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 at which 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 in Europe. Among other things, the report notes the publication of the 2022 revised VAT guidelines in Austria, the exemption from the Austrian Emissions Trading System for Austrian facilities already covered by the EU Emission Trading System, and a recent judgment of the Austrian Federal Finance Court holding that taxpayers taking advantage of a voluntary self-disclosure program must meet all procedural requirements to qualify for relief from any fiscal criminal consequences.
- **KPMG in Bahrain** published a report discussing tax developments in the Gulf Corporation Council (GCC) states. The report notes that the Bahrain National Bureau for Revenue (NBR) reminded taxpayers about the new NBR digital stamp mobile application for smartphones which enables users to authenticate the digital stamp QR code on tobacco products. It also discusses a public consultation launched by the Saudi Arabian Zakat, Tax and Customs Authority (ZATCA) on proposed amendments to the Saudi VAT law.
- **KPMG in Belgium** published a report discussing a recent decision of the Court of Appeal in Ghent holding that a qualitative evaluation must be made as to whether renovations of an old building are so far-reaching and entail sufficient added value to constitute new construction for VAT purposes. The Court of Appeal rejected the quantitative criterion often applied by the tax authority under which renovations are treated as new construction when the cost price, excluding VAT, of the works reaches at least 60 percent of the sales value of the building after the renovation.
- **KPMG in Botswana** published a report discussing tax proposals in the 2023-2023 budget presented on February 6, 2023. Among others, these include the introduction of e-invoicing to improve VAT compliance, strengthening the tax audit function and the capacity of the Large Taxpayer's Unit, and initiating a review of the lists of VAT zero-rated and exempt items.

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- **KPMG in Cambodia** published a report discussing a new tax authority guidance published on January 24, 2023, clarifying the application of VAT on e-commerce. The guidance provides that a nonresident taxpayer who has transactions only with its Cambodian-related entities (e.g., subsidiary or branch) is exempt from the obligation to register for VAT. However, the related entity in Cambodia must notify the tax authority of the transactions. In addition, for business-to-business transactions when the resident customers are subject to the self-assessment regime, the customer (who has already filed the monthly tax declaration) can amend the VAT amount by using credit notes issued by the non-resident taxpayer. However, VAT credits resulting from this amendment are deductible only against self-assessed VAT. The clarification follows the publication of Notification No. 4549 on February 9, 2023, in which the tax authority reminds nonresident taxpayers providing digital services to customers in Cambodia of their obligation to register for VAT. To read KPMG's previous discussion of Cambodia's VAT on e-commerce rules, please click here.
- **KPMG in Colombia** published a report discussing a tax authority guidance on the single-use plastics products tax introduced in 2022. The guidance clarifies that the tax will apply to producers and importers of single-use plastic products used to wrap, pack, or package goods, and that taxpayers are not required to include the tax in the details of the invoice. To read KPMG's previous discussion of Colombia's tax reform measures and the single-use plastics products tax, please click here.
- **KPMG in Costa Rica** published a report discussing an updated "Catalog of Goods and Services for Tax and National Accounts Use" (CAByS), which is effective March 1, 2023. The CAByS is a catalog that lists more than 20,000 goods and services in hierarchical categories that taxpayers must use to identify products and services when issuing e-invoices. The new catalog introduces 253 new codes related to manufacturing materials, school supplies, and specific services.
- **KPMG in Cyprus** published a report discussing implementation of a new single tax administration portal, Tax For All (TFA), which will progressively replace the TAXISnet website. All taxpayers must update their e-mail addresses via the TAXISnet website, for their account to be transferred to the new TFA portal and to receive future updates and communications.
- **KPMG in Denmark** published a report discussing a new automatic check of reported VAT figures launched on January 19, 2023. An EU sale must be reported correctly on the tax authority's website under "EU sales without VAT" on TastSelv Erhverv and in box B on the VAT return. Companies that have differences between what they report on the VAT declaration and what they report as "EU sales without VAT" in the VAT Information Exchange System (VIES) system will be contacted automatically by the tax authority with a message to correct their reports. If a report is made incorrectly or is incomplete, the tax authority will in principle be able to charge Danish VAT, regardless of whether the VIES validation and shipping documentation are in place for the sale in question. In addition, when a Danish company buys goods or services abroad, Danish VAT generally must be settled on the purchase, and the purchase must be reported in box A on the VAT return. Reporting in box A is currently compared with vendor reporting to the VIES system when a company's VAT return is taken for control. The comparison will now occur automatically, and companies with differences between the Box A reporting on the VAT return and the VIES reports of its vendors will be contacted automatically by the tax authority with a message to correct their reports.

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- **KPMG in France** published a report discussing tax measures in the Finance Law for 2023 that was published on December 31, 2022. The law phases out the CVAE (*cotisation sur la valeur ajoutée des entreprises*) by 2024. The CVAE is a component of the territorial economic contribution due by companies that carry out an activity taxable under business property tax (i.e., a non-salaried professional activity carried out regularly) and whose gross receipts is equal to or greater than EUR 500,000. To read KPMG's previous discussion of tax measures in the 2023 Finance Law, please click here.
- **KPMG in India** published a report discussing introduction of a "Centralized Processing of Equalization Levy Statement Scheme" effective from February 7, 2023. The report discusses the guidance provided on the processing of Equalization Levy (EL) statements and notes that the Centralized Processing Centre (CPC) will help process only valid EL statements; statement may be treated as invalid if they are prepared with unapproved software.
- **KPMG in India** published a report discussing recommendations from the 49th meeting of the goods and services tax (GST) Council held on February 18, 2023. Among other things, the GST Council recommended (1) amending the GST sourcing rules for goods shipping services when the vendor or customer is outside India, (2) increasing the time for filing returns from 30 days to 60 days, extendable by another 60 days, subject to certain conditions, (3) rationalizing the late fees for delay in filing annual returns, and (4) introducing an amnesty program for certain past cases when registrations were canceled for not filing returns.
- **KPMG in India** published reports discussing recent indirect tax-related court decisions. In *Premier Sales Promotion Pvt Limited*, the Karnataka High Court held that gift vouchers, cash-back vouchers, and e-vouchers are not subject to GST. It found that the vouchers were neither goods nor services and were more akin to money or a deposit; they had no intrinsic value of their own. In *Choksi Exports*, the Gujarat High Court held that a taxpayer was entitled to a provisional refund of 90 percent of integrated GST (i.e., GST pertaining to inter-state transactions) because it provided all relevant information to the tax authority in a timely manner. It found that even if the taxpayer was deemed a "risky exporter" because a vendor to its vendor was deemed the same, the taxpayer had otherwise fulfilled their obligations to obtain IGST refunds and had no further obligation to verify the genuineness of a vendor to its vendor. In *Godrej Sara Lee Ltd*, the Indian Supreme Court held that the dismissal by the Punjab and Haryana High Court of a taxpayer's case challenging the tax authority's jurisdiction to, of its own accord, reopen an assessment order on the grounds that there was an alternative remedy available, was improper.
- **KPMG in Malaysia** published a report discussing recent tax developments. Among other things, the report discusses the publication of a Q&A from the tax authority's webinar on implementation of the sales tax on low-value goods. The Q&A clarifies the treatment of goods sold through a seller's own website vs. those sold through an online marketplace, the treatment of goods sold and delivered locally vs. those shipped from overseas, and the treatment of goods imported by the seller. In addition, Malaysia has indefinitely postponed the implementation of the sales tax on low-value goods, and the service tax on goods delivery services.
- **KPMG in Malaysia** published a report discussing tax proposals in the revised 2023 budget presented to parliament on February 24, 2023. The budget includes proposals to introduce a new tax on luxury goods, extend various tax incentives for electric vehicles, and reintroduce the amnesty program for indirect tax that ended on September 30, 2022. For KPMG's previous discussion of the Malaysian amnesty program, please click here.

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- **KPMG in Nigeria** published a report discussing a recent decision of the Lagos State Tax Appeal Tribunal in *INT Towers Limited*. The case addressed whether a network facilities provider was a telecommunications company and as such subject to the National Information Technology Development Agency (NITDA) levy. In the case, the taxpayer was assessed a NITDA levy of 1 percent of its profit before tax. This tax is imposed on telecommunications companies under the NITDA Act. The taxpayer argued that it is an infrastructure service provider to telecommunications companies and was, therefore, not subject to the NITDA levy. The FIRS disagreed with the taxpayer's position and issued a notice of refusal to amend. The taxpayer then filed a notice of appeal before the Tax Appeal Tribunal. The tribunal held that the taxpayer is a network facilities provider and is not a telecommunications company subject to the NITDA levy.
- **KPMG in the Philippines** published a report discussing draft legislation to impose VAT on digital services. As previously discussed, if House Bill No.4122 is enacted, it would require non-resident digital services providers to register for, collect, and remit VAT if their gross sales of such digital services for the past 12 months exceed (or are reasonably expected to exceed) PHP3 million (USD 550,000).
- **KPMG in Poland** published a report discussing postponement of the implementation of the mandatory e-invoicing system (NeIS) from January 1 to July 1, 2024 (January 1, 2025, for small taxpayers exempt from VAT) and the exclusion of sales made to consumers (B2C) from this obligation. The report notes that new provisions will provide a special procedure if the taxpayer encounters system issues preventing it from issuing e-invoices Should such a situation occur, taxpayers will be able to issue invoices off-line, outside the NeIS, and upload them to the system the next day. To read KPMG's previous discussion of Poland's e-invoicing measures, please click here.
- **KPMG in Poland** published a report discussing recent indirect tax developments in the country. These include the announcement of a new Slim VAT 4 package, and a recent decision of the Supreme Administrative Court (SAC). In the decision, the SAC held that although the application of preferential VAT rates should be subject to strict interpretation, it should not lead to narrowing its scope based on prerequisites not resulting from the tax law. Consequently, if the law does not clearly state what items should be covered by reduced rates, the scope thereof should be interpreted in the taxpayers' favor.
- **KPMG in Poland** published a report discussing draft legislation implementing the DAC7 requirements into national law effective May 1, 2023. Under DAC7, digital platform operators located both inside and outside the EU are required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States are required to automatically exchange this information.
- **KPMG in Poland** published a report discussing a recent decision of the European Court of Justice (ECJ) in *W. Sp. z o. o.*, Case C-729/21. Here, the ECJ held that a Member State can treat the sale of an entity or an organized part of it as a VAT-free transfer of going concern without making the application of the relief subject to a legal succession requirement between the seller and the buyer. For this relief to apply, it is not necessary that all the tangible and intangible components that make up the part have been transferred to the buyer. The relief should apply if the entirety of the transferred assets is sufficient to enable the enterprise to conduct an independent economic activity.
- **KPMG in Qatar** published a report discussing the proposed introduction of a VAT regime in Qatar in 2023. The report discusses the general principles of VAT based on the GCC VAT Framework Agreement and outlines practical steps that businesses can take now in preparation.

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- **KPMG in Singapore** published a report discussing tax measures in the 2023 budget presented on February 14, 2023. The budget proposes an increase of the excise duties for all tobacco products by 15 percent effective from February 14, 2023.
- **KPMG in Singapore** published a report discussing relaxation of GST claims on the purchase and related expenses of motor vehicles effective from January 1, 2023. From that date, Singapore allows GST claims on both the purchase and related expenses of a motor vehicle used by businesses to offer chauffeur services or cars for lease or hire. Individuals or groups who wish to claim GST must meet the qualifying conditions, such as registering as required by law and maintaining a fleet of at least three chauffeured private-hire vehicles and three chauffeurs (including the owner), to evidence the operation of a service business. Such transport services are not confined to passengers but extend also to goods such as food and baggage.
- **KPMG in South Africa** published a report discussing carbon tax-related measures in the 2023 budget. South Africa introduced a phased carbon tax regime effective from June 1, 2019. Phase 1 runs from June 1, 2019 through December 31, 2025, (extended by 3 years last year), and phase 2 runs from January 1, 2026 through December 31, 2030. The budget proposes to change the period for utilizing carbon offsets to align it with the extension of the first phase of the carbon tax. The budget further proposes to increase the current carbon tax rate of ZAR 144 per ton to ZAR 159 per ton for the 2023 calendar year.
- **KPMG in Sweden** published a report discussing a proposal to modernize the Swedish VAT regime to make the regulations more easily understood and better adapted to the EU VAT directive. Among other things, the proposal would amend one of the conditions for treating services provided within independent groups of persons which carry out activities of general interest as VAT-exempt. Under the current regime, services cannot be provided exempt from VAT between associations and organizations within a group if the same services are also provided on the open market. The proposed change would expand the availability of the VAT exemption to be more fully compliant with the EU VAT directive.
- **KPMG in Switzerland** published a report discussing a draft ordinance for implementing the new streaming tax, which requires any streaming or television service provider in Switzerland that generates annual gross income of more than CHF 2.5 million (USD 2.69 million) per year is obligated to invest 4 percent of its annual gross income generated in Switzerland in Swiss filmmaking (or pay a substitute levy to the Federal Office of Culture (FOC)). The draft ordinance on the amended law provides that the relevant gross income is determined based on a company's gross income for VAT purposes as reported to the Swiss Federal Tax Administration. Streaming and television service providers in Switzerland must register with the FOC, and companies must provide the FOC with copies of their VAT returns together with the corresponding annual financial statements by April 30 of the following year. To read KPMG's previous discussion of the Swiss streaming tax, please click here.

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Global Rate Changes

- **Botswana:**[i] On February 6, 2023, the Botswana Minister of Finance announced extension of the temporary 12 percent reduced VAT rate through March 31, 2023. The reduced rate was introduced on August 1, 2022, to cushion the impact of rising global inflation; it originally scheduled to expire on January 31, 2023. In addition, Botswana plans to review the list of zero-rated or exempt items to include sanitary products and private medical services and remove other items. To read KPMG's previous discussion of the application of the reduced VAT rate in Botswana, please click here.
- **Greece:**[ii] On March 15, 2023, the Greek Ministry of Finance announced further extension of the application of the 13 percent reduced VAT rate for passenger transport, coffee, non-alcoholic beverages, cinemas, gyms, tourism, zoo tickets, and dance schools as well as for the import of artwork, art collections, and antiquities until December 31, 2023. To read KPMG's previous discussion of Greece's reduced rate measures, please click here.
- **Guyana:**[iii] Guyana published amendment acts, orders, and regulations for implementation of the tax measures in the 2023 budget. Among other measures, these include introducing a VAT exemption for the sale of residential properties and new electric motor vehicles effective February 1, 2023. To read KPMG's previous discussion of the tax measures in Guyana's 2023 budget, please click here.
- **Ireland:**[iv] On February 21, 2023, Ireland announced a package of new measures intended to support households and businesses struggling with high inflation and energy costs. These include extension of the temporary 9 percent reduced VAT rate for gas and electricity, through October 31, 2023, and on tourism and hospitality through August 31, 2023. The package further announced a phased increase in excise duty rates on fuel, which are scheduled to be reintroduced in a phased manner, starting from June 1, 2023.
- **Pakistan:**[v] On February 14, 2023, Pakistan increased the federal sales tax standard rate from 17 percent to 18 percent. For more information, please click here.
- **Romania:**[vi] On February 8, 2023, the Romania parliament approved a draft bill to introduce a 5 percent reduced VAT rate for the delivery of sawdust, wood waste, and similar products. The draft bill is currently pending senate approval.
- **Türkiye:**[vii] On February 14, 2023, Türkiye issued Presidential Decision No. 6790 temporarily reducing the VAT rate applicable to the sale of prefabricated structures and containers from 18 percent to 1 percent to support relief efforts in areas hit by the recent earthquakes. The reduced rate will apply from February 15, 2023, through December 31, 2023. Further, the reduced rate will apply for sales to victims of the earthquake and specified institutions and organizations for use in the cities of Adana, Adıyaman, Diyarbakır, Gaziantep, Hatay, Kahramanmaras, Kilis, Malatya, Osmaniye and Sanlıurfa. Further, on February 23, 2023, Türkiye issued Presidential Decision No. 6830, which removes the conditions regarding the delivery and use of prefabricated structures and containers so that the 1 percent rate applies more broadly.
- **Venezuela:**[viii] Effective January 13, 2023, Venezuela introduced a VAT and customs duties exemption for the import and sale of hydrocarbon fuels and products as well as additives intended to improve their quality. It also introduced an exemption from the financial transaction tax for local sales of these items. To take advantage of VAT and customs duties exemption, taxpayers submit a description of the goods to be imported, the commercial invoice issued to the taxpayer, and the exemption letter issued by the tax authorities to the relevant customs office. These exemptions will apply through January 13, 2024.

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- **Zambia:**[ix] Effective January 1, 2023, Zambia implemented the tax measures in its 2023 Budget. These include provisions to, among other things, (1) apply a zero percent VAT rate to the sale of milk cans and milking machines, as well as selected information and communications technology equipment, and telecommunications equipment; (2) introduce a VAT exemption for gaming, betting, lotteries, and game animals imported as breeding stock; (3) allow an exemption for plant, machinery and equipment imported by a special purpose vehicles for projects under public-private partnerships arrangements; (4) apply the standard VAT rate to selected energy saving appliances and equipment; and (5) remove the VAT relief on goods imported by the President. To read KPMG's previous discussion of the tax measures in the Zambian 2023 budget, please click here.

