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 on a monthly basis as developments occur. We look forward to hearing your feedback to help us in providing you with the most relevant information to your business.

KPMG Publications

KPMG TaxNewsFlash Newsletter on COVID-19 Measures

KPMG has set up a dedicated Tax Newsflash newsletter reporting tax measures adopted by countries around the globe in response to the coronavirus (COVID-19) pandemic, including indirect tax measures. The most common indirect tax measures adopted by jurisdictions so far include delays in VAT return filing and payment deadlines, relief from late payment interest and penalties, accelerating VAT refunds, and other targeted measures such as exempting certain medical equipment.

Developments Summary of the Taxation of the Digitalized Economy

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

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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.

Global Rate Changes

- **Bahrain:**[i] Effective January 1, 2022, Bahrain increased its VAT rate from 5 percent to 10 percent. However, there is a transition period of one year, ending December 31, 2022, during which vendors will charge 5 percent VAT under certain conditions. The transitional rules are mandatory when the specified conditions are met.

- **Bulgaria:**[ii] Effective January 1, 2022, Bulgaria extended until December 31, 2022, the application of the 9 percent reduced VAT rate applicable to books including e-books; restaurant and catering services; common tourist services; excursions organized by tourist operators and travel agents; services for the use of sports facilities; and baby foods and diapers. The reduced rates were previously scheduled to end on December 31, 2021.

- **Congo (Dem. Rep.):**[iii] Effective July 24, 2021, the Democratic Republic of Congo temporarily exempts airline companies from customs duty and VAT on imports and applies a reduced VAT rate of 8 percent to sales of airline tickets. This regime is valid for two years.

- **Ecuador:**[iv] Effective November 29, 2021, Ecuador enacted a comprehensive tax reform law. Under the new law, VAT is imposed at 12 percent on previously zero-rated goods such as LED lamps, electric cars for private use, electric and induction cookers, solar panels, and plants for the treatment of wastewater. The reform further zero-rates alcohol and anti-bacterial gel stronger than 70 percent, masks, oximeters, feminine hygiene products, tourism accommodations, and services provided by unions and similar entities that charge its members a fee not exceeding $1,500 per year. Finally, the reform authorizes the government to temporarily reduce the standard VAT rate (12 percent) to the sale of goods and services in the tourism sector (e.g., for holidays).

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— **Greece:**[v] Greece recently extended the reduced VAT rates applicable to certain goods and services through June 30, 2022: (1) 6 percent to hemodialysis, hemofiltration, hemodiafiltration and plasmapheresis filters, and fluid collection pouches for filtering process during hemodialysis, as well as products used for virus protection and the prevention of hospitalization, including protective masks and gloves for medical use and antiseptic solutions; and (2) 13 percent to entrance tickets to zoos and the importation of art objects, collections, or antiquities. In addition, the application of the reduced VAT rate of 13 percent is extended up to June 30, 2022, also in relation to the transportation of passengers and their luggage and the sale of coffee, juices, and other beverages, excluding alcoholic beverages

— **Italy:**[vi] Effective November 27, 2021, Italy reduced the VAT rate to 5 percent on sales of natural gas used for domestic and industrial purposes

— **Laos:**[vii] Effective January 1, 2021, Laos has reduced its VAT rate from 10 percent to 7 percent.

— **Latvia:**[viii] Effective January 1, 2022, Latvia reduced the VAT rate for e-books and printed media from 21 percent to 5 percent. However, publications wholly or predominantly devoted to advertising, or wholly or predominantly consisting of video content or audible music are specifically excluded from the scope of the reduced rate.

— **Moldova:**[ix] On January 13, 2021, Moldova extended the application of its reduced VAT rate of 6 percent for hotel and restaurant services through March 15, 2022.

— **Philippines:**[x] On December 3, 2021, the Philippines reinstated the VAT zero-rate applicable to the following transactions that are considered exports: (1) sales of raw materials, inventories, equipment, packaging materials to a registered export enterprise to be used directly and exclusively in its registered project or activity; and (2) sales of services, including the provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment to a registered export enterprise to be used directly and exclusively in its registered project or activity.

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— **Poland:**[xi] Effective January 1, 2022, Poland temporarily reduced the VAT rate applicable to energy products until March 31, 2022. The reduced rates will apply as follows: for gas from 23 percent to 8 percent; for electricity from 23 percent to 5 percent; and for household heating from 23 percent to 8 percent.

— **Romania:**[xii] Effective December 1, 2021, Romania has reduced the VAT rate for sales of firewood in the form of logs, stumps vines, branches, or of similar nature from 19 percent to 5 percent.

— **Romania:**[xiii] Effective January 1, 2022, Romania applies the reduced 5 percent VAT rate to sales of e-books and other electronic publications, except those that have, in whole or in part, video or audio music content and those intended solely or principally for advertising purposes. In addition, the reduced rate applies to the sale of thermal energy during the cold season (defined as the period between November 1 and March 31) intended for the general population and sales to public and private hospitals; public and private schools; nongovernmental organizations; religious entities; and accredited public and private social service providers. Finally, the reduced VAT rate applies to the transfer of dwelling premises, purchased by a single individual or purchased jointly with another individual (or individuals), that are ready for immediate occupancy and have a maximum usable area of 120 square meters, if the value of the premises, including the land on which they are built, does not exceed RON 700,000 ($160,230) (excluding VAT).

— **Russia:**[xiv] Effective January 1, 2022, Russia reduced the VAT rate applicable to the sale of live freshwater trout from 20 percent to 10 percent.

— **Turkey:**[xv] On November 26, 2021, Turkey reduced the VAT rate applicable to specified legal aid services from 18 percent to 8 percent.

— **Tajikistan:**[xvi] Effective January 1, 2022, Tajikistan reduced the VAT rate applicable to cashless transactions from 18 percent to 15 percent. The rate will be further reduced to 14 percent in 2024 and 13 percent in 2027. For cash transactions, the VAT rate will remain at 18 percent in 2022 and will be raised to 19 percent in 2024, and to 20 percent in 2027.

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Overview of Indirect Tax Developments from the KPMG International Member Firms

- **KPMG in Austria** published a report discussing recent indirect tax developments, including a decision of the Austrian supreme court on the deduction of VAT incurred for rented real property. Under Austrian law, rentals for business purposes are generally VAT exempt, and any VAT directly connected to the rental activity is not deductible. However, for rentals starting after August 31, 2012, landlords may opt to apply VAT if the tenant uses the immovable property nearly exclusively (minimum of 95 percent) for generating taxable revenues and consequently may deduct VAT incurred. In the case, the taxpayer acquired a rented property, and parts of the property were rented to entrepreneurs which were not entitled to deduct VAT. The Austrian supreme court held that as a consequence of acquiring the property the taxpayer entered into new rental contracts for VAT purposes for which the taxpayer cannot exercise the option to apply VAT. Therefore, any VAT incurred on the acquisition costs relating to the VAT-exempt rented areas is non-deductible. The Austrian supreme court further held that the acquirer (new lessor) of the property is not entitled to raise compensation claims against the tenant to compensate for non-deductible VAT.
- **KPMG in Belgium** published a report discussing recent amendments to the VAT exemption for medical and hospital care, especially tolerances provided by the tax authority regarding the new measures.
- **KPMG in Belgium** published a report discussing proposed amendments to the Belgian VAT Act that were submitted to the Belgian parliament on October 27, 2021. The proposal would reduce the VAT rate for household consumption of gas and electricity to 6 percent and extend the application of the 6 percent reduced VAT rate for facemasks and hydroalcoholic gels. The proposal would further simplify the administrative rules regarding the application of the reduced VAT rate of 6 percent for immovable property services and introduce new provisions regarding the sourcing of remote (distance) sales of imported goods.
- **KPMG in Belgium** published a report on a recent circular published by the Belgian tax authorities concerning the VAT treatment of charging facilities and charging of electric vehicles. The new circular provides that the installation of a charging station generally qualifies as immovable work if the station is incorporated in the ground. While the installation of a charging point in a building does not qualify as immovable work, it qualifies for VAT purposes as a transaction assimilated with "immovable work", as the charging point can be considered an element of the electric installation of a building. The installation of a charging station is generally subject to the standard VAT rate of 21 percent. However, in certain cases, the reduced VAT rate of 6 percent may apply (e.g., a charging station installed in a private dwelling in use for more than 10 years). With respect to the deductibility

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of the VAT incurred, the circular makes a distinction between charging stations installed at business premises and those installed at the private dwelling of an employee. A business charging station is considered to be part of the electric installation of the business, and the right to deduct VAT is determined according to the general rules (the VAT deduction limitation for car costs does not apply). A home charging station that is arranged by an employer for the employee, is not part of the electric installation of the business, and the VAT deduction depends on whether the charging station is made available to the employee for free, in which case the VAT deduction is made according to the business use of the car, or for consideration, in which case there should be a full VAT deduction. The charging of an electric vehicle qualifies as a sale of a good (electricity) and is subject to the standard VAT rate of 21 percent. VAT incurred on charging at (semi-)public charging stations and business charging stations should be based according to the business use of the car with a maximum of 50 percent recovery. However, the VAT recoverability of a home charging station will depend on the contractual arrangements between the employer, employee, and the e-mobility service provider, each with their own VAT treatment.

— **KPMG in Cambodia** published a report discussing recently introduced investments incentives in Cambodia. The new measures clarify that there are exemptions from customs duty, special tax, and VAT with regard to qualifying imports. The new incentive regime also makes it easier for investors to comply with Cambodian laws and regulations and allows for the electronic registration of an eligible project.

— **KPMG in Cambodia** published a report discussing a guidance issued by the Cambodian tax authority clarifying the rules and procedures for implementing VAT on e-commerce transactions. According to the guidance, nonresident vendors of digital goods and services to customers in Cambodia are required to register for VAT in Cambodia. The guidance clarifies the registration procedure, the timeline of registration, and the rules for the deregistration of a business. Taxpayers who fail to register or to update information or who fail to declare and pay VAT will be subject to penalties. In a separate report, KPMG Cambodia discussed an additional guidance from the Cambodian tax authority in which it delays the implementation of the new VAT rules on e-commerce transactions until March 31, 2022.

— **KPMG in Canada** published a report discussing a new "sweetened beverage tax" in Newfoundland and Labrador which will be effective September 1, 2022. The new tax will apply at 20 cents per liter on certain sweetened beverages and requires wholesalers who sell these drinks to issue invoices that contain specific details.

— **KPMG in Canada** published a report on Canada's 2021 Fall Economic Update, which proposes to introduce a digital services tax (DST) at a rate of 3 percent on revenue earned by "large businesses" from certain digital services (i.e., online marketplace services, online advertising service, social media services, and user data revenue). The tax would be imposed effective January 1, 2024, but only if the OECD/G20 Inclusive Framework's

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multilateral approach has not come into force by that time. In that event, the DST would be payable as of 2024 for revenues earned as of January 1, 2022. Although the DST will generally apply to businesses that have global group revenue from all sources of EUR 750 million or more in their fiscal period ending in the previous calendar year, as well as more than CAD 20 million of "in-scope" revenue related to Canadian users for the particular calendar year, businesses with CAD 10 million of "in-scope" revenue for a particular calendar year will also be required to register under the proposals. The Canadian Ministry of Finance indicated that it will accept comments on the proposal until February 22, 2022.

