclusively intended for activities not granting the right to deduct VAT; and (3) a special pro rata must be determined for VAT on "mixed costs" that cannot be wholly attributed to one of the other two categories. Until now, the option for VAT deduction based on the actual use was subject to an application procedure in which the competent VAT office had to grant explicit approval to the taxpayer to base its VAT deduction on the actual use. Effective January 1, 2023, the new procedure will merely consist of a prior electronic notification by the taxpayer of its choice to apply the VAT deduction based on actual use. The tax authorities can oppose the election or the criteria used by the taxpayer in the framework of this VAT deduction method. This should be done through a reasoned decision that is communicated to the taxpayer at the latest by December 31 of the year following the year in which the initial election by the taxpayer entered into force.
- **KPMG in Bulgaria** published a report discussing changes to the VAT law that were enacted on December 23, 2022. Among other measures, the changes include (1) the introduction of bad debt relief for incorrectly charged VAT; (2) the transposition of the EU's Council Directive (EC) 2020/284, introducing certain record keeping and reporting obligations for payment service providers; (3) making permanent the application of the 9 percent reduced rate for books, baby food, diapers, and similar hygiene products; and (4) extension of the VAT exemption for financial services to the

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management of alternative investment funds qualified as special investment funds as per the criteria of the EU law. These measures are effective from January 1, 2023, except the new record-keeping and reporting obligations for payment service providers which is effective from January 1, 2024. To read KPMG's previous discussion of these measures, please click here.

- **KPMG in Canada** published a report discussing the expansion of the federal fuel charge to more provinces. Effective July 1, 2023, the federal fuel charge is scheduled to take effect in the provinces of Newfoundland and Labrador, Nova Scotia, and Prince Edward. The federal government recently announced that these provinces' fuel charge systems will not meet the upcoming revised federal benchmarks for carbon pricing and will therefore be subject to the federal carbon pollution pricing backstop as of this date. As a result, fuel producers, fuel wholesalers, emitters, and fuel distributors, as well as air, marine, rail, and road carriers, and certain users will need to determine if they are required or permitted to register and prepare to meet the compliance obligations accompanying the federal rules.
- **KPMG in Canada** published a report providing an overview of changes to the goods and services tax (GST) and other indirect taxes in 2022.
- **KPMG in Colombia** published a report discussing the tax reform that was adopted by the Colombian Congress on December 13, 2022. The tax reform introduces a significant economic presence (SEP) standard for nonresidents effective January 1, 2024. Nonresidents will be considered as having a SEP if (1) they maintain a deliberate and systematic interaction with the Colombian market; and (2) they have income equal to or greater than 31,300 Units of Tax Value (i.e., $275,000 in FY 2023) from transactions involving the sale of goods and services to Colombian customers. during the current or previous taxable year. The Law presumes a deliberate and systematic interaction in the Colombian market if (1) the nonresident maintains an interaction or marketing display with 300,000 or Colombian customers; (2) the nonresident keeps or establishes the possibility of viewing prices in Colombian pesos (COP) or allows payments in COP; the law also clarifies that for this purpose, there will be an aggregated application with regards to activities carried out by related parties. The SEP standard focuses on the digital economy, including services such as: online advertising, digital content, streaming, user data, intermediation platforms, digital subscriptions, data management, and search engine licensing. Nonresidents meeting the SEP standard can elect to either file a corporate income tax return and pay tax at 3 percent on their gross income or be subject to a 10 percent withholding tax on their gross income.
- **KPMG in the Czech Republic** published a report discussing a recent Supreme Administrative Court (SAC) decision on a taxpayer's right to deduct VAT when involved in a fraudulent chain of transactions. In the case, the taxpayer purchased electronics from other EU member states and stored them in the Czech Republic. The taxpayer then sold the same electronics to shelf companies that did not declare or pay output VAT. The tax authority denied the taxpayer the right to deduct VAT on the sale of electronics because the taxpayer knew, or could have known, that the vendor would not pay output VAT because of tax fraud. While the SAC agreed with the tax authority that in combination, the evidence may create the impression of the existence of tax fraud, it also held that separately, the individual parts of the case could be explained. As a result, the tax authority did not fully prove that the taxpayer knew, or could have known, that the vendor would not pay output VAT because of tax fraud.
- **KPMG in the Czech Republic** published a report discussing the working paper of the European Union VAT Committee on the VAT treatment of fuel cards, which is not in line with Czech administrative practice. According to the current Czech practice, most fuel card issuers carry out two transactions from a VAT viewpoint: (1) a purchase of goods (fuel) from

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the fuel station owner; and (2) a delivery of goods (fuel) to the vehicle operator. The VAT committee has adopted a different position. Under the standard buy/sell model, the VAT Committee takes the position that the fuel card issuer does not at any moment acquire the right to dispose of the fuel as the owner. In line with the ECJ's judgment in *Vega*, C-235/18 (May 15, 2019), the VAT Committee concluded, therefore, that the fuel card issuer merely finances the purchase of fuel on behalf of the vehicle operator (i.e., provides a financial service exempt from VAT). On the other hand, under the commissionaire model, the VAT Committee agrees with the existing interpretation that there are two transactions (i.e., the acquisition and subsequent sale of goods (fuel).

- **KPMG EU Tax Center** published a report discussing recent EU and international tax developments, including Finland clarifying DAC7 reporting obligations, and Greece, Hungary, Italy, and the UK introducing and amending windfall profit taxes on the energy sector.
- **KPMG in India:** published a report discussing recent indirect tax developments, including court decisions clarifying the recovery of GST and tax authority guidance on the processing of IGST refunds of risky exporters.
- **KPMG in Latvia:** published a report discussing recent amendments to the excise tax law that are effective February 13, 2023. The amendments align the excise tax treatment of distance sales of non-alcoholic and alcoholic beverages so that the payment of excise tax in Latvia will become the responsibility of the vendor of the beverages when sold through an online store registered in another Member State. Latvian vendors will need to pay excise tax in the Member State in which their customer is located following the rules on excise tax applicable in that Member State. If the excise tax on goods sold to individuals in another Member State has been already paid in Latvia, it will be possible to recover it according to the procedure specified in the law.
- **KPMG in Luxembourg** published a report discussing the tax measures in the 2023 budget law, which include a temporary reduction of the VAT rates in 2023.
- **KPMG in Malaysia** published a report discussing the Royal Malaysian Customs Department (RMCD) that it is postponing implementation of the requirement for nonresident vendors to register for and collect sales tax on low-value goods from January 1, 2023 to April 1, 2023. Online sellers are required to register for and charge sales tax on goods with an intrinsic value of not more than MYR 500 ($111) sold online (whether directly via the seller's own platform or third-party platform/ marketplace) and brought into Malaysia if they make sales up to MYR 500,000 ($111,325) in a 12-month period. The RMCD further published draft guidance clarifying the definitions of low-value goods, online marketplace as well as the process for registering for sales tax, importing low-value goods subject to the new rules, and filing returns.
- **KPMG in Mexico** published a report (in Spanish) discussing modifications to the Miscellaneous Tax Resolution 2022, which extends the deadline for issuing e-invoices using version 4.0 (CFDI 4.0) from January 1, 2023, to April 1, 2023.
- **KPMG in Nigeria** published a report discussing the implementing regulations for the excise tax on non-alcoholic carbonated and sweetened beverages which were published on September 12, 2022. The regulations impose excise tax of NGN 10 per liter on non-alcoholic carbonated and sweetened beverages and further expand the definition of excisable products. The person liable for the excise tax is the manufacturer or importer of the products for sale in Nigeria. The regulations further clarify the filing and payment procedures as well as the penalties for non-compliance.
- **KPMG in Nigeria** published a report discussing the Electronic Money Transfer Levy Regulations, 2022. The regulations provide for a singular and one-off levy of NGN 50 on

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the recipient of any electronic receipts or transfers of NGN 10,000 or above. For equivalent receipts or transfers carried out in other currencies, the levy will be charged at the exchange rates determined by the Central Bank of Nigeria (CBN). The Regulations require the receiving bank to collect and remit the Levy to the FIRS by the next working day after the transaction or on such other date as prescribed by the FIRS. The regulations further clarify the compliance requirements, including the filing of returns. There is also a requirement for banks to prepare a daily list of canceled or reversed transactions containing the names of the transferee, transaction amounts, levies deducted thereon, and the amount reversed and/ or canceled.

- **KPMG in Norway** published a report discussing recently approved VAT amendments. Effective January 1, 2023, Norway will extend the current obligation of nonresident digital services providers to register for, collect, and remit VAT on sales to final consumers to all providers of remote services. Remote service providers will be able to register under the simplified registration mechanism (VOEC). To the extent that the remote services are sold by intermediaries such as marketplaces, the VAT liability will apply to the marketplace or other intermediary instead of the actual sellers. The zero-rating for sales of remote services from Norway to other countries is similarly changed so that they generally can be treated as zero-rated regardless of whether they are for use in Norway or abroad. Moreover, the amendments introduce a maximum value threshold of NOK 500,000 for the application of the VAT exemption for electric cars. Finally, the amendments repeal the VAT exemption for electronic news services.
- **KPMG in Poland** published a report discussing draft VAT legislation. If approved, the legislation would introduce a mandatory e-invoicing system effective January 1, 2024. The mandatory e-invoicing would cover all domestic activities subject to VAT, including domestic sales of goods and services between taxpayers (B2B), sales of goods and services to public bodies (B2G), and sales of goods and services to consumers (B2C). The obligation to issue e-invoices via a National e-Invoicing System would be imposed on taxpayers subject to the invoicing obligation under Polish VAT law and having their seat or fixed base in the territory of Poland, including small businesses. Taxpayers applying special VAT mechanisms, such as the one-stop shop mechanisms for cross-border B2C sales of goods and services would be exempt from the requirement to issue e-invoices. The law would further repeal the possibility of issuing invoices using cash registers effective 2025. Moreover, cash register receipts bearing the buyer's tax identification number up to PLN 450 would no longer be treated as invoices. The National e-Invoicing System will be compatible with the e-Invoicing Platform. The bill would further amend the register of taxpayers (Whitelist) to include information on whether a given taxpayer is obliged to issue invoices via National e-Invoicing System. Failure to meet the e-invoicing obligations will be subject to a fine, including a fine of up to 100 percent of the amount of the tax indicated on the invoice.
- **KPMG in Poland** published a report discussing recent indirect tax developments, including the EU Council authorizing Poland to continue to apply a 50 percent restriction on the VAT recovery right for certain vehicle expenses until December 31, 2025.
- **KPMG in Serbia** published a report discussing amendments to the VAT law effective January 1, 2023. The amendments extend the scope of foreign entities that are not required to register for VAT in Serbia to include entities that sell goods that are in customs storage procedure. For transactions between related parties, the amendments clarify that if the consideration is lower than market value and if the acquirer does not have the right to deduct VAT in full, the tax base is the market value of those goods or services, excluding VAT. Moreover, the amendments clarify that the right to deduct VAT can be exercised based on an e-invoice that has been accepted and in the tax period in which the tax liability arose,

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regardless of whether the e-invoice was issued on the day the tax liability arose or after that day. Finally, the amendments clarify certain tax base and tax point rules.