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Indirect Tax Developments and News from Around the World

The Americas

United States: Local Sales Tax Sourcing Rule Amended in Texas

On January 27, 2023, the Texas Comptroller formally adopted revised 34 Texas Administrative Code §3.334 which governs Local Sales and Use Taxes. There are over ten pages of text in the Texas Register explaining the procedural background, summarizing the comments received on the proposed amendments, and responding to those comments and requests for change to the rule. Many of the comments addressed a change in the definition of "place of business," which is relevant in determining where a local sale is consummated for sourcing purposes. Historically, 34 TAC § 3.334(h)(3)(C), provided that when an order was placed over the internet and the seller fulfilled that order at a location that was a "place of business in Texas," the sale was deemed consummated at that place of business where the order was fulfilled. Accordingly, local sales tax was sourced to the fulfillment location. As revised, 34 TAC § 3.334(b)(5), provides that "a facility without sales personnel is not usually a place of business of the seller." Further, "a computer that operates an automated shopping cart software program is not an established outlet, office, or location," and does not constitute a "place of business of the seller." When an order is received at a location that is not a "place of business of the seller in Texas and is fulfilled from a location in Texas that is not a place of business of the seller," the sale is consummated at the location in Texas to which the order is shipped or delivered, or at which the purchaser of the item takes possession. As a result, local sales taxes from Internet orders fulfilled at warehouses or distribution centers in Texas (assuming those locations are not places of business of a seller) will be sourced to the delivery location. Many localities have economic development agreements with retailers that have established fulfillment centers in those jurisdictions, and localities are concerned about local sales tax revenue loss due to this sourcing change. Previously, under an agreed to temporary injunction, the Comptroller did not enforce the provision relating to orders not received by sales personnel while the rule's validity was being challenged in district court. Thus, although the rule has been formally adopted, it appears the Comptroller will not enforce it pending the outcome of the

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Belgium: Proposed Amendments to VAT Law

On March 2, 2023, the Belgian parliament approved a bill to amend the Belgian VAT law. It includes several measures meant to modernize the VAT compliance process. The bill proposes to introduce a VAT provision account (*Provisierekening BTW/Compte-provisions TVA*) for unrequested VAT refunds in cases in which the amount of deductible VAT exceeds the amount of VAT due. Taxpayers would be allowed to immediately request a refund through an account with the "My MinFin" app without going through any specific formalities. The bill would further require the tax authorities issue a refund to taxpayers by the end of the third month following the refund filing period. The refund would however be paid if all only VAT returns in the preceding six months were filed in a timely manner. The refund may, at the discretion of the tax authority, also be credited against an amount of VAT due, if the amount of the refund is uncertain or the requested documents were not submitted. Refunds may also be applied to VAT owed if there are serious suspicions or proof that incorrect returns were filed.

Moreover, the bill would introduce a new substitute return procedure, the "replacement VAT assessment" (*vervangende aangifte*, RA) that would be used when a taxpayer fails to submit its periodic VAT returns. If a taxpayer does not file a timely VAT declaration, the tax authority would be allowed to levy a "replacement VAT assessment" three months after the VAT filing period expires. This assessment would be equal to the highest amount of VAT due in the preceding 12 months or EUR 2,100 if no VAT return was filed in that period. Once an assessment is issued, the taxpayer would have one month to appeal and submit their actual VAT return for the respective period. If no action is taken within the one-month period, the replacement assessment would become definitive. The tax authority would further have the right to request information from the taxpayer for this purpose, which would need to be submitted within 1 month (or 10 days if the rights of the treasury are in danger or in case of a VAT refund audit).

The bill would further require the tax authority notify taxpayers one month before a tax debt is included in the tax collection register. Taxpayers could make payments to resolve the debt through the account of the tax authority, a recognized electronic means of payment, or by direct debit (*domiciliëring*). Finally, the bill proposes to extend the deadline for submitting quarterly VAT returns to the 25th of the month following the period. If enacted, the bill would be effective January 1, 2024, unless the King of Belgium determines a later date, but not later than January 1, 2025.

Source: Belgium – Government Submits Bill to Modernize VAT Procedures, Collection, (February 8, 2023), News IBFD; Orbitax, Belgian Parliament Considering Amendments to Improve Processing of Periodic Vat Declarations and Payments, February 2, 2023.

European Union: ECJ Holds That Digital Services Marketplace Rules are Valid

On February 28, 2023, the ECJ published its decision in *Fenix International*, Case C-695/20, regarding the validity of the provision in the EU VAT Implementing Regulation providing that an online intermediary platform facilitating the sale of digital services is deemed liable to collect and remit VAT (rather than the underlying seller). (To read KPMG's previous discussion of this case, and in particular, the AG's Opinion, please click here.) According to Article 28 of the EU VAT Directive, when a taxpayer acting in his own name, but on behalf of another person, takes part in a provision of services, that taxpayer is deemed

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to have received and sold those services himself (i.e., the provision creates a deemed buy/sell regime). Article 9a of the EU VAT Implementing Regulation, referencing Article 28, includes a rebuttable presumption that all intermediaries (e.g., online marketplaces) intervening in a sale of digital services are considered performing a buy/sell of the digital services. However, such intermediaries cannot rebut the presumption if they authorize the delivery of the service, authorize the charge to the customer, or set the general terms and conditions of the sale.

In the case, a UK company operates an online platform that is offered to "users" from around the world; users are divided into "creators" and "fans." Creators post content such as photographs and videos to their respective profiles and can also stream live videos to their fans or send private messages to them. Fans can access that content by making payments and may pay tips/donations to the creators without further payment by the Fan. Fenix is responsible for collecting and distributing the payments made by fans, charging creators an amount of 20 percent of the sums paid by their fans by way of a deduction. For the payments involved in this case, the taxpayer charged and accounted for VAT on a tax base representing only the 20 percent deduction. The UK tax authority (HMRC) took a different view, finding that pursuant to Article 9a of the EU VAT Implementing Regulation, the taxpayer was required to pay VAT based on all sums paid by fans (i.e., the taxpayer was deemed to make the sale to the fans). The taxpayer disputed the legal basis for Article 9a in the light of the concept of "implementing power" under the EU VAT Directive arguing that the Implementing Regulation goes beyond the limits of the implementing power because it has the effect of amending and/or supplementing the VAT Directive. It further argued that the provision deprives the parties of their contractual autonomy and disregards commercial and economic reality as it alters the liability of the intermediary by transferring the tax burden on platforms operated on the internet, since it proves impossible, in practice, to rebut the presumption laid down in Article 9a.

The ECJ held previously in *Parliament v Commission*, Case C-65/13 (October 15, 2014), that to be valid, an implementing act must comply with the essential general aims of the basic legislative act and must be necessary or appropriate for implementation of the basic legislative act in that it provides further detail as to its content without supplementing or amending it, even as to its non-essential elements. The ECJ found that the essential general aims of the EU VAT Directive is to establish a common VAT system that should be applied uniformly across the EU. Specifically, article 9a is intended to ensure the uniform application of the presumption established in Article 28 of the VAT Directive. Thus, it complies with the essential general aims of the VAT Directive and, in particular, those of Article 28. In addition, due to changes made to the VAT Directive from January 1, 2015 regarding the VAT sourcing rules for electronic services, it had become essential to amend that implementing regulation to establish the manner in which the relevant provisions of the VAT Directive should be applied, in order to ensure legal certainty for service providers and to avoid double taxation or non-taxation which would have resulted from divergent implementation arrangements between Member States. As such, Article 9(a) operates only to clarify the application of Article 28 in the specific context of the provision of electronically provided services through a telecommunications network, an interface, or a portal such as a marketplace for applications.

Further, Article 9a provides that the presumption may be rebutted if the contract between the parties explicitly indicates the actual seller (as opposed to the platform) is the provider of the services. This is in keeping with the ECJ decision in *Henfling and Others*, Case C-464/10 (July 14, 2011), that the condition relating to the fact that the taxpayer must act in his or her own name, but on behalf of another, included in Article 28 of the

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VAT Directive, must be determined, on the basis of the contractual relations between the parties. Thus, Article 9a merely clarified the normative content established by Article 28, as interpreted by the ECJ in *Henfling*, so as to ensure that the article is implemented uniformly throughout the European Union.

Moreover, by providing that the presumption cannot be rebutted in specific circumstances (i.e., if the platform authorizes the charge to the customer or the delivery of those services or sets the general terms and conditions of that transaction), Article 9a took account of the economic and commercial reality of transactions in the context of digital services provided through a platform. A taxpayer who does any of these activities may unilaterally define essential elements relating to the transaction, namely the provision of that service and the time at which it will take place, or the conditions under which the consideration will be payable, or the rules forming the general framework of that service. Such a taxpayer cannot evade the presumption simply by contractually designating another person as the vendor of the services concerned. To hold otherwise would be to tolerate contractual terms which do not reflect economic and commercial reality. In this regard, the fact that the circumstances provided for under 9a are not mentioned in Article 28 does not invalidate that analysis.

Finally, the ECJ held that the fact that the final customer is aware of the existence of the agreement between the principal and the agent (i.e., the platform and the vendor), and the identity of the agent is immaterial to the obligations of the platform in this regard. It is above all, the powers enjoyed by that platform in the context of the provision of services in which it takes part in that matter. The ECJ consequently held that Article 9(a) is valid.

Source: European Union; United Kingdom – ECJ Decides on Interpretation of EU VAT Provisions in Relation to Intermediary Services and Electronic Platforms: *Fenix International* (Case C-695/20) (VAT), February 29, 2023, News IBFD.

European Union: Roundup of Recent ECJ Decisions

On February 2, 2023, the ECJ published the nonbinding Opinion of its Advocate General in *Napfény-Toll Kft.*, Case C-615/21, in which the AG opined that the limitation period for the tax authority's right of assessment of VAT may be suspended throughout the course of a judicial review, even when an appeal is brought against consecutive decisions issued by a tax authority and relating to the same tax. This suspension of the limitation period during judicial proceedings cannot be regarded as a factor that jeopardizes the taxpayer's right to deduct VAT indefinitely. However, it is up to the competent court in a Member State, considering all circumstances, such as the complexity of the procedure, to assess whether the repetition of the tax procedure and the judicial inspections in question were mainly due to deficiencies in the tax administration or whether this delay can be attributed to the national courts and to draw the necessary conclusions therefrom, including whether there may be a right to taxpayer compensation.

On February 9, 2023, the ECJ published its decision in *A v Finanzamt X*, Case C-713/21, in which a horse-training stable owner who provided boarding and training of horses and the participation of the horses in competitions was compensated by the horse-owner assigning 50 percent of the right to prize winnings to the trainer. The ECJ held that such an arrangement qualified as a sale for consideration subject to VAT, even though the services were remunerated with prize winnings.

On February 9, 2023, the ECJ published its decision in *Euler Hermes*, Case C-482/21, in which it held that Member States are not required to deduct an irrecoverable debt from the VAT tax base, where an insurer who, under a contract for the insurance of trade debts, pays the insured person, following non-payment of a debt, part of the taxable amount of the taxable transaction at issue including

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VAT , even though, pursuant to that contract, that part of the debt together with all associated rights have been assigned to that insurer.

Source: European Union; Hungary – ECJ Advocate General Opines on Unjustified Extension of Tax Procedure and Implications for Right to Deduct VAT: Napfény-Toll Kft. (Case C-615/21) (VAT), (February 2, 2023); European Union; Germany – ECJ Decides on Whether Services Provided to Competition Horse Owners Constitute Supply for Consideration Even When These Services Are Remunerated with Prize Money: *Finanzamt X (Prestations du propriétaire d'une écurie)* (Case C-713/21) (VAT), (February 9, 2023), News IBFD; European Union; Hungary – ECJ Decides on Whether Reduction of Taxable Amount in Respect of Irrecoverable Debt Under Insurance Contract Can Be Denied: *Euler Hermes* (Case C-482/21) (VAT), (February 9, 2023), News IBFD.

Ukraine: Overview of Recent Indirect Tax Developments

On January 27, 2023, the Ukraine State Tax Service (STS) clarified that when a Ukrainian taxpayer receives a prepayment for the sale of software before becoming a registered taxpayer, the sale of such software is VAT-exempt even if the software is sold after the taxpayer becomes a registered taxpayer. The STS clarified that no VAT liability should arise since the prepayment, which constitutes the first taxable event, was received when the taxpayer was not registered for VAT purposes.

On February 1, 2023, the STS clarified that when a Ukrainian taxpayer receives a grant under a program financed by the European Union, which is not international technical aid, such a grant is not considered as reimbursement for goods or services that the taxpayer may sell. Therefore, the grant should not be subject to Ukrainian VAT.

On February 7, 2023, Ukraine adopted amendments to the tax code reducing the time limit for desk audits from 60 days to 30 days when taxpayers make a refund claim. Thus, a taxpayer filing a claim for a VAT refund may be desk audited by the tax authorities within 30 calendar days following the deadline for filing the associated tax return (or after the day of its actual filing).

Source: Ukraine – Ukraine Clarifies VAT Treatment for Supplies of Software, (February 9, 2023), News IBFD; Ukraine – Ukraine Clarifies VAT Treatment of EU Grants Received by Ukrainian Taxable Persons, (February 10, 2023), News IBFD; Ukraine-Ukraine Halves Audit Time Limit for VAT Refund Claimants, (February 10, 2023), News IBFD.

United Arab Emirates: Clarification of Declaration of E-Commerce Sales

On February 22, 2023, the UAE's Federal Tax Authority (FTA) published Clarification VATP033 No. 26 of 2023, clarifying the criteria and conditions for e-filing of tax returns by taxpayers engaged in e-commerce effective July 1, 2023. Generally, taxpayers registered for VAT are required to report taxable sales subject to VAT at the standard rate made in each Emirate in box 1 of the VAT return for the tax period in which the sale is made. However, for a special category of taxpayers, identified as "Qualifying Registrants" in the guidance, the FTA introduces additional recordkeeping obligations and clarifies to which Emirate e-commerce sales are to be reported for VAT purposes effective July 1, 2023. Qualifying registrants are taxpayers selling goods and services through e-commerce that exceed AED 100 million (USD 27.2 million) over a calendar year. These taxpayers are required to report standard rated sales in the Emirate in which the sale is received. Qualifying Registrants must also maintain relevant supporting documents and information proving the Emirate in which the goods or services were received. The FTA may require these documents as part of a tax audit. As a default, the FTA accepts the place of residence of the consumer (i.e., the residential address of a consumer or the establishment most closely connected to the service for a business customer) as the location at which the services are received.

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The guidance further defines "e-commerce" as the process of selling goods or services through electronic means, an electronic platform, a social media shop or electronic applications, in accordance with the criteria and conditions established by the Minister of Finance. The sale of goods or services will be deemed to be made by electronic means if the goods and services are listed or advertised in an electronic commerce medium; the goods and services are ordered through an electronic commerce medium, whether or not payment is made online; goods are delivered to a location specified by the customer which is not owned or operated by the seller; and services are provided or the right to receive the services is granted to the customer with minimal or no human intervention.

Moreover, the guidance clarifies that if the e-commerce platform does not disclose the name of the seller of the relevant goods or services, it shall be regarded as an undisclosed agent. In such cases, the law will deem that the platform performs a buy-sell operation (i.e., the seller shall be regarded as selling the goods or services to the platform, and the platform shall be regarded as selling the same goods or services to the customer). In this case, the operator of the platform is responsible to account for VAT on the sale to the customer if the platform is a taxpayer. Activities that support online transactions, such as payment systems, logistics for the delivery of goods and other similar platform services fall as an e-commerce sale of goods if these ancillary services are provided by the same seller of the goods.

Source: United Arab Emirates; GCC – Federal Tax Administration Clarifies Criteria and Conditions for E-Commerce Supplies in UAE Declarations, (February 28, 2023), News IBFD.

United Kingdom: Overview of Recent Indirect Tax Developments

On January 30, 2023, the UK's Upper Tribunal published its decision in *The King (On the Application of Gloucestershire Hospital NHS Foundation Trust)*, [2023] UKUT 00028 (TCC), on whether VAT on consumable goods is refundable to a hospital. In the case, a hospital, operating as an NHS Foundation Trust, requested a VAT refund on the VAT incurred on consumable healthcare goods that were part of a wide-ranging contract for the provision of healthcare facilities with a third-party provider. Under the contract, the third-party provides the hospital with managed surgical theatre facility services, which include maintenance services, facilities and sterilization services, data analytics, stock control, management, and other services necessary for a surgical theatre to be available and ready for use. The contract also called for the provision of a variety of single use goods, used in procedures on patients, such as sutures, bandages, and gauze; prostheses (e.g., hip and knee joints provided to patients during surgery. While HMRC granted a VAT refund on all the services and goods, it refused a VAT refund for the consumables, arguing that these were to be considered separate from the provision of services and thus not deductible under Heading 45 of the Contracted-Out Services Directive for healthcare facilities, which provides refunds for the operation of healthcare facilities and the provision of any related services for VAT chargeable to Government departments including NHS Foundation Trusts. The Upper Tribunal disagreed with HMRC and held that the sale of consumable goods was part of a single provision of managed theatre services and should qualify for the VAT exception for healthcare facilities. The Upper Tribunal observed that the value to the hospital was the provision of the whole package of services, including the consumable goods. Such value would be greatly diminished if the hospital were required to separately procure the consumables and equipment.

On February 2, 2023, the Bank of England Monetary Policy Committee voted to increase the Bank of England's base rate to 4 percent, up from 3.5 percent. As HMRC's interest rates are linked to the Bank of England base rate, HMRC's interest rates for late payment and

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repayment have been adjusted accordingly, effective February 21, 2023. Late payment interest is set at base rate plus 2.5 percent (now 6.5 percent). Repayment interest is set at base rate minus one percent, with a lower limit of 0.5 percent (now 3 percent).

On February 9, 2023, the UK published the outcome of its consultation to introduce an Online Sales Tax (OST) that was launched on February 25, 2022. The consultation was meant to assess whether an OST could address tax imbalances reported by the retail sector, including a possible percentage of revenue approach or a flat fee per order approach. The document sets out in detail, stakeholders views on OST, including an assessment of the challenges put forward. It notes that most respondents opposed the introduction of an OST, including retailers of all sizes and various business models. In light of the concerns raised and the absence of credible solutions to the challenges identified in the consultation, the UK announced in Autumn statement 2022, that it had decided not to proceed with an OST. To read KPMG's previous discussion of the UK's now-defunct proposal to introduce an Online Sales Tax regime, please click here.

On February 13, 2023, the UK's Court of Appeal (Civil Division) published its decision in *Gray & Farrar International LLP* [2023] EWCA Civ 121, on whether matchmaking services constitute services of consultants or consultancy firms, which are outside the scope of VAT when provided to consumers established outside the EU. In the case, the taxpayer provided matchmaking services that included the following elements: an interview and vetting process, the preparation of the brief (of the client's requirements), the matching process, and a post-introduction liaison. The taxpayer did not charge VAT on services provided to consumers established outside the EU, arguing its services qualified as consultancy services and should be sourced outside the UK for VAT purposes. However, HMRC determined that VAT was due because the services were not in the nature of consultancy services and should thus be sourced to the UK where the taxpayer is established. The Court of Appeal upheld a previous Upper Tribunal's decision that the predominant element test should be applied when determining the nature of the services provided. Under the test, the predominant element of a service is what the provider is promising to provide and what the client is paying for from a typical consumer perspective. Basing its analysis on the terms and conditions of the taxpayer's agreement with its clients, the Court of Appeal said the predominant element of the company's matchmaking services is to introduce clients to potential matches in exchange for a fee. In this regard, there is no basis for thinking that the typical consumer would view the taxpayer as providing advice and/or providing information, as that is not what is contracted for. Consequently, it held that the service provided by the taxpayer to clients outside the EU was within the scope of UK VAT.

On February 22, 2023, the UK Supreme Court published its decision in *News Corp UK & Ireland*, [2023] UKSC 7, on whether digital versions of newspapers were entitled to the VAT zero-rating for newspapers before the legislation was changed to include them effective May 1, 2020. In the case, the taxpayer argued that the VAT zero rating that applied to its printed papers under the UK VAT Act also applied to its digital versions, such as for e-readers, tablets, smartphones, and websites for periods before May 1, 2020. The taxpayer argued that extending the zero rate from printed newspapers to digital newspapers is the logical extension of the "always speaking" doctrine because it involves a technological development that could carry over the purpose to the new development. That doctrine provides that a statute should be interpreted taking account of changes that occurred after it was enacted. This applies even if those changes could not have been reasonably foreseen when the statute became law. The Supreme Court disagreed with the taxpayer and held that, in line with EU law, zero-rating provisions must be interpreted strictly because they

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constitute exemptions to the general principle that sale of goods and services by taxpayers should be subject to VAT. The need for strict interpretation is particularly marked when, as here, it does not involve mandated EU exemptions, but rather national law exceptions. Regarding the application of the "always speaking doctrine," the starting point should be the ordinary meaning of the word "newspapers" as of December 31, 1975, which is the date of standstill provision in the EU VAT Directive allowing Member States to carry over certain exceptions in their VAT law (here a special zero rate for newspapers). At that date, "newspapers" referred only to printed newspapers. Then, newspapers referred only to printed copies because digital editions had not been envisaged. Consequently, the meaning of "newspapers" in the VAT law should be interpreted narrowly as news communicated through the medium of print in a physical form. The appeal of the taxpayer was therefore dismissed.

Source: Single-Use Healthcare Goods Are VAT Refundable, UK Court Rules, Bloomberg Law News, March 7, 2023; CCH, Global VAT News & Features, UK To Hike Interest On Underpaid Tax,(Feb. 9, 2023); Taxnotes, Company Owes VAT for Matchmaking Services, U.K. Court Says, February 15, 2023; United Kingdom - Supreme Court Rules that Digital Editions Should Not Have Been Classified as Newspapers for VAT Purposes Before 2020, (February 23, 2023), News IBFD; United Kingdom -Supreme Court Rules that Digital Editions Should Not Have Been Classified as Newspapers for VAT Purposes Before 2020, (February 23, 2023).

United Kingdom: Agreement on Post-Brexit Framework with EU

On February 27, 2023, the EU Commission and the UK government announced they reached an agreement, the Windsor Framework, to overhaul the post-Brexit agreement regarding trade between the UK and the EU, focusing on Northern Ireland (NI). This framework constitutes a comprehensive set of joint solutions aimed at addressing the practical challenges faced by citizens and businesses in Northern Ireland post-Brexit, paving a new way forward for the Protocol of Ireland and Northern Ireland (the Protocol).

Among other changes, the agreement would introduce an expanded trusted trader program that would simplify procedures related to the movement of goods. Goods moved by trusted traders from Great Britain to Northern Ireland that are not at risk of entering the EU Single Market can benefit from these new arrangements. However, goods moving from Great Britain to NI that are destined for the EU or at risk of entering the EU will be subject to full customs checks and controls. To qualify as a trusted trader, traders must register with the relevant UK authority, fulfill all relevant conditions, and provide a detailed list of the products they usually ship. The new trusted trader program will also be open to companies based in Great Britain and not only in NI, as is currently the case.

In terms of VAT, the EU VAT rules will still apply in NI for goods. Under the Windsor Framework, existing provisions within the Withdrawal Agreement and Article 8 of the original Protocol have been used to change Annex 3 to the Protocol and allow for carve outs from EU rules. This will mean that NI will be able to avail itself of UK VAT rate changes which might otherwise not be allowed under EU VAT rules. At present, these include (1) reduced VAT rates for energy saving materials such as heat pumps and solar panels that will be installed in immovable property in NI and (2) applying UK VAT rates in NI that are below minimum VAT rates allowed in the EU (currently 5%); and (3) allowing NI to follow any decision by the UK to set more than 2 reduced rates (including a zero rate). The UK and EU have agreed to explore the establishment of a wider list of goods that would follow UK VAT rates in NI, when these do not pose a threat to the EU market and the level playing field provisions.

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A permanent solution has been agreed to for the second-hand vehicle market in NI. Although the margin mechanism has continued to be used in NI since the Protocol came into effect, this is contrary to EU VAT rules for vehicles sourced in GB and sold in NI and has only continued under a grace period introduced by the UK. The permanent solution (referred to as the VAT-related payment scheme) will apply in NI from May 1, 2023. This should provide vehicle dealers in NI with the same outcome as under the prior margin scheme. Moreover, NI will not be required to apply the EU special scheme on small enterprises which is coming into effect on January 1, 2025. Finally, there will be a new Enhanced Coordination Mechanism which will be able to look at future EU rule changes and make further legally binding changes to resolve any potentially new distortive impacts it may have for Northern Ireland around VAT and excise.

Importantly, the current rules and requirements set out under the Protocol and in HMRC guidance regarding VAT treatment of NI business sales of goods to the EU and EU sales of goods to NI businesses will continue. Therefore, the XI VAT numbers, EC Sales Lists reporting, and Intrastat requirements will remain as they exist currently. Sales of services were not within the scope of the Protocol and as such will continue to follow the current UK VAT rules in full. To read a report prepared by the KPMG International member firm in Ireland, please click here.

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Asia Pacific (ASPAC)

India: Proposed GST Amendments Focused on Digital Economy in Budget

On February 1, 2023, the Indian Finance Minister presented the Union Budget for 2023-24. With respect to GST, the bill proposes to omit the terms "minimal human intervention" and "essentially automated" from the definition of online information database access and retrieval (OIDAR) services. Under the current GST rules, India requires nonresident providers of OIDAR services to non-taxable online recipients in India to register for, collect, and remit GST. OIDAR services are defined as services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their sale essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology. If the proposal is enacted, services that were traditionally excluded due to the human involvement element may come within the scope of the GST on digital services. Thus, any service whose delivery is mediated by information technology or an electronic network, the provision of which is impossible to ensure without information technology would be in the scope of OIDAR services.

The bill also proposes to amend the definition of "non-taxable online recipient" to include a person receiving OIDAR services, who is registered for GST solely for the purpose of claiming the "tax deduction at source" (TDS) deduction. Under the current regime, a non-taxable online recipient includes unregistered customers, individuals, and public bodies. For sales made to GST-registered persons (B2B customers), the GST self-assessment mechanism will apply. However, India also operates a TDS regime wherein most public bodies are required to withhold (i.e., apply a tax deduction at source) 2 percent on payments made to the seller of taxable goods and/or services when the total value of such sale, under an individual contract, exceeds INR 250,000. The TDS can later be deducted by the seller if they are GST-registered. As a result, certain sellers may register for GST simply to be able to receive the TDS

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deduction. If enacted, taxpayers registered for the GST solely for TDS purposes will be considered B2C customers, and a nonresident seller will be required to charge and collect GST for sales made to them. The proposal would thus complicate the B2B/B2C distinction as sellers of OIDAR services would need to confirm if the GST registration status of its customer is solely due to TDS deduction purposes.

In addition, the bill proposes to introduce penalties on marketplaces facilitating the sale of goods/services of vendors in India that are not GST-registered, if they are required to do so. Under the current regime, vendors selling goods through a marketplace are required to register for GST purposes, regardless of their sales revenues. However, vendors providing services through a marketplace are required to register for GST purposes only if the value of their annual sales exceeds INR 2,000,000. The Budget proposes to impose potential penalties on marketplaces that enable underlying vendors that are not registered for the GST to sell on their marketplace. The penalties would either be INR 10,000 per transaction or 100 percent of the GST that was not accounted for by the underlying vendor, whichever is higher. Consequently, the proposal would shift the responsibility/onus to marketplace facilitators to assess whether the underlying vendors that are not GST registered have an obligation to do so. This assessment would differ between (1) underlying vendors of goods, which must be GST registered in any case and (2) underlying vendors of services, in which case the marketplace should check if the unregistered vendor has exceeded the registration threshold.

Finally, the budget proposes to place restrictions on GST recovery for activities pertaining to corporate social responsibility obligations; increase the monetary threshold for launching prosecution of offences under the GST law from INR 10 million to INR 20 million, except for the issuance of fake invoices; decriminalize certain offenses in the GST law; introduce a new provision to enable the exchange of information via the Common Portal; require GST registration if sales relate exclusively to exempted business; and introduce an option for sellers of goods through platforms to use the "composition mechanism" for GST payments. Generally, Finance Bills are effective either from April 1 or from the day when the president gives assent, which generally takes place before April 1. To read a report prepared by the KPMG International member firm in India, please click here.

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European Union: Progress Report on Developing Electronic Systems for Customs Purposes

Trade & Customs (T&C)

On February 10, 2023, the European Commission published a progress report on the development of an electronic system for the exchange and storage of customs information related to goods brought into the EU customs territory, as required by the Union Customs Code (UCC). The UCC, which entered into force on May 1, 2016, requires the European Commission and the Member States to upgrade some existing electronic systems and to introduce several new systems for the completion of a modern and digital environment for customs formalities. In total, the UCC requires the upgrading or creation of fourteen trans-European systems and three national systems. The deadline for completion of the systems is set for the end of 2020, 2022, or 2025, depending on the system. The report analyses the progress made on three main electronic system types: (1) the central trans-European systems; (2) the decentralized trans-European systems;

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and (3) the national systems. For the national systems, the report notes that Member States are facing delays and challenges in the deployment of the UCC electronic systems by the specified deadlines and have consequently requested extensions. These delays put the timely deployment of the remaining trans-European systems at risk reducing the time window for deployment. In addition, compared to last year, the trans-European systems are being affected as well, with additional Member States reporting delays. They will have to reassess their strategies, resources, and governance approaches to avoid further delays. Finally, the report notes that the European Commission will continue to monitor the situation to work toward implementation by the end of 2025. It will also consider other specific actions to reinforce its support to Member States by offering technical assistance, for example.

Source: European Union – European Commission Publishes Progress Report on Developing Electronic Systems for Customs Purposes, (February 13, 2023), News IBFD

European Union: Launch of Second Phase of Import Control System 2

On March 1, 2023, the EU launched the second phase of its Import Control System 2 (ICS2) to gradually replace the current ICS. ICS2 is an advanced cargo information and risk management platform which enhances customs supervision of goods prior to their shipment in a third country and arrival at EU external borders as a means of protecting against security and safety threats. The new system was created to facilitate legitimate trade into the customs territory of the EU, Norway, and Switzerland, to identify high-risk consignments, and to collaborate closely with customs authorities of EU Member States. It sets new advance data reporting requirements for all air carriers, freight forwarders, express couriers, and postal operators involved in the shipment of goods by air to or through the EU (including Norway, Switzerland, and Northern Ireland). These economic operators will need to submit cargo information in the form of an entry summary declaration (ENS) prior to the loading and arrival of the goods. Moreover, they will also be legally responsible for providing this data. The obligation to start filing such declarations will depend on the type of services that the operators provide. Phase 1 (March 15, 2021) covers express carriers and designated postal operators responsible for bringing goods into the common European customs security area. Phase 2 (March 1, 2023) covers all operators involved in handling, shipping, and transporting of cargo, express or postal consignments to or via the common European customs security area by air. Phase 3 (March 1, 2024) covers operators carrying goods on maritime and inland waterways, roads, and railways. However, on February 24, 2023, the European Commission authorized Austria, Belgium, Croatia, Denmark, Estonia, France, Greece, Luxembourg, the Netherlands, Poland, Romania, and Sweden to use means other than electronic data-processing techniques for the exchange and storage of customs information required under Phase II. The European Commission granted this derogation from March 1, 2023, until June 30, 2023, provided it does not affect the exchange of information among Member States for applying customs legislation. For economic operators that fail to provide the data required under the ICS2, consignments and freight will be stopped at the EU borders, and the goods in question will not be cleared by the customs authorities. Economic operators covered under phase 2 can request a delay in implementation (up to October 2, 2023), dependent on each business model and the different types of economic operators, as defined in the relevant transition strategy.

Source: European Union – European Commission Launches Second Phase of Its Import Control System 2, (February 28, 2023), News IBFD; European Union; Austria; Belgium; Croatia; Denmark; Estonia; France; Greece; Luxembourg; Netherlands; Poland;

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Romania; Sweden – European Commission Grants Derogation Requested by Several EU Member States to Use Other Means than Electronic Data-Processing for Exchange of Customs Information for Import Control System 2, (February 28, 2023), News IBFD

Korea: Supreme Court Clarifies Customs and VAT Valuation of Free Samples Provided Under Sales Contract

On November 17, 2022, the Korean Supreme Court published judgment on the appropriate customs valuation method for goods imported free of charge due to meeting an annual standard quantity of the purchase contract condition (Judgment 2018DU47714). In the case, the taxpayer, a pharmaceutical company, imported pharmaceutical raw materials under a contract that provided that a certain percentage of the goods (based on the quantity purchased annually) constituted free samples. The taxpayer filed import declarations for the goods using a contract price determining based on dividing the total amount paid under the contract by the volume of goods provided (including the free samples). The customs authority denied the customs value reported by the taxpayer on the grounds that the goods were imported free of charge and did not fall under "goods sold for export to Korea." The Seoul customs authority determined the customs value of those goods based on the purchase price per unit stipulated in the contract and corrected the customs duties and VAT (including penalties), using the customs valuation method stipulated in the Customs Act. The taxpayer appealed the determination to the Supreme Court, which held that the purchase contract set a provisional base price, but determined the final transaction price based on the annual total payment and the annual total purchase quantity when the amount of free sample quantities was determined. The Supreme Court found that even though the goods were called free samples, and the taxpayer technically did not pay for them, they were not sold without cost. The transactional value of the goods should not be denied and should be determined based on the transaction value of identical goods. For more information, click here.

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In Brief

- **Argentina:**[x] On February 13, 2023, the Argentine tax authority (AFIP) published General Resolution 5329, introducing a Fiscal Monitoring Program, and a VAT advance collection system for taxpayers engaged in the sale of certain goods, effective from April 1, 2023. The Fiscal Monitoring Program will allow for systematic and real-time verification of the sworn statements, including returns, submitted by taxpayers and other responsible parties. Under the new VAT collection system, VAT-registered taxpayers are required to act as VAT collection agents when they sell human food products (except for meat, unprocessed fruits and vegetables, bread and certain wheat-flour based products), beverages, personal hygiene products, and cleaning items to other VAT-registered taxpayers. These taxpayers will charge in their invoices, a 3 percent advanced VAT collection percentage (*percepción*). This percentage will be reduced to 1.5 percent if the relevant goods are subject to a 10.5 percent reduced VAT rate (instead of the general VAT rate of 21 percent). Purchasers will compute the amounts charged by the collection agents as a payment in advance in their corresponding monthly VAT return. Collection agents will report the amounts collected to the AFIP through the withholding control system (SICORE). Collection agents are not required to apply this charge if the amount of the charge itself (*percepción*) is less than ARS 60 for each transaction. In addition, collection agents are not required to use this system if:

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(a) they are collection agents under the general collection VAT system, (b) the purchaser is not subject to the general VAT withholding system, (c) the purchaser holds a ticket from the AFIP that it is not subject to VAT withholding, or (d) the purchaser is registered in the new "Registry of taxable persons not subject to VAT advance collection–massive consumption products" (*Registro de sujetos no alcanzados-Productos de consumo masivo*).

- **Bahamas:**[xi] Effective April 1, 2023, the Bahamas will no longer allow health insurance companies to recover VAT charged on private medical services that are paid for using a health insurance policy.
- **Bahamas:**[xii] Effective January 31, 2023, the Bahamas introduced a new Condo-Hotel Tax on units that are part of a condo-hotel or other properties that are rented in a hotel rental pool. On February 13, 2023, the Bahamian tax authority clarified that a condo-hotel is a condo that is run like a hotel. This is a facility in which several people own every unit and share amenities; a hotel rental pool refers to any collective renting arrangement in which properties not owned by a hotel constitute part of a hotel's bedroom inventory. The tax is calculated at 75 percent of the tax on residential property under the Bahamian Real Property Tax law, based on the value assessed by the Chief Valuation Officer of every property that is part of the condo-hotel or hotel rental pool, up to a maximum of BSD 150,000 per unit. During the first year, however, unit owners and administrators will be required to pay only 50 percent of this tax. The current residential property tax rate is 0.625 percent of the property's value. Further, if the unit owner or administrator files a return by January 31 showing that the net VAT paid in the previous year is an amount greater than the Condo-Hotel Tax due, the Condo-Hotel Tax assessment will not be payable. If the net VAT paid is an amount less than the Condo-Hotel Tax due, the difference between the Condo-Hotel Tax amount and the net VAT amount will be payable.
- **Bahamas:**[xiii] On February 28, 2023, the Bahamian tax authority announced that effective from March 1, 2023, all property owners operating their properties as short-term vacation rentals will be required to register their properties by April 30, 2023, in a newly launched portal. The end goal is to ensure that all owners within the short-term vacation rental market are maintaining a high standard of service and meeting all tax obligations.
- **Bahrain:**[xiv] On February 10, 2023, the National Bureau of Revenue of Bahrain published a manual for 2023 VAT compliance. Among other things, the manual covers the procedure for submitting the simplified VAT return form for 2023, FAQs on VAT forms, zero-rated VAT return filing, and amended returns.
- **Belgium:**[xv] Effective January 1, 2023, Belgium increased its annual interest rate from 4 percent to 8 percent.
- **Congo (Dem. Rep.):**[xvi] On February 3, 2023, the Minister of Environment proposed to introduce a carbon tax, the creation of a Carbon Market Regulatory Authority, and the implementation of a national environmental contribution.
- **Congo (Dem. Rep.):**[xvii] On February 15, 2023, the Congolese Ministry of Budget published the 2023 Finance Law. The law includes measures introducing an 8 percent reduced VAT rate on specified food items, outlining rules on VAT deductions, and invoicing requirements. It also sets excise tax rates on specified goods and services and imposes fines for noncompliance and fraud. The law is effective January 1, 2023.
- **Congo (Dem. Rep.):**[xviii] On January 26, 2023, the Congolese tax authority published a notice informing VAT taxpayers that effective February 15, 2023, they are required to submit electronically, alongside their VAT returns, an annex (in Excel format) stating: the VAT incurred on their purchases, the VAT withheld by mining companies on behalf of state

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companies and establishments, VAT imposed under the self-assessment mechanism, and exempt transactions.

- **Denmark:**[xix] On February 6, 2023, the Danish Customs and Tax Administration published Tax Council Decision No.SKM2023.62.SR clarifying the VAT treatment of the sale of CO2 credits and the VAT self-assessment mechanism. In the case, the taxpayer entered into a climate agreement with Danish companies for tree planting services and climate adaptation work in Uganda. The taxpayer sought clarification on whether these services created VAT self-assessment obligations, or whether they should be treated as advisory services under the VAT Act with a place of delivery in Uganda. The tax council clarified that the services in question fall outside the scope of advisory services, and the transaction is subject to VAT, because the parties entered into an agreement for specific consideration, and the delivery of CO2 credits is subject to the fulfillment of the purchase agreement. Since sales of CO2 credits are subject to self-assessment requirement, the Danish companies that receive the CO2 credits are liable to self-assess the VAT due.
- **European Union:**[xx] On January 31, 2023, the EU's VAT Expert Group (VEG) published summary minutes of its 32nd meeting held on December 6, 2022. Among other things, the VEG discussed the 2020 Tax Action Plan as well as updates on the state of play of the VAT in the Digital Age package, the Travel and Tourism package, and the ECJ decision in *Vega International* (Case C-235/18) regarding the VAT treatment of fuel cards. The group also relaunched a communication campaign to outline the key findings from the ex-post evaluation of the e-commerce package.
- **European Union:**[xxi] The European Parliament's Industry, Research, and Energy Committee has approved proposals to introduce a new eID, which would allow citizens to identify and authenticate themselves online (via a European digital identity wallet) without having to resort to commercial providers. The proposal includes introducing a voluntary "European Digital Identity Wallet," a tool that can read and verify electronic documents and allow for peer-to-peer interactions. The draft legislation includes provisions to securely request, obtain, store, combine, and use personal identification data and electronic certificates, that can be used to authenticate online and offline and to access goods and public and private services.
- **European Union:**[xxii] On January 19, 2023, the EU Commission released meeting notes of a November 2022 Directorate General for Taxation and Customs Union (TAXUD) meeting during which the TAXUD announced its intention to conduct a study on health-related taxes other than those already scheduled on tobacco and alcohol.
- **European Union:**[xxiii] On February 23, 2023, the EU's Internal Market Commissioner announced an exploratory consultation on The future of the electronic communications sector and its infrastructure. The consultation seeks comments on measures to finance EU telecommunications and connectivity infrastructure, especially with the increasing digitalization of the world and the global economy. While announcing the consultation, the commissioner noted that a contribution mechanism such as "network fees" could be a measure to ensure that digital players such as content and application providers help pay for the necessary infrastructure investments. The commissioner noted this is not intended to operate as a backdoor to digital tax. The consultation is open through May 19, 2023.
- **Germany:**[xxiv] On February 2, 2023, the German Ministry of Finance published official guidance on the implementation of the DAC7 requirements into German law. The new rules cover digital platforms located both inside and outside the EU. Under DAC7, digital platform operators will be required to report income earned by sellers

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on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information. Germany implemented DAC 7 through the 2022 Annual Tax Act published on December 22, 2022. To read KPMG's previous discussion of Germany's efforts to implement DAC7 requirements, please click here.

- **Greece:**[xxv] On February 24, 2023, Greece enacted Bill 5024/2023 which amends several VAT procedures. The amendments provide that the application for a commercial lease to be subject to VAT may be filed without any time limitation. In such a case, the effective date of the lease will be considered to commence from the next taxable period (month or quarter). Currently, such a commercial lease is subject to VAT either before the first use of the property or later on, and in any case within 30 days from the commencement of the fiscal year (in which case, the effective date of the lease is considered to commence from the fiscal year). The law further abolishes the obligation to notify the tax office of volume discounts to be deducted from the VAT base. Finally, it provides that for an immovable property owned by a third party to qualify as capital goods of a business without the lessee having the right to use such property for a period of at least 9 years. However, the existence of a relevant legal relationship with the owner allowing the use of the property is required.
- **Hungary:**[xxvi] On February 21, 2023, the Hungarian National Tax and Customs Administration clarified the VAT treatment of intra-EU private purchases by VAT-registered taxpayers. When a taxpayer makes an intra-EU purchase, the sale is zero-rated in the Member State from which the goods are shipped, but the purchaser is liable for VAT on the purchase of the goods in Hungary. The taxpayer is thus liable to account for VAT in its return regardless of the purpose of the purchase (i.e., whether for business or for private use). However, if the purchases were made for private purposes, the taxpayer will not be entitled to VAT recovery.
- **Isle of Man:**[xxvii] Effective February 21, 2023, the Isle of Man increased interest rates for late payment and repayment for VAT and other indirect taxes. The interest for late payment increased to 6.5 percent, while the repayment interest rate (in the case of tax overpayment) increased to 3 percent.
- **Italy:**[xxviii] On February 21, 2023, the Italian tax authority issued pre-filled VAT annual returns for 2022 to qualifying taxpayers. Qualifying taxpayers are those that are resident or established in Italy that submit quarterly VAT returns, except taxpayers operating in certain specific sectors or subject to special VAT regimes (e.g., publishers or travel agents). Qualifying taxpayers may amend, supplement, and transmit to the tax authority their pre-filled annual VAT returns starting February 15, 2023, through their personal tax account.
- **Italy:**[xxix] On February 20, 2023, the European Commission published a Proposal for a Council Implementing Decision authorizing Italy to increase its annual VAT registration threshold from EUR 65,000 to EUR 85,000 from January 1, 2023, to December 31, 2024.
- **Italy:**[xxx] According to news reports, the Milan prosecutor's office launched an investigation into whether a social media company's exploitation of user data qualified as a barter transaction and should be subject to VAT. According to the news updates, the personal information provided by a user in exchange for access to a social media company's platform is effectively one of the core inputs used by that company to generate revenue; thus, it can be argued that there is a barter-like exchange of consideration between the parties that may be subject to VAT. In 2018, the EU VAT Committee unanimously decided in a nonbinding opinion that such an exchange should only be subject to VAT if there was a direct link between the services provided and the data provided by the user. As such, taxpayers should not be subject to VAT if their free of charge services are offered under the same conditions to all users, irrespective of the quantity and quality of the personal data they

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provide individually, if no direct link can be established between the services provided and the personal data received.