— **KPMG in Canada** published a report on a Canada Revenue Agency announcement that it is deferring the goods and services tax (GST) / harmonized sales tax (HST) information reporting requirement for platform operators for 2021. Under current law, distribution platform operators and accommodation platform operators registered or required to be registered for GST/HST on the provision of short-term accommodation situated in Canada are required to file an information return for the calendar year. However, the CRA has deferred the first calendar year information return (i.e., for 2021) to help affected businesses and platform operators adjust to the new reporting requirements. The information return reporting requirement will be in effect for all other calendar years. The information return for 2022 must be filed before July 2023. Procedures for filing the information returns will be issued in advance of the filing deadline. The deferral for filing the 2021 annual information return by platform operators does not affect their collection and remittance obligations. It also does not affect storage service providers who are required to notify the CRA by January 1, 2022, that they provided storage services as of July 1, 2021.

— **KPMG in Canada** published a report discussing new guidance clarifying Manitoba's new retail sales tax regime for online platform operators and online sellers effective December 1, 2021. The guidance states that operators of qualifying online sales platforms must collect and remit Manitoba's retail sales tax on all taxable retail sales facilitated through their platforms. Online sellers will not have to remit retail sales tax on retail sales of such goods if the online platform operator has collected and remitted the retail sales tax. The guidance also clarifies the retail sales tax rules applicable to providers of streaming services and other media services that may also be required to collect and remit retail sales tax.

— **KPMG in Canada** published a report discussing updated guidance issued by the CRA on sales of insurance intermediation services that generally are exempt from GST/HST. The CRA confirms that, when a person whose primary business is not insurance facilitates the sale of insurance on behalf of the insurer, their fees would generally be consideration for an exempt sale of a financial service. The CRA reasons that the incidental seller is arranging for the sale of a GST-exempt financial instrument (i.e., the insurance policy). The CRA further adds that, if the seller is doing more than arranging for the sale of insurance, it is a question of fact whether those fees are still exempt. The CRA previously considered those fees

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as consideration for taxable sales because it found that the predominant element to the transactions was a promotional and administrative service. However, the CRA says it has changed its position following two recent court decisions.

— **KPMG in the Czech Republic** published a report discussing the following changes to the tour operator margin mechanism effective January 1, 2022: (1) eliminating the option to calculate VAT from the aggregate data for the taxable period for travel services provided, (2) the new requirement to declare VAT on advances received for travel services, and (3) restricting the VAT exemption for air transport within the EU in the case of foreign tours outside the EU. The tour operator margin regime is a special mechanism for businesses that buy and resell travel, accommodation, and certain other services as a principal or undisclosed agent. It treats a bundle of sales made to the same person as a single sale and applies VAT on the margin rather than on each individual transaction.

— **KPMG in Estonia** published a report discussing proposed changes to its VAT and Excise tax laws, including introducing a VAT zero rate for certain exports and imports of goods; extending the reduced excise tax (duties) for another year through April 30, 2023; repealing the VAT exemption for coins and banknotes not intended for circulation; and introducing special rules for packages covered by the deposit-refund system, sales of second-hand goods, original works of art, and collectibles and antiques.

— **KPMG in Germany** published a report discussing recent indirect tax developments including a tax court decision on rescission of the waiver of VAT exemption and a tax authority guidance on the retention of invoices.

— **KPMG in Germany** published a report discussing recent indirect tax developments including a tax court decision on the separation of the sale of goods and services in the provision of meals, and tax authority guidance on the VAT treatment of consignment stocks, the proper description of sales in invoices, and the extension of the deadline for non-EU businesses to continue to apply the tour operator margin mechanism

— **KPMG in Hungary** published a report discussing the postponement of the electronic system for VAT (e-VAT system) through which the Hungarian tax authority prepares a "tentative" VAT return that taxpayers must review. The first e-VAT return was intended to cover the reporting period starting on October 1, 2021. However, Government Decree 613/2021 (XI. 8.) delayed the introduction of the e-VAT system until the end of the state of emergency (which currently lasts until the end of 2021). Thus, the first e-VAT system returns to be proposed by the tax authorities for taxpayers would, at the earliest, be in February 2022. According to preliminary plans, the preparation of VAT return proposals would be implemented in several steps. First, the VAT return proposals would be prepared based on data available from the online invoicing system. It is not yet known how the postponement of the e-VAT system could affect the implementation of further functions such as the inclusion of data related to import of products and providing return proposals for taxpayers that are obliged to submit EU

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sales and purchase lists or report VAT self-assessment transactions, which initially were supposed to be gradually implemented throughout 2022.

- **KPMG in India** published a report discussing a recent decision of the Indian supreme court holding that the GST common portal is only a facilitator for information and not the primary source for self-assessment.
- **KPMG in Italy** published a report on a recent Italian tax authority ruling on the VAT treatment of services between an Italian branch and a UK head office belonging to a UK VAT group after Brexit. In the ruling, the tax authority confirmed that UK VAT groups are still recognized after Brexit. Therefore, a UK VAT group is seen as a separate taxpayer for VAT purposes, and services between a fixed establishment located in Italy and the UK head office belonging to a UK VAT group are relevant for VAT purposes (although based on the general business-to-business (B2B) sourcing rules, outside the scope of Italian VAT.
- **KPMG in Italy** published a report discussing the VAT measures in the Budget Law for 2022, including (1) postponement of the new e-invoicing rules on cross-border transactions (i.e. between entities established in Italy and non-Italian customers/vendors) from January to July 2022; (2) postponement – for those retailers that decide to adopt debit systems – of certain electronic transmission and payment storage requirements from July 2021 to July 2022; (3) extension of the e-invoicing rules to parties that have adopted the simplified "*forfetario*" regime; (4) amendments to the zero-rating regime for international shipping services; (5) reduction of the Italian cash payment cap; and (6) introduction of a new penalty for not accepting electronic payments.
- **KPMG in Malaysia** published a report on a new voluntary disclosure program for indirect taxes in 2022. The voluntary disclosure program is being provided in two phases, the first opening January 1, 2022. The program applies to sales tax, service tax, goods, and services tax, and import and export customs duty liabilities. A determination as to whether the taxpayer will be granted remission from penalties and/or tax will be determined on a case-by-case basis.
- **KPMG in Mexico** published a report on updates to online digital tax receipts. The Mexican tax authority recently announced that version 4.0 of the online digital tax receipt (*comprobante fiscal digital por internet*—CFDI) system will be effective May 1, 2022. After this date, vouchers cannot be issued in versions other than 4.0. New required fields under CFDI version 4.0 include: new attributes for export; the name, company name, and postal code of the recipient; receipt-of-payment requests to confirm whether the amounts listed in the voucher are subject to tax or not; and a summary of the total amounts of payments as well as the taxes that are transferred. Another modification is that vouchers can be canceled only in the year in which they are issued if the recipient accepts this process.
- **KPMG in Mexico** published a report discussing a new two percent tax on individuals or entities that operate, use, and administer applications or computer platforms that are used for the distribution and delivery of goods (including food and meals). Digital platforms subject to the tax can be fixed

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or mobile devices, provided they allow users to contract for the delivery of packages, food, provisions, or any type of merchandise and when the delivery is made within the territory of Mexico City. The 2 percent tax is determined on the commissions or fees the digital platform charge to their customers and should be remitted to the government no later than the 15th day of the month following the month of the collection of the commissions. In addition, taxpayers are required to report the number of monthly deliveries. The law explicitly states that the tax is not to be included in the total cost paid by customers and is not to be charged to third-party bidders or on any other third party that delivers packages, food, provisions, or any type of goods. Rather, this tax is to be a direct tax on digital platforms and not one that is indirectly passed on to consumers.

- **KPMG in Mexico** published a report discussing a recent tax authority guidance on the use of e-invoices with a bill of lading component. Generally, the rules have an effective date of January 1, 2022. However, a new transition period is available—through March 31, 2022—to correct e-invoices without being subject to penalties. With regard to certain foreign trade transactions, an e-invoice with a bill of lading supplement is mandatory effective March 31, 2022. In addition, an administrative simplification is available for domestic traders that use "light load vehicles" for transport not exceeding 30 kilometers on federal highways. These traders are not required to issue an e-invoice with a bill of lading.
- **KPMG in the Netherlands** published a report discussing proposed climate and environmental tax measures agreed on by the governing coalition and presented to the parliament on December 15, 2021. The proposal includes changes to the energy, air passenger, and CO2 tax regimes.
- **KPMG in the Netherlands** published a report discussing a recent Advocate General to the Dutch Supreme Court opinion regarding a claim for VAT recovery by a bank that sought to base its VAT recovery on a financial analysis of the profit and loss (P&L) per product as a potential "actual use method" for determining the VAT recovery right.
- **KPMG in the Netherlands** published a report discussing the Deduction Exclusion Decree that precludes the recovery of VAT incurred on certain promotional gifts and staff benefits if a taxpayer provides them free of charge or below cost price, provided the cost price of those benefits exceeds the threshold of EUR 227 ($ 256) (excluding VAT) per recipient, per annum. Accordingly, no adjustment is necessary if the total purchase and production costs (the cost price) of the gifts or benefits are less than EUR 227 (excluding VAT) per recipient, per annum. However, if the threshold is exceeded, the VAT incurred on the purchase of such gifts or benefits is non-recoverable.
- **KPMG in Nigeria** published a report providing an update on Nigeria's oil industry as the federal government has shifted the focus to audits for stamp tax (duties). This report further discusses in brief other developments for the oil and gas industry, such as the Petroleum Industry Act 2021, the Upstream Commission's website launch, Nigeria's actual production vs. Organization of the Petroleum Exporting Countries (OPEC) production quota, and oil prices.

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— **KPMG in Oman** published a report discussing a recent tax authority guidance regarding the fee to be paid when businesses apply for a license to operate an excise tax warehouse. Oman allows businesses to apply for a license to operate an excise tax warehouse when the applicant is registered for excise tax purposes. The amount of the fee generally is based on the value of the bank guarantee submitted by the business at the time of the application to establish or renew an excise tax warehouse license.

— **KPMG in Sweden** published a report discussing a new tax on credit institution debts—a "risk tax" (*riskskatt*) for certain credit institutions effective January 1, 2022. The new tax applies to banks and other credit institutions that are part of groups with total liabilities attributable to operations in Sweden exceeding SEK 150 billion ($16.57 billion) for 2021. The tax basis is the amount of liabilities (with certain exceptions) generally referred to as a "simplified indebtedness." The tax is levied at a company level, and the rate of tax is 0.05 percent in 2022 (increasing to 0.06 percent from 2023).

— **KPMG in Thailand** published a report discussing a draft ministerial regulation approved by the Thai Cabinet on December 21, 2021, that includes rules relating to e-tax invoices and e-receipts. The regulation requires VAT-registered taxpayers to apply and obtain approval from the Director-General of the Revenue Department to prepare, send, receive, and maintain e-tax invoices and e-receipts and defines certain critical terms, and sets forth data security measures. The issuance of the ministerial regulation will not affect VAT registrants that have been certified to issue e-tax invoices and e-receipts via the "e-tax invoice by email" system under the prior rules.

— **KPMG in the United Arab Emirates** published a report on a recent tax authority guidance regarding the VAT recovery rules for mobile phone packages provided to employees for business use. The guidance provides that VAT recovery on mobile phone expenses is only possible when a strict business-use policy is in place and the taxpayer actively enforces the policy. The guidance lists conditions that must be met before a taxpayer may recover the VAT incurred on mobile phone packages. If the business acquires airtime and packages based on expected business requirements, any airtime and packages used in excess of the business plan would be regarded as non-business use, unless the additional airtime and packages are "recharged" to the employee with VAT, or if there is robust monitoring in place to substantiate the actual use.