- **KPMG in Serbia** published a report discussing amendments to the Law on Fiscalization effective December 20, 2022. The amendments clarify the definition of a retail sale for tax purposes, update the mandatory information to be included on a tax receipt, broaden the exception to the mandatory use of at least one fiscal device that uses its own fiscal receipt processor, and require that data contained in the Fiscalization Management System related to fiscal receipts issued to self-employed taxpayers will be transferred to the Electronic Invoice System database.
- **KPMG in Serbia** published a report discussing amendments to the e-invoicing regime effective January 1, 2023. The amendments clarify that e-invoices must be issued for all requests for payment to a public body, subject to certain exceptions. The amendments further clarify that the electronic recording of VAT is done cumulatively, for all obligations, by showing data on the tax base and calculated VAT, separately by tax rate, subject to certain exceptions. Finally, the amendments authorize the subsequent acceptance of an e-invoice that was initially rejected effective June 1, 2023.
- **KPMG in Slovakia** published a report discussing amendments to the VAT law effective January 31, 2023, The amendments require taxpayers to correct VAT deducted from the goods and services purchased in Slovakia provided they are (partially) overdue with the payment for more than 100 days. Moreover, the amendments introduce changes in the correction of tax base upon total or partial non-payment of consideration for sales of goods or services and in related obligation to correct VAT deducted. The amendments further repeal the VAT registration obligation for established entities provided they exceeded the registration threshold solely from specific VAT-exempt transactions (e.g., insurance and financial services and sale and rent of immovable property). Finally, the amendment would also incorporate the new EU-wide reporting obligation of providers of payment services into national law effective January 1, 2024. The information would be exchanged between Member States through the Central Electronic System of Payment information (CESOP).
- **KPMG in Sri Lanka** published a report on a supreme court decision, clarifying that the reduction of the annual VAT registration threshold from LKR 300 million to LKR 80 million is effective October 1, 2022 (as stated in the Value Added Tax (Amendment) Bill) and the repeal of the VAT exemption for the provision of any condominium residential accommodation is effective January 1, 2023.
- **KPMG in Trinidad and Tobago** published a report discussing the tax-related measures in the Finance Act 2022, including (1) increasing the VAT registration threshold from TTS 500,000 to TTS 600,000 per year and (2) introducing a tax amnesty from November 14, 2022, to February 17, 2023, on any tax owed concerning tax years up to and including the year ending December 31, 2021.
- **KPMG in the United Kingdom** published a report discussing an investigation by the National Audit Office into the digital services tax (DST). The investigation examines the UK tax authority's (HMRC) implementation of DST and its operation in the first year. The findings highlight that HMRC received much more in DST receipts than was initially forecast – actual receipts were GBP 358 million compared to the estimated GBP 275 million.

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Global Rate Changes

- **Argentina:**[i] Effective January 1, 2023, Argentina applies the following VAT rates to advertising space in newspapers and magazines and online news portals, depending on the publisher's annual turnover in the previous year: (1) 2.5 percent if the annual gross receipts are less than ARS 250 million; (2) 5 percent if the annual gross receipts exceed ARS 250 million but are less than ARS 500 million; (3) 10.5 percent if the annual gross receipts exceed ARS 500 million but are less than ARS 1,000 million; and (4) 21 percent if the annual gross receipts exceed ARS 1,000 million.
- **Aruba:**[ii] Effective January 1, 2023, Aruba increased the turnover tax rate from 1.5 percent to 2.5 percent, making the combined rate for turnover tax, health levy, and tax for special projects is 7 percent.
- **Belgium:**[iii] On December 8, 2022, the Belgian tax authority extended the 6 percent reduced VAT rate for sports facilities if: (1) the sports facility offers the customer personalized support and/or group lessons in addition to the right of access to the sports facility; (2) the customer has the right to access the sports facility outside the hours of personalized support and/or group lessons; and (3) the customer can, during these hours, use the sports equipment independently (without personalized support as part of group lessons). Separately, Belgium extended the 6 percent reduced VAT rate for electricity provided under residential contracts until March 31, 2023.
- **Benin:**[iv] On December 25, 2022, the Beninese President signed Law No. 33/2022, which exempts new trucks, buses, and four-wheeled vehicles imported or manufactured in Benin from VAT between January 1, 2023, and December 31, 2023.
- **Bulgaria:**[v] Effective January 1, 2023, Bulgaria introduced some changes to the application of its reduced 9 percent VAT rate. For some sales, the reduced rate is a permanent measure, while for others, its application is limited in time. Thus, currently, the reduced rate applies generally to 3 groups of sales, (1) books, newspapers, and magazines, (2) accommodation in hotels and similar establishments, and (3) specific products for babies (some food and hygiene products). As a temporary crisis measure the 9 percent reduced rate would apply (i) until the end of 2023 to restaurant and catering services, some tour operator services, and the use of sports facilities, and (ii) until July 1, 2023, to central heating and provision of natural gas. Finally, again as a temporary measure, Bulgaria zero-rates sales of bread and flour – valid up to December 31, 2023.
- **Greece:** Greece recently extended the VAT suspension regime for new buildings until December 31, 2024. Moreover, Greece extended the application of the reduced VAT rate of 13 percent for transport services for persons and their luggage, catering services, non-alcoholic beverages, and aerated waters, zoo tickets, services provided by gyms and dance schools, and tourist packages until June 30, 2023. Finally, Greece extended the application of the reduced VAT rate of 6 percent for certain personal hygiene and protection goods as well as on tickets for theatres, concerts, and cinemas until June 30, 2023. To read a report prepared by the KPMG International member firm in Greece, please click here.
- **Grenada:**[vi] Effective February 1, 2023, Grenada will increase the VAT rate for carbonated beverages, soft drinks, sodas, and drinks with added sugar from 15 percent to 20 percent and remove sugar from the zero-rated list. In addition, Grenada will reduce the VAT rate for electricity from 15 percent to 7.5 percent and temporarily exempt the following products until December 2023: soya chunks and veggie patties; olive, canola, soya bean, sunflower, and coconut oils; red kidney beans, black-eyed peas, and lentil peas; hand sanitizers and storage media; adult and baby diapers; and toothpaste, toilet paper, bathing and laundry soap, sanitary napkins, and condoms.

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- **Kazakhstan:**[vii] On November 24, 2022, the parliament of Kazakhstan approved a draft law exempting from VAT the sale of gold to jewelers as well as the import of raw cane as a means of stimulating the production of sugar and certain chemicals required to produce pesticides.
- **Kyrgyzstan:**[viii] On November 18, 2022, the Cabinet of Ministers of Kyrgyzstan proposed to introduce a 3 percent sales tax on the sale of goods, works, and services to entities operating under a patent, in special tax regime zones, or subject to the single tax at a reduced rate (2 percent for cashless transactions). The Cabinet further proposed to introduce a 4 percent sales tax on the sale of goods, works, and services to anonymous entities. In addition, the Cabinet proposes to extend for one year the exemption from the sales tax for cashless payments concerning goods sold to an entity under the general tax regime and the 4 percent sales tax rate on goods sold to an entity subject to a single tax (2 percent for cashless transactions).
- **Lithuania:**[ix] Effective January 1, 2023, Lithuania applies the reduced VAT rate of 9 percent to electronic books and electronic non-periodical information publications. Moreover, Lithuania has extended indefinitely the application of the 9 percent reduced VAT rate to accommodation services and extended the application of the reduced 9 percent VAT rate until December 31, 2023, to catering services provided by restaurants, cafes, and similar catering establishments (excluding alcoholic beverages and services or parts of services that are related to alcoholic beverages) and the sale of takeaway food (excluding alcoholic beverages). Lithuania further extended the application of the 9 percent reduced VAT rate to services provided by performers (actors, singers, musicians, conductors, dancers, or other persons acting, singing, reading, reciting. or otherwise performing works of literature, art, folklore, or circus acts) until June 30, 2023. Finally, Lithuania introduced a 5 percent reduced VAT rate for food used for special medical purposes including food specifically processed or formulated and intended for the dietary management of patients, including infants, to be used under medical supervision.
- **Maldives:**[x] Effective January 1, 2023, the Maldives increased the standard GST rate from 6 percent to 8 percent and the tourism sector GST rate from 12 percent to 16 percent.
- **Mozambique:**[xi] Effective January 1, 2023, Mozambique introduced changes to its VAT regime. These changes include measures (1) reducing the standard VAT rate from 17 percent to 16 percent; (2) introducing a 5 percent reduced VAT rate for educational, training, medical and health services provided by private entities, which were previously VAT exempt; (3) eliminating the VAT exemptions for certain transactions like issuance of a postage stamp for circulation, and funeral services provided by private entities; (4) extending the VAT exemptions applicable to transactions like the sale of sugar, raw materials, cooking oil and soap; (5) introducing a VAT exemption for provision of metal bicycles with up to four gears, waste removal services carried out by public entities or sub-contractors, and solar panels for rural electrification, through December 31, 2025; and (4) allowing taxpayers to claim VAT refunds when they register a VAT credit in their favor that exceeds MZN 500,000 ($7,756) in 1 month
- **Philippines:**[xii] On December 7, 2022, the Philippine Bureau of Internal Revenue issued Revenue Memorandum Circular No. 152-2022, clarifying zero-rated VAT incentives. The circular clarifies that registered export enterprises (REEs) whose incentives period have already expired are subject to 12 percent VAT. However, the zero rate remains applicable for these REEs between December 10, 2021, and March 8, 2022.
- **Poland:**[xiii] Effective January 1, 2023, Poland extended the application of the zero rate for essential foodstuffs (e.g., fruits, vegetables, meat, dairy, and grain products) until December 31, 2023. Moreover, Poland will apply the reduced VAT rate of 8 percent to fertilizers effective from January 1, 2023

