KPMG

Inside Indirect Tax

June 2023

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.

Table of Contents

KPMG Publications

Developments Summary of the Taxation of the Digitalized Economy

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

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. When used by tax authorities, these technologies can be disruptive and require radical changes in the way taxpayers interact internally as well as with their customers, related parties, and the tax authorities.

Overview of Indirect Tax Developments from KPMG International Member Firms

- **KPMG in Bahrain** published a report noting that the Bahraini National Bureau for Revenue (NBR) has imposed penalties on nonresident businesses making taxable sales in Bahrain to unregistered customers without obtaining a VAT registration. The report also discusses the VAT treatment of syndicated loans.
- **KPMG in Bahrain** published a report discussing recent tax developments in the Gulf Cooperation Council (GCC) states. It notes that the NBR announced that starting May 14, 2023, the digital stamps electronic system began to receive digital stamps orders for certain goods subject to excise tax. The NBR further issued a public tender (259/2023/BTB (NBR/11/2023)) through the Bahrain Tender Board for "provision of technical support services" to support the development of an e-invoicing system.
- **KPMG in Bolivia** published a report discussing the e-invoicing requirement that became effective for a fourth group of taxpayers on April 1, 2023. These taxpayers may issue fiscal documents through the new e-invoicing system, the existing SFV system, or manually until July 31, 2023. Effective August 1, 2023, these taxpayers can issue fiscal documents only through the new e-invoicing system. To read KPMG's previous discussion of Bolivia's e-invoicing requirement, click here.
- **KPMG in Canada** published a report on implementation of the federal fuel charge in New Brunswick effective July 1, 2023. New Brunswick announced in February 2023 that the Canadian federal fuel charge regime will replace the province's own fuel charge. The Canadian federal carbon pollution pricing system includes a fuel charge applied to fossil fuels as well as an output-based pricing system for industrial facilities that emit greenhouse gases above a certain threshold. These rules, which were introduced in 2018, apply in provinces and territories that do not have carbon pricing systems that meet the federal benchmark. From July 1, 2023, the federal fuel charge will apply in the provinces

of New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island, as well as in Alberta, Saskatchewan, Manitoba, Ontario, Yukon, and Nunavut where it was previously in place. To read KPMG's previous discussion of the extension of Canada's federal fuel charge to more provinces, please click here.

- **KPMG in Canada** published a report noting that financial institutions and other businesses deemed to be financial institutions must file one or two annual goods and services tax (GST) / harmonized sales tax (HST) and Quebec sales tax (QST) returns by June 30, 2023. This deadline applies to selected listed financial institutions (SLFIs), other types of financial institutions, and entities deemed to be financial institutions under the GST/HST and QST rules if they have a December 31 year-end. In addition, financial institutions that qualify as SLFIs and have a December 31 year-end are also required to file the annual GST/HST and QST final return for SLFIs by June 30, 2023. Certain other financial institutions have until July 5, 2023, to elect to renew or change their 2024 input tax credit (ITC) allocation method. To read KPMG's previous discussion of Canada's reporting requirements for selected listed financial institutions, please click here.
- **KPMG in Chile** published a report discussing recent tax developments, including tax authority guidance on (1) the VAT treatment of cryptocurrency transactions and related tax documentation; (2) application of the VAT exemption for professional services to a veterinary clinic that is run by a lawyer and a veterinarian; (3) the VAT treatment of unpaid activities of worship and religious assistance; and (4) the VAT treatment of publishing a scientific text on a foreign platform.
- **KPMG in Chile** published a report discussing recent tax developments, including tax authority guidance on (1) whether the VAT exemption applicable to workers who work alone applies to the activity carried out by a sole proprietorship; (2) the recoverability of fuel tax when a company ships cargo by boat from the Easter Islands to mainland Chile and vice versa; (3) issuance of invoices for VAT purposes for reimbursing international cargo insurance premium; (4) the concept of "dependents" in professional companies for VAT purposes; and (5) exclusion of VAT on services included in government tenders and public procurement.
- **KPMG in the Czech Republic** published a report discussing a recent decision of the Supreme Administrative Court (SAC) in which it held that a taxpayer was required to include a sale of land in calculating the VAT deduction coefficient. Even though the taxpayer accounted for the land as a fixed asset (excluded from the computation of the VAT deduction coefficient) and engaged in some small-scale use of the land while it was being held, the taxpayer's main economic activity was development, and the taxpayer acquired the land with the intention to sell it. The SAC thus agreed with the tax authority that the land was inventory (included in the computation of the VAT deduction coefficient), and its sale was a sale of goods for VAT purposes.
- **KPMG in the Czech Republic** published a report discussing a recent SAC decision in which the SAC held that the VAT self-assessment regime does not apply to the sale of certain moveable items (i.e., a refrigerated truck, a digital scale with a label printer, a vacuum packer, stainless steel racks, a glass refrigerator, a hand forklift, a refrigerator and freezer, cheese molds, mobile work desks and steel racks) when providing construction or assembly services in connection with modernizing a dairy. The SAC found that the self-assessment mechanism only applies to the delivery and installation of equipment firmly attached to the dairy (e.g., industrial machines for milk filtration, centrifugation, pasteurization, ventilation, or homogenization).