— **KPMG in the United Kingdom** published a report on updated HMRC guidance that notes that cryptocurrency platforms may potentially be within the scope of the DST. The UK DST applies if a group has worldwide revenues in excess of GBP 500 million ($680 million) which arise in connection with an in scope digital services activity and its UK digital services revenues are in excess of GBP 25 million ($34 million). In scope activities include the provision of an online marketplace. There is an exemption for online financial marketplaces, if the majority of the online marketplace's revenues arise in connection with the facilitation of trading

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of financial instruments, commodities, or foreign exchange. According to HMRC, even though this exemption is intended to be broad and to encompass all types of financial services, crypto assets are unlikely to meet the definition of financial instruments, commodities, or foreign exchange. HMRC has a long-held view that crypto assets are not money/currency.

- **KPMG in the United Kingdom** published a report on a new HMRC guidance on Freeport tax reliefs. The UK had announced the introduction of new Freeports in eight English regions and subsequently published legislation to formally designate the first tax sites at the Humber, Teesside, and Thames Freeports. For this purpose, HMRC published guidance on certain tax incentives that are available in these tax sites, including (1) enhanced capital allowance for companies investing in plants and machinery, (2) a new 10 percent tax rate for structures and buildings allowance (SBA) and (3) stamp duty land tax relief (SDLT). Further, the HMRC published guidance to help taxpayers check if goods can be moved into or stored in a Freeport customs site.
- **KPMG in Zimbabwe** published a report discussing tax measures in the 2022 budget which proposes, among other things, to (1) revise the definition of "tax invoice" or "fiscal tax invoice" when produced by a registered operator and printed by a fiscal electronic register or fiscal memory device used by a registered operator; (2) clarify that tax invoices generated before December 31, 2021, may be claimed no later than March 31, 2022; and (3) provide that tax clearance certificates are not to be issued to non-compliant taxpayers.

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Indirect Tax Developments and News from Around the World

The Americas

United States: Pennsylvania Commonwealth Court Clarifies Scope of Manufacturing Exemption

The Pennsylvania Commonwealth Court recently addressed whether a taxpayer was a manufacturer and whether it owed sales tax on purchases of help supply services. *Quality Driven Copack, Inc., Petitioner v. Commonwealth of Pennsylvania*. The taxpayer at issue was engaged in assembling and selling pre-cooked frozen meals. To create its products, the taxpayer purchased food components and packaging materials, blended the components into meals, packaged them into various types of containers, and then froze the meals. The issue before the court was whether the taxpayer was engaged in manufacturing such that it was entitled to the manufacturing sales and use tax exemption on its purchases of machinery, equipment, and associated repair parts. The taxpayer also argued that it had not purchased taxable help supply services.

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After the taxpayer lost its appeals before the Appeals Board and the Board of Finance & Revenue, the case came before the Commonwealth Court.

The Commonwealth Court concluded that the taxpayer was not a "manufacturer" as contemplated under the manufacturing exemption. Although the taxpayer took individual food products and transformed them into prepackaged, ready-to-use meals, this process did not result in the kind of substantive change necessary to the ingredients to qualify for the manufacturing exemption. In the court's view, the taxpayer's operations were similar to the operations of other businesses that were determined not to be manufacturers because their processes did not result in a pronounced and lasting change to the starting materials. The court next addressed whether the taxpayer purchased taxable help supply services when it contracted with various vendors for contract laborers. Under Pennsylvania law, a taxable help supply service is when a vendor provides an individual to a purchaser and the individual is an employee of the vendor, but the work performed by the individual is under the supervision of the purchaser. The issue in the case centered on whether the taxpayer was supervising the employees at issue. The court concluded that the taxpayer's largely unrebutted affidavits supported its position that its contractors worked independently on the plant floor with very little hands-on oversight by the taxpayer. While the taxpayer retained responsibility for overall quality control and operations, there was no evidence that the level of direction by the purchaser that would be necessary for the services to be considered taxable help supply services was present. Accordingly, the court determined the taxpayer did not owe sales tax on its purchases. For more information, click here.

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Europe, Middle East, Africa (EMA)

European Union: Proposal for New Revenue Resources

On December 22, 2021, the Commission of the European Union (EU) proposed to introduce three new sources of revenue: (1) revenues from emissions trading (ETS), (2) revenues from the proposed EU carbon border adjustment mechanism, (3) a sharing of residual profits from multinationals that will be re-allocated to EU Member States under the recent OECD/G20 agreement on a re-allocation of taxing rights ("Pillar One"). These new revenue sources are expected to generate on average of up to EUR 17 billion ($19.2 billion) annually for the EU budget in the years 2026 -2030 and help repay borrowing made for the EU-wide Covid-19 relief measures. In addition, the new resources would provide essential support to the Fit for 55 Package by putting in place the financing of the Social Climate Fund proposed by the Commission in July 2021. The Fit for 55 package aims to reduce net greenhouse gas emissions in the EU by at least 55 percent by 2030, compared to 1990, to stay on track to reach climate neutrality by 2050. For KPMG's previous discussion on this, click here.

Under the current EU Emissions Trading System, most revenues from auctioning emission allowances are transferred to national budgets. The

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Commission proposes that the future, 25 percent of the revenue from EU emissions trading flows into the EU budget. Revenues for the EU budget are estimated at around EUR 12 billion ($13.5 billion) per year from 2026-2030.

The new carbon border adjustment mechanism puts a carbon price on imports of a targeted selection of products to ensure that EU climate actions do not lead to "carbon leakage." This mechanism would apply to specified sectors and would be fully consistent with WTO rules according to the Commission. The Commission proposes to allocate 75 percent of the revenues generated by this carbon border adjustment mechanism to the EU budget. Revenues for the EU budget are estimated at around EUR 1 billion ($1.1 billion) per year on average over 2026-2030.

The third measure would be dependent on the proposed reform of the international corporate taxation framework under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. Pillar One of this agreement would reallocate the right to tax a share of so-called residual profits from the world's largest multinational enterprises to participating countries worldwide. (For more information on the OECD/G20 Inclusive Framework two-pillar solution, click here.) The Commission proposes to divert to the EU budget 15 percent of the Pillar One levy residual profits of in-scope companies that are reallocated to EU Member States. The Commission aims to propose a Directive in 2022, once the details of the OECD/G20 Inclusive Framework agreement on Pillar One are finalized. Pending the finalization of the agreement, revenues for the EU budget could amount to roughly between EUR 2.5 and EUR 4 billion ($2.5 – $4.5 billion) per year

Sources: Orbitax, European Commission Proposes the Next Generation of Own Resources for the EU Budget, (December 23, 2021)

European Union: Overview of recent Indirect Tax Developments

On October 19, 2021, the European Commission adopted the Commission Work Programme 2022, which sets out the priority legislative proposals and the action plan for 2022 including: (1) VAT reporting obligations and e-invoicing; (2) VAT treatment of the platform economy; and (3) single EU VAT registration. The ultimate goals of the program are to harmonize and promote the provision of cross-border sales in the single EU market, to help improve tax collection, and to ensure sustainable revenues for the EU region.

On November 3, 2021, the EU published a list of gold coins meeting the criteria established in the EU VAT Directive to be treated as investment gold. The sale of these coins will be exempt from VAT for the 2022 calendar year. However, a coin that does not appear on the list may still qualify for the VAT exemption if it meets the criteria for the exemption laid down in the VAT Directive.

On November 11, 2021, the EU published Commission Implementing Regulation (EU) 2021/1948 on the treatment of VAT repayments to consumers and taxpayers for their exempt activities for purposes of the gross national income at market prices data (GNI). The treatment of VAT

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repayments needed to be defined and clarified for data on the GNI to be reliable, exhaustive, and comparable between Member States. The regulation provides that, when compiling national accounts aggregates, repayments of VAT incurred on purchases for their exempt activities shall be treated as other current transfers or capital transfers, and not as if they were deductible VAT.

On November 17, 2021, the EU published Commission Implementing Regulation (EU) 2021/2007, which lays down detailed rules for applying the special program for small enterprises effective January 1, 2025. Under the new rules, Member States will be allowed to continue exempting small businesses with annual gross receipts not exceeding a given threshold not to exceed EUR 85,000 ($97,250). The new rules will further open the exemption to small enterprises established in other Member States than the one in which the VAT is due. The exemption will apply if the gross receipts in Member State where the SME is not established are below the national threshold and if the annual gross receipts in the EU are below EUR 100,000 ($114,400). The regulation sets out rules in relation to the VAT exemption for the sale of goods and services made by taxpayers under the small businesses special program. The regulation provides definitions, functionalities of the electronic interfaces to those businesses and the process to automatically exchange information that has been collected and stored relative to the small operators.

On November 29, 2021, the EU's VAT Expert Group (VEG) held a meeting in which it discussed the work of the sub-group dedicated to the "Platform economy." The sub-group conducted an in-depth analysis to provide advice and assistance regarding the problems related to VAT encountered by actors intervening in the platform economy, such as users of the platforms, the platforms themselves, and the tax authorities; it also assessed potential solutions to those problems. The sub-group discussions were focused on the nature and sourcing of sales carried out by platforms considering both transactions in which the platform accounts for its own sales to the vendor and/or customer (bud does not account for the underlying sale, provided by the vendor to the customer) , and transactions in which the platform accounts for the underlying sale to the customer (as a deemed vendor). The role of the platforms was also discussed (i.e., an educational role, the joint liability, the withholding of tax, and the deemed vendor role) as well as the reporting obligations of the platforms and the application of the deemed vendor model. In addition, the sub-group involved business representatives from accommodation and transport services to discuss the issues facing them in the current application of VAT. These primarily relate to the inconsistent application of the VAT rules amongst Member States. The sub-group further proposed issues to consider in the future when refining the VAT rules applicable to the platform economy, including the conditions to obtain a VAT number harmonized across the EU, the nature of the service fee charged by the platforms, record keeping/data sharing, and the VAT obligation of the platforms.

On December 2, 2021, the European Commission published its annual VAT Gap report for 2019 showing that EU Member States lost an estimated EUR 134 billion ($151 billion) in VAT in 2019, representing a decrease of about 5 percent

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or EUR 6.6 billion ($7.4 billion) compared to 2018. This figure represents revenues lost to VAT fraud and evasion, VAT avoidance, and optimization practices, bankruptcies, and financial insolvencies, as well as miscalculations, and administrative errors. For 2019, the smallest gaps were observed in Croatia (1.0 percent), Sweden (1.4 percent) and Cyprus (2.7 percent); the largest VAT compliance gaps were recorded in Italy (EUR 30.1 billion ($3.5 billion)) and Germany (EUR 23.4 billion ($26.5 billion)). To further reduce the VAT Gap, the EU Commission will launch legislative proposals to further modernize the VAT system, including reinforcement of the Eurofisc network, comprised of liaison officials from the 27 Member States and Norway.

On December 3, 2021, the EU published new non-binding guidelines from the VAT Committee which addresses the following: (1) the return of goods placed under call-off stock arrangements; (2) interactive sessions filmed and broadcast in real time via the internet (video-chat); (3) transactions related to the recharging of electric vehicles; and (4) computation of the EU sourcing threshold under the new e-commerce rules. With respect to video-chat, while the VAT Committee agrees with the ECJ decision in *Geelen*, Case C-568/17, that such services should be sourced to the location at which the performance occurs, the VAT Committee concludes that such place of performance is where the customer is established and not, as the ECJ ruled, where the vendor is established.