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- **Romania:**[xiv] On December 19, 2022, the Romanian Chamber of Deputies sent to the General Secretariat of the parliament a draft bill introducing a 5 percent reduced VAT rate for the delivery to and installation at individuals and public authorities of photovoltaic panels, solar thermal panels, and high-efficiency low-emission heating systems.
- **Slovakia:**[xv] Effective January 1, 2023, Slovakia temporarily decreased the VAT rate for ski lifts, swimming pools, indoor and outdoor sports facilities, and restaurants from 20 percent to 10 percent until March 31, 2023.
- **Spain:**[xvi] For the period January 1, 2023, through June 30, 2023, Spain has temporarily decreased the VAT rate for basic food products (i.e., bread, flour, milk, cheese, eggs, fruits, vegetables, legumes, tubers, and cereals) to zero percent and for oil and pasta to 5 percent. Spain further extended until December 31, 2023, the temporary application of the 5 percent rate for natural gas, briquettes, and pellets of biomass and wood for firewood, and electricity to qualifying customers.
- **Sweden:**[xvii] On December 21, 2022, the Swedish Tax Agency issued Clarification No. 8-2071393 regarding the application of the reduced VAT rate to electronic publications. The clarification states that electronic publications such as books, newspapers, and specific educational materials are subject to the 6 percent reduced VAT rate if the publication is not entirely or mainly devoted to advertising, moving images, or audible music. The clarification further explains that a publication is not covered by the reduced VAT rate if the content or functions cause the product to have an extended use or a completely different use than a publication in a physical form; the content consists of at least 75 percent advertising; or the publication is only a means for the customer to be able to make the best use of the moving image or the audible music.
- **Switzerland:**[xviii] On December 12, 2022, the Swiss Federal Tax Administration published the new VAT rates applicable from January 1, 2024, on its website. From that date, Switzerland will increase the standard VAT rate to 8.1 percent (currently 7.7 percent), the reduced VAT rate to 2.6 percent (currently 2.5 percent), and the special VAT rate for lodging services to 3.8 percent (currently 3.7 percent). The Swiss Federal Tax Administration also published draft VAT practice guides concerning the rate increases.
- **Tajikistan:**[xix] On December 7, 2022, Tajikistan exempted companies engaged in the domestic civil aviation industry from VAT on the import of aircraft (airplanes and helicopters), engines, fuels, and lubricants. Tajikistan further exempted the leasing services provided by non-resident companies to Tajik airlines. The exemptions apply until January 1, 2027
- **Tunisia:**[xx] On December 23, 2022, the Minister of Finance of Tunisia issued Decree-Law No. 79-22 on the 2023 Finance Law, which reduces the VAT rate to 7 percent for electric car charges and increases the VAT rate to 19 percent for: architects and consulting engineers; topographers, except for agricultural land surveying services; lawyers; bailiffs; notaries and translators; tax advisers; accountants; and experts and consultants, regardless of their specialization. The Finance Law further increases the VAT rate to 19 percent for medicines and surgical operations, except in case of treatment, and exempts commissions and other remunerations accruing to distributors from electronic recharges and sales of chips and telephone recharge cards from VAT
- **Türkiye:**[xxi] On December 21, 2022, Türkiye extended the VAT exemption for new machinery and equipment deliveries made to taxpayers that hold an industry registry certificate exclusively in the manufacturing industry; engage in R&D, innovation and design activities in technology development zones and specialized technology development zones within the scope of Law No. 4691; engage in such activities in R&D and design centers within the scope of Law No. 5746; and operate research laboratories within the scope of Law No. 6550 exclusively for such activities. The exemption is extended through December 31, 2024

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- **Uzbekistan:**[xxii] Effective January 1, 2023, Uzbekistan reduced the standard VAT rate from 15 percent to 12 percent. In addition, effective from April 1, 2023, Uzbekistan, reduced the audit period for claimed VAT refunds from 60 days to 30 days and abolished the VAT exemption for geological services provided within the framework of annual budget-funded state programs for the development and reproduction of the mineral resource base; sale of postage stamps, stamped postcards, and envelopes; and budget-funded scientific research and development

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Indirect Tax Developments and News from Around the World

The Americas

United States: Proposed California Marketplace Regulation Would Clarify Aspects of the Marketplace Facilitator Law

The California Department of Tax and Fee Administration has proposed amendments to CCR section 1684.5, which addresses marketplace sales. Under California law, on and after October 1, 2019, a marketplace facilitator is a retailer engaged in business in the state if its total combined sales (i.e., including both sales of its own property and sales it facilitates on behalf of marketplace sellers) of tangible personal property for delivery into California exceed $500,000. Similarly, a marketplace seller must include both direct sales and marketplace-facilitated sales in determining whether it exceeds the economic nexus threshold. One amendment to the regulation would confirm that a marketplace facilitator and a marketplace seller must include both taxable and nontaxable sales in determining whether it exceeds the $500,000 threshold. Another amendment would clarify that to be considered a "marketplace" a physical or electronic place must offer tangible personal property for sale by multiple marketplace sellers. As such, a company that sells web hosting services and related services (e.g., payment processing) to other sellers who use the services to create their own e-commerce websites would not be considered a marketplace facilitator. The revised regulation also makes clear that a person is not required to provide payment processing services to be considered a marketplace facilitator.

Another set of amendments to the regulation addresses the statutory carve-out for websites that are merely advertising tangible personal property for sale and refer a purchaser to the seller to complete the sale. Under California law, such entities are not considered to be facilitating a sale. The amended regulation adopts a new subsection to address "advertising" to clarify that when the advertising exclusion applies to a sale, the person publishing the advertisement is not considered the seller and retailer for the sale and that such person is not the retailer selling or making the sale of the tangible personal property sold through the advertisement. This is true regardless of whether the person is a marketplace facilitator, the seller is a marketplace seller, the tangible personal property is advertised in a marketplace, or the advertisement contains an offer to sell tangible personal property. One of the new examples in the "advertising" section confirms that when a person takes orders for sellers that advertise goods on the person's website, that person is facilitating the sale of tangible personal property and would be considered the retailer for those sales. "Order taking" would be newly defined to mean the process of getting or obtaining a buyer's order to buy a marketplace seller's tangible personal property by telephone, fax, email, or any other physical or electronic means, including, but not limited to, the customer including the items in a physical or virtual shopping cart at checkout.

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European Union: Invoice Requirements Are Substantial Requirements for Triangular Simplification to Apply

On December 8, 2022, the ECJ published its judgment in *Luxury Trust Automobil*, Case C-247/21, regarding whether the triangulation simplification can be denied by the Member State of Party B if the invoice between Party B and Party C does not explicitly include a reference to "reverse charge." According to Article 40 of the EU VAT Directive, intra-EU acquisitions of goods are taxable in the Member State of arrival of the goods. However, according to Article 41, an intra-EU acquisition is taxable in the Member State that issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition following Article 40. As an exception to this rule, Article 141 of the EU VAT Directive provides a simplification for the intermediary in an intra-EU drop-shipment transaction between three parties (so called triangular simplification). The simplification applies to transactions that meet the following requirements: (a) the acquisition of goods is made by an intermediary who is not established in the Member State of arrival of the goods but is identified for VAT purposes in another Member State; (b) the acquisition of goods is made for the subsequent sale of those goods, in the Member State of arrival of the goods by the intermediary; (c) the goods thus acquired by the intermediary are directly shipped from a Member State other than that in which he is identified for VAT purposes to the end-customer; (d) the end-customer is identified for VAT purposes in the Member State of arrival of the goods; and (e) the end-customer has been designated following Article 197 as liable to self-assess VAT under the reverse charge mechanism. In this respect, Article 197(1) of the EU VAT Directive provides that VAT shall be payable by the person to whom the goods are sold when the following conditions are met: (a) the taxable transaction is a sale of goods carried out following the conditions laid down in Article 141; (b) the person to whom the goods are sold is identified for VAT purposes in the Member State in which the sale is carried out, and (c) the invoice issued by the taxpayer not established in the Member State of the person to whom the goods are sold is drawn up following Sections 3 to 5 of Chapter 3.

In this case, a taxpayer established in Austria that had purchased goods (vehicles) from a vendor in the United Kingdom (at the time still an EU Member State) using its Austrian VAT identification number. The taxpayer subsequently sold these goods to a Czech VAT-registered customer. The goods were shipped directly from the United Kingdom to the Czech Republic. The taxpayer issued an invoice to the Czech customer on which no VAT had been charged and with a reference saying "VAT-exempt intra-Community triangular transaction" because it believed that the conditions for applying the simplified triangulation under Article 141 had been met. The taxpayer had reported the sale as a simplified triangular sale in its Austrian EC Sales List. The Czech customer had not reported the VAT due on the purchase and was later classified as a manifestly fraudulent missing trader. After performing an audit, the Austrian tax authorities took the position that the invoice issued by the taxpayer to the Czech customer did not include the required reference to the self-assessment requirement under the reverse-charge mechanism. Thus, in the view of the Austrian tax authorities, the conditions for reverse-charging the VAT to the Czech customer and, by extension, for applying the simplified triangulation had not been met. According to the Austrian tax authorities, the taxpayer should therefore have reported an intra-EU acquisition in Austria (i.e., the Member State of identification) and should have paid VAT using its Austrian VAT registration number. (pursuant to Article 41).

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The ECJ pointed out that the triangular simplification is an optional mechanism that departs from the general rule. To apply, the end-customer must self-assess the VAT on the acquisition of the goods. In this respect, the EU VAT Directive requires the intermediary to issue a correct invoice to the end customer. The ECJ is thus stating that issuing a correct invoice is a substantive condition for applying this reverse-charge mechanism and, by extension, for the simplified triangulation. The purpose of the invoice is, among other things, to inform the customer about the legal qualification of the sale that the person issuing the invoice performed for them. Because the simplified triangulation is a mechanism that departs from the general rule, the ECJ is of the view that the "reverse charge" reference on the invoice ensures that the end customer is aware of their tax obligations arising from the intermediary having opted to apply the mechanism. According to the ECJ, there must be no uncertainty about this. The ECJ therefore concluded that to apply the reverse-charge mechanism under simplified triangulation, the intermediary must specifically state "reverse charge" on invoices it issues. The ECJ further concluded that a retroactive inclusion of the correct reference on the invoice does not mean that the simplified triangulation applies retroactively. The inclusion of the correct reference on the invoice is a substantive condition for this reverse-charge mechanism and thus for simplified triangulation. Retrospectively including the correct reference on an invoice is not a correction of an earlier invoice, but the first time the required invoice is issued, which cannot have a retroactive effect.