- **KPMG in the Czech Republic** published a report discussing proposed tax changes that are expected to become effective from January 1, 2024. The proposed measures include merging the current VAT rates into two rates of 12 percent and 21 percent. In addition, certain activities that were included in the reduced VAT rate because of the COVID-19 pandemic (e.g., hairdressing services, shoe repairs, collection, transport, and the storage of municipal waste) will become subject to the standard VAT rate. However, a special zero VAT rate will apply to books.
- **KPMG in Denmark** published a report discussing the launch of a consultation on a proposal to charge interest on VAT and tax corrections from July 1, 2023, at an annual rate of 8.4 percent.
- **KPMG in Germany** published a report discussing recent VAT developments, including tax authority rulings on the VAT rate reduction for foodstuffs used as advertising materials and the VAT treatment of a surcharge for electricity that is consumed in a decentralized manner.
- **KPMG in India** published a report discussing tax-related court decisions, including that of Tata Motors Ltd. before the Indian Supreme Court. The case involved a transaction in which a manufacturer issued a credit note to an auto parts dealer for auto parts the dealer purchased from the manufacturer, but the dealer had to subsequently replace under a warranty using its own auto parts stock. The court held such a transaction constituted a sale subject to sales tax. In *Gameskraft Technologies Private Limited*, the Karnataka High Court held that the game rummy is a game of skill and thus is not gambling, whether played online or offline, or with stakes or without stakes. Accordingly, a technology platform that allows users to play rummy against one another online was subject to GST at the 18 percent rate for online gaming services, rather than the 28 percent rate applicable to lottery, betting, and gambling.
- **KPMG in Italy** published a report on a May 29, 2023 tax authority ruling in which the tax authority clarified that, as a consequence of the United Kingdom leaving the EU, UK VAT groups will no longer be recognized for Italian VAT purposes. As such, an Italian fixed establishment and a UK fixed establishment of the same company are the same legal entity and should be treated as a single taxpayer for VAT purposes, even if the latter is in a UK VAT group. As a result, transactions between the two are disregarded for VAT purposes as established by the Court of Justice of the European Union (ECJ) under FCE Bank Case C-210/04 (March 23, 2006).
- **KPMG in Kenya** published a report discussing proposed tax measures in the Finance Bill 2023, including an increase in the VAT rate on petroleum products from 8 percent to 16 percent, introduction of a VAT exemption for exported services, and a new digital asset tax on income derived from the transfer or exchange of digital assets.
- **KPMG in Malaysia** published a report discussing recent tax developments, including (1) extension of the stamp duty exemption for restructuring and rescheduling of loss and financing; (2) extension of the grace period of the tourism tax obligations for registered digital platform providers of accommodation services, and (3) guidance on application of import duty and sales tax exemptions on studio filming and production equipment
- **KPMG in Malta** published a report noting that, following the increase in penalty rates in April 2023, the Maltese tax authority is allowing a one-time concession on imposition of administrative penalties related to filing of VAT recapitulative statements due to be filed by or before September 15, 2023 if they are filed by that date.