- **Japan:**[xxxi] Japan's government recently proposed a consumption tax (JCT) law amendment to provide relief to businesses on account of the new qualified invoice system being introduced. Effective October 1, 2023, taxpayers will be required to present a qualified invoice to be able to credit consumption tax incurred on their purchases. The qualified invoice must bear new details, including the recipient's tax number, the rate charged on each sale, and the tax amount charged. The JCT law further provides a six-year transition period (through September 2029) aimed at currently tax-exempt businesses. During the transition, taxpayers buying goods and services from such tax-exempt businesses will be allowed to credit 80 percent of the JCT incurred until September 30, 2026, and 50 percent of the JCT incurred in the remaining period. The proposal would allow tax-exempt businesses that become qualified invoice issuers to reduce the amount of JCT paid to 20 percent during a three-year transitional period. Moreover, the proposal would allow taxpayers to continue to recover JCT without a qualified invoice for six years if the consideration paid is less than JPY 10,000.
- **Netherlands:**[xxxii] On February 24, 2023, the Dutch government submitted a draft bill to parliament implementing the VAT Directive on a new simplified mechanism for small business effective 2025. Currently, small businesses established or having a fixed establishment in the Netherlands whose annual gross receipts does not exceed EUR 25,000 can choose to apply for an exemption from VAT registration. This draft bill provides that small businesses established in another EU Member State can also opt for application of the exemption provided that their annual gross receipts in the EU do not exceed EUR 100,000. However, the exemption does not apply to new vehicles that are purchased by or for the account of the seller or customer and that are shipped to another Member State, and immovable property and related rights which a taxpayer has used in his company. In addition, small businesses established in the Netherlands would be allowed to request the application of the exemption for other EU Member States if their annual gross receipts in the EU does not exceed EUR 100,000. Finally, the bill would abolish the minimum 3-year application period for the exemption.
- **OECD:**[xxxiii] On February 15, 2023, the OECD released a VAT Digital toolkit for Africa. The toolkit provides detailed guidance to tax authorities in Africa on implementing strategies, policies, best practices, and legislation to secure VAT revenue in the e-commerce space. The OECD has published similar toolkits for APAC, and LATAM and Caribbean regions.
- **Panama:**[xxxiv] On January 20, 2022, Panama published Executive Decree No. 3/2023 extending the deadlines for implementation of e-invoicing requirement for various taxpayers. The decree sets new deadlines for e-invoicing as follows: (1) March 1, 2023, for national air transport service providers, and international land, air, and sea transport service providers; (2) three-phase deadlines of April 30, June 30, and August 31, 2023, for certain services provided by banks and other financial institutions, (3) August 31, 2023, for operations carried out in the stock market, the insurance sector, and financial institutions not previously classified; and (4) June 30, 2023, for companies operating under specific regimes. In addition, on January 31, 2023, the Panama Ministry of Economy and Finance published Resolution No. 201-0717, clarifying which bank and financial institution services fall under the phased-in rollout of e-invoicing described above. In addition, the Resolution clarifies that banks with an international license directing transactions from an office established in Panama that are used abroad are exempt from the e-invoicing requirements provided they do not generate taxable income in Panama. Banks that have a general license and an international license are subject to the e-invoicing requirements for those covered operations and financial services covered under the general license, while those under the international license are exempt. To read KPMG's previous discussion of Panama's

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implementation of e-invoicing requirements, please click here.

- **Philippines:**[xxxv] The Philippines parliament is considering a proposal to review the VAT rules for goods sold in freeport zones. The Philippines enacted the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE) in 2021. Prior to the CREATE Act, ecozones and freeport zones were considered foreign territories in which the sale of goods and services by a VAT-registered seller to a registered enterprise was treated as zero-rated export. The CREATE Act provided that only those goods and services that are directly and exclusively used in a registered project or activity of a Registered Business Enterprises (RBE) qualify for the VAT zero-rate, and a zero-rated treatment is available only for sales of goods and services rendered to persons or entities who have direct and indirect tax-exemption granted pursuant to special laws or international agreements to which the Philippines is a signatory. Taxpayers who previously qualified for these VAT reliefs, but were not an RBE, were consequently excluded. The proposal intends to amend the CREATE Act and other relevant tax laws for the benefit of these affected taxpayers. To read KPMG's previous discussion on the CREATE Act, please click here.
- **Romania:**[xxxvi] On January 31, 2023, Romania enacted a law implementing the DAC7 requirements into national law. The new rules cover digital platforms located both inside and outside the EU. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information.
- **Romania:**[xxxvii] On January 30, 2023, the EU authorized Romania to continue to apply the VAT self-assessment mechanism to sales of wood products through December 31, 2025.
- **Romania:**[xxxviii] On February 7, 2023, the Romanian Ministry of Public Finance proposed a draft bill to transpose into Romanian law, EU Directive 2017/1371 imposing criminal penalties for cross-border VAT fraud. The draft bill would introduce a new criminal offense for cross-border VAT fraud that will carry a prison sentence of 7 to 15 years and the prohibition of certain rights. The draft bill provides that any action or inaction committed within a fraudulent scheme with a cross-border character that results in the reduction of at least EUR 10 million of EU budget resources by concealing VAT-related information will be considered a criminal offense. The draft bill further outlines what would qualify as concealing VAT-related information, including the use or presentation of false, incorrect, or incomplete VAT-related statements, non-disclosure of VAT-related information when required by law, and presenting correct VAT-related statements to fraudulently disguise non-payment or wrongful creation of rights to VAT refunds.
- **Russia:**[xxxix] On December 22, 2022, the Russian tax authority clarified that digital mining transactions are subject to Russian VAT. However, the Russian parliament is currently considering a proposal exempt digital currency transactions, including related digital mining, from VAT.
- **South Africa:**[xl] On February 10, 2022, the South African Revenue Service issued Binding General Ruling No. 28 on VAT credit and debit note requirements for electronic service providers. The ruling sets out the minimum information that must be contained on credit or debit notes, exchange rate rules that must be applied to determine the amount of VAT charged, and manner in which prices must be advertised or quoted.
- **Spain:**[xli] On January 27, 2023, the Spanish government presented a bill to parliament implementing the DAC7 requirements into national law. The new rules cover digital platforms located both inside and outside the EU. Under DAC7, digital platform operators will be required to report income earned by sellers on sales of goods, accommodation,

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personal services, and transportation services on their platforms. EU Member States will be required to automatically exchange this information.

- **Sweden:**[xlii] Effective February 1, 2023, Sweden increased the nonpayment and late payment interest rate from 17.5 percent to 18.75 percent, the rate on credit balance on taxpayers' accounts from 1.125 percent to 1.6875 percent, and the interest rate on tax debt repayment plans negotiated with the tax authority from 2.5 percent to 3.75 percent.
- **Sweden:**[xliii] Sweden's tax authority, the Swedish Companies Registration Office, and the Agency for Digital Government (Digg) recently called on the Swedish government to extend the mandatory e-invoicing regime to business-to-business and government-to-business transactions. Sweden introduced mandatory e-invoicing for all transactions between government agencies in 2019.
- **Vietnam:**[xliv] On February 23, 2023, the Vietnamese Ministry of Finance launched a consultation on a draft bill proposing to expand the tax base, improve VAT collection, combat VAT fraud, increase the 10 percent standard VAT rate, amend regulations on VAT recovery and refunds, and amend the regulations on export services.

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ii. Greece – Greece Suspends Reduced VAT on Transportation, Non-Alcoholic Drinks Through 2023, (February 21, 2023), News IBFD

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vii. Turkey – Turkey Reduces VAT Rate on Supplies of Prefabs and Containers to Earthquake Zone, (February 14, 2023), News IBFD

viii. Venezuela – Venezuela Waives VAT, Financial Transaction Tax on Import, Sale of Hydrocarbon Fuels, (February 1, 2023), News IBFD

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