European Union: Roundup of Recent ECJ Decisions

On December 1, 2022, the ECJ published the nonbinding Opinion of its Advocate General (AG) in *Momtrade Ruse OOD*, Case C-620/21, on whether the cross-border provision of services to elderly persons with health problems may be exempt from VAT. The AG opined that the Member State to which the transactions are sourced must assess whether the provision of services is closely linked to welfare and social security work. The mere fact that a commercial company is registered as a provider of social services with a state agency of another Member State does not suffice to be able to infer that a body is devoted to social well-being.

On December 1, 2022, the ECJ published its judgment in *Norddeutsche Gesellschaft für Diakonie mbH*, Case C-141/20, regarding whether a financial integration between entities is required to constitute a VAT group. According to the ECJ, Member States can designate, as a single taxpayer of a group formed by persons who are legally independent but closely bound to one another by financial, economic, and organizational links, the controlling company of that group. The Member State can make that designation only if that controlling company can impose its will on the other entities forming part of that group and only if the designation does not risk of tax loss. However, Member States cannot condition creation of the VAT group on a requirement that the controlling company holding a majority of the voting rights and a majority of the share capital of other entities in the group. Moreover, Member States are precluded from classifying entities as non-independent, when those entities are integrated, in financial, economic, and organizational terms, into the controlling company of a group formed by persons who are legally independent but closely bound to one another by financial, economic, and organizational links. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

On December 1, 2022, the ECJ published its judgment in *Finanzamt T v. S*, Case C-269/20, regarding the taxability of services provided by taxpayers exercising public authority that are also members of a VAT group. According to the ECJ, EU law must be interpreted as meaning that when an entity which is the single taxpayer of a VAT group performs both

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economic activities in which it is a taxpayer and as well as activities in the exercise of its powers as a public authority for which it is not considered to be a taxpayer, the provision of services in connection with that exercise of powers by another member of the group, must not be taxed.

On December 1, 2022, the ECJ published its judgment in *Aquila Part Prod Com S.A.,* Case C-512/21, regarding a taxpayer's right to deduct VAT when participating in tax fraud. According to the ECJ, the EU VAT Directive precludes a tax authority, which intends to deny a taxpayer the right to deduct VAT because that taxpayer participated in a VAT carousel fraud, from denying the deduction merely by establishing that the transaction is part of a closed billing chain. It is the responsibility of that tax authority to precisely identify the elements of fraud and to prove fraudulent acts as well as to show that the taxpayer was actively involved in that fraud or that he knew or should have known that the transaction in question was related to that fraud. The mere fact that the members of the supply chain in that transaction knew each other is not sufficient evidence to prove the taxpayer's involvement in the fraud. However, a tax authority can demonstrate that the taxpayer could have known, with due diligence, that the transaction in question was related to such fraud and require taxpayers, when there are indications of suspicion of irregularity or fraud, to exercise greater diligence to prevent participation in fraud. However, a taxpayer cannot be required to perform comprehensive and in-depth verifications, such as may be carried out by a tax authority.

On December 8, 2022, the ECJ published its judgment in *P GmbH*, Case C-378/21, regarding whether incorrectly charged VAT is payable by the issuer of an invoice when the sale is made to the final consumer. The ECJ held that a taxpayer who has provided a service and included an amount of VAT calculated based on an incorrect rate on the invoice is not liable for the part of the VAT invoiced incorrectly if there is no risk of loss of tax revenue on the ground that the recipients of that service are exclusively final consumers who do not have a right to deduct input VAT.

On December 1, 2022, the ECJ published the nonbinding Opinion of its AG in *Finanzamt X v. Y,* Case C-516/21, on whether leasing or letting a building together with the equipment and machinery permanently installed therein meets the conditions to be exempt from VAT. The AG opined that the exemption of the leasing of a livestock building also applies to the leasing of equipment and machinery, which constitute equipment adapted to the function of the building as a breeding shed, provided that the equipment and machinery are sold as an ancillary service to the leasing of the building.

Source: European Union; Bulgaria – ECJ Advocate General Opines That Commercial Company Must Prove That Supply of Services Is Closely Linked to Welfare and Social Work to Be Exempt from VAT (December 1, 2022), News IBFD; European Union; Germany – ECJ Decides on Existence of VAT Group and Whether Financial Integration is Required: Norddeutsche Gesellschaft für Diakonie (Case C-141/20) (VAT) (December 1, 2022), News IBFD; European Union; Germany – ECJ Decides on Taxable Persons Exercising Public Authority Becoming Members of VAT Group: Finanzamt T (Prestations internes d'un groupement TVA) (Case C-269/20) (VAT) (December 1, 2022), News IBFD; European Union; Hungary – ECJ Decides That Taxable Persons May Be Denied VAT Deduction when Participating in Tax Fraud and not Showing Due Diligence: Aquila Part Prod Com (Case C-512/21) (VAT) (December 1, 2022), News IBFD; European Union; Austria – ECJ Decides VAT May Be Payable by Issuer of Invoice When Supply Was Made to Final Consumer: Finanzamt Österreich (TVA facturée par erreur à des consommateurs finals) (Case C-378/21) (VAT) (December 8, 2022), News IBFD; European Union; Germany – ECJ Advocate General Opines on Whether

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Leasing a Building with Permanently Installed Equipment and Machinery Can Be Exempt from VAT: Finanzamt X (Case C-516/21) (VAT) (December 8, 2022), News IBFD.

European Union: Proposal on New Tax Transparency Rules for Service Providers Facilitating Crypto-Asset Transactions

On December 9, 2022, the European Commission (EC) issued a proposal for extending the Directive on Administrative Cooperation (DAC) to cover the exchange of information on crypto-assets, as well as tax rulings for individuals (DAC8) effective January 1, 2026. The rules also aim to introduce a common system of minimum penalties for serious non-compliance offenses, applicable both to existing and proposed disclosure requirements. In the case of crypto-assets, the proposed revision includes rules on due diligence procedures and reporting requirements for crypto assets service providers, based on the OECD's Crypto-Asset Reporting Framework (CARF). The proposal is aligned with the definitions included in the Markets in Crypto-Assets (MiCA) Regulation, which regulates the issuance and trading of crypto-assets within the EU.

According to the proposal, in-scope crypto-asset service providers would be required to collect and verify information from crypto-asset users that is in line with specific due diligence procedures (prescribed in Annex VI of the proposal. Subsequently, certain information would be reported to the relevant competent authorities. Under a third step, this information would be exchanged by the recipient Member State with the tax authorities of the Member State in which the reportable user is a tax resident. In scope crypto-assets would be defined as crypto-assets refer to any digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology. A crypto-asset user is an EU-resident individual or an entity that is a customer of a reporting crypto-asset service provider for reportable transactions. The proposal covers both domestic and cross-border exchanges and transfers of reportable crypto-assets. In some cases, reporting obligations will also cover non-fungible tokens (NFTs). The information would need to be reported on an aggregated basis, by type of reportable crypto-asset.

In-scope crypto-asset service providers would be required to carry out due diligence procedures depending on whether the crypto-asset user is an individual or a legal entity. For instance, for individual customers, reporting crypto-asset service providers would need to obtain a self-certification allowing them to determine the individual's tax residence and confirm the reasonableness of the self-certification based on the information obtained, including any other documents collected. Reporting crypto-asset service providers are further required to disclose the information to the Member State in which they are resident for tax purposes for EU providers, in which the companies are authorized under MiCA for non-EU crypto-asset service providers, or in which they opt to report for non-EU companies not subject to MiCA. Reports would be due by January 31 of each year for the previous calendar year. The disclosed information would be exchanged automatically between Member States, on an annual basis, via the EU common communication network by using an XML schema to be developed by the Commission. To read a report prepared by KPMG's EU Tax Centre, please click here.

Eurasian Union: Agreement on VAT Rules on Digital Services

On December 9, 2022, the member states of the Eurasian Economic union – Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia – adopted rules for the collection of VAT on digital services. Digital services are defined as services provided through information and telecommunications networks, including the internet, that could not be provided without the

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use of IT. Those services include, among other things, the sale of goods, works, or services if, when ordered through an information and telecommunications network, the goods, works, or services are provided without the use of that network; the sale of (or transfer of the right to use) software for all types of electronic devices on physical media or databases on physical carriers; and the provision of access to an information and telecommunications network.

According to the agreement, a member state will be recognized as the place of business of a legal entity purchasing digital services if it meets one or more of the following: (1) the entity operates in that member state based on its state registration there; (2) the entity is not registered in that member state, but the services are provided to (or purchased for) and consumed by a branch, representative office, or permanent establishment of that entity; or (3) the entity is not registered in that member state, but its place of management is located there, the entity carries out its business activities there, and the services are consumed there. A member state will be recognized as the place of business of an individual, including an individual entrepreneur who purchases digital services, if it meets one or more of the following: (1) the individual's place of permanent or predominant residence is located in that member state; (2) the bank at which the account used to pay for the digital services was opened or the digital currency operator through which the individual pays for the services is located in that member state; (3) the individual's internet address used to purchase the digital services is registered in that member state; or (4) the international country code of the individual's phone number used to purchase or pay for the digital services is assigned by that member state. If the digital services could be classified as having been provided in more than one member state, the digital services provider can determine the member state in which the services are provided based on the state's simultaneous compliance with a larger number of the eligibility conditions. If two or more states comply with an equal number of eligibility conditions, the digital services provider can determine independently the state in which an individual carries out business activities for VAT purposes.

The agreement further clarifies that a digital services provider residing in one member state and providing services to legal entities, individual entrepreneurs, or individuals carrying out activities in another member state must register for VAT in that other member state. If the laws of the member state in which a digital services provider operates do not require the provider to register, the VAT due will be calculated and remitted by the legal entities or individual entrepreneurs that purchase the digital services following their domestic legislation. When a digital services provider of a member state provides digital services in another member state through an entity or individual entrepreneur registered with the tax authorities of that other member state and that intermediary participates directly in the collection of payments from the recipients in that other member state, the VAT due on those digital services will be calculated and remitted by the intermediary.

Finally, the agreement clarifies the rules for the registration of a digital services provider as a VAT payer, the determination of the VAT base, the applicable VAT rate, and the procedure for VAT calculations, payments (including any applicable VAT exemptions), and refunds should be determined by the domestic legislation of the member state in which the digital services provider provides its digital services.

Source: Iurie Lungu, Eurasian Union States Adopt Rules for VAT on Digital Services, Tax Analysts (December 29, 2022).

Saudi Arabia: Amendments to Zero Rating to Some Categories of Sales

Effective December 2, 2022, Saudi Arabia introduced amendments to the VAT regulations regarding the application of the zero VAT rate to some transactions. Firstly,

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the amendments clarify that the zero VAT rate does not apply if services are sourced to any member state of the Gulf Cooperation Council. In addition, the amendments broadened the zero rating of international transportation of passengers to include such transportation by any means of transport designed or adapted to carry a minimum of 10 people or designed to carry goods on a commercial basis, which is used predominantly for international transportation. Previously, the zero rating applied to transportation by a more limited range of transport means or by way of a scheduled passenger flight or voyage which runs according to a published timetable.

Moreover, the amendments would zero-rate the sale of qualified military goods to the armed forces and government internal security forces in all sectors, when the purchase is made through a taxpayer registered with the tax authority and licensed in the field of military industrialization by the General Authority for Military Industries (GAMI). Military goods that qualify for the zero VAT rate are locally manufactured military goods that meet the following: (1) the imported goods must be locally manufactured by the same vendor that applies the zero VAT rate, and (2) the vendor must have obtained a certificate of selling qualified military goods from GAMI which confirms that the sale meets all the requirements and controls for each contract, provided that the certificate includes information regarding the vendor, the customer, and the sales subject of the contract, with separate consideration for the qualified military goods to be subject to the zero VAT rate and for any other goods or services to which the provisions of this article do not apply. For more information, click here.

Ukraine: Overview of Recent Indirect Tax Developments

On November 28, 2022, the Ukrainian State Fiscal Service (SFS) announced proposed changes to the VAT invoice registration system. The proposed changes would extend the business day on which a deadline for adjustment calculations or registration of VAT invoices falls, to 24:00 hours from 0:00 hours. The amendments would further apply unconditional registration to tax invoices for which the sales value or adjustment calculations do not exceed UAH 5,000, with a monthly transaction limit of up to UAH 500,000. Such invoices would also be excluded from monitoring. Finally, the amendments would allow one-time automatic registration of VAT invoices and adjustment calculations for a specified period and introduce procedural and technical changes.

On November 30, 2022, the SFS clarified that imports of medications and their sale in Ukraine are subject to a reduced 7 percent VAT rate, if the medications can be legally produced and used in Ukraine and are included in the State Register of Medications. The 7 percent VAT rate further applies to imports of medical devices if they can be legally sold or offered for sale or put into operation and used in Ukraine and are included in the State Register of Medical Equipment and Devices or meet the requirements of the relevant technical regulations. If any of the above-mentioned conditions are not met, transactions involving imports and sales of medications and medical devices are subject to the standard 20 percent VAT rate. However, the SFS said a temporary VAT exemption applies during the period of martial law for imports and sales of medicines and medical devices that meet the conditions mentioned above, or if they are not registered in Ukraine but are intended for use by healthcare institutions and persons participating in measures to ensure national security and defense and provide medical assistance to individuals injured and wounded.

On December 5, 2022, the SFS clarified that sales of goods in Ukraine to which an investor acquires ownership title after their distribution under a production-sharing agreement and products that the state of Ukraine transfers to an investor for further sale are subject to VAT.

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On December 6, 2022, the SFS clarified that the term "sale of services" means any sale that is not considered a sale of goods; any operation involving the transfer of intellectual property and other intangible assets; the granting of exclusive rights to that IP; or the provision of services consumed in the execution of a specific act or activity. For VAT purposes, the following activities qualify as sales of services: (1) agreeing to refrain from a specified act or from competing with a third party or granting permission for any act, subject to the conclusion of a contract; (2) providing services by a decision of a regional authority; (3) providing services to another person free of charge; (4) transferring the results of work performed or services rendered to a taxpayer authorized under an agreement to keep records of the business results of joint activities carried out without creating a legal entity, and their return by the taxpayer after the completion of joint activities; (5) work performed or services provided as a contribution to a joint activities project carried out without forming a legal entity and the reciprocal return of services; and (6) placing a trademark or product in a movie or television program so that viewers see the trademark or product.

On December 13, 2022, the SFS issued FAQs on VAT exemptions for specified imports, clarifying what VAT exemptions are available and that the exemptions apply regardless of the origin of the goods and the status of the importer.

On December 15, 2022, the SFS clarified the VAT base for the sale of used goods. According to the SFS, if a taxpayer conducts business activities relating to the sale of used goods that are received from persons that are not registered as taxpayers under a commission agreement, the tax base for VAT purposes is the commission fee of such vendor. However, if the taxpayer is engaged in the sale of used goods purchased from persons not registered as taxpayers under agreements providing for the transfer of ownership of such goods to the seller, the tax base is the positive difference between the sale price and the purchase price of such goods. For persons not registered for VAT, the sale price is based on the price specified in the sale and purchase agreement, but not lower than the market value of such asset, calculated by the body authorized to carry out the assessment. For taxpayers, the sale price is based on the contractual value, but not lower than usual prices. Used goods are goods that have been in use for at least one year and are suitable for further use in an unchanged condition or following repair, as well as vehicles that do not fall under the definition of a new vehicle.

Source: Ukraine – Ukraine Clarifies VAT Treatment of Supply of Used Goods (December 19, 2022), News IBFD; Ukraine Tax Agency Clarifies Proposed Changes to VAT Invoice Registration System, Bloomberg Law News (December 1, 2022); Ukraine Tax Agency Issues FAQs on VAT Exemptions for Imports, Bloomberg Law News (December 16, 2022); Iurie Lungu, Ukraine Explains VAT Treatment of Production-Sharing Agreements, Tax Analysts (December 12, 2022); Iurie Lungu, Ukraine Issues VAT Guidance on Payment Deadline, Medical Imports, Tax Analysts (December 7, 2022).

United Kingdom: Overview of Recent Indirect Tax Developments

On December 9, 2022, the UK tax authority (HMRC) launched a consultation on the VAT treatment of fund management services. Currently, UK fund managers rely on the VAT exemptions in Items 9 and 10 of Group 5, Schedule 9 of the UK VAT Act or on the exemption for special investment funds (SIFs) in Article 135(1)(g) of the EU VAT Directive. Over the years, courts have held that a wider range of funds should be treated as SIFs, which has led to uncertainty regarding the scope of the VAT exemption as new types of funds have developed. The consultation suggests that the exemptions in UK and EU

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laws should be incorporated into UK statute to provide clarity and certainty and to help create a more attractive tax environment for UK fund management. The list of exempt fund types would be kept, but not expanded, to provide continuity for UK fund. Instead, case law and guidance would be brought into UK law by defining the criteria to determine which funds are entitled to the SIF exemption. The conditions for the VAT exemption would be: (1) the fund must be a collective investment; (2) the fund must operate on the principle of risk spreading; (3) the return on the investment must depend on the performance of the investments; (4) the holders must bear the risk connected with the fund; and (5) the fund must be subject to the same conditions of competition and appeal to the same circle of investors as undertakings for collective investment in transferable securities (UCITS), i.e., funds intended for retail investors.

On December 9, 2022, the UK Court of Appeals published its judgment in *Mainpay Ltd.,* regarding whether contracting out medical consultants and specialists should be exempt from VAT as the provision of medical care in the exercise of the medical and paramedical professions. In the case, the taxpayer provides medical consultants and specialists to an intermediary company, which then provides the employees to hospitals owned by NHS trusts. The taxpayer provided a payroll function for employees involved in medical assignments. The taxpayer only communicated with the employees for payroll matters and did not establish indemnity insurance for itself or its employees. The First-Tier Tribunal (FTT) (Tax Chamber), and subsequently the Upper Tribunal, agreed with HMRC that the company's sales were standard-rated because the consultants were under the control, direction, and supervision of the NHS trusts. The Court of Appeal said that the FTT and the Upper Tribunal applied the correct test when analyzing whether the taxpayer's services constituted medical care. It rejected the taxpayer's argument that charging VAT would increase the cost of healthcare and transgress fiscal neutrality.

On December 9, 2022, HMRC updated its guidance on the self-assessment requirement for construction to revise the information on scaffolding for zero-rated new build housing. The updated guidance provides that for scaffolding provided for zero-rated construction work, the services of erecting and dismantling scaffolding can be zero-rated. Charges for the hire of scaffolding are not covered by the zero rate and are liable to VAT. The VAT liability of any provision of scaffolding will depend on what is being provided under the contract in each case. The hire of goods on its own is not a service that is covered by the self-assessment mechanism. Any VAT due on the hire of scaffolding for new build housing work should be accounted for under normal VAT rules. A contract for the hire, erection and dismantling of scaffolding is within the scope of the Construction Industry Program. If the scaffold provider's invoice shows separate charges for the hire of scaffold and the cost of the labor to erect and dismantle it, the labor element will be VAT zero-rated as a service carried out in connection with the construction of new build housing. The self-assessment does not apply if the scaffolding is provided for a zero-rated construction project. Further, the updated guidance clarifies that a transitional period until February 1, 2023, will apply during which businesses can use self-assessment accounting or normal VAT rules for new-build scaffolding.

Effective January 1, 2023, the UK introduced a new penalty regime for VAT non-compliance. For the late payment of tax, penalties are calculated on the amount outstanding and the length of the delinquency. For the late submissions of tax returns, a new points-based penalty system will apply. A penalty of GBP 200 for late submissions will only be issued when the relevant points threshold is reached. Taxpayers accrue points separately for instances of non-compliance concerning VAT and income tax, and HMRC grants more leniency to those required to file regularly: five points for monthly filers; four points for quarterly filers; and two points for annual filers. Taxpayers can reset their points to

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zero by submitting all returns before the due date for a set period of time: 24 months, for annual filers; 12 months, for quarterly filers; and 6 months, for monthly filers. They must also have filed all outstanding returns for the previous 24 months.

Source: United Kingdom – Government Consults on VAT Exemption for Fund Management Services (December 15, 2022), News IBFD; Kiarra M. Strocko, Medical Consultancy Services Not VAT Exempt, U.K. Court Finds, Tax Analysts (December 12, 2022); United Kingdom Updates VAT Guidance on Reverse Charges for Construction to Clarify Scaffolding, Bloomberg Law News (December 14, 2022); CCH, Global VAT News & Features, UK To Introduce New VAT Penalties Regime (December 27, 2022).

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Asia Pacific (ASPAC)

India: Proposed Amendments to GST

On December 17, 2022, India's GST Council agreed to revisions to the country's goods and services tax (GST) penalty regime. The GST Council recommended that prior to prosecuting a taxpayer, the tax at stake should be at least INR 20 million, up from INR 10 million, except when invoices for fictitious transactions are issued. To encourage more taxpayers to settle GST disputes, the compounding amount (paid to settle a dispute without litigation) should be lowered to between 25 percent and 100 percent of the tax due, instead 50 percent to 150 percent. Further, the GST Council proposed decriminalizing the following offenses: (1) obstructing or preventing any officer from discharging their duties; (2) deliberate tampering with material evidence; and (3) failure to provide requested information.

Another recommendation concerns the implementation of recommendations made earlier regarding sales of goods or services through an electronic commerce operator. The GST Council had granted approval in principle for allowing taxpayers registered under the composition mechanism (i.e., a flat rate mechanism) to make intra-state sales of goods through e-commerce operators, subject to certain conditions. The mechanism was scheduled to be implemented January 1, 2023. Due to the time required to develop the necessary tax administration systems as well as provide sufficient preparation time for ECOs, the Council has now recommended that implementation occur October 1, 2023.

The GST Council agreed to other amendments, including restricting the filing of returns/statements to a maximum period of three years from the due date; changing and clarifying applicable GST rates for certain products; establishing a procedure to enable non-taxpayers to reclaim GST incurred when contracts for the provision of services fall through or are canceled prematurely; and streamlining GST compliance. Finally, the GST Council recommended reviewing the definition of "non-taxable online recipient" and "Online Information and Database Access or Retrieval Services (OIDAR)" to reduce interpretation issues and litigation arising in the requirements for nonresident digital services providers of OIDAR services to register for and collect GST on sales of digital services to consumers in India. To read a report prepared by the KPMG International member firm in India, please click here.

Source: CCH, Global VAT News & Features, Indian GST Council Agrees GST Regime Changes (December 21, 2022); Orbitax, Recommendations of the 48th Meeting of India's GST Council Include Decriminalization Under GST (December 21, 2022); Kiarra M. Strocko, GST Council Cuts Back Prosecution of Some Tax Offenses (December 20, 2022).

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European Union: Proposal for a Carbon Border Adjustment Mechanism

On December 13, 2022, negotiators of the EU Council and Parliament reached a provisional agreement on the Carbon Border Adjustment Mechanism (CBAM) which targets imports of products in carbon-intensive industries. The objective of CBAM is to prevent the EU's greenhouse gas emissions reduction efforts from being offset by increasing emissions outside its borders through the relocation of production to non-EU countries with less restrictive climate policies) or by importing more carbon-intensive products. CBAM is designed to function in parallel with the EU's Emissions Trading System (EU ETS) and to mirror and complement its actions on imported goods as well as to remain compliant with international trade rules.

According to the proposal, CBAM covers imports of goods from six emissions-intensive sectors: electricity, iron and steel, cement, aluminum, fertilizers, and hydrogen. Indirect emissions (under certain conditions), certain precursors, as well as some downstream products (such as screws and bolts and similar articles of iron or steel) also fall under the scope of CBAM. A detailed list of covered products will become available later.

CBAM would be gradually implemented effective October 1, 2023 with a transitional phase, during which affected importers would be required only to fulfill reporting obligations. Effective 2026, financial obligations would take effect, and importers would have to start purchasing CBAM certificates. These would be phased in gradually, in parallel with a phasing out of the free allowances under EU ETS. The phasing out of free allowances for CBAM sectors still must be agreed to as part of the ongoing EU ETS negotiations. Before the end of the transitional period, the CBAM would be reviewed to assess whether to extend the scope to other goods such as organic chemicals and polymers, with the intention that all goods covered by the EU ETS will fall under the scope of CBAM by 2030. The review will also include an assessment of the methodology for indirect emissions and the possibility to include more downstream products. To read a report prepared by the KPMG International member firm in the Netherlands, please click here.

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In Brief

Argentina:[xxiii] On December 5, 2022, the tax authority of Argentina (AFIP) published General Resolution 5298 extending the deadline for taxpayers to request VAT refunds related to the purchase or construction of fixed assets (except cars) as provided by Article 12 (second) from December 1 through December 15 of each year (previously December 1 – 10). Definitive requests for the refund of VAT (i.e., once approved by the AFIP) must be presented once a year but, according to General Resolution 5298, there is no limit of time to do so (previously, the definitive request had to be presented no later than December 31 of the year of approval).

- **Australia:**[xxiv] On November 30, 2022, the Australian Taxation Office (ATO) clarified the GST treatment applicable to mortgagees on the sale of mortgaged property. According to the ATO, taxpayers become mortgagees in possession when they take possession of a mortgagor's property to exercise their power of sale under the mortgage. Taxpayers are liable to pay GST on the sale of the property if (1) they sell the property to pay off the mortgagor's debt, and (2) the sale would have been subject to GST (a taxable sale) if the mortgagor had sold the property. The mortgage securing the loan can be either registered or unregistered. While there may be multiple mortgagees for the same property, they may not all become a mortgagee in possession. The sale contract for the property should state which mortgagee is the mortgagee in possession exercising the power of sale.
- **Bosnia and Herzegovina:**[xxv] Effective July 1, 2023, large taxpayers are required to submit their returns electronically through the tax agency's online portal.
- **Bulgaria:**[xxvi] Effective January 1, 2023, Bulgaria increased the VAT registration threshold from BGN 50,000 to BGN 100,000.
- **Croatia:**[xxvi] On November 30, 2022, the tax authority of Croatia published official guidelines concerning the timeframe for deducting VAT on purchases on a cash basis. Historically, the tax authority considered that in this situation the taxpayer should be allowed to deduct VAT immediately upon the receipt of the invoice (i.e., as if the purchase was received from a vendor applying the regular taxation procedure). According to the guidelines, effective December 1, 2022, the VAT on such purchases can be deducted only upon the payment of the invoice to the vendor. The new interpretation was triggered by the ECJ judgment in *Grundstücksgemeinschaft Kollaustraße 136*, Case C-9/20 (February 10, 2022), in which the ECJ held that when a taxpayer receives a purchase from a cash basis vendor, the VAT deduction is delayed until VAT becomes chargeable.
- **Czech Republic:**[xxviii] Effective January 1, 2023, the Czech Republic increased the VAT registration threshold from CZK 1 million to CZK 2 million. The tax authority published guidance on December 1, 2022 explaining the transitional provisions for VAT registration requirements for taxpayers with turnover of up to 2 million korunas for November 2022 and December 2022, and the transitional provisions on the cancellation of VAT registration effective December 3, 2022.
- **Czech Republic:**[xxix] On December 20, 2022, the Czech tax authority published FAQs on the mandatory exchange of information requirements for digital platform operators under DAC7. Effective January 1, 2023, platform operators in the Czech Republic will be required to submit notifications within 15 days of becoming a Czech platform operator. Such operators are required to file information on reportable activities made through their platforms for the reporting period 2023 by January 31, 2024. The FAQs further clarify the determination of the reporting state of platform operators; the procedure for when a platform operator ceases to be a Czech reporting platform operator; and the registration obligations of a non-established platform operator.

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- **Czech Republic:**[xxx] On December 8, 2022, the Czech Supreme Administrative Court (SAC) held that an upward transfer pricing adjustment for marketing services provided by a multinational pharmaceutical manufacturer's Czech subsidiary to its Swiss affiliate is not a service subject to VAT in the Czech Republic. *Eli Lilly v. Odvolací finanční reditelství* (No. 7 Afs 279/2021 – 59).
- **Denmark:**[xxxi] The Danish tax authority recently clarified that the provision of rights to crypto-art is not an alternative means of payment to legal tender. Therefore, the VAT exemption for financial services does not apply when crypto-art is acquired exclusively with virtual currency as consideration. Further, such a sale does not benefit from a concession for the first sale of art produced by a taxpayer personally according to the authority. Finally, the tax authority clarified that it has not taken a position on whether the sale of crypto-art is a VAT-exempt artistic performance.
- **Ecuador:**[xxxii] Effective November 30, 2022, the Ecuadorian tax authority announced that individuals and businesses, except those under the Simplified Regime for Entrepreneurs and Popular Businesses (RIMPE), are required to issue e-invoices for all transactions once the deadline for the implementation of e-invoicing is complete. The announcement further clarifies the rule for taxpayers to use pre-printed invoices until their expiration only if they are authorized to issue e-invoices before November 30 and how taxpayers can verify if they are authorized to issue electronic invoices.
- **European Union:**[xxxiii] On December 2, 2022, the EU Commission VAT Committee made available working paper 1054 containing the minutes of its 120th meeting in which the application of certain EU VAT provisions were discussed. Topics address include: VAT treatment of fuel cards; VAT e-commerce package; VAT in the Digital Age initiative; electronic exemption certificate/procedure; VAT refund statistics for 2021; small and medium enterprises mechanism; new study on the VAT rules applicable to travel and tourism; extension of the EU Commission Decision (EU) 2020/491 (COVID-19 Decision) until the end of June 2022; and support to Member States in the field of VAT and customs duty to help mitigate the humanitarian impacts of the Ukraine crisis.
- **European Union:**[xxxiv] On November 9, 2022, the European Data Protection Supervisor (EDPS) issued its response to the consultation of the European Commission in which it found no significant data protection issues concerning the Proposal for a Council Regulation amending Regulation 389/2012 regarding the exchange of information maintained in the electronic registers concerning economic operators who move excise goods between Member States for commercial purposes, presented by the EU Commission to the EU Council on October 24, 2022. According to the Proposal, the information contained in the national registers would include all economic operators engaged in movement of excise goods, not only those under suspension of excise duty but also those which have been released for consumption in the territory of one Member State and are moved to the territory of another Member State to be delivered there for commercial purposes. In addition, the Proposal would require the EU Commission to ensure that all persons involved in the movement of excise goods in both scenarios can obtain an electronic confirmation of the validity of excise numbers held in the central register.
- **France:**[xxxv] On December 21, 2022, the French General Directorate of Public Finance issued an administrative doctrine clarifying that under legislative changes contained in Law No. 2021-1900, VAT is imposed on installments received on the delivery of goods to align the French VAT rules with the EU Directive effective January 1, 2023. In other words, VAT on the deliveries of goods will always be payable at the time the transaction is performed, except when an installment is paid in advance. In this case, the VAT will be due upon payment of the installment, up to the amount collected.

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- **Germany:**[xxxvi] On December 12, 2022, the German Ministry of Finance published FAQs on recently adopted VAT measures for photovoltaic systems. The FAQs explain that the sale of photovoltaic systems installed on or near a residential building, including all components, are zero-rated, effective January 1, 2023. The FAQs further clarify the application of the zero rate to systems ordered before, but not received by, January 1, 2023, and the expansion of an existing facility. In addition, the FAQs specify the tax registration requirement for system operators and clarify the application of the zero rate to the rental or leasing of a system. The FAQs also address the application of the zero-tax rate to systems with a peak power value above 30 kW, the exchange and installation of defective components, and the continued application of the 19 percent standard VAT rate to apply to warranty and maintenance contracts.
- **Guernsey:**[xxxvii] Guernsey's Policy and Resources Committee recently said that Guernsey would introduce a GST from 2025. After a lengthy consultation period, the Committee concluded that Guernsey should pursue a five percent GST, with an exemption for rent and mortgages.
- **Guinea-Bissau:**[xxxviii] Effective January 1, 2023, Guinea-Bissau replaced the sales tax (*Imposto Geral Sobre Vendas e Serviços*) regime with a new 19 percent VAT. Under the new VAT regime, taxpayers with gross receipts above F.CFA 40 million are subject to the standard VAT regime while taxpayers with gross receipts between F.CFA 10 million – 40 million are subject to a simplified regime of 5 percent that eases their reporting obligations. Small taxpayers with gross receipts of less than F.CFA 10 million are exempt from VAT. Imports, sales of goods, and the provision of services specified in Annex I of the VAT Code are subject to a reduced rate of 10 percent while exports are zero-rated and the following sales are exempt: medicines and pharmaceutical products; medical care services provided by hospitals, health centers, clinics and other similar establishments; services provided in the medical and paramedical professions; services provided in the field of school or university education by public and private establishments or equivalent bodies, duly recognized by the supervising Ministry; gas for domestic usage; financial operations; and insurance and reinsurance operations (other than those remunerated by a commission or explicit consideration); and real estate transactions relating to residential properties, except for accommodation services provided within the scope of hotel activities or others with similar functions. The new VAT regime denies taxpayers the right to deduct VAT incurred on the following: expenses related to travel, reception, accommodation, food or leisure of the taxpayer and its staff; expenses related to the import, acquisition, leasing or maintenance of passenger vehicles, excluding vehicles intended exclusively for the carriage of goods; expenses related to the import, acquisition, leasing or maintenance of recreational fishing boats, helicopters, planes, motorcycles and motorcycles, and fuels normally used to operate them; luxury expenses which, due to their nature or amount, do not constitute normal operating expenses; and expenses related to illicit goods.
- **Indonesia:**[xxxix] On December 2, 2022, Indonesia published Regulation No. 44 of 2022 on the application of VAT on goods and services, and sales tax on luxury goods. The regulation outlines certain definitions; collection and reporting procedures for VAT and sales tax; types of owned or gifted goods subject to tax; basis for imposing VAT and sales tax; computation methods; sourcing rules; and invoicing requirements.
- **Ireland:**[xl] On December 19, 2022, the Irish Revenue Commissioners issued Revenue eBrief No. 214/22 on VAT amendments included in the Finance Act 2022. The guidance clarifies, among other things, (1) the extension of the 9 percent VAT rate on sales of gas and electricity until February 28, 2023; (2) the VAT deduction on new stocks, shares, debentures and other securities for raising capital effective December 15, 2022; (3) the obligation on VAT traders to notify the tax authority regarding intra-EU trade effective December 15,

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2022; (4) the tax authority power to exchange information within other member states on administrative cooperation and combating VAT fraud effective December 15, 2022; (5) the exemption from VAT of professional medical care services and of sales between members of certain independent groups of persons effective December 15, 2022; (6) the application of zero VAT on specific items such as newspapers, non-oral hormone replacement therapy medicine, automated external defibrillators, and menstrual cups effective January 1, 2023. On December 30, 2022, Irish Revenue published Revenue eBrief 236/22 which concerns the above-described Finance Act 2022. VAT rating provisions.

- **Italy:**[xli] On December 6, 2022, the Council of the European Union authorized Italy to continue limiting the to the deduction for VAT to 40 percent on purchases of certain motorized road vehicles, including contracts of assembly, manufacture, intra-EU acquisition, importation, leasing or hire, modification, repair or maintenance, and related expenditure, including lubricants and fuel, when the vehicle in question is not entirely used for business purposes. The authority to continue the limitation through December 31, 2025.
- **Japan:**[xlii] On December 26, 2022, the Japanese Ministry of Finance issued Tax E-mail Magazine No. 158, announcing measures contained in draft 2023 tax reform provisions intended to ease the transition to the invoice system for consumption tax. The announcement explains measures to reduce the consumption tax payment amount to 20 percent of the tax when a tax-exempt business operator becomes an invoice-issuing business; reduce other administrative burdens, such as with purchase tax credits for small transactions and certain refund invoices; and not requiring an explanation of hardship for registration applications submitted after the March 31, 2023, deadline.
- **Jersey:**[xliii] On December 16, 2022, Jersey published Regulation No. 112/2022, approving the 2023 Budget Law as presented to the Jersey States Assembly. Among other things, the Budget requires nonresident vendors of goods, including online marketplaces facilitating such sales to register for and charge GST at point-of-sale effective July 1, 2023.
- **Kenya:**[xliv] On December 2, 2022, Kenya's High Court published its judgment in Africa Oil Kenya BV in which it held that the taxpayer's farm-out transactions through which it assigned oil exploration rights to unrelated oil companies do not qualify as a VAT-exempt transfer of capital assets because they do not result the cessation or sale of the person's business. According to the court, the assignment of interests to third parties cannot be considered a disposal of the appellant's capital assets. In farm-out agreements, the transferor retains an overriding reversionary interest in the farmed-out area upon the completion of the farm-out. A farm-out agreement is thus an economic venture and not a sale of services or property.
- **Kyrgyzstan:**[xlv] On January 1, 2023, the Kyrgyzstan State Tax Service (STS) requires all business entities engaged in the sale of goods to register in the information system (ETTN, or eTTH system) of the STS and issue electronic invoices to counterparties of transactions. The use of the ETTN system for electronic invoicing has been required for sales of oil and oil products from May 15, 2022 and for sales of goods included in the list approved by the Eurasian Economic Commission from July 1, 2022.
- **Luxembourg:**[xlvi] On December 1, 2022, the Luxembourg tax authority clarified the procedure for requesting a VAT refund for individuals or legal persons who are not registered for VAT and who occasionally sell a new aircraft, vehicle, or vessel to another EU Member State. Non-registered persons must notify the tax administration within 15 days of the sale and claim any refund within 5 years of the sale. The 5-year period ends on 31 December of the fifth year following the year to which the refund relates. Non-registered persons can file a refund claim by mail or in paper form and must include: a copy of the purchase invoice; in case of purchase abroad, proof of VAT payment in Luxembourg; a copy of the sales invoice; a copy of the seller's identity card; and a bank statement of the beneficiary of the refund.

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- **Malaysia:**[xlvii] On December 14, 2022, Malaysia published Order No. P.U.(A)380/2022 amending sales tax exemptions for registered manufacturers' purchases of raw materials, components, and packaging materials for use in manufacturing finished, taxable and exempted goods effective January 1, 2023. The order includes measures imposing sales tax on materials used for manufacturing when the manufactured goods are not exported within 12 months from the date of the material purchase; and allowing the exemption for registered manufacturers' local sales of pharmaceutical and milk products.
- **Netherlands:**[xlviii] On December 19, 2022, the Council of the European Union authorized the Netherlands to extend the application of the VAT registration threshold of EUR 25,000 until December 31, 2024.
- **Norway:**[xlix] The tax authority of Norway recently clarified that the transfer of digital works of art is a digital service subject to VAT. Such a sale does not fall within the VAT exemption for the sale by an author of their own works of art or copyright over their own literary or artistic works as the VAT exemption applies only to tangible art.
- **Norway:**[l] On December 27, 2022, Norway published Regulation No. FOR-2022-12-20-2466 amending the regulations applicable to VAT. The amendments establish documentation requirements for VAT-exempt operations, including the use of sales documents, declarations, and certificates for exports; specify the conditions for exempt and non-exempt sales of goods to passengers and crew on vessels; expand the exemption to additional goods and services, including household goods and one vessel imported when moving to Norway; and require that refund applications be submitted to the tax office along with the required documents.
- **OECD:**[li] On December 20, 2022, the OECD released a consultation on draft Multilateral Convention (MLC) Provisions on Digital Services Taxes (DSTs) and other Relevant Similar Measures of Amount A of Pillar One. The Convention is to be concluded to secure progress on Pillar One. When an international agreement was reached on a two-pillar plan, it was agreed that a new right to tax the profits of large multinationals by market jurisdictions ("Amount A") must be paired with an international commitment to repeal existing digital services taxes and refrain from introducing new ones. The consultation document contains draft MLC provisions implementing the commitments concerning DSTs and other relevant similar measures, including (1) an obligation to withdraw the measures listed in an Annex to the MLC and stop applying them to any company; (2) a definition of the measures the parties to the MLC will commit not to enact in the future; and (3) a mechanism that will eliminate Amount A allocations if this commitment is breached.
- **Palau:**[lii] Effective January 1, 2023, Palau introduced a 10 percent GST. Taxpayers are required to register for GST if their annual gross receipts exceed $300,000 or if they hold a Foreign Investment Approval Certificate (FIAC). Nonresident providers of remote services to consumers in Palau are required to register for and collect GST while business customers are required to self-assess GST under the reverse charge mechanism when receiving such services. Registration for GST automatically registers a taxpayer for Business Profits Tax (BPT), which replaces the Gross Revenue Tax, effective January 1, 2023. The GST law zero rates the following: exports; goods temporarily imported for repair, renovation, or modification; international transport services; prescription medicines; the transfer of a business as a going concern; and the provision of telecommunications to a recipient outside Palau, among other things. In addition, the GST law zero rates or exempts financial services.
- **Portugal:**[liii] On December 21, 2022, Portugal published Decree-Law No. 85/2022, which eases VAT compliance related to reporting, payment, and other tax obligations from certain operations. Effective January 1, 2023, the sale of surplus electricity produced for self-consumption is subject to the self-assessment requirement when the buyers are electricity

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resellers. Further, such sales are, generally, subject to simpler invoicing rules, namely, by applying a mandatory self-invoicing and self-communication of invoices regime. In addition, effective December 22, 2022, entities whose main activity includes organizing fairs and events may now apply for a full VAT reimbursement on expenses incurred for said activities. This deduction was partially limited earlier (expenses with accommodation, food, and drinks, among others).

- **Romania:**[liv] On December 15, 2022, the European Commission proposed to authorize Romania to continue to require taxpayers purchasing wood products to self-assess VAT until December 31, 2025.
- **Romania:**[lv] Effective January 1, 2023, Romania increased the Intrastat arrivals and dispatches thresholds from RON 900,000 to RON 1 million.
- **Saudi Arabia:** The Zakat, Tax and Customs Authority (ZATCA) recently extended the amnesty initiative that waives penalties on all delinquent and unpaid taxes, including income tax, withholding tax, VAT, excise tax, and real estate transaction tax, until the end of May 2023 (previously set to close November 30, 2022). For more information, click here.
- **Saudi Arabia:**[lvi] On December 23, 2022, the ZATCA set a threshold of SAR 500 million in annual income during 2021 as the demarcation for those entities subject to the second phase the e-invoicing implementation. VAT-registered taxpayers meeting the criteria are required to integrate their e-invoicing solutions with the ZATCA (FATOORA) Platform starting from July 1, 2023. ZATCA has stated that Phase Two (Integration Phase) also requires certain additional requirements, including to integrate taxpayer's E-invoicing solutions with (FATOORA) Platform, issue electronic invoices based on a specific format, and include additional fields in the invoice. Phase Two (Integration Phase) of E-invoicing will be implemented in waves, and ZATCA will inform affected taxpayers at least six months before their integration date. It is noteworthy that the implementation of the Integration Phase of the first wave will be on January 1, 2023, for the taxpayers whose selection criteria were announced last June.
- **Singapore:**[lvii] On December 15, 2022, Singapore published Regulations No. S 963 amending specific regulations related to the GST Act concerning chauffeured cars effective January 1, 2023. The regulations add definitions for "chauffeured private hire car" and "chauffeur service." It further provides that the disallowance of GST credits relating to a motor car do not apply to GST incurred by a taxpayer on the purchase of a chauffeured private hire car, subject to conditions. The regulations further provide that the disallowance of GST credits relating to the purchase of goods or services by a taxpayer directly in connection with a motor car does not apply regarding chauffeured private hire cars, subject to conditions.
- **Slovenia:**[lviii] On December 16, 2022, the Slovenian tax authority clarified the obligation to calculate VAT following the cessation of taxable economic activity and the correction period for fixed assets. According to the tax authority, in such a situation, when the taxpayer retains a fixed asset for which the right to deduct VAT has been granted, the taxpayer must calculate VAT regardless of whether the adjustment period for the fixed asset has already expired. The tax base is the purchase price of the goods or similar goods, determined at the time the goods are withheld.
- **South Africa:**[lix] On December 12, 2022, the South African Revenue Service (SARS) issued Binding General Ruling 62 on the VAT treatment of securities lending arrangements effective April 1, 2023. According to the ruling, securities lending arrangements constitute VAT-exempt "financial services." The scrip-lending fee due by the borrower constitutes consideration for an exempt transaction and is thus not subject to VAT.
- **South Africa:**[lx] On November 30, 2022, the SARS announced that the Voluntary Disclosure Program (VDP) is to be made permanent. The VDP program enables taxpayers to regularize

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their affairs, in exchange for a waiver of prosecution and penalties. Eligible disclosures range from outstanding returns, submitting inaccurate or incomplete information, or the failure to submit information to SARS requested concerning any tax type that SARS administers, excluding duties and levies charged in terms of the Customs and Excise Act, 91 of 1964. Required elements of the relief application include: (1) the disclosure must be voluntary; (2) the disclosure is complete in all material respects; (3) the disclosure involves a default that has not occurred within five years of the disclosure of a similar default; (4) the disclosure involves a behavior referred to in the understatement penalty table in Section 223 of the Tax Administration Act; (5) the disclosure would not result in a refund due by SARS; and (6) the disclosure is made in the prescribed form and manner.

- **South Korea:**[lxi] On December 23, 2022, the South Korean National Assembly passed Bill No. 2117164 which amends the VAT Act. Among other things, the Bill exempts the service of reading books indoors from VAT of the Bill also expands the allowable reasons for issuing corrected import tax invoices, excluding when the taxpayer is guilty of customs duty evasion. The Bill further allows the National Tax Service Commissioner to issue a corrective notice or impose a fine of up to KRW 20 million, against an agent or broker of sales or payments for goods and services, for failing to submit, or incorrectly submitting, agency or brokerage information. Finally, the Bill expands the scope of the tax credit system for issuing electronic tax invoices to apply to simple taxpayers selling goods and services, for electronic invoices issued by December 31, 2024.
- **Spain:**[lxii] On December 2, 2022, the city of Barcelona published a proposal to introduce a 1.25 percent tax on income from goods delivered to homes by delivery companies with revenues over EUR 1 million in the Barcelona area. Business deliveries and packages sent to drop-off points would be exempt. The proposal is open to a public consultation from December 28, 2022, through February 8, 2023.
- **Spain:**[lxiii] The Spanish tax authority recently issued a binding ruling V2295-22 regarding the concept of intermediation for digital services tax (DST) purposes. DST applies to, among other things, services "made available to users of a multi-sided digital interface (which permits interaction with several users simultaneously), which facilitates the underlying sale of goods or services directly between users or permits the location of and interaction with other users". In a prior ruling, the STA held that when an entity acts in its own name and on its own account, it is selling its own service to travelers and therefore does not act as an intermediary. Consequently, in their actions vis-à-vis travelers, travel agencies provide services that are not subject to DST. However, in ruling V2295-22, the tax authority held that the platform's performance is the same if it acts in its own name (and on behalf of the users) as if it acts in the name and on behalf of the users, with the only real differences being (i) the payment flow, (ii) the additional services (the loyalty service) and (iii) the liability. The tax authority further held that the definition of intermediary in its prior ruling cannot be interpreted in a formalistic way; otherwise, there would be intermediation only in cases when the platform acts in the name of and on behalf of third parties (as the interpretation so far seemed to be). Finally, the tax authority said that when the platform contracts accommodation services, it is simply replicating the contracting made with it by the traveler at the interface, without any other element that would allow it to consider that the accommodation service is provided.
- **Sweden:**[lxiv] On December 20, 2022, the Swedish Tax Agency issued Clarification No. 8-2068095 on the significance of a taxpayer's VAT registration for status as a taxpayer with the right to deduct VAT. According to the clarification, the VAT registration is a confirmation that the applicant is a taxpayer carrying on an economic activity. The tax authority cannot change a registered taxpayer's status retroactively so long as the taxpayer registered in good faith, and a taxpayer registering in good faith must report VAT collected on sales and has the

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right to claim VAT deductions. A registration change adding an activity does not give rise to a new review of the existing registration. The Tax Agency further clarified that a taxpayer is not entitled to VAT deduction for transactions that are exempt or without compensation and that the withdrawal of assets may be taxable when the business ceases economic activities or otherwise ends its VAT registration.

- **Thailand:**[lxvi] Effective December 1, 2022, Thailand no longer requires individual entrepreneurs to provide a business address when seeking to register for VAT. They can instead provide their address within a condominium unit. Taxpayers are required to register for value-added tax when their annual income exceeds THB 1.8 million.
- **Türkiye:**[lxvi] Effective January 1, 2023, Türkiye introduced a new 2 percent accommodation tax applicable to accommodation in hotels, motels, holiday villages, pensions, apart-hotels, guesthouses, camping sites, chalets, and highland houses. It further applies to all other services, such as food and entertainment, that are included the billed service. An exemption applies for services provided to students, for stays to support their studies and related activities. The tax collected on such services must be declared and paid by the 26th day of the month following the taxable event. Services provided to foreign states' diplomatic personnel, consulates, and their members with diplomatic rights in Turkey, as well as international organizations and their members that are tax-exempt in accordance with international agreements, will also be exempt from tax.
- **United Arab Emirates:**[lxvii] The Federal Tax Administration of the United Arab Emirates (FTA) recently published clarification (VATP032) regarding the VAT treatment of services related to gold and diamond products effective January 1, 2023. According to the FTA, if the vendor charges a single price for a gold item, including the manufacturing service, the transaction will be considered a single composite transaction of the gold item and subject to the reverse charge mechanism if all the following are met: (1) the transaction consists of a principal element (the gold item) and ancillary elements or these elements are so closely linked that they constitute a single transaction which it would be impossible or abnormal to split; (2) the prices of the gold item and the related services are not listed separately; and (3) the gold item and the related services are sold by the same vendor. In such a case, the vendor and the recipient are required to maintain sufficient evidence, including a tax invoice issued by the vendor reflecting a single consideration for the gold item (including the related services) and noting that the self-assessment requirement has been applied. However, if the vendor charges separately for gold items and related services (including the manufacturing service), or if the prices for these items are listed separately, the vendor is making multiple transactions. In this case, the vendor is required to treat each item as a separate transaction and apply the correct tax treatment to each separate item. Only the VAT relating to the gold items can be accounted for under the self-assessment mechanism.

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Footnotes

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