- **KPMG in Mexico** published a report discussing the updated list of registered foreign providers of digital service published on May 12, 2023. As of April 30, 2023, 185 taxpayers are registered under Mexico's VAT on digital services regime.
- **KPMG in Nigeria** published a report discussing new tax measures published on April 30, 2023. These measures include (1) an increase in the excise tax rate of 20 percent to 100 percent on alcoholic beverages, tobacco, wines and spirits—effective June 1, 2023, (2) introduction of a 10 percent excise duty on single-use plastics, including plastic containers, films and bags, (3) reinstatement of the 5 percent excise duty on telecommunication services, including mobile telephone services, fixed telephone and internet services (both postpaid and prepaid), which was first introduced under the Finance Act 2020 but was suspended last year, and (4) introduction of a 2 percent and 4 percent import adjustment tax on vehicles with two-liter engines and four-liter engines, respectively.
- **KPMG in the Philippines** published a report discussing newly issued Revenue Regulations (RR) No. 3-2023, on the application of VAT to registered export enterprises, effective April 28, 2023. The regulations provide that transactions qualifying for VAT zero-rating include sales of raw materials, inventories, supplies, equipment, packaging materials, goods, and services when used directly and exclusively in the registered project or activity of the enterprise. HMO plans for employees directly involved in the project or activity are also included. Local purchases of certain services and goods related to administrative operations are not considered directly and exclusively used, unless proved otherwise. The VAT zero-rating certification will be issued by the concerned Investment Promotion Agency, and local vendors will no longer need to apply for approval with the BIR.
- **KPMG in the Philippines** published a report discussing newly issued Revenue Memorandum Circular (RMC) No. 52-2023, which provides for optional monthly VAT filing and payment for VAT-registered persons. The Circular, issued May 10, 2023, provides that VAT-registered persons may continue to file and pay VAT monthly, but may switch to quarterly compliance or vice versa at no penalty. Taxpayers must file quarterly returns within 25 days following each taxable quarter.
- **KPMG in Poland** published report discussing recent indirect tax developments, including (1) a recent decision of the Supreme Administrative Court (SAC) that a loan contract between VAT payers was subject to capital duty; (2) a new decree from the Minister of Finance on changes to the VAT law relating to the VAT self-assessment mechanism on gas and energy; and (3) implementation of the EU directive on single-use plastics in Poland.
- **KPMG in Poland** published a report discussing a recent ECJ judgment in *Taxation des véhicules d'occasion exportés*, Case C-105/22 (May, 2023), holding that Polish provisions precluding the reimbursement of excise duty on passenger cars exported from Poland (but previously registered in Poland) are not contrary to EU principles, including the principle of proportionality and the principle that excise duty is a single-stage tax.
- **KPMG in Poland** published a report discussing a draft bill that proposes to introduce mandatory e-invoicing using the "National e-invoicing System" (KSeF) from July 1, 2024. The proposed measure was submitted to the Polish Parliament on May 17, 2023. The proposed e-invoice standard would simplify the transaction documentation process, accelerate, and automate document issuing, processing, and archiving, enable more efficient document processing, and provide taxpayers with access to up-to-date information from invoices for management and other business purposes, including analytics. To read KPMG's previous discussion of Poland's e-invoicing requirements, please click here.

- **KPMG in Poland** published a report discussing the publication of the law implementing the EU Directive requiring payment service providers to report on cross-border payments and their recipients effective January 1, 2024.
- **KPMG in South Africa** published a report noting that the South African Revenue Service (SARS) has indicated that it will be monitoring customs clearances for incorrect or non-declaration of VAT numbers. Incorrect or non-existing declarations of VAT numbers may lead to SARS rejecting the declaration and denying VAT refunds or imposing administrative penalties.
- **KPMG in South Africa** published a report discussing changes to the South African VAT registration application process for local entities announced on May 11, 2023. Going forward, an applicant may be required to present themselves in person for validation and accreditation to the SARS branch closest to the business location. Applicants must pre-book all visits to SARS branches on the agency website and submit all supporting documents required for VAT registration on the day of the appointment. The VAT registration will become effective only when SARS is satisfied that the application is lawful.
- **KPMG in Spain** published a report discussing changes to the Spanish VAT law enacted on May 25, 2023, including the implementation of the EU DAC 7 reporting requirements, and a provision that financial and insurance services rendered to businesses are excluded from application of the use and enjoyment sourcing rules.
- **KPMG in Uganda** published a report discussing proposed measures in the Tax Amendment Bills of 2023. Among other things, the bills would (1) expand the scope of digital services that are covered under Uganda's VAT on digital services rules to include advertising platforms, streaming platforms and subscription-based services, cab-hailing services, cloud storage, and data warehousing; (2) introduce a digital services tax on nonresidents providing digital services to Ugandan customers; and (3) amend the definitions of fruit juice, un-denatured spirits, and vegetable juice for excise duty purposes.
- **KPMG in the United Kingdom** published a report discussing the launch of a consultation on a proposed new tax to replace the stamp duty and stamp duty reserve tax, published on April 27, 2023.

Back to top Back to top

Global Rate Changes

- **Belgium:**[i] On April 28, 2023, the Belgian Federal Service for Finance announced extension of the temporary six percent reduced VAT rate for electricity, gas, and heating systems for individuals and businesses until June 30, 2023. For individuals, the six percent rate becomes permanent as of June 30, 3023. For businesses, the reduced rate will apply to gas and heating networks until June 30, 2023 at which point it is scheduled to revert to the 21 percent standard rate. The agency also issued guidance on application of the reduced rate.
- **Botswana:**[ii] Effective May 3, 2023, Botswana introduced a VAT zero-rate on vegetables, cooking oil, liquid petroleum gas, salt, infant formula, baby diapers, sanitary pads, tampons, agricultural implements, and condoms. Botswana also included private medical services to the list of exempt activities. To read KPMG's previous discussion of Botswana reduced rate measures, please click here.

- **Cyprus:**[iii] On May 2, 2023, the Cyprus Council of Ministers approved a decree to introduce a temporary VAT zero-rate for all types of bread, milk, eggs, baby food, nappies, and feminine hygiene products. These measures will apply through October 31, 2023.
- **Egypt:**[iv] On May 18, 2023, the Egyptian Ministry of Finance amended its VAT suspension regime on imported machinery and equipment used for production. Under the regime, introduced last year, industrial businesses may benefit from having the 14 percent due on such imports suspended, subject to certain conditions. The tax ultimately due would be waived if the equipment or machinery is used in industrial processes. If the imported equipment and machinery is instead sold to a services-providing company, a concessionary rate of five percent applies, and the remaining nine percent is suspended. The amendments provide that importers will not be required to pay the VAT in the interim or provide a financial guarantee if they demonstrate that the goods have been delivered to an eligible business that is undertaking industrial activities. Instead, a letter certified by a bank stating that the tax due would be paid if required is sufficient.
- **Finland:**[v] Effective May 26, 2023, Finland introduced a VAT exemption for the sales of goods and services made to defense forces of other North Atlantic Treaty Organization (NATO) member countries and imports into Finland by NATO forces. To read KPMG's previous of this measure, please click here.
- **Grenada:**[vi] Effective March 1, 2023, Grenada introduced a duty free and VAT-free regime for commodities classified as "tools of trade" as a means of promoting the creative industry. The program applies to registered cultural and creative practitioners and businesses, registered retailers of tools of trade directly involved in the production of creative goods and services, and registered education and community organizations or programs focused on training in the creative and cultural industry. To participate, eligible taxpayers must first apply online to the Grenada Office of Creative Affairs (GOCA). Once registered and authorized, they will receive an e-mail with instructions to access the online concession application.
- **Ireland:**[vii] On April 28, 2023, the Irish Revenue published eBrief 105/2023 confirming that the VAT zero-rate applies to the sale and installation of solar panels on private dwellings from May 1, 2023. To qualify for the zero VAT rate, the guidance specifies that the same business must be responsible for both the sale and installation of the solar panels under the same contract. If there is no installation contract in place, the standard 23 percent VAT rate will apply to the sale of the panels. If there is a separate installation contract, the reduced VAT rate may apply to the installation of the solar panels, subject to the two-thirds rule, (i.e., the panels must constitute at least two-thirds of the total price). To read KPMG's previous discussion of this measure, please click here.
- **Portugal:**[viii] On May 17, 2023, the Portuguese parliament enacted Law 20/2023, which includes measures introducing a reduced 13 percent VAT rate and reduced special consumption taxes on fuels.
- **Rwanda:**[ix] Rwanda recently proposed to introduce a VAT exemption for most consumed cereals, special purpose vehicles, and brokers under capital markets. It also proposed to introduce a cap on excise duty rates charged on wine and liquor.
- **Saint Lucia:**[x] On April 25, 2023, the Saint Lucian Prime Minister presented the 2023-24 budget to parliament. The budget proposes to apply a VAT zero-rate to specified solar photovoltaic (PV) components, temporarily reduce the VAT rate on specific building materials from 12.5 percent to zero for two years from July 1, 2023 and introduce a new 2.5 percent Health and Security Levy on select goods, except for pharmaceuticals, food, certain building materials, and medical and security equipment.

- **United Kingdom:**[xi] On May 1, 2023, the UK tax authority, HMRC, published Revenue and Customs Brief 5(2023), introducing a VAT exemption for medical services carried out by staff directly supervised by pharmacists. Under the current UK VAT legislation, the provision of medical services made by certain registered health professionals is exempt from VAT. The exemption extends to non-registered staff providing medical services directly supervised by registered health professionals. Services provided by pharmacists are also exempt. However, the exemption did not include services carried out by non-registered staff directly supervised by pharmacists. The exemption has now been extended to such services.
- **Vietnam:**[xii] On May 24, 2023, the Vietnamese government submitted to parliament, a bill that includes measures to reduce the standard VAT rate from 10 percent to 8 percent. The reduced rate would not apply to telecommunications, financial services, banking, securities trading, insurance, real estate trading, metals, mining, oil, chemicals, and goods and services subject to excise tax.