On December 7, 2021, the EU Economic and Financial Affairs Council (ECOFIN) issued a release announcing that agreement has been reached on a proposed Directive to update EU rules on VAT rates. According to the release, the new rules reflect Member States' current needs and the EU's present policy objectives, which have changed considerably since the old rules were put in place. The agreement ensures Member States are treated equally and provides more flexibility to apply reduced and zero VAT rates, while also phasing out preferential treatment for environmentally harmful goods. The proposal will update the list of goods and services under the EU VAT Directive to which all Member States can apply reduced VAT rates to include new products and services including those that protect public health, are good for the environment, and support the digital transition. In addition, Member States will further be allowed to exempt from VAT certain listed goods and services considered to cover basic needs. Further, the agreement prohibits Member States from applying reduced rates and exemptions to goods and services deemed detrimental to the environment and to the EU's climate change objectives, effective 2030. Moreover, the agreement would make derogations and exemptions for specific goods and services, currently in place for historical reasons in certain Member States available to all countries to ensure equal treatment and avoid distortion of competition. However, existing derogations that are not justified by public policy objectives other than those in support of EU's climate action will need to end by 2032. The new rules will be sent to the European Parliament for consultation by March 2022. If approved, Member States will be required to adopt and publish, by December 31, 2024, the laws, regulations, and administrative provisions necessary to comply with it, and enforcement measures will apply as from January 1, 2025.

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On December 9, 2021, the European Commission presented an action plan to support the development of the social economy. Social economy organizations are entities that put social and environmental purposes first, reinvesting most of their profit back into the organization. One of the areas in which the European Commission proposes to act is creating the right conditions for the social economy to thrive, through policy and legal frameworks. According to the Action Plan, taxation is an important policy for the social economy and few countries have developed a specific and consistent taxation framework for social enterprises. To address these issues, the European Commission will propose a Council Recommendation on developing the social economy framework conditions in 2023. It will also publish guidance for Member States on taxation frameworks for social economy organizations and facilitate easier access to guidance on State aid.

On December 14, 2021, an EU citizens' initiative calling for an EU proposal to reduce the VAT rate for green products and services was initiated. A citizens' initiative is an agenda-setting tool for EU citizens. It is considered admissible if the proposed action does not fall outside the Commission's powers to submit a proposal for a legal act; is not abusive, frivolous, or vexatious; and does not contradict the values of the EU. According to the legislative initiative, since VAT can influence an end consumer's purchasing decisions, every Member State of the European Union could actively support climate and environmental protection by reducing the VAT rate for "green" products. The organizers of the Green VAT initiative have six months from December 14 to begin collecting signatures. If the initiative receives 1 million statements of support within a year from at least seven different Member States, the Commission is required to react to the initiative. From there, the Commission could decide to act on the request or refuse it with an explanation of its rationale for either choice.

The European Commission recently launched a new tax and customs learning portal. The portal is intended to be a hub for tax officials and professionals to discuss and disseminate tax and customs knowledge, alongside learning materials prepared by Commission staff. It is intended to build on existing efforts by the European Commission to support Member State tax and customs administrations their staff, and if possible, private sector professionals as well. The Commission said the new portal is intended to be a significant addition to the range of training and education materials it offers. It is intended to have broad, international appeal, but some of the content will be restricted to tax authorities only.

Source: European Union - European Commission Publishes Proposal for Council Directive Amending Directive 2006/112/EC Regarding VAT Rates, (December 6, 2021) News IBFD; European Union - List of Gold Coins Treated as "Investment Gold", Exempt from VAT, (December 6, 2021) News IBFD; European Union - European Commission Adopts Implementing Regulation (EU) 2021/2007 Laying Down New Rules on VAT Scheme Applicable to Small Businesses, (December 6, 2021) News IBFD; European Union - European Commission Publishes the Latest List of VAT Guidelines on VAT Committee Meetings, (December 6, 2021) News IBFD; European Union - Commission

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Implementing Regulation on the Treatment of Repayments of VAT to Non-Taxable and Taxpayers for their Exempt Activities, (December 6,2021) News IBFD; European Union - European Commission Presents Action Plan to Boost Social Economy and Create Jobs, (December 9, 2021) News IBFD; European Union - European Commission Work Programme 2022 Includes Actions on VAT in Digital Age,(November 25, 2021) News IBFD; European Union - VAT Expert Group Discussed Report on the VAT treatment of the Platform Economy in its 30th VAT Meeting, (November 30, 2021) News IBFD; European Union - European Commission Reports on EUR 134 Billion Gap in Revenues in 2019, (December 3, 2021) News IBFD; CCH, Global VAT News & Features, EU Releases Latest VAT Gap Report,(Dec. 7, 2021); Tax Notes, EU Citizens' Initiative Calls for 'Green VAT' System, December 15, 2021; CCH, Global VAT News & Features, EU Launches New Tax And Customs Learning Portal,(Nov. 19, 2021).

European Union: Roundup of recent ECJ cases

On November 18, 2021, the Court of Justice of the European Union (ECJ) published its judgment *Promexor Trade*, Case C-358/20, in which it held that a taxpayer has a right to deduct VAT and is obliged to pay VAT charged on invoices even if its VAT number is revoked by the tax authorities, provided that the taxpayer is not involved in any tax evasion scheme. The tax authorities cannot refuse the re-registration of a taxpayer for VAT purposes due to a formal requirement nor because the director of the taxpayer is a shareholder of a company subject to insolvency proceedings.

On November 25, 2021, the ECJ published its judgment in *Amper Metal*, Case C-334/20, in which it held that a taxpayer is allowed to deduct VAT incurred on advertising services when the provision of the services constitutes a transaction subject to VAT and presents a direct and immediate link with one or more taxable downstream operations or with all of the taxpayer's economic activity under its general expenses. The tax authority may not take into account that the price invoiced for such services would be excessive compared to a reference value defined by the national tax administration or that those services would not have given rise to an increase in the gross receipts of that taxpayer.

On December 9, 2021, the ECJ published its judgment in *Kemwater ProChemie s.r.o.*, Case C-154/20, in which it held that a tax authority may deny a VAT deduction without proving that the taxpayer committed VAT fraud or that he or she knew, or ought to have known, that the transaction relied on to establish the right of deduction was connected with such fraud when the taxpayer fails to provide proof that that vendor had the status of the taxpayer, even if the true vendor of the goods or services was not identified. The tax authority must consider the factual circumstances and the evidence produced by that taxpayer and determine that the information needed to verify that the true vendor had that status is lacking.

Source: European Union; Czech Republic - ECJ Decides on VAT Right to Deduct Based on Vendor's Evidence: *Kemwater ProChemie* (Case C-154/20) (VAT), (December 9, 2021) News IBFD; European Union; Romania - ECJ Decides on Requiring Involuntarily De-Registered Taxpayers to Collect VAT But Denying

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Right to Deduct VAT: *Promexor Trade* (Case C-358/20) (VAT) 18 November 2021; European Union; Hungary ECJ Decides on VAT Deduction Right on Services Purchased from Independent Party at Disproportionately High Price: *Amper Metal* (Case C-334/20) (VAT), (November 25, 2021) News IBFD.

Italy: Overview of Recent Indirect Tax Developments

On December 17, 2021, the EU Commission extended the authorization granted to Italy to apply mandatory electronic invoicing through December 31, 2024. The authorization allows Italy to require taxpayers to accept invoices in electronic format if they are issued by taxpayers established in Italy, with no exceptions. The use of electronic invoices in these circumstances is not subject to acceptance by the recipient.

The Italian tax authority (ITA) recently published Ruling Answer No. 632/2021, in which it clarified that contributions processed by a company that manages a digital platform designed in order to collect funds for organizations engaged in gathering signatures for petitions are outside the scope of VAT. According to the ITA, it was not possible to identify a direct link between the activity of the company initiating the petition and the contribution paid and processed through the platform. Further, the person paying the contribution does not have the right to receive any services from such an organization which also does not undertake any obligations as a consequence of the funds received. The contribution is solely aimed at generally supporting the organization which initiated the petition and only grants the right to receive periodical updates on the impacts and results of the petition campaign and related events and activities.

The ITA recently published Ruling Answer No. 584/2021, in which it clarified the requirements for a VAT deduction paid on preparatory services, even if the taxpayer is later not able to start its business activity for reasons independent from its will. In the ruling, a company concluded a contract for the rental of an immovable property and related renovation services to start a hotel activity. The contract was subsequently terminated because the vendor did not finalize the required renovation by the agreed deadline, and the company was not able to start its business activity. The ITA pointed out that the right to deduct VAT can be exercised starting from the time of sale of the relevant goods and services, without a need to "use and enjoy" the services before recovering the VAT. VAT is deductible once the existence of a direct link between the purchase and the business activity has been ascertained, even in the absence of sales.

The ITA recently published Law Principle No. 13/2021, in which it confirmed that the taxpayer entitled to recover the VAT paid at the time goods are imported is the actual recipient of the goods subsequently used in the exercise of its business activity. To exercise the right to deduct the VAT paid, the taxpayer must post relevant customs bills in the VAT purchase ledger in accordance with the general rules applicable to invoices.

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The ITA recently published Protocol No. 293390/2021, which sets out implementing rules on anti-fraud checks on habitual exporters and the letters of intent they issue to benefit from the special VAT regime effective January 1, 2022. The habitual exporter regime allows taxpayers meeting certain requirements to purchase goods and services free of VAT. To qualify as a habitual exporter, the taxpayer must show that export/international services and/or intra-EU sales exceed 10 percent of total gross receipts. In the Protocol, the tax authorities define the criteria, principles, and procedures they will adopt in carrying on the relevant risk and control analysis aimed at verifying that habitual exporters meet all the necessary requirements. If an analysis highlights irregularity, the tax authorities may declare the relevant letter of intent invalid and prevent the taxpayer from issuing new letters of intent.

On December 30, 2021, the ITA published Ruling No. 884/2021, in which it confirmed that transactional net margin-based income (TNMM) transfer pricing adjustments do not constitute a taxable sale of goods or services for VAT purposes. Neither do they require any corresponding change to the VAT base for intragroup product sales. In the case, a domestic subsidiary (Alpha Spa) of a publicly traded Italian clothing and footwear manufacturer (Beta Spa), sold finished goods to its local distribution subsidiaries in the Czech Republic, Germany, Hungary, and the Netherlands as well as to the German subsidiary's Austrian branch. Although the prices for these intragroup product sales were initially determined using the comparable uncontrolled price method, the group's transfer pricing policy provided for year-end operating income adjustments to ensure that the distributors' operating margins fell within the arm's-length range determined using the TNMM. At the end of the relevant year, downward income adjustments—made in the form of adjustment invoices—were required for all the distributors identified by the ruling. The question addressed by the ruling is whether these year-end transfer pricing adjustments have VAT consequences, either because the adjustments themselves constitute a taxable sale of goods or services or because the adjustment amounts should be added to the taxable VAT base of the intragroup product sales. The ITA ruled that the group's transfer pricing policy provides for an operating income adjustment rather than a product pricing adjustment. They do not represent the actual value of any specific sale of goods or provision of services because there is no direct link between the transfer pricing adjustments and any specific sale of goods or services. Thus, the adjustments should not be added to the taxable VAT base for the original product sales prices either.

Source: European Union; Italy - European Commission Authorizes Italy To Continue Applying Mandatory Electronic Invoicing, (December 17, 2021) News IBFD; Italy - Tax Authorities Clarify VAT Treatment of Contributions to Petition Programmes, (December 21, 2021) News IBFD; Italy - Tax Authorities Clarify Requirements for VAT Deduction, (December 21, 2021) News IBFD; Italy - Tax Authorities Clarify Deduction of VAT Paid on Imported Goods, (December 22, 2021) News IBFD; Italy - Tax Authorities Issue Implementing Rules on Anti-Fraud Checks on Habitual Exporters, (December 22, 2021) News IBFD; Taxnotes, Italian VAT Liability Unaffected by Transfer Pricing Adjustments, January 3, 2022.

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Russia: Overview of Recent Indirect Tax Developments

Russia recently proposed to implement a 20-year relief from land and vehicle tax, and a VAT exemption for goods imported into a free customs zone. The relief is available to taxpayers registered on the Kuril Islands after January 1, 2022. The taxpayer may opt out of the above tax exemptions from the first day of the relevant tax period by notifying the tax authorities no later than December 31, of the year preceding the year in which the right to the tax exemptions is waived. To be eligible for the incentives, taxpayers must meet the following criteria: (1) have no stand-alone subdivisions outside of the Kuril Islands; (2) have no intermediary activities; (3) not produce or process excisable goods; (4) not extract or process hydrocarbons; (5) not fish valuable species of crustaceans (with the exception of brine shrimp and prawn); and (6) not have passive income that exceeds 10 percent of all income subject to corporate income tax.

On November 12, 2021, Russia issued a release on a meeting of the Eurasian Economic Commission's Council. The release discussed the approval of a protocol amending the 2014 Treaty on the Eurasian Economic Union (EAEU) regarding the procedures for collecting indirect taxes on e-services. The amendments establish the term "e-services" in the EAEU legislation and ways of paying VAT on such services. The document will be sent to the treaty parties for internal procedures needed for signing. Parties to the treaty include Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia.

Source: Russia - Russia Proposes Tax Incentives for New Businesses on Kuril Islands, (December 2, 2021); Orbitax, Eurasian Economic Union Members Agree to Treaty Protocol for Indirect Taxes on E-Services, November 17, 2021.

Ukraine: Overview of Recent Indirect Tax Developments

On November 28, 2021, Ukraine's State Fiscal Service (SFS) issued a guidance letter clarifying the VAT implications of the contribution of a right to use an immovable property by a nonresident legal entity to a Ukrainian company's capital. In the case, a nonresident legal entity that intends to become a shareholder of a Ukrainian company contributed capital to the Ukrainian company. The contribution consisted of the right to use the nonresident's commercial immovable property in Ukraine for three years. The nonresident entity does not have a permanent establishment in Ukraine. Based on the right received from the nonresident, the Ukrainian company intends to lease the commercial immovable property to third parties. The nonresident asked the SFS if its contribution to capital is subject to VAT in Ukraine. The SFS noted that for VAT purposes, a sale of goods is any transfer of the right to dispose of goods, including their sale, exchange, donation, or sale to a third party based on a court's decision. A sale of services refers to any sale that is not considered a sale of goods; any operation involving the transfer of intellectual property and other intangible assets; the granting of exclusive rights to that IP; or the provision of services consumed in the execution of a specific act or activity. It held that the nonresident legal entity's capital contribution will not be treated as a sale of goods or services for VAT purposes and will not be subject to VAT in Ukraine.

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On December 24, 2021, the STS issued a release in which it provided an overview of the amendments to the Ukrainian tax code effective January 1, 2022. The amendments include VAT exemptions for the import and sale of investment gold; provision of services to agents involved in the sale of investment gold; provision of services related to the production of investment gold and/or services for conversion of gold into investment gold. The amendments further clarified the new VAT rules requiring nonresident digital service providers to register for and charge VAT effective January 1, 2022. Per the amendments, operations carried out through applications on smartphones, tablets, or other digital devices are also considered in determining if the UAH 1 million ($36,057) registration threshold is met. The amendments also extended the VAT exemption for the sale and import of waste and ferrous scrap and non-ferrous metals, as well as paper and cardboard for recycling for 5 years.

Ukraine is considering a Draft Law that would introduce a reduced VAT rate of 5 percent on energy carriers and related services. If enacted, the proposal would apply to the sale, storage, shipping, and distribution of natural gas; the production, distribution, and sale of electricity, the production, shipping, and sale of thermal energy; the provision of heating services; and the sale of centralized drinking water and drainage.

On December 10, 2021, the STS clarified when nonresident providers of digital services do not have VAT obligations in Ukraine. Effective January 1, 2022, nonresidents are required to register for VAT purposes if they provide digital services directly to individuals and to individual entrepreneurs not subject to VAT. (For KPMG's previous discussion on the new requirements for nonresident digital services providers, please click here.) However, nonresidents are not subject to the requirement if they (1) sell digital services under intermediary agreements, provided that the invoices (receipts) issued to consumers of electronic services specify the list of such digital services and their actual vendor; (2) exclusively process payments for electronic services and do not participate in the provision of these services; or (3) provide electronic services directly through their permanent establishment in Ukraine. In addition, the Ukrainian Ministry of Finance recently published the VAT return form (in Ukrainian and English) for compliance with the new rules for nonresident digital services providers. VAT returns must be filed on a quarterly basis within 40 calendar days following the last day of the reporting (tax) period, regardless of whether the nonresident provided digital services during the reporting period. The VAT return and any amendments may be filed in Ukrainian or in English. All figures must be expressed in the foreign currency (EUR or USD) chosen at registration by the taxpayer, rounded up in accordance with the generally established rules.

On December 23, 2021, the Ukraine Ministry of Finance published Order No. 637, which amends the regulations of registration for VAT payers. The main amendments are for the implementation of the new registration requirements for nonresident vendors of digital services effective 2022, including a new section that defines the procedures for registration, re-registration, and cancellation of registration of non-residents as VAT payers. The order clarifies that nonresident digital services providers are required to register by March 31 if their sales in Ukraine exceed UAH 1 million ($35,000) in the previous calendar year.

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The main amendments are for the implementation of new registration requirements for non-resident suppliers of electronic services and advertising from 2022, including a new section that defines the procedures for registration, re-registration, and cancellation of registration of non-residents as VAT payers. The provisions of the new section apply for non-residents without a permanent establishment in Ukraine that supply electronic services to individuals, including individual entrepreneurs not registered for VAT (B2C supplies).

The STS recently issued a Guidance Letter in which it clarified that if a nonresident has a permanent establishment (PE) in Ukraine that is registered for VAT purposes and activities (sales of goods/works/services) are carried out in the customs territory of Ukraine through this PE, the PE should accrue and pay VAT related to the transactions carried out by the nonresident in the customs territory of Ukraine. This obligation of the PE regardless of whether the payment for the goods/works/services is made to the account of the nonresident in a foreign bank or to the account of the PE in a Ukrainian bank.

Sources: Taxnotes, Ukraine Clarifies Taxation of Nonresident's Capital Contribution, (December 17, 2021); Orbitax, Ukraine Tax Code Amendments for 2022, (December 30, 2021); Ukraine Tax Agency Posts Letter on VAT Procedures for Electronic Services to Nonresidents, Bloomberg Law News, (December 15, 2021); Orbitax, Ukraine Parliament Considering Reduced VAT Rate on Energy Carriers and Related Services, (November 16, 2021); Ukraine - Ukraine Clarifies VAT Obligations for Nonresident Vendors of Electronic Services in 2022, (December 20, 2021) News IBFD; Ukraine - Ukraine Publishes VAT Return Form for Nonresident Providers of Electronic Services,(December 21, 2021) News IBFD; Ukraine State Tax Service Clarifies That PE is Liable To Pay VAT on Transactions Carried Out in Ukraine, (January 3, 2022) News IBFD; Orbitax, Ukraine Amends VAT Registration Regulations for Non-Resident Suppliers of Electronic Services (Jan. 18, 2022).

United Kingdom: Overview of Recent Indirect Tax Developments

On November 24, 2021, the UK tax authority (HMRC) updated its guidance on the VAT liability and registration rules under the new plastic packaging tax regime. The updates include eligibility requirements; registration requirements under the regime; guidance on creating invoices that mention the plastic packaging tax charged; recordkeeping requirements; and VAT liability under the regime. Taxpayers that are liable to register for the tax will be able to do so from April 1, 2022.

On December 6, 2021, a UK High Court issued a decision on a legal point raised by ride-hailing services about the significance of the U.K. Supreme Court decision in February that the companies' drivers are "workers" for purposes of employment rights, rather than independent contractors working under contract to customers. The companies sought clarification, asserting that they act merely as an agent for drivers who contract directly with drivers. The court rejected this assertion and opined that the Supreme Court "suggested" in the February decision that for the companies to comply with the *Private Hire Vehicles (London) Act 1998*, the companies would have to accept a contractual obligation with passengers. An earlier law provides that

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“every contract for the hire of a licensed private-hire vehicle outside London shall be deemed to be made with the operator who accepted the booking for that vehicle, whether or not he himself provided the vehicle.” To the court, this demonstrates a clear parliamentary intention that the operator should undertake contractual responsibility and obligations. While the language of the 1998 Act differs from the 1998 Act, the court saw no reason for any different parliamentary intention for private-hire vehicle services in London. The Act plainly contemplates that acceptance of a booking by the operator will create a contract between the operator and the passenger and that this will be a contract by which the operator undertakes an obligation as principal to provide the transportation service (i.e., a vehicle and driver to convey the passenger to the agreed destination). While the decision does not directly address VAT liability, the companies said they would adapt their business practices and terms to comply with the ruling.

The U.K First-Tier Tribunal recently issued its decision in *Lockheed Martin UK Ltd* on whether helicopter conversion kits provided by Lockheed Martin to the UK Ministry of Defense are goods subject to VAT at the standard rate or qualified as modification services eligible for zero-rating. In November 2016, Lockheed Martin UK (LMUK) contracted to provide the Ministry of Defense with removable role-fit kits that were used to configure helicopters to perform various tasks. In November 2017, HMRC concluded that the sale of the kits was subject to VAT at the standard rate rather than the zero-rate applicable to the services of modifying or converting aircraft. LMUK argued that it is inappropriate to classify the provision of the role-fit kits as the predominant element of the contract and that the sale should be understood by reference to the drastic changes in the helicopters’ performance after the kits’ installation. Dissecting the operating systems to which the role-fit kits were added is impossible because the kits are part of an integrated system. LMUK pointed out that the Military Aviation Authority classified the installation of the kits as “a major modification for regulatory purposes,” and said that while the kits are removable, that does not mean they are not a modification. The Tribunal, however, used the analogy of a classic car collector installing wiring and brackets in each car in their collection to support a single portable sound system that could be moved from car to car. The analogy shows the importance of analyzing the nature of the good at “a granular level” to determine its ultimate purpose. The tribunal said that while the helicopters were modified, the sale of the role-fit kits was not a modification or conversion because that would require a more radical change than adding an accessory or feature. Furthermore, the term “modification” connotes permanence, and the kits are independently removable and replaceable.

Source: United Kingdom Tax Agency Explains VAT Liability, Registration Rules Under Plastic Packaging Tax Regime, Bloomberg Law News, November 30, 2021; CCH, Global VAT News & Features, Ride-Hailing Services Should Include VAT, UK Court Says,(Dec. 9, 2021); Taxnotes, Uber Faces VAT Bill After U.K. Court Rules on Contractual Issue, December 7, 2021; Taxnotes, Kits to Modify Aircraft Are Standard-Rated Goods, U.K. Court Finds, December 27, 2021.

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Singapore: Overview of Recent Indirect Tax Developments

On December 10, 2021, Singapore published its Goods and Services Tax (Amendment) Act 2021 which amends the GST rules to implement the 2021 budget measures. The law includes measures: 1) introducing GST on imported goods valued at SGD 400 ($292) or more; 2) applying GST on business-to-consumer imported nondigital services; 3) changing the basis for determining whether GST zero-rating or standard-rating applies to media sales effective January 1, 2022; and (4) improving the overseas vendor registration and VAT self-assessment regimes to provide tax certainty and ease of compliance for the imposition of GST on imported low-value goods and/or imported business-to-business or business-to-consumer services. (For KPMG's previous discussion on this, please click here.)

The Inland Revenue Authority of Singapore (IRAS) recently published an updated e-Tax Guide GST: Guide for Advertising Industry (Fourth Edition). The e-Tax guide explains the goods and services tax (GST) principles applicable to the advertising industry. It applies to media owners; media agencies; creative agencies, and full range advertising agencies. Some of the common forms of advertising and related services discussed in the guide include media sales; media planning; creative and production sales; brand public relations (PR); and events organizing. The guide also covers the change in the GST treatment of media sales (advertising space) with effect from January 1, 2022, and the transitional rules applicable to the provision of media sales straddling January 1, 2022, that were formally approved as part of the Goods and Services Tax (Amendment) Act 2021. The Act changes the basis for determining whether GST zero-rating or standard rating applies to media sales. The rate determination for such sales will be based on the place where the customer (i.e., the contractual customer) and direct beneficiary of the service is established, instead of the place of circulation of the advertisement. If the customer of the service belongs outside Singapore and the direct beneficiary either belongs outside Singapore or is GST-registered in Singapore, the media sales will be zero-rated. However, if the customer belongs in Singapore, the media sales will be standard rated.

The prior edition of the e-Tax guide was already updated to provide guidance on the changes for media sales, with the latest fourth edition revised to provide further clarification with respect to certain aspects of these changes. This includes that in identifying the direct beneficiary of media sales, the Comptroller will generally regard the contractual client as the sole direct beneficiary of the services if the following conditions are satisfied (1) the service agreement between the vendor and the contractual client does not specify or require the services to be provided to another person; and (2) the vendor only liaises with the contractual client and is accountable to them for the service deliverables (e.g., takes instructions from the contractual client for the media sales). The fourth edition of the guide also adds guidance on factors to consider when these conditions are not satisfied, as well as the addition of examples on identifying direct beneficiaries for media sales.

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Source: Orbitax, Singapore Publishes Updated E-Tax Guide on GST for the Advertising Industry Including Clarifications on New Rules for Media Sales, December 22, 2021; Singapore Gazettes Law Amending GST Rules to Implement 2021 Budget Measures, Bloomberg Law News December 15, 2021; Orbitax, Singapore Publishes Goods and Services Tax (Amendment) Act 2021 Including Changes for Low-Value Goods, B2C Non-Digital Services, and Media Sales, December 15, 2021.

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Trade & Customs (T&C)

Russia: New Excise Duty on Liquid Steel

Effective January 1, 2022, Russia introduced an excise duty on liquid steel. For blast-furnace based producers, the excise duty rate (denominated in Russian RUB per metric ton) will be calculated as the average monthly export price for steel slabs – on a free-on-board (FOB) basis - in Russia's Southern Federal District seaports, multiplied by a royalty interest coefficient of 0.027 and the monthly average US dollar-Russian RUB exchange rate established by the Central Bank of Russia. However, the excise duty will equal zero percent if the average export price of a steel slab falls below $300 per metric ton. For the open-hearth, induction and electric furnace-made liquid steel, the excise duty rate will also apply based on a specific formula. The excise duty will not apply to machine-building and shipbuilding steelmakers; electronics and radio-electronic industry enterprises; defense industry enterprises; small and medium-sized enterprises with a production volume of liquid steel (semi-finished) products of up to 1,000 metric ton per month; and manufacturers of special steel with a production volume of no more than 300,000 metric ton per year. The objective of the excise duty is to provide additional revenue to the state budget and to create a fairer approach to the taxation of rental income, as well as excess profits earned in the metallurgical industry.

Source: Russia - Russia Introduces Excise Duty on Liquid Steel, (December 2, 2021) News IBFD

China: Exports to Certain Countries No Longer Enjoy Tariff Reduction under Generalized System of Preferences

China has ceased issuing Generalized System of Preference (GSP) certificates of origin of products for its exports to the Member States of the European Union, the United Kingdom, Canada, Turkey, Ukraine, and Liechtenstein effective December 1, 2021. For the above countries, the prices of products imported from China are likely to increase.

Source: China (People's Rep.) - Exports to Certain Countries No Longer Enjoy Tariff Reduction under Generalized System of Preferences, (December 2, 2021) News IBFD.

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United Kingdom: New Import Rules Effective January 1, 2022

Effective January 1, 2022, UK businesses trading with the European Union must apply new import and export customs controls. HMRC has been reaching out to traders and businesses to support them in adapting to the changes, including through letters and emails, and delivering webinars for traders to explain the new customs rules that start in 2022, the action that they need to take, and the support on offer from HMRC. Current customs arrangements for goods moving from Ireland and Northern Ireland to Great Britain have been extended for as long as discussions between the UK and EU on the operation of the Northern Ireland Protocol are ongoing. This means that full customs controls were introduced as planned on January 1, 2022, for goods moving between the rest of the EU and Great Britain (excluding Northern Ireland), and for goods exported from Great Britain to Ireland. According to HMRC, the changes to customs and tax rules affect every entity that trades with Europe, no matter the type or value of the goods they buy or sell, how frequently they trade or how their goods are shipped. The changes coming into force on January 1, 2022 include: a requirement for full customs import declarations for all goods at the time businesses or their courier/freight forwarder bring them into Great Britain, except if they are non-controlled goods imported from Ireland to Great Britain; customs controls at all ports and other border locations; requirement for a vendors' declaration proving the origin of goods (either UK or EU) if they are using the zero tariffs agreed in the UK's trade deal with the EU; commodity codes, which are used to classify goods for customs declarations, are changing. There are different rules in place for the movement of goods into, out of or through Northern Ireland. Businesses moving goods into or out of Northern Ireland can receive free support from the Government's Trader Support Service.

Source: CCH, Global VAT News & Features, UK Introducing New Rules For Traders From January 1,(Dec. 22, 2021)

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In Brief

- **Argentina:**[xvii] On December 7, 2021, Argentina extended the deadline for small businesses to upgrade their electronic fiscal devices. Taxpayers were required to replace their invoicing equipment (i.e., *controladores fiscales*) with new technology approved by the tax authority. The deadlines are established based on the number of electronic fiscal devices that a taxpayer uses that are considered "old technology." Those with 5 or more devices were required to have replaced that technology by October 31, 2021, with larger businesses required to have adapted their systems sooner. For taxpayers with up to two electronic fiscal devices, the old technology systems must be replaced by April 30, 2022, rather than by February 28, 2022; for taxpayers with three or four devices, a new deadline of January 31, 2022, applies, rather than a deadline of December 31, 2021.

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- **Argentina:**[xviii] Effective November 11, 2021, Argentina has implemented a number of tax relief measures to address the COVID-19 pandemic, including a waiver of unpaid tax and customs duties debt as of August 31, 2021, for certain taxpayers as well as the introduction of an installment regime for settling unpaid debts.
- **Argentina:**[xix] On November 24, 2021, Argentina published a resolution updating the amounts of the non-reimbursable economic support to promote investment in new forests or the extension of existing forests, including the right to VAT refunds on these investments.
- **Armenia:**[xx] On December 10, 2021, the Armenian Parliament adopted amendments to its Tax Code to extend the VAT exemption for the import and sales of electric vehicles through January 1, 2024. The exemption was originally introduced on July 1, 2019.
- **Aruba:**[xxi] According to news reports, Aruba is considering the adoption of tax reform measures, including the introduction of a 12.5 percent VAT. The proposal further includes reforms for expanding the tax base and improving tax authority performance in tax collections. The reform is the centerpiece of a broader reform program agreed with the Dutch Government to put the territory's finances on a more sustainable footing and centers on a shift away from direct taxes toward indirect taxes.
- **Azerbaijan:**[xxii] Effective January 1, 2022, Azerbaijan introduced VAT exemptions for the sale of electric cars and car-charging stations. Azerbaijan further introduced a 3-year VAT exemption to the import and sale of hybrid vehicles that are less than 3 years old and with engine capacity of less than 2.5 liters.
- **Azerbaijan:**[xxiii] Azerbaijan recently extended the VAT exemption for medical services funded by the Compulsory Health Insurance Fund through January 1, 2023.
- **Belarus**[xxiv] Effective December 1, 2021, Belarus introduced additional tax incentives for the use of electric vehicles, including VAT exemptions for (1) the import of electrical vehicles provided the vehicle is no older than 5 years; (2) the import of components for the manufacture of electrical vehicles; and (3) the sale of electric vehicles in Belarus, with individuals who purchased an electric vehicle prior to December 1, 2021 allowed to claim a refund of VAT paid limited to 500 base units as on the day of purchase (1 unit = BYN 29 ($11 for 2021)). The tax incentives will be valid until December 31, 2025. The 5-year limitation from the date of manufacture of the electric vehicle applies to legal entities immediately, and to individuals starting from March 1, 2022.
- **Belgium:**[xxv] On January 18, 2022, the EU authorized Belgium to continue applying a higher registration threshold for small businesses through December 31, 2024. Belgium had been granted authorization to exempt from VAT, taxpayers whose annual gross sales did not exceed EUR 25,000 ($28,320).
- **Bolivia:**[xxvi] The Bolivian Tax Administration (*Servicio de Impuestos Internos*, SIR) recently issued Resolution No 102210000011, which establishes

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the mandatory issuance of e-invoicing effective December 1, 2021. The mandatory rollout will be phased in based on resolutions published by the SIR. The SIT has issued Resolution No 10210000012 on August 11, 2021, establishing the first list of large taxpayers required to comply with the e-invoicing mandate effective December 1, 2021.

— **Colombia:**[xxvii] Colombia enacted a law in September 2021 that grants a VAT exemption for low-value imports from the United States. The law provides for a VAT exemption for personal imports worth up to $200 (FOB value) received through postal services if provisions for the VAT exemption are specifically included in a free trade deal. Currently, the law applies only to the free trade agreement concluded with the United States and does not apply to imports for commercial purposes or imports from other countries.

— **Costa Rica:**[xxviii] Costa Rica is currently considering new rules for the taxation of crypto assets. The proposed rules provide that crypto assets would be treated as intangible assets and not currency, and transactions involving such assets would be subject to VAT. The Costa Rican tax administration launched a consultation for commentary from the private sector (*Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado*, UCCAEP) on a draft resolution. The consultation of the draft resolution is only available for UCCAEP commentary. After this, the draft resolution will be published for public consultation following the ordinary procedures.

— **Costa Rica:**[xxix] Costa Rica recently introduced tax incentives for film projects, including a 90 percent VAT reimbursement on purchases of goods and services valued over $500,000 that are directly related to film projects as well as an import tax exemption for supplies, costumes, makeup, scenery, and technical materials and equipment temporarily imported and used for film projects.

— **Cyprus:**[xxx] The EU Commission recently decided to send two reasoned opinions to Cyprus for failure to transpose the EU VAT e-commerce package into national law. The new rules are intended to simplify VAT for companies and consumers involved in cross-border online sales within the EU and to create a fairer environment for EU sellers by removing the VAT exemption for low-value imports from outside the EU. Member States should have adopted and published the necessary national provisions by June 30, 2021. If Cyprus does not act within the next two months, the Commission may decide to refer the case to the ECJ.

— **Denmark**[xxxi] On December 8, 2021, the Danish Customs and Tax Administration (DCTA) published a tax council decision (Danish Tax Tribunal) explaining the VAT recovery of costs rendered by a Danish management company that administered a Danish investment fund. The investment fund sought clarification as to whether it was entitled to reimbursement of VAT relating to services provided, invoiced, and paid for by the management company as the investment fund argued that the costs incurred in the Danish management company were used in connection to financial transactions outside the EU (granting VAT recovery) performed by the investment fund. The Danish Tax Tribunal decided that no reimbursement of VAT could be granted as the rendered services were provided and paid by the management company, which used the services as part of its management of the investment fund.

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- **Denmark**[xxxii] The Danish tax authority recently announced that by using its new tax risk analysis technologies, it has been able to prevent illegitimate VAT refund requests worth around DKK 7.3bn ($1.1bn) since 2014. The system uses machine learning, as well as input from enforcement teams. The tool flagged erroneous claims with a success rate of 50 percent in 2014 and up to 70 percent recently. It found errors in 25,000 claims, of a total of 40,000 investigated from 2014 to 2020.
- **Egypt:**[xxxiii] Egypt recently proposed amendments to its VAT law, to include a provision: (1) granting a one year VAT exemption for medicines and goods needed for the production of vaccines and certain medical devices, equipment, and machinery; various agricultural products, including seeds, and vegetables and fruits produced domestically; sewage and water services; services provided by the Suez Canal Authority to transiting vessels; civil aircraft and related components; and goods and services used in approved projects in economic zones; (2) allowing tax refunds for foreigners on purchases of at least EGP1,500 ($95) and; (3) introducing VAT registration requirements for nonresidents selling digital services to consumers in Egypt.
- **Estonia:**[xxxiv] On December 7, 2021, the Estonian Parliament accepted a bill for consideration that proposes to reduce the VAT on gas, electricity, and heat from 20 percent to 9 percent through January 1, 2023.
- **Estonia:**[xxxv] On December 9, 2021, Estonia published proposed amendments to its VAT law to include: (1) introducing a VAT exemption on imports made by EU bodies to deal with the coronavirus pandemic; (2) limiting VAT deductions for taxpayers who failed to pay for goods and services; (3) harmonizing VAT accounting principles; (4) introducing a zero-rate VAT on specific export and import services; (5) establishing a procedure to determine taxable values of imported goods; (6) setting excise tax rules for alcohol, tobacco, and fuel; and (7) bringing the taxation of collector coins in line with the EU VAT directive.
- **Finland:**[xxxvi] On November 15, 2021, the Finnish tax authority updated its guidance on the VAT liability of cross-border trade in services. The updated guidance covers (1) the special VAT arrangements for cross-border services; (2) tax-free freight shipping services; and (3) the taxation of distance learning.
- **France:** [xxxvii] On December 1, 2021, the French tax authorities published a public ruling clarifying refunds of VAT erroneously collected in France. According to the ruling, some businesses realized, while implementing the new rules on distance sales applicable from July 1, 2021, that they had previously collected VAT in France instead of the destination countries. These businesses corrected their VAT returns in the destination countries. To avoid double taxation, businesses may obtain the refund of VAT paid in France if they provide documentation of the transactions concerned and of the initial VAT payments made in France. The standard time limits for obtaining a VAT refund will not apply if the reassessment period in the destination state is longer than in France. In addition, the French tax authorities would inform the tax authorities of the destination countries of the VAT refund made in France.

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— **Germany:**[xxxviii] On December 2, 2021, the European Commission decided to send a reasoned opinion to Germany for failing to fulfill its obligation to have its IT systems ready to automatically exchange information with other Member States relating to the call-off stock arrangements via the electronic system VAT Information Exchange System (VIES). In accordance with Council regulation 904/2010, the call-off stock arrangements, effective January 1, 2020, require Member States to adapt their IT systems to allow other Member States to carry out the necessary controls to prevent VAT fraud or tax evasion. If Germany fails to comply within 2 months, the Commission may refer the case to the ECJ.

— **Germany:**[xxxix] On November 30, 2021, the European Commission extended the air travel tax exemption for certain flights carrying certain categories of passengers to and from certain small and remote islands in Germany. Under the program, airlines operating the eligible routes to and from the eligible islands are exempted from the air travel tax on passengers domiciled in those islands as well as other categories of passengers, including passengers in need of medical treatment and civil servants working on the islands. The airlines pass on the tax exemption in its entire amount to the passengers, which are relieved from the payment of the tax. The program is open to all airlines operating flights from the European Economic Area (EEA) that provide air services on all or part of the eligible routes, covering flights between the eligible domestic islands and all eligible EEA destinations.

— **Ghana:**[xl] On December 30, 2021, Ghana adopted the Value Added Tax (Amendment) Act 2021, which extends VAT reliefs provided to textile manufacturers for additional two years and removes wholesalers from the scope of the VAT flat rate regime; the regime provides for a VAT flat rate of 3 percent on the sale of goods by wholesalers and retailers. The regime now only applies to retailers with an annual gross receipt below GHS 500,000($80,415). All other sales of goods and services would be subject to the standard VAT rate. In addition, the government plans to resubmit a bill to the parliament proposing to levy an "Electronic Transaction Levy," or "E-Levy," at a rate of 1.75 percent on electronic transactions covering mobile money payments, bank transfers, merchant payments, and inward remittances. The levy would be borne by the sender (payer), except inward remittances, which will be borne by the recipient. However, all transactions that add up to GHS 100 ($16) or less per day would be exempt from the levy.

— **Guatemala:**[xli] On November 24, 2021, the Guatemalan Tax ADMINISTRATION (*Superintendencia de Administración Tributaria*, SAT) published Resolution SAT-DSI-1240-2021 and Resolution SAT-DSI-1218-2021, in which it instructed certain taxpayers to comply with the electronic invoice system regime (Régimen de Factura Electrónica, FEL). The resolutions require auditors, accountants, and other taxpayers providing financial or tax-related services to comply with the regime by February 23, 2022; it requires taxpayers registered under the general VAT regime to comply with the regime by July 1, 2022.

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- **Hungary:**[xlii] Effective January 1, 2022, Hungary increased the highest rate of the retail sales tax from 2.5 percent to 2.7 percent. The tax is imposed on domestic and foreign companies engaged in retail activities with sales exceeding HUF500m ($1.53m), regardless of the method of sale. The tax features three rates, based on a company's gross receipts, as follows; HUF500m ($1,578,980) to HUF30bn ($94.7m) – 0.1 percent; more than HUF30bn ($94.7m) and up to HUF100bn($315.7m) – 0.4 percent; and exceeding HUF100bn($315.7m) – 2.7 percent (previously 2.5 percent).
- **Hungary:**[xliii] On January 18, 2022, the European Union authorized Hungary to continue applying an increased VAT registration threshold of EUR 48,000 until December 31, 2024.
- **Ireland:**[xliv] On December 23, 2021, the Irish Revenue issued Revenue eBrief No. 235/21. The guidance includes information on the following: (1) the obligation of VAT groups to notify Revenue regarding changes in their status; (2) a clarification that cancellation deposits are taxable, effective January 1, 2022 effective December 22, 2021, (3) a requirement to repay VAT incorrectly claimed and refunded under a VAT refund order, effective December 22, 2021; (4) an explanation of the application of the zero VAT rate on vaccines and diagnostic medical devices and services to combat the coronavirus pandemic, effective December 12, 2020 and a VAT exemption on the importation of goods by, and the zero-rating of certain goods and services provided to the EU Commission and certain agencies and bodies responding to the Covid-19 pandemic , effective January 1, 2021; (5) and a clarification of the definition of qualifying persons for the purposes of VAT zero-rating relief under the VAT Act and (6) the reduction in the farmers' flat-rate addition from 5.6 per cent to 5.5 per cent, effective January 1, 2022.
- **Ireland:**[xlv] On December 31, 2021, the Irish Revenue issued Revenue ebrief No.240/21, which noted that the tax and duty manual has now been updated to take account of technical amendments to the VAT grouping provisions introduced by Finance Act 2021 (effective from 22 December 2021), and confirms that certain older Revenue material on VAT and charities has been archived due to being obsolete and/or available elsewhere in other published guidance.
- **Jersey:**[xlvi] On December 17, 2021, Jersey published its 2022 budget law, which requires large offshore retailers and online marketplaces to register for GST if the annual aggregated customs value of their sales to Jersey residents exceeds JEP 300,000 ($410,305) effective January 1, 2023.
- **Kazakhstan:**[xlvii] On December 20, 2021, Kazakhstan published amendments to its tax code effective January 1, 2022. They provide simplified VAT refunds for businesses exporting goods and introduce simplified registration procedures for nonresident vendors of digital services and goods sold to consumers in Kazakhstan. The law introduces a new "merchant ID" to identify a foreign company that receives payment or money for the provision of digital services and goods through online platforms and further requires banks to provide payment information on such payments to the tax authorities.

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- **Kenya:**[xlviii] On November 22, 2021, the Kenyan Revenue Authority (KRA) issued a guidance on the implementation of its new e-invoicing rules. The guidance clarifies that Electronic Tax Registers (ETRs) that are compliant with the Tax Invoice Management System (TIMS) are now subject to an automated activation process through the iTax System and that the KRA will no longer issue approval letters for the purchase of non-TIMS compliant ETRs to newly VAT registered taxpayers or to taxpayers intending to replace their existing ETRs. Vendors of ETRs are notified to cease the sale of ETRs that are not compliant with the Value Added Tax (Electronic Tax Invoice) Regulations, 2020, effective January 15, 2022.
- **Kenya:**[xlix] Kenya's National Assembly recently published the Petroleum Products (Taxes and Levies) (Amendment) Bill 2021 for public comment. The bill proposes to reduce the VAT rate on petroleum products from 8 percent to 4 percent and would clarify that the 8 percent VAT rate would apply to liquified petroleum gas, including propane. The bill further includes a proposal to provide for inflation adjustments every two years for the excise duty and provide for an excise tax exemption for specified petroleum products.
- **Latvia:**[l] On November 12, 2021, the Council of the European Union extended until December 31, 2024, the authorization granted to Latvia to temporarily limit to 50 percent the right to deduct the VAT on the purchase, leasing, intra-EU acquisition, and importation of passenger cars not wholly used for business purposes and to relieve taxpayers from being required to account for taxes on the private use of their cars.
- **Lithuania:**[li] On December 7, 2021, the Lithuanian tax authority launched a consultation on proposed amendments to the VAT law, which would clarify (1) what constitutes a sale of goods for VAT purposes, (2) the VAT declaration rules, as well as (3) the VAT rules for property lease transactions.
- **Mauritania:**[lii] On October 15, 2021, the Mauritanian Ministry of Economy and Finance published its draft finance law for 2022. If adopted, it would reduce the VAT rate applicable to telecommunication services from 18 percent to 16 percent and introduce a VAT exemption for public passenger and goods transportation activities.
- **Mexico:**[liii] Mexico recently published a decree implementing the Economic Package for 2022. According to the decree, taxpayers conducting acts or activities not subject to VAT (e.g., those carried out abroad) are not allowed to deduct VAT incurred on the acquisition of goods, services, and imports relating to such acts or activities. The decree also includes amendments to the VAT requirements for digital service providers including the filing of monthly informative returns, rather than quarterly returns.
- **Moldova:**[liv] On November 29, 2021, the Moldovan State and Tax Service (STS) clarified the VAT refund rules for capital investments made by a lessee. Generally, under the Moldovan VAT law, VAT due for a tax period is calculated as the VAT on sales reduced by the VAT on expenditures. In

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a tax period when the VAT on expenditures exceeds the VAT on sales, the difference is carried forward to the next tax period. However, taxpayers making capital investments in production buildings (i.e., intended for producing goods or sale of services) are entitled to a VAT refund. Further, repair expenses relating to fixed assets used under a lease agreement may be deducted up to 15 percent of the rent amount. Repair expenses relating to fixed assets used under the lease agreement are included in the value of depreciable fixed assets for the portion that exceeds 15 percent of the rent amount. Therefore, if the capital repair expenses of the leased fixed assets exceed 15 percent of the rent amount, a separate fixed asset is created. The STS concluded that when a separate fixed asset for which depreciation is calculated is created the legal entity is entitled to a VAT refund on capital repair expenses relating to the rented property, provided that the leased asset is intended for the production of goods or sale of services.

— **Netherlands:**[lv] The Dutch government recently proposed a number of tax measures focused on the climate including (1) tightening the carbon tax, by way of adjustments to exemption permits and the price per ton of emitted CO2; (2) introducing an increased minimum CO2 price effective 2023; (3) repealing the reduced energy tax rate applicable for greenhouse companies; (4) increasing the airline tax effective 2023; and (5) introducing, effective 2030, a "pay-per-kilometer-driven system" that will replace the current road tax (*motorrijtuigenbelasting*), which is based on the weight of the vehicle.

— **New Zealand:** [lvi] The New Zealand Inland Revenue recently released draft guidance on when taxpayers registered for GST on a cash basis may claim GST credits on goods purchased on deferred payment terms. Generally, a person registered for GST on a cash basis can claim GST credits only when and to the extent that payment has been made. This includes goods purchased under a standard sales agreement or goods purchased on a buy now, pay later basis. However, if the person has entered into a hire-purchase agreement for the purchase of goods, they can claim the full GST credit in the taxable period in which they enter into the agreement instead of when the installment payments are made. If the agreement is a layby sales agreement, the person can claim a GST credit only in the taxable period in which the ownership is transferred, typically after the final payment has been made. Consultation on the draft guidance closed on December 24, 2021

— **New Zealand:**[lvii] On November 18, 2021 the New Zealand Inland Revenue posted Technical Decision Summary No.21/05 which clarified the eligibility rules for GST credits. In the case, the taxpayer was a GST-registered company that imported and distributed goods in New Zealand. In 2017, the taxpayer filed four GST returns that all gave rise to refunds, except for one, which was a pending investigation due to lack of documentation. The issue was whether the taxpayer carried on taxable activity which would entitle it to the deductions. The tax authority disallowed all the deductions because the taxpayer failed to provide tax invoices to support the GST credits claimed; the bank statements did not prove that the taxpayer carried on a taxable activity during the relevant period.

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- **Nigeria:**[lviii] On December 31, 2021, Nigeria published the Finance Act 2021, which clarifies the VAT obligations of digital non-resident companies by restricting VAT obligations mainly to digital non-resident companies selling to final consumers; reducing the compliance burden on other non-resident taxpayers that are not required to register for VAT in Nigeria; clarifying that the Federal Inland Revenue Services (FIRS) may appoint persons (including non-residents) for the purpose of tax collection; and clarifying that such appointed persons may collect and remit taxes to FIRS / relevant tax authorities. The Finance Act further empowers FIRS to assess non-resident firms to tax on fair and reasonable gross receipts tax basis on gross receipts earned from providing digital services to Nigerian customers. For this purpose, the Finance Act 2021 introduces a specific gross receipts tax on a fair and reasonable percentage of profits earned from providing digital services to Nigerian customers (i.e., 6 percent of gross receipts) and clarifies that such digital services include apps, high-frequency trading, electronic data storage, online advertising, etc.
- **OECD:**[lix] The OECD released a report on Revenue Statistics in Africa 2021. The report notes that successful efforts to increase tax revenues and boost domestic revenue mobilization in African economies over the last decade have been offset by rising debt-service costs. The tax-to-GDP ratio in African economies remains low. The report further notes that while the priority continues to be navigating the challenges of the COVID-19 crisis, in future, fiscal reforms will be required to finance developmental goals and to ensure debt sustainability. In addition, while some African countries have moved their tax base in recent years toward VAT and personal income tax, the continent remains more reliant than other regions on trade taxes and the corporate income tax, which are among the taxes most heavily affected by an economic downturn.
- **Panama:**[lx] The National Assembly of Panama recently published Law No 256/2021, which establishes several modifications and new requirements to the mandatory e-invoicing system, which includes that: (1)all newly registered taxpayers are required to adhere to the e-invoicing regulations starting January 1, 2022; (2) all government entities will be required to accept only e-invoices for business-to-government transactions starting July 30, 2022; and (3) all taxpayers that participated in the e-invoicing pilot program will be required to issue e-invoices starting January 1, 2023.
- **Philippines:**[lxi] The Philippines government recently instructed the Bureau of Internal Revenue to work with the Securities and Exchange Commission to probe the tax affairs of financial technology (Fintech) companies, especially electronic payment services providers, alternative credit scoring companies, online lending firms, digital banks, virtual asset service companies, play-to-earn platforms, crowdfunding platforms, big data companies, digital advisers, and insurance technology firms, among others.
- **Saudi Arabia:**[lxii] On November 16, 2021, the Zakat, Tax and Customs Authority (ZATCA) announced the fines and penalties to be imposed for non-compliance with the new e-invoicing rules starting December 18, 2021. (For KPMG's previous discussion on the implementation of e-invoicing in Saudi Arabia, please click here.) The fines levied will depend on the type of violation and the number of times the violation has occurred:

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- Non-issuance and/or failure to archive e-invoices: between SAR 5,000 ($1,331) and SAR 50,000 ($13,314);
- Failure to include the QR Code in simplified tax invoices (B2C): from an initial warning to SAR 50,000 ($13,314);
- Failure to inform ZATCA of any malfunction that hinders the issuance of e-invoices: from an initial warning to SAR 50,000 ($ 13,314);
- Failure to include the purchaser's VAT registration number on e-invoices (when required to be included): from an initial warning to SAR 50,000 ($13, 314); and
- Deletion or amendment of e-invoices after their issuance (other than by credit/debit note): between SAR 10,000 ($2,662) and SAR 50,000 ($13, 314).

— **Sierra Leone:**[lxiii] Sierra Leone recently announced that it will extend its electronic cash register requirements to GST-registered taxpayers not yet covered by the initiative, as well as to all new taxpayers registered through the Block Management Registration System (BMRS). In addition, the government will implement special tax breaks and incentives for businesses located within "Special Economic Zones" in 2022. The incentives will include tax holidays, duty waivers, and streamlined customs administrative procedures.

— **South Africa:**[lxiv] On December 10, 2021, the South African Revenue Service (SARS) published Government Notice No. 1594, which prescribes the invoicing requirements for nonresident digital services providers selling to customers in South Africa and those acting as intermediaries. According to the notice, tax invoices must include: (1) the name and VAT registration number of the electronic services vendor; (2) the name of the electronic services recipient is a vendor, the VAT registration number of the electronic services recipient; (3) the business address, residential address or postal address of the electronic services recipient; (4) an individual serialized number; (5) the date on which the tax invoice is issued; (6) a full and proper description of the electronic services provided; and (6) the consideration in money for the sale in the currency of any country. If the consideration is reflected in South African Rand (ZAR), the tax invoice must include the value of the sale; and the amount of tax charged or a statement that the consideration includes the tax and the rate at which the tax was charged. If the consideration is not in ZAR, the tax invoice must include the amount of tax charged in ZAR and the exchange rate used; or a separate document issued by the electronic services vendor reflecting the amount of tax charged in ZAR and the exchange rate used. Further, a digital services provider issuing a tax invoice reflecting the consideration in money in a currency other the ZAR must convert the tax charged to ZAR using the daily exchange rate on the date the sale occurs, or the daily exchange rate on the last day of the month preceding the sale, or the monthly average rate for the month preceding the month during which the sale occurs. Taxpayers should refer to rates published by the South African Reserve Bank, Bloomberg, or the European Central Bank.

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- **Suriname:**[lxv] Effective October 1, 2021, Suriname exempts primary basic goods and strategic goods from the sales tax until December 31, 2023. Primary basic goods and strategic goods include potatoes, onions, coffee, tea, and salt.
- **Sweden:**[lxvi] On December 16, 2021, the Swedish parliament approved the Budget for 2022, which (1) implements the EU Directive providing temporary VAT exemption on sales to EU bodies for COVID-19 that will apply retroactively from January 1, 2021; (2) increases the VAT registration threshold from SEK 30,000 ($3,298) to SEK 80,000 ($8,796) per year effective July 1, 2022; (3) further reduces the VAT rate from 12 percent to 6 percent on repairs of goods like bicycles, shoes, clothing, from July 1, 2022; and (4) introduces a payment plan for taxes that were temporarily deferred from March 30, 2020, that are due in March-April 2022.
- **Sweden:**[lxvii] On December 10, 2021, the Swedish tax authority clarified the VAT treatment of medical and dental treatment provided by doctors and medical companies. The clarification outlines the Swedish VAT law and the EU VAT directive as applied to medical and dental care and the definitions of terms such as medical center and medical company. It further discusses the provider of the treatment to patients, using the agreement between the medical company and the medical center as the basis of analysis; and provides examples of medical centers and medical companies offering care to patients for VAT treatment purposes.
- **Thailand:**[lxviii] On December 7, 2021, the Thai tax authority clarified the deadline extensions for filing VAT returns and making related payments by nonresident digital services providers and nonresident electronic platforms effective September 1, 2021. The notification confirms a prior extension of the filing and payment deadline from the 15th of the following month to the 23rd of the following month.
- **Tunisia:**[lxix] On December 28, 2021, Tunisia published its Finance Law for 2022, removes the VAT suspension for international commerce and fully exporting companies, and introduces a VAT suspension for imports and local sales of aircraft, equipment, and parts destined to international air traffic, as well as for related services including ground, catering, technical inspection, and assistance services. The Finance Law further introduces a new tax amnesty program granting a 50 to 95 percent waiver of sanctions and penalties relating to overdue taxes and customs duties subject to various conditions.
- **Turkey:**[lxx] Turkey recently postponed the implementation of its accommodation tax to January 1, 2023.
- **Turkey:**[lxxi] On December 21, 2021, Turkey clarified the VAT exemption for the development of mobile apps with social content. Effective January 1, 2022, Turkey does not levy VAT on the provision of the following services subject to income tax: (1) activities of social content producers that share content, such as text, images, audio, and video through social network providers on the Internet; and (2) income derived from electronic application sharing and sales platforms by application developers for mobile devices, such as smartphones or tablets.

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- **United Arab Emirates:**[lxxii] On December 9, 2021, the United Arab Emirates Federal Tax Authority (FTA) clarified the VAT recovery rules for mobile phones and related telecommunication services provided to employees for business use. According to the FTA, businesses may recover VAT if an employer acquires these goods and services for use by its employees solely for business purposes and has a strict policy in place to ensure this. In these circumstances, the right to use the phones, airtime, and packages will not constitute a personal benefit for the employee, provided the value of such use aligns with the actual historical business usage. The business must regularly monitor the use of airtime and packages and retain justification for the variances. The business must act against inappropriate use and must retain valid tax invoices for goods and services acquired.
- **United Arab Emirates:**[lxxiii] The FTA published an amended version of the Turnover Declaration Letter, which should be submitted for VAT registration purposes. The new form requires VAT registrants to provide additional information including (1) details on monthly bifurcation of gross receipts between standard-rated sales, zero-rated sales, and out-of-scope sales; and (2) monthly details of expenses subject to VAT.
- **Zambia:**[lxxiv] The Zambian Minister of Finance presented proposed amendments to the VAT and Customs regime to parliament in support of the 2022 Budget measures. The proposed Customs measures include revising the rates of Customs and Excise duty payable on certain goods; revising the list of goods to be subject to surtax at importation; and removing the export duty on maize. The proposed VAT measures include: (1) providing clarification on the use of an electronic fiscal device to record each sale or transaction; (2) revising the penalty for failure to issue a tax invoice and providing an upward adjustment of the penalty for failure to use an electronic fiscal device; and (3) providing clarification on documents to be submitted in support of imported goods. Further, on December 30, 2021, Zambian enacted amendments to its VAT penalty regime.

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