KPMG

Inside Indirect Tax

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About this Newsletter

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

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Global Rate Changes

- **Belize:**[i] On May 3, 2024, the Belizean Tax Service clarified that the sale of services to a non-resident person, who is outside the jurisdiction when the services are provided, is zero-rated for general sales tax (GST) purposes. There are three exceptions: when services are directly connected with land or improvements on land situated in Belize; when services are directly related to goods located in Belize at the time the services are performed; and when services involve abstaining from or tolerating an activity, a state of affairs, or the doing of an act in Belize, if the abstention or toleration is effectively used or enjoyed in the jurisdiction. The Belizean Tax Service further clarified that for an entity to be classified as non-resident for GST purposes, it must either lack jurisdiction in Belize or be a Belizean commercial entity possessing a Certificate of Tax Exemption from the Belize Tax Service Department. Therefore, if a company meets the GST threshold but provides services to a non-resident entity, those services are subject to the zero-rate. Conversely, if the entity is deemed a resident due to substantial economic presence in Belize, the company must register for GST and charge it on that entity.
- **Bulgaria:**[ii] On May 13, 2024, Bulgaria's parliament approved a proposal to extend the period of application of the temporary zero percent VAT rate for bread and flour from June 30, 2024, through December 31, 2024.
- **Bulgaria:**[iii] On April 29, 2024, Bulgaria proposed to expand the scope of the 9 percent reduced VAT rate for accommodation services. The proposal includes measures to remove the requirement for providers of accommodation services in hotels and similar establishments to possess a categorization certificate to apply the reduced 9 percent VAT rate (following the ECJ judgment in *Valentina Heights*, Case C-733/22). It also provides clarifications on the documents required for applying the zero percent VAT rate for sales to EU institutions.

- **Cameroon:**[iv] On May 8, 2024, Cameroon issued Circular No. 020/2024 implementing the tax provisions in the Finance Law for 2024. Among other changes, the circular clarifies the repeal of the VAT exemption for high consumption products, like parboiled rice, perfumed rice, and certain fish and fish products. This applies to invoiced deliveries and imports made as of January 1, 2024.
- **Cyprus:**[v] Cyprus' Council of Ministers recently announced the extension of the VAT zero-rate for basic commodities until September 30, 2024. It applies to coffee, sugar, bread, milk, eggs, baby food, nappies, feminine hygiene products, and continence support products.
- **Lithuania:**[vi] On May 13, 2024, the Lithuanian tax authority updated its guidance on the application of the preferential 9 percent VAT rate to passenger and luggage transportation services on regular routes established by the Ministry of Transportation. The update clarified the VAT treatment for charter flights, local and long-distance routes, and routes crossing the country's borders. It also provided definitions for "passenger ticket" and "cargo," amended examples, deleted obsolete provisions, and made editorial changes.
- **Peru:**[vii] On April 24, 2024, Peru's Ministry of Economy published Supreme Decree No. 058-2024-EF. This decree introduces complementary rules on the application of the VAT exemption for the sale and import of books until 2026. Among other things, the decree provides that imports and sales of electronic books, digital books, and e-books are VAT-exempt activities. Book publishers may request a VAT refund on their acquisitions, such as electronic prepress services and graphic services for the production of books and related publishing products. However, they must hold a certificate issued by the National Library accrediting the production of books and related publishing products and have electronic proof of payment or a Customs Declaration of Goods showing the VAT paid for the acquisitions. This amount must not be less than 0.02 percent of the Tax Unit in force at the date of issuance of such documents. The decree also states that a VAT refund may be requested monthly and should be granted by the tax authority within 30 working days.
- **Portugal:**[viii] Portugal recently proposed to expand the application of the 6 percent reduced VAT rate to the first 200 kWh of electricity consumed each month (previously 100 kWh), and to the first 300 kWh (previously 150 kWh) in the case of large families, which are households of 5 or more people.
- **Vietnam:**[ix] On May 2, 2024, Vietnam announced a proposal to further extend the application of the 2 percent standard VAT rate reduction through December 31, 2024. Vietnam originally reduced the standard VAT rate from 10 percent to 8 percent, until December 31, 2023, but extended it to the end of June 2024.
- **Uzbekistan:**[x] Uzbekistan introduced a VAT exemption for the import of precious stones used in the jewelry industry, effective January 1, 2024, until January 1, 2027.

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Digitalized Economy Indirect Tax Updates

Brazil: Impact of Indirect Tax Reform Proposal on Nonresidents

On April 24, 2024, the Brazilian government proposed a new dual VAT regime under a tax reform bill. The reform supports destination-based taxation and adopts key VAT principles for the digital economy. (For KPMG's previous discussion on the Brazilian indirect tax reform, click here). The reform would introduce two harmonized taxes: a tax on goods and services (IBS) and the contribution on goods and services (CBS). These taxes would replace the current state VAT, municipal tax on services, and federal PIS/COFINS contributions respectively.

Under the proposed reform, nonresidents conducting taxable transactions in Brazil would face an indirect tax compliance obligation for the first time. This would require any nonresident carrying out taxable transactions in Brazil to register for, collect, and remit the new taxes. The general sourcing rule would be the domicile of the recipient, which could be someone other than the buyer.

The proposal also introduces a new IBS/CBS liability for transactions conducted through digital platforms, whether Brazilian or nonresident. This includes sales made by nonresident sellers not registered for IBS/CBS and sales made by Brazilian sellers not registered for the IBS/CBS or transactions not recorded through an e-invoice.

The tax reform is currently under review by the Brazilian parliament and could be approved within 2024. The new indirect tax regime is expected to commence in 2026. Further details are expected in implementing regulations, which should also clarify the IBS/CBS obligations of nonresidents. For more information, click here.

Canada: Provincial Sales Tax Changes Targeting Software and Cloud Computing Services in British Columbia

On April 25, 2024, British Columbia (B.C.) implemented changes to its provincial sales tax (PST) regulations, expanding the tax's application to a wider range of electronically delivered products and services, including software and cloud computing services. These changes, effective retroactively from April 1, 2013, were made in response to a 2023 B.C. Supreme Court decision that ruled certain cloud computing services and online chat technical support services were not subject to PST.

The new rules expand the definition of "software" to include more digital products and services. The term "software" now includes Infrastructure as a Service (IaaS), Software as a Service (SaaS), and Application Programming Interfaces (APIs). The change also removes the distinction between "software" and "software program," potentially including digital services and products where users may not interact with an application to create an output.

The updated rules further ensure that digital products and services are subject to PST, regardless of how they are accessed by users. Previously, software used "on or with" a device situated in British Columbia was taxable. The new rules expand this to software accessed "on, through or with" such a device.

In addition, the new rules limit the de *minimis* PST exemption for certain software or telecommunication services. Previously, software or telecommunication services that were "merely incidental" to non-taxable goods and services were exempt from PST. The new rules eliminate this exclusion for prescribed software and telecommunication services.

Finally, the new rules introduce penalties for non-compliance, effective from July 1, 2024. These penalties may apply if a taxpayer fails to file a return, fails to provide required details in a return, or fails to comply with audit and records rules. A new penalty for misrepresentation by a third party is also introduced. Businesses that previously determined their digital products and services were not subject to PST should thus review these changes to understand how they may affect their tax liability. To read a report prepared by the KPMG International member firm in Canada, please click here.

Other Developments

- **Australia:** On May 14, 2024, the Australian Taxation Office (ATO) implemented specific exemptions from the Sharing Economy Reporting Regime (SERR) for online platforms, aligning with the OECD's Model Reporting Rules for Digital Platforms. Since July 2023, the SERR has mandated reporting for short-term accommodation, taxi travel, and ride-sourcing transactions. This mandate will expand in July 2024 to include long-term accommodation, shared spaces, services, and intangible assets such as eBooks and software. The ATO's legislative instrument provides exemptions for certain electronic distribution platform operators from reporting specific transactions. These exemptions apply when the sale involves multiple platforms, when the operator did not directly provide any consideration for the sale, and when another platform operator who provided part or all the consideration has a reporting obligation. The legislative instrument also exempts transactions involving certain sellers, such as listed entities or government departments, and transactions involving certain types of sales, including substantial property and scheduled passenger travel services. To read a report prepared by the KPMG International member firm in Australia, please click here.
- **Costa Rica:** On April 26, 2024, Costa Rica's tax authority released a draft resolution for public consultation aimed at adopting the OECD's Model Reporting Rules (MRR) for digital platforms. The proposal would require digital platforms providing accommodation, transport, personal services, and the sale of goods to report their activities, unless they meet certain exclusion criteria. Non-resident platforms facilitating in-scope activities in Costa Rica would also be subject to this requirement. The draft resolution does not include a specific registry for platform operators, but instead assumes all platforms are subject to reporting requirements unless they provide evidence to the contrary. The first report under these rules would be submitted by April 30, 2026, and non-compliance could result in a fine of 2 percent of the offender's gross income. For more information, click here.
- **European Union:** On May 30, 2024, the Court of Justice of the European Union (ECJ) ruled in several cases that EU law precludes measures such as those adopted by Italy that impose additional obligations on online service providers established in other Member States. Cases C-662/22 and C-667/22, C-663/22, C-664/22 and C-666/22, C-665/22. The cases involved online intermediation services and search engines platforms, which were challenging obligations under Italian law requiring them to register with an administrative authority, provide detailed information, and pay a financial contribution. The ECJ held that under the Directive on electronic commerce, the home Member State of the company providing information society services regulates the provision of those services. Therefore, Italy cannot impose additional obligations on providers of those services established in other Member States. Moreover, the ECJ held that for non-EU platforms, Regulation (EU) 2019/1150, aimed at promoting fairness and transparency for business users of online intermediation services, does not support the imposition of such obligations on service providers, particularly when it involves disclosing a significant amount of information related to their revenues. For more information click here.
- **Germany:** On April 29, 2024, the German ministry of finance (BMF) issued guidelines regarding online-event services. For preproduced content, including recordings of events, the provision of such content by an event organizer in a digital form that can be viewed

later is considered a digital service, which is taxable where the recipient is located. For live-streaming events, the provision of a livestream by an event organizer is considered an event related service under the German VAT Law. If the live streaming is provided to a non-business, the services are taxable where the recipient resides or is domiciled. In the case of commission services, particularly in music events, if the digital provision of these events is offered via an external event portal or other third party, it must be examined whether a commission of services exists under the German VAT Law. Regarding service combinations, the provision of a livestream and a recording that can be retrieved by the user later should be considered as either an independent service to be evaluated separately or a single sale, based on the general regulations on the uniformity of a transaction. The guidelines also apply to other online service offerings, such as in the areas of education and health. The principles outlined in the guidance must be applied in all open cases according to the BMF. For services provided before July 1, 2024, no objection will be raised if the parties assumed VAT rules consistent with other principles. To read a report prepared by the KPMG International member firm in Germany, please click here.

- **Kenya:** On May 9, 2024, Kenya's parliament accepted for consideration the Finance Bill, 2024 proposing significant changes to the digital tax landscape in Kenya. It plans to abolish the current digital service tax and replace it with a significant economic presence (SEP) tax, which will apply to non-residents deriving income from services provided over a digital marketplace. Certain incomes, including those from management or professional fees, royalties, interest, and businesses transmitting messages by various methods of communication, will be exempt from SEP tax. The proposed tax rate is 30 percent of the taxable profit, equating to 20 percent of the gross receipts. The tax and corresponding tax return will be due on or before the 20th day of the month following the month in which the service was offered. Additionally, the Bill aims to redefine a digital marketplace and introduce a withholding tax on income deemed to have accrued in or derived from a digital marketplace from the making or facilitation of payments by the digital marketplace or platform. The proposed withholding tax rates are 20 percent and 5 percent, for resident and nonresident persons, respectively. This change will bring sellers or persons offering goods or services through a digital marketplace or platform within the tax ambit. To read a report prepared by the KPMG International member firm in Kenya, please click here.
- **New Zealand:** On May 21, 2024, the New Zealand tax authority issued Determination DET 24/02 outlining the criteria for GST-registered hostels and motels to opt-out of the electronic marketplace rules under the Goods and Services Tax Act. The determination applies to those who sell accommodation through an electronic marketplace and directly to recipients, and who exceed the GST registration threshold of NZD 60,000 but do not meet the statutory opt-out thresholds because they make taxable sales of NZD 500,000 or less in a 12-month period and do not have 2,000 nights of accommodation listed as available on one electronic marketplace for a 12-month period. If eligible, these underlying sellers can enter into an opt-out agreement with the operator of an electronic marketplace, retaining responsibility for their own GST obligations. The determination is effective from April 1, 2024, to March 31, 2025, and will be reviewed before its expiry.
- **Poland:**[xii] On June 11, 2024, the president of Poland signed a law transposing the EU DAC7 reporting requirements into law. Under DAC7, digital platform operators located both inside and outside the EU are required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms. EU Member States are required to automatically exchange this information.

- **Senegal:** The Senegalese Ministry of Finance has updated the implementation date for VAT on cross-border provision of digital services from April 1, 2024, to July 1, 2024. (For KPMG's previous discussion on Senegal introducing VAT obligations for nonresident digital services providers, click here). The order largely retains the same provisions as the previous one, but it includes additional guidance on the foreign exchange rate applicable for VAT compliance, clarification on VAT invoice issuance requirements for nonresident digital service providers and marketplaces for both business-to-business and business-to-consumer transactions, and measures introducing relief for taxpayers from certain record-keeping requirements. For more information, click here.

Developments Summary of the Taxation of the Digitalized Economy

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

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E-Invoicing Updates

Other Developments

- **Estonia:**[xiii] On May 2, 2024, the government Estonian published a draft amendment to the Accounting Act, which aims to standardize and simplify e-invoicing requirements. If adopted, starting January 1, 2025, sellers will be obligated to provide an e-invoice if a buyer requests it. If a buyer requests an e-invoice and no other format has been agreed upon, the European e-invoice standard (EU EN16931) will be used by default. The Head of the Financial Information Policy Department underscored that Estonia will neither prohibit the use of any existing e-invoice format nor hinder the introduction of new ones.
- **Jordan:**[xiv] On May 27, 2024, Jordan's tax authorities urged all entities and individuals required to use the national e-invoicing system, including those who have not yet registered their activities, to do so promptly. He confirmed that the department will waive fines for those who register and reconcile their legal status before the end of May. Registered users can enjoy benefits such as faster tax transactions, delayed tax payments, and reduced paperwork. The Department also answers inquiries through their Taxpayer Services Center via phone, WhatsApp, and social media platforms.
- **Kenya:** On May 9, 2024, Kenya's parliament accepted for consideration the Finance Bill, 2024, proposing significant enhancements to the electronic tax administration. The Bill seeks to revise section 59A of the Income Tax Act, mandating the integration of the electronic tax system with the data management and reporting system for e-document submission. The Bill would broaden the definition of "Tax Invoice" to include an e-tax invoice issued in compliance with the Tax Procedures Act (TPA). Consequently, all tax invoices for VAT purposes, excluding certain exempted items such as emoluments, would need to be transmitted electronically through the Tax Invoice Management System. If enacted, these changes are set to become effective on July 1, 2024. To read a report prepared by the KPMG International member firm in Kenya, please click here.

- **Latvia:**[xv] On May 27, 2024, the Ministry of Finance of Latvia published a draft law, which, if approved, would mandate all Latvia-based companies to issue e-invoices starting January 1, 2026. Additionally, these companies would be required to issue e-invoices to public entities starting January 1, 2025. The draft law also assigns the Cabinet of Ministers the responsibility of establishing the e-invoice circulation procedure by July 1, 2025. The regulations will mandate domestic e-invoice circulation in the business-to-business taxpayer segment using three electronic delivery methods. To facilitate compliance with these requirements starting January 1, 2026, free data transmission channels will be made available for e-invoice submission to the tax authorities.
- **Philippines:**[xvi] On April 11, 2024, the tax authority of the Philippines released Resolution 7-2024, which details the necessary information for invoices in the country. The resolution sets specific invoice content based on their use for claiming VAT credits. It also establishes new expiration dates for authorized Official Receipts. In line with the Ease of Paying Taxes Act, Official Receipts are no longer required. However, until December 31, 2024, recipients can use these documents to claim input credits if they are labeled as "invoice" and include the necessary information. Starting January 1, 2025, Official Receipts will no longer be acceptable for claiming credits. Finally, the Resolution outlines the required content of invoices used to claim VAT credits, the penalties for those who fail to issue invoices or issue them without the necessary information and clarifies that invoices must be stored for five years.
- **Saudi Arabia:**[xvii] On May 24, 2024, the Zakat, Tax and Customs Authority (ZATCA) outlined the criteria for the 12th group of taxpayers who must adhere to the second phase of the e-invoicing system implementation, starting from December 1, 2024. This group includes taxpayers whose VAT-liable revenues exceeded SAR 10 million in 2022 or 2023. The second phase, also known as the integration phase, requires taxpayers to integrate their e-invoicing solutions with the FATOORA Platform. This phase also necessitates issuing e-invoices in a specific format, adding extra fields to the invoice, and introduces new requirements for storing e-invoices, including the QR code. ZATCA will provide a six-month notice before the compliance date and encourages taxpayers to seek guidance if needed. It reminds taxpayers that e-invoicing system compliance is mandatory, and penalties may apply for non-compliance.

E-invoicing developments timeline

The world of taxation and compliance is constantly becoming more digitalized and governments are continuously issuing new regulations and requirements for taxpayers. To help businesses stay up to date with tax administration developments in e-invoicing, digital reporting, and real-time reporting, we have created this e-invoicing developments timeline which will be regularly updated.

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Other Indirect Tax Developments and News from Around the World

The Americas

United States: Tennessee Department of Revenue Issues Guidance on Revised Sales and Use Tax Sourcing Rules

The Tennessee Department of Revenue recently published Notice 24-08 to summarize the sales and use tax sourcing changes that were made by House Bill 323 enacted last year as Public Chapter 377, "The Tennessee Works Tax Act" (the TWTA). The changes, which are effective on July 1, 2024, are intended to make the majority of Tennessee's sales and use tax sourcing provisions consistent with the Streamlined Sales and Use Tax Agreement. The Notice explains that the TWTA adopts destination sourcing for interstate sales of services performed on tangible personal property and computer software. Generally, if a service is performed within Tennessee and the serviced property or software is delivered by the seller to the purchaser outside of Tennessee, the sale is no longer sourced to Tennessee and is considered an exempt interstate sale. In contrast, if a service is performed outside of Tennessee and the serviced property or software is then delivered for use or consumption to a purchaser in Tennessee, the sale is sourced to the location where the serviced property or software is received by the purchaser. The new sourcing provisions will affect several taxable services, including repairs and installation of computer software, repairs, and installation of tangible personal property, and laundering or dry-cleaning of tangible personal property.

For marketplace facilitators, the Notice explains that all sales, including services, made through the marketplace are sourced to the location where the product or service is received by the purchaser. For leased property, including licensed computer software and specified digital products, the TWTA adopts destination sourcing based on the primary property location of the leased property during the lease period. If the primary property location of the leased property moves from an out of state location into Tennessee, then the periodic lease payments after the move are sourced to Tennessee and are subject to tax. If the primary property location of the leased property is moved out of Tennessee, then the periodic lease payments after the move are no longer sourced to Tennessee and are considered exempt interstate sales. The primary property location is defined as an address for the property provided by the lessee to the lessor.

The TWTA also adopts destination sourcing for sales of direct mail to recipients outside of Tennessee. Sales from a Tennessee business location of direct mail that is distributed to recipients outside of Tennessee is no longer sourced to Tennessee. When direct mail is delivered to recipients located both within and outside of the state, the portion of the sales price that relates to the out-of-state recipients is not sourced to Tennessee and is considered an exempt interstate sale. The purchaser of the direct mail must provide the seller with the delivery information for the recipients or a fully completed Streamlined Sales Tax exemption certificate to claim that the direct mail is distributed to recipients outside of Tennessee. Finally, under the TWTA, sales into Tennessee of magazines and books by mail or common carrier, when the seller has limited activities in Tennessee, are now sourced to Tennessee and subject to sales tax. For more information, click here.

KPMG in Brazil: Overview of Proposed Indirect Tax Reform

On April 24, 2024, the Brazilian government tabled legislation in the Brazilian lower house of parliament that will govern the proposed dual VAT regimes under the indirect tax reform. (For KPMG's previous discussion on the Brazilian indirect tax reform, click here). The government has also released an explanatory memorandum, which provides an article-by-article breakdown of the provisions included in the regulations. Under the tax reform bill, Brazil would enact a dual VAT regime including: a tax on goods and services (Imposto Sobre Bens e Serviços—IBS) that would replace the state VAT (Imposto Sobre Circulação de Mercadorias e Serviços—ICMS) and the municipal tax on services (Imposto Sobre Serviços de Qualquer Natureza—ISS); and the Contribution on Goods and Services (Contribuição Sobre Bens e Serviços—CBS) that would replace the federal PIS/COFINS contributions.

The new legislation would govern the administration, collection, and enforcement of the two levies. The legislation clarifies matters such as taxable events, the scope of taxation, sourcing rules, calculation, special mechanisms, the division of revenues among states, and rates. The legislation also includes provisions for the potential application of a split payment mechanism and states that the government may offer a tax relief mechanism for consumers who request an invoice from sellers to promote compliance and stipulate that federal and local level authorities should agree on a standardized format for such invoices. The legislation further provides for a 60 percent rate reduction on a broad range of goods and services, including education services, health services, medical devices, accessibility devices for people with disabilities, medicines, basic menstrual health care products, food intended for human consumption, personal hygiene and cleaning products primarily consumed by low-income families, and agricultural, aquaculture, fishing, forestry, and fresh plant extractive products. Finally, the legislation includes concessionary arrangements for the real estate sector and special tax rules for the minerals, energy, and financial services sectors. To read a report prepared by the KPMG International member firm in Brazil, click here.

Miscellaneous Developments in the Americas

- **Colombia:**[xviii] On April 25, 2024, the Colombian tax authority clarified that the tax on single-use plastics applies to domestic sales as well as to sales abroad (i.e., exports) of single-use plastics to pack or wrap goods. It also clarified that the exclusions granted by the regime to certain products, also applies to qualifying exports.
- **Ecuador:**[xix] On April 24, 2024, the Ecuadorian tax authority published Resolution No. NAC-DGERCGC24-00000016, amending the procedure for claiming tax credits generated from VAT withholdings. The amended procedure specify that claims should be submitted monthly in chronological and consecutive order and must include a signed explanation if the tax credit cannot be offset within 6 months. Supporting evidence, such as a digital list of withholding receipts and monthly VAT returns, must be attached. For taxpayers required to keep accounting records, the general ledger for the VAT withholding account and ledgers for tax credit accounts must also be included. The Resolution further removes the notification process for administrative acts related to VAT credit refund requests, instead, notifications will be sent electronically. Finally, it provides that documents should generally be submitted digitally, with exceptions for physical documents requested by the tax authority.

- **Suriname:**[xx] On May 13, 2024, the Suriname government announced that it has installed a VAT Evaluation Commission to evaluate the current VAT regulations and provide recommendations on improvements to the regime. The Commission was expected to provide a written report of its findings by May 30, 2024. The commission was installed on March 28, 2024.

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Europe, Middle East, Africa (EMEA)

Overview of Indirect Tax Developments in EMEA from KPMG International Member Firms

- **KPMG in Bahrain** published a report discussing recent tax developments in the Gulf Cooperation Council (GCC) region. These include the introduction of a new tourist levy on hotel accommodations in Bahrain, effective May 1, 2024. In a second report, it discusses the publication of an updated VAT Real Estate Guide in Bahrain, and an updated VAT guidance for natural persons acting as board members in the United Arab Emirates (UAE).
- **KPMG in the Czech Republic** published a report discussing a recent decision of the Supreme Administrative Court (SAC) holding that the statutory rate of interest on retained VAT deductions for the 2017 to 2020 period was in line with EU law.
- **KPMG in the Czech Republic** published a report discussing proposed amendments to the country's VAT law. Among other things, the proposal includes measures to change the rule for determining the tax base when employers sell to their employees (or close persons) for a symbolic price; narrow the scope of financial activities exempt from VAT; correct the tax base for bad debts; and reduce the time limit for the right to deduct VAT based on a credit note to two years.
- **KPMG in Poland** published a report discussing a recent ruling issued by the Polish ministry of finance on the VAT treatment of certain activities performed by local government bodies (i.e., building installations of renewable energy sources and removing asbestos) in connection with the ECJ judgments in *Gmina O*. C-612/21 and *Gmina L* C-616/21 (March 30, 2023). The ruling clarifies that when such activities have been taxed by a local government unit and the VAT on the account has been settled, the local government unit is authorized to correct such a settlement, but do not need to do so.
- **KPMG in Kenya** published a report discussing tax proposals in the Finance Bill 2024, including measures to increase the VAT registration threshold from KES 5 million to KES 8 million, and extend the time frame for the Kenya Revenue Authority (KRA) to issue decisions from 60 to 90 days.
- **KPMG in Malta** published a report discussing the enactment of tax measures in the 2024 budget. Among other things, the law introduces a General Anti-Abuse Rule (GAAR) which largely codifies the VAT anti-abuse principles established through the ECJ case-law. The GAAR stipulates that any scheme aimed at obtaining a tax advantage in a way that contradicts the VAT Act will be disregarded and redefined to reflect the situation that would have existed without it. Additionally, the GAAR states that no amount can be treated as deductible VAT expense if it is linked to goods or services involved in VAT fraud, whether the person claiming the deduction was aware of the fraud or not. Other measures in the enacted law include the removal of the provision in the VAT Act setting out the income

tax deductibility of interest levied in terms of the VAT Act; increasing the power of the tax authority to access to books, records, and documents during an investigation; and record-keeping requirements for taxpayers not registered for VAT.

- **KPMG in Nigeria** published a report noting that the Central Bank of Nigeria (CBN) has issued an implementation guideline for the introduction of a national "cybersecurity levy," effective from May 6, 2024. The 0.5 percent levy applies to all electronic transactions and is to be deducted and remitted by specified financial institutions and intermediaries. Specified intermediaries include GSM service providers and all telecommunication companies, internet service providers, insurance companies, and the Nigerian Stock Exchange. These institutions are required to deduct the levy at the point of electronic transfer origination and reflect it in the customer's account with the narration "Cybersecurity Levy." This levy was enacted in 2015, but implementation had been delayed until now.

Roundup of Latest Court of Justice of the European Union Cases

On May 8, 2024, the ECJ published its decision in *P. sp. z o.o.*, Case C-241/23, in which it held that the taxable amount of a contribution of property by one company to the capital of a second company in exchange for shares in the latter must be determined in relation to the issue value of those shares where those companies agreed that the consideration for that capital contribution was to be that issue value.

On May 16, 2024, the ECJ published its decision in *Slovenské Energetické Strojárne a.s.*, Case C-746/22, in which it held that the Directive pertaining to the refund of VAT to taxpayers not established in the Member State of refund but established in another Member State read in the light of the principles of VAT neutrality and effectiveness, precludes national legislation that prohibits a taxpayer from providing additional information at the complaint stage before a second-tier tax authority if that information was not provided to the first-tier tax authority within the one-month period stipulated in the refund Directive. The ECJ further held that the refund Directive does not preclude national legislation that requires a tax authority to discontinue the VAT refund procedure if the taxpayer has not provided additional information within the time limit and the VAT refund application cannot be processed, provided that the discontinuation decision is regarded as a decision refusing the refund application and can be the subject of an appeal.

Source: CCH, Global Tax News, *ECJ Rules In Portuguese Pawnbroker VAT Dispute*, May. 7, 2024, HU: ECJ, May 16, 2024, Case C-746/22, Slovenské Energetické Strojárne A. S. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, Case Law IBFD.

European Union: New draft of EU VAT reform (VAT in the Digital Age (ViDA))

On May 8, 2024, the European Commission (EC) released an updated draft of the VAT in Digital Age (VIDA) package. The proposed amendments to the EU VAT rules include expanding the VAT digital platform rules to include passenger transport and short-term accommodation platforms, enlarging the single VAT registration and compliance mechanism under the One Stop Shop (OSS), and implementing a real-time digital reporting system based on e-invoicing for cross-border businesses in the EU. The initial VIDA package was proposed on December 8, 2022, and has since been discussed and modified to address various concerns from Member States. The proposed new digital platform and single VAT registration rules, if adopted, would come into effect on July 1, 2027, with some technical provisions being effective from January 1, 2026. The e-invoicing and digital reporting rules would only be effective from July 1, 2030.

The updated proposal states that from July 1, 2027, platforms facilitating short-term accommodation rentals or passenger transport services will be considered to have received and sold those services themselves, unless the service provider has provided their VAT ID and declared they will charge any VAT due. Member States can also require platforms to validate the VAT IDs they receive. Short-term accommodation rental services in this context refer to the uninterrupted rental of accommodation to the same person for a maximum of 30 nights. These rentals would be subject to rules set by each member state, and the EC will publish a comprehensive list of these rules by December 31, 2027. The updated proposal allows Member States to exclude short-term accommodation rentals and road passenger transport services made under the special mechanism for small enterprises from the deemed seller rules. The proposal would also clarify that facilitation services provided to final consumers would be sourced to the member state when the underlying transaction is taxable. This provision would apply to all platforms, not just those facilitating the sale of short-term accommodation and passenger transport services. The initial proposal to expand the deemed buy-sell rules to marketplaces facilitating the sale of EU established vendors is no longer included in the updated proposal.

The updated draft proposes that from July 1, 2027, the One Stop Shop (OSS) would be expanded to include transfers of own goods between Member States, B2C sales of goods with installation or assembly, sales of goods on board ships, aircrafts or trains, sales of gas, electricity, heating and cooling by taxpayers not established in the Member State of consumption, domestic B2C sales of goods by taxpayers not established in the member state of consumption, and certain zero-rated transactions. The initial proposal to include sales subject to the margin mechanism in the expanded OSS mechanism is no longer included in the updated draft. The proposal would also expand the requirement for the purchaser to self-assess VAT under the VAT self-assessment mechanism when vendors are not established or identified for VAT purposes in the member state where the VAT is due, and the recipient is identified for VAT purposes. Member States would also be allowed to apply the self-assessment mechanism to sales by non-established vendors to any customer, regardless of their status, subject to the conditions laid out by the Member State. The proposal also includes technical amendments related to when VAT is reportable in an OSS return, when and how amendments of the OSS return can be made and repealing the call-off stock simplification.

Further, the VIDA package would allow Member States to mandate e-invoicing for domestic transactions without EU approval. From July 1, 2030, e-invoicing and digital reporting would be mandatory for certain transactions, including intra-EU sales and acquisitions of goods, and taxable sales and purchases under the VAT self-assessment mechanism. The updated proposal states that e-invoices must comply with the EU standard. For transactions not subject to the EU mandate (e.g., domestic transactions), Member States may accept other formats. In addition, e-invoices must be issued within 10 days of the chargeable event of the transactions in scope of the EU mandate (two days in the initial proposal). This timeline is shorter than the current requirement to issue valid VAT invoices within 15 days of the end of the month following that in which the chargeable event occurs.

The new digital reporting requirement would replace the current recapitulative statement. Taxpayers would need to submit it to their tax authority at the time of invoice for sales when the seller issues the invoice, or five days after the invoice issuance for sales when the buyer issues invoices, and for purchases, five days after the invoice issuance for intra-EU acquisitions and purchases subject to the VAT self-assessment mechanism. Member States could also implement digital reporting requirements for B2B transactions not under the EU mandate. These states could also require taxpayers to hold a valid e-invoice to deduct VAT, a significant change to the EU VAT credit mechanism.

Member States would be allowed to implement digital reporting requirements for B2B transactions not under the EU mandate. In this regard, the updated proposal includes harmonization with the EU requirement, such as timing of data transmission and compliance with the EU e-invoicing standard. Member States opting for this additional reporting could require taxpayers to hold a valid e-invoice to deduct VAT, a significant change to the EU VAT credit mechanism, as currently, possession of a valid VAT invoice is not a substantial requirement for VAT deduction. Finally, by March 31, 2033, the EC would be required to present an interim evaluation report on the e-invoicing and digital reporting requirements to the European Council. For more information, click here.

Miscellaneous Developments in EMEA

- **Austria:**[xxi] The Austrian Ministry of Finance launched consultation on its Tax Amendment Act 2024. The Act includes measures to implement the EU's small business VAT reform, effective from January 1, 2025. This reform allows EU Member States to maintain small business exemptions up to EUR 85,000 and extends these exemptions to small businesses in other EU states, provided their gross receipts in the non-established Member State are below the national threshold and their total EU gross receipts are below EUR 100,000. Non-EU businesses are not eligible for these exemptions. For more information, click here. The Act also introduces a VAT exemption for food donations to charitable organizations.
- **Belgium:**[xxii] On May 23, 2024, the Belgian tax authority further extended the deadline for certain taxpayers to report information related to their allocation of VAT deductible expenses. Since January 1, 2024, Belgium has allowed taxpayers with taxable and exempt activities (mixed entities), and taxpayers with activities both within and outside the VAT scope (partial entities), who can deduct their VAT expenses in relation to their taxable activities, to do so based on several specified allocation methods. These taxpayers are required to periodically report certain information related to these methods. Initially, the tax authority had provided that partial entities would be required to annually communicate certain information relating to their right to deduction in the periodic VAT declaration: in the first quarter (by April 20 at the latest) for quarterly filers; or in one of the first three months of the current calendar year (no later than February 20, March 20, or April 20) for monthly filers. The tax authority has confirmed that these deadlines have been extended until August 9, 2024, for both monthly and quarterly filers, corresponding with the periodic VAT declaration deadline for the second quarter of 2024 or June 2024. It said that monthly filers who wish to receive a refund in their periodic declaration for the month of June should file by no later than July 24, 2024. To read KPMG's previous discussion of this measure, click here.
- **Bulgaria:**[xxiii] On May 28, 2024, Bulgaria published amendments to its VAT law introducing VAT refund rights for persons from non-EU countries that are also OECD members, effective from January 1, 2025. This is in line with the OECD's recommendations in connection with Bulgaria's accession to the OECD. The refund applies even if these countries do not levy VAT or a similar tax, but only on certain goods and services related to professional events. The conditions, procedure, and time limits for the VAT refund to persons from OECD countries are the same as those for persons from countries listed by the Bulgarian Minister of Finance and the Minister of Foreign Affairs.
- **Denmark:**[xxiv] On April 29, 2024, the Danish Customs and Tax Administration published Tax Council Binding Answer No. SKM2024.247.SR, clarifying the VAT treatment of a

compensation payment for allowing a competitor to lease property space in a building. In the case, the taxpayer, a retail chain, allowed a competitor to lease a space in the same building as one of the taxpayer's businesses in exchange for compensation. The tax authority decided that the compensation payment to the taxpayer from the competitor was subject to VAT because it constituted a consideration for a sale of services. The Tax Council upheld the tax authority's decision finding that there was a direct link between the compensation payment and the taxpayer's acceptance of the competitor's lease, which established the necessary connection for VAT liability; and they received the payment as a taxpayer since the receipt of the payment is a direct extension of the business operation.

- **Denmark:**[xxv] The Danish government recently enacted legislation to implement environmental tax reforms to help meet its 2030 environmental goals. These reforms include aligning the country's carbon tax regime with the EU's Emission Trading Mechanism and reducing the tax burden for mineral and metallurgical processing firms. The law introduces rate hikes to the regime from January 1, 2025, with different rates for companies inside and outside the EU's cap and trade system, and for emissions from mineralogical and metallurgical processes. In addition, the government enacted a tax on air travel tickets for flights departing from Denmark, effective from January 1, 2025. The tax rate would vary based on flight length and would increase by 2030.
- **Denmark:**[xxvi] On May 8, 2024, the Danish Customs and Tax Administration published National Tax Court Decision No. SKM2024.263.LSR, clarifying the VAT liability and the non-approval of a VAT deduction on advisory service expenses for the sale of capital shares in a subsidiary. In the case, the taxpayer, a company registered for various consulting services, engaged in activities that included holding capital shares. The tax authority found that the costs incurred by the advisors were linked to the sale of the shares. It did not approve the taxpayer's VAT expense deductions on advisory service expenses used for VAT-exempt letting after the sale and increased the taxpayer's VAT liability. On appeal, the National Tax Court upheld the decision, finding that the expenses for the advisory services may be directly attributable to the taxpayer's VAT-exempt sale of shares in the subsidiary, and therefore the taxpayer was not entitled to a deduction for VAT from the costs of the services. Since the expenses for the advisory services had a direct and immediate connection to the VAT-exempt sale of shares in the subsidiary, the expenses could not be considered to constitute general expenses. Moreover, the purpose of the company's sale of shares was not relevant to the company's right of deduction. Thus, the fact that the company used part of the proceeds from the sale of the shares for the company's taxable economic activity with the provision of services to both affiliated companies and external companies could therefore not lead to a different result.
- **Denmark:**[xxvii] On May 10, 2024, the Danish Supreme Court ruled in Case No. BS-30127/2023-HJR that a VAT-exempt insurance company is not entitled to an additional VAT refund from insurance sales in a non-EU country through its foreign branch. The Supreme Court argued that the transactions carried out in Denmark by the taxpayer had no connection with the branch's business in the other country. Therefore, these services must be considered to be delivered to recipients in the non-EU country by the branch and not by the taxpayer in Denmark.
- **Denmark:**[xxviii] On May 28, 2024, the Danish Customs and Tax Administration published Tax Council Binding Answer No. SKM2024.291.SR, clarifying VAT exemptions for services provided to insurers. The taxpayer provided an insurer with marketing services, made customer data available, and provided a website for pricing insurance, purchasing it, or requesting an insurance adviser. In the case, the taxpayer inquired whether the

services were exempt under the VAT Act as services provided by insurance brokers and intermediaries in association with insurance and reinsurance transactions. The tax authority found that the services did not fall under the exemption. Upon review, the Tax Council agreed with the tax authority's findings that the services provided were separate and independent of each other in terms of VAT. Therefore, the services were not considered as a single service that could be exempt under the VAT Act.

- **Finland:**[xxix] Finland recently confirmed plans to implement the EU's small business VAT reform, effective from January 1, 2025. This reform allows EU Member States to maintain small business exemptions up to EUR 85,000 and extends these exemptions to small businesses in other EU Member States, provided their gross receipts in the non-established state are below the national threshold and their total EU gross receipts are below EUR 100,000. Non-EU businesses are not eligible for these exemptions. For more information, click here.
- **Liberia:**[xxx] Liberia's lower house of parliament recently approved legislation to replace the country's sales tax regime with a VAT regime. The current sales tax regime does not allow tax credits for costs, resulting in cascading taxation. The proposed VAT regime would enable taxpayers to claim VAT refunds and is expected to remove distortions to business decisions and promote voluntary compliance. The legislation is currently before the country's senate for approval.
- **Moldova:**[xxxi] On May 8, 2024, the Moldovan State Tax Service (STS) issued Order 214 clarifying several points regarding VAT registration, imports and temporary transfers to nonresidents, and exchange rates. Firstly, businesses in Moldova must register for VAT if their sales exceed MDL 1.2 million over 12 consecutive months, excluding VAT-exempt sales. Registration must be completed by the last day of the month in which the threshold is exceeded. Businesses can also voluntarily register for VAT, and they will be considered registered from the first day of the following month. The STS can cancel a VAT registration under certain conditions, such as failure to file VAT returns or providing false information. However, if a business suspends its activities as per the law, its VAT registration will not be cancelled. The STS further clarified rules for resident taxpayers transferring movable assets to nonresidents for repairs, reconstruction, or modernization performed abroad. If the costs of these services are included in the customs value and are subject to VAT upon importation, no additional VAT will apply. But if these costs are not included in the customs value upon importation, the services provided by nonresidents abroad will be subject to VAT as per the general procedure. Finally, the STS clarified that VAT due on imports of services must be calculated at the rate established by the Moldovan National Bank on the earlier of the date on which the services are imported and the date on which payment for the services is made. Goods imported into Moldova's customs territory and placed in a customs warehouse, and goods sold to a free economic zone from inside Moldova are exempt from VAT.
- **Norway:**[xxxii] On May 4, 2024, the Norwegian Government presented its revised budget for 2024. Among other things, the budget proposes to amend the VAT chargeback regime on used car sales. Currently, selling used cars in Norway does not trigger any VAT, but purchasing a new vehicle does, which can be deducted if the vehicle is used for taxable activities. However, if the car is sold as a used car within 48 months of purchase, the deducted VAT is charged back based on a set deduction plan. The revised budget proposes that effective July 1, 2024, the reversal amount should be determined by multiplying the deducted VAT by the value of the vehicle at the time of transfer and dividing by the value at the time of deduction. The revised budget further includes technical amendments to ensure that the VAT exemption applicable to NATO visiting forces also applies to civilian

contractors and subcontractors providing services to US forces in line with Norway's bilateral agreement with the United States. Finally, starting in 2024, ships over 5,000 gross tons will be included in the EU Emissions Trading System (ETS), requiring them to meet emission quotas. To avoid double taxation, Norway plans to introduce a reduced CO2 tax for quota-regulated maritime transport.

- **Norway:**[xxxiii] On May 10, 2024, the Norwegian tax authority published Tax Appeals Board Decision No. SKNA11-2024-7, clarifying the refund of incorrectly charged VAT. In the case, the taxpayer sought the refund of previously reported and self-corrected VAT returns on behalf of 38 companies related to packaging and shipping costs. The self-correction was based on tax office guidance that packing freight costs are a cost of fulfilling the sales agreement and that the tax calculation must follow the goods' tax rate. The tax authority found the tax was passed on to the buyers and concluded that taxpayer was thus not allowed to a refund. The Tax Appeals Board held that the taxpayer does not meet the conditions for self-correction to be repaid the incorrectly charged VAT. This is because the taxpayer has not made any corrections to its customers and, according to the Tax Appeals Board's assessment, there are no "special circumstances" that would warrant to waive such a requirement. Even if there were "special circumstances," the repayment requirement should be reduced to zero, as the entire fee that is required to be refunded has been charged to the customer.
- **Saudi Arabia:** On May 3, 2024, the Saudi Arabia Zakat, Tax, and Customs Authority (ZATCA) announced amendments to the real estate transaction tax (RETT) regulations. Among other things, the amendments provide that for purposes of the RETT exemption for property transfers from an individual to a company, such property must be recognized as an asset in the books of accounts before the effective date of the regulations and such individual must be a shareholder in the company on the date of recognizing the asset in the books of accounts irrespective of the fact that he or she may be a shareholder on the date of transfer of title or not. Further, the RETT exemption now includes all real estate fund types for in-kind subscription to any real estate investment fund, removing restrictions on leasing real estate funds and initial establishment requirements. For more information, click here.
- **Slovakia:**[xxxiv] On May 17, 2024, Slovakia published Law No. 102/2024, which provides for various changes to the VAT Act, including an increase to the VAT registration threshold. The law provides that, from January 1, 2025, taxpayers will be required to register for VAT if their gross receipts exceeded EUR 50,000 in the previous year, or if their gross receipts in the current year reaches EUR 62,500. The legislation also transposes into domestic law the EU Directive to make changes to the special mechanism for small enterprises, also effective from January 1, 2025. This reform allows EU Member States to maintain small business exemptions up to EUR 85,000 and extends these exemptions to small businesses in other EU Member States, provided their gross receipts in the non-established state are below the national threshold and their total EU gross receipts are below EUR 100,000. Non-EU businesses are not eligible for these exemptions. For more information, click here. The Act also introduces a VAT exemption for food donations to charitable organizations.
- **Slovakia:**[xxxv] On May 22, 2024, the government of the Slovak Republic proposed a bill introducing tax on soft drinks sweetened with sugar and other sweeteners, effective January 1, 2025. The tax rate would be EUR 0.15 per liter and EUR 0.30 per liter for soft drinks with high caffeine. The new tax would not apply to sweetened milk drinks, yogurt drinks, plant-based drinks, concentrated packaged substances with medicinal properties sold in pharmacies, and nutritional supplements like over-the-counter effervescent vitamin tablets or protein drinks with added sugar or sweeteners.

- **South Africa:**[xxxvi] On May 17, 2024, South Africa published Notice No. 4845, amending the domestic VAT self-assessment regulations for precious metals. These changes include a new definition for "residue" to encompass waste from mining operations and a broader definition for "valuable metal" to include various goods and materials containing gold. The amendments also modify the rules for issuing debit and credit notes, expand VAT record-keeping requirements, and mandate a thorough description of valuable metals and their gold content, with some exceptions.
- **South Africa:**[xxxvii] On May 21, 2024, the South African Revenue Services issued Binding General Ruling No. 64, Issue No. 2, clarifying the VAT treatment of newly built residential dwellings that are temporarily applied for exempt sales by developers. It clarifies that a developer temporarily using any dwellings for exempt sales must make a VAT adjustment based on the adjusted cost of the fixed property. The sale of any dwelling during the 12-month period in which it was temporarily used for exempt sales will be a taxable sale. Further, no adjustment is required when a written agreement of sale for a dwelling was concluded during the period in which that dwelling was temporarily used for exempt purposes, but the time of sale only occurs after the end of the 12-month period. A developer will be required to make a VAT adjustment based on the open market value (OMV) of the property if any dwelling is let for a period in aggregate of more than 12 months. The subsequent sale of such a property will not be a taxable sale.
- **South Africa:**[xxxviii] On May 22, 2024, the South African Revenue Service issued Binding General Ruling No. 14, Issue No. 4, clarifying the VAT treatment of short-term insurance sales, due to amendments to the VAT Act effective January 1, 2024. The ruling covers a range of scenarios, including tax point for insurance, international transport insurance, hull insurance, insurance for property in an export country, excess payments, indemnity payments, third-party payments, recoveries, group accident claims, intermediary services, and alternative documents to tax invoices. It also allows insurers to issue recipient-created tax invoices, credit, and debit notes for intermediary services.
- **Sweden:**[xxxix] On May 2, 2024, the Swedish tax authority updated its guidance on the VAT treatment of the sale of mortgages. The incorporates the recent ECJ judgment in *Companhia União de Crédito Popular*, Case C-89/23, which clarified that the organization of sales through the auction of pledged goods was not ancillary to the principal activity of granting the credit secured by the pledge. These ancillary services therefore did not share the VAT exemption provided by law for the principal services of granting the credit.
- **Sweden:**[xl] On May 2, 2024, the Swedish ministry of finance submitted its final report on the "Inquiry on Measures to Prevent VAT Fraud" to the government, which includes several proposals to prevent VAT fraud, including examining the possibility of showing companies' VAT registration numbers as invalid in the VAT Information Exchange System (VIES) and the tools needed by the Swedish Tax Agency to detect and prevent fraud. The report prioritizes preventive measures, aiming to restrict access to the VAT system to prevent fraud from occurring.
- **Tunisia:**[xli] The Tunisian Ministry of Finance recently announced the introduction of a new electronic platform for issuing withholding tax (WHT) certificates, effective from June 1, 2024. Initially, it will be used by large and medium companies and tax professionals, then by taxpayers using the online tax declaration system from January 1, 2025, and finally by all taxpayers, including for VAT, from January 1, 2026. Taxpayers are required to join the platform by registering remotely and creating their own account. They may have more than one account to allow their secondary establishment to issue withholding certificates on the platform. The registered taxpayer may assign an accounting or tax professional to issue

these withholding tax certificates. Registered taxpayers are required to prepare and submit the withholding tax certificates at the latest by the end of the month following the payment.

- **Turkey:**[xlii] On May 21, 2024, the Turkish government published a Presidential Decision to raise the rate of interest that applies to late tax payments from 3.5 percent to 4.5 percent.
- **Uganda:**[xliii] On March 27, 2024, the Ugandan Parliament published Bill No. 53/2024, to amend the VAT Act, effective July 1, 2024. The bill includes measures to classify the sale of goods or services by an employer to an employee as a taxable sale, increase the offset threshold of overpaid tax from USH 5 million to USH 10 million, broaden the scope of VAT exempt transactions, and hold withholding agents who fail to withhold tax personally liable to pay the tax authority the unwithheld amount, which they can recover later.
- **United Arab Emirates:**[xliv] On May 13, the Federal Tax Authority of the United Arab Emirates clarified that the performance of a director's function, by an individual for remuneration, on specified boards of directors, is not a taxable sale of services for VAT purposes.
- **United Kingdom:**[xlv] On May 9, 2024, the UK tax authority, HMRC, issued a policy paper on the VAT treatment of voluntary carbon credits. The paper states that from September 1, 2024, transactions involving most transfers of voluntary carbon credits made in the United Kingdom will become subject to VAT. It defines a carbon credit as a tradable instrument issued by an independently verified carbon-crediting program. This change is due to the emergence of a secondary market where these credits are actively traded, which was not the case when the credits were first introduced. However, certain activities, such as the first issuance of a voluntary carbon credit by a public authority and the holding of voluntary carbon credits as an investment without economic activity, remain outside the scope of VAT.
- **United Kingdom:**[xlvi] On May 21, 2024, the UK's Court of Appeal (Civil Division) ruled in *HMRC v. Hotel La Tour*, [2024] EWCA Civ 564, that professional services used to facilitate the sale of shares for financing a construction project does not qualify for VAT recovery. In the case, the taxpayer, Hotel La Tour Ltd. (HLT), is an active holding company that owns various pieces of intellectual property, including the hotel trademark name of its subsidiary, Hotel La Tour Birmingham Ltd. (HLTB). HLT sold shares in its subsidiary HLTB to finance the construction of a new hotel. For this purpose, HLT purchased professional services to assist with the promotion and sale of the shares. When HLT filed its VAT return, requesting a refund of VAT paid for professional services, HMRC denied the request, arguing that the share sale was an exempt transaction which used the VAT on the fees and therefor there was no "direct and immediate" link between the VAT claimed and HLT's taxable activities. The Upper Tribunal, confirming a previous ruling of the FTT, found that there was a direct and immediate link between the commissioned professional services and HLT's downstream economic activity, allowing for a VAT refund. HMRC appealed the determination before the Court of Appeal. The Court of Appeal upheld HMRC's argument, stating that the professional fees were directly linked with HLT's exempt sale of shares, and thus VAT cannot be recovered. To read KPMG's previous discussion of this case, click here.
- **United Kingdom:**[xlvii] On May 23, 2024, the UK's Upper Tribunal ruled in the *SilverDoor Ltd. v. HMRC*, [2024] UKUT 147 (TCC) that corporate credit card fees charged by a UK-based short-term rental agent for booking travel accommodations online are standard-rated for VAT purposes. The case involved SilverDoor, a company that provides services to businesses seeking accommodations for employees on temporary work assignments, which charged customers a 2.95 percent processing fee on the total reservation price if they paid with a corporate credit card. SilverDoor argued that the fees are VAT exempt financial intermediary services, as they were a separate transaction from the reservation services. However,

the Upper Tribunal rejected this argument, agreeing with the FTT and HMRC, stating that the ability to pay by credit card was part of the wider spectrum of services provided by SilverDoor, and thus subject to VAT at the standard rate.

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Overview of Indirect Tax Developments in ASPAC from KPMG International Member Firms

- **KPMG in Australia** published a report discussing the launch of a consultation on a draft legislative instrument aimed at changing the GST treatment of certain motor vehicle sales. The proposal includes measures to waive the requirement, under certain circumstances, for a buyer of a motor vehicle to hold a tax invoice before the relevant VAT credit can be attributed to a tax period. The draft instrument would apply when the buyer makes a creditable acquisition of a motor vehicle from a dealer and, in addition to the consideration payable by the buyer, the dealer receives or is entitled to receive third-party consideration in the form of a motor vehicle incentive payment.
- **KPMG in Bangladesh** published a report discussing recent tax developments in the country, including the introduction of an advance tax exemption on import of raw materials by manufacturers of computers and related accessories.
- **KPMG in Cambodia** published a report discussing a new VAT guidance. This includes measures introducing the requirement to apply the VAT self-assessment mechanism to all imported services, as well as an extension of the period to claim VAT credits.
- **KPMG in Japan** published a report discussing the passage of bills with the 2024 tax reform measures on March 28, 2024. These include the introduction of consumption tax liability for platforms facilitating the sale of digital services. To read KPMG's previous discussion of Japan's platform taxation rules, click here.
- **KPMG in Malaysia** published a report discussing recent tax developments in the country. These include the introduction of a service tax exemption for specified maintenance, repair and overhaul services for the aerospace and maritime sector, and the issuance of several sales tax guides, including a guide on the treatment of food and beverages.

Miscellaneous Developments in ASPAC

- **Australia:**[xlviii] In the 2024-25 Budget, the Australian government proposed a measure to extend the mandatory notification period for Business Activity Statement (BAS) refund retention from 14 to 30 days. This gives the Australian Taxation Office an extra 16 days to decide whether to suspend processing a GST refund request submitted with a taxpayer's BAS for further investigation. The changes will be effective from the first financial year after Royal Assent to the proposal.
- **India:**[xlix] On June 1, 2024, India's Goods and Services Tax Network (GSTN) announced the launch of the E-Way Bill 2 Portal on June 1, 2024. E-way bills, which were introduced in 2018, are required for the shipment of goods worth more than INR 50,000 and facilitate the movement of goods between Indian states without border checks. The portal will run alongside the existing one, synchronizing data between the platforms. The new portal will act as a backup system in case of technical issues with the main portal, allowing taxpayers to update e-way bills, including Part-B. Existing login credentials can be used to access the E-Way Bill 2 portal.

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

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Footnotes

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