Back to top Back to top

Indirect Tax Developments and News from Around the World

The Americas

United States: Amendments to Taxability of Delivery and Installation Charges in Michigan

The Michigan Department of Treasury (Treasury) recently issued guidance on a recent law change around the taxability of delivery and installation charges. Public Act 20 made several changes to the taxability of delivery and installation charges previously included in the "sales price" for sales tax purposes or "purchase price" for use tax purposes. Effective April 26, 2023, delivery and installation charges are no longer included in the sales price or purchase price if the seller (1) separately states the charges on the invoice, bill of sale, or similar document provided to the purchaser and (2) maintains appropriate books and records detailing the transactions used to determine the applicable tax. Delivery and installation charges related to the sale of electricity, natural gas, or artificial gas by a utility remain taxable for sales and use tax purposes unless otherwise exempt.

In addition to the taxability changes, Public Act 20 requires Treasury to cancel all outstanding (unpaid) balances in existence before the effective date related to the delivery and installation charges on Notices of Intent to Assess and Final Assessments issued by Treasury no later than ninety (90) days after the effective date. The Act further prohibits Treasury from issuing new assessments for tax periods before the effective date. The Act does not establish a right to a refund for sales or use tax on delivery or installation charges remitted before the effective date. While there is no statutory requirement for retailers to refund customers for taxes collected in error, customers may seek a refund from retailers who continue to charge taxes on delivery or installation charges after the effective date, and the retailer may then seek a refund from Treasury for tax remitted upon proof of refunding to the customer. Treasury is working to locate and cancel existing assessments, but taxpayers with outstanding balances for delivery or installation charges are strongly encouraged to contact Treasury. For more information, please click here.

Back to top Back to top

Benin: Nonresident Vendors of Digital Services Required to Register for VAT

On March 22, 2023, Benin's tax authority published a circular implementing a VAT collection obligation on cross-border provision of digital services. Per the circular, covered nonresidents are required to register for and comply with the rules within six months. The regime imposes VAT on the provision of "services of any kind carried out on Beninese territory through foreign or local e-commerce platforms" and "commissions received by local operators of e-commerce platforms on the occasion of sales of goods and services, carried out through their platforms on Beninese territory."

An e-commerce platform means a digital tool that connects, remotely, by electronic means, with a view to selling a good or providing a service. The e-commerce platform can be operated by either an operator who connects vendors and customers or a vendor for the distribution of its own products.

The circular defines digital services as services provided over the internet or an electronic network, the nature of which renders their provision essentially automated and involving minimal human intervention and impossible to provide in the absence of information technology. Digital services include the sale of digitized products in general, including software (and modifications or upgrades), services providing or supporting a professional or personal presence on an electronic network such as a website or web page, and services automatically generated from a computer via an electronic network, in response to the entry of specific data by the recipient, the assignment for consideration of the right to offer for sale a good or service on an internet site operating as an online marketplace on which potential buyers make their submissions by automated procedural system and on which the parties are notified of a sale by electronic mail automatically generated from a computer, Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e., packages going beyond internet access and including other elements such as content pages giving access to news, weather or travel reports), hosting of websites, access to online debates, and automated distance learning.

The regime applies only to sales made to individuals or entities not registered for VAT purposes in Benin (B2C). For B2B sales, the business customer is required to self-assess and remit the VAT due to the tax authority. The customer's status may be determined by the customer self-declaring that they are a business. However, the nonresident seller is obligated to provide the tax authority on request, periodically, the list of its customers who have self-declared that they are a business and from whom VAT is not collected.

Covered nonresidents may determine the location of a customer in Benin based on their IP address, geolocation information, credit card information, or any other information collected by the nonresident in the normal course of its activities. Finally, the circular provides that penalty provisions in the general VAT law will apply for noncompliance, including a publication of a list of noncompliant providers. For more information, please click here.

European Union: Roundup of Recent ECJ Decisions

On May 4, 2023, the ECJ published its decision in *Mv. – 98*, Case C-97/21, in which it held that legislation that imposes both a financial penalty and seals the business premises of a taxpayer for the same offense of failure to issue an invoice, without ensuring coordination of the procedures and proportionality of the penalties, violates the EU VAT Directive and the EU Charter for Fundamental Rights.

On May 4, 2023, the ECJ published its decision in *Balgarska telekomunikatsionna kompania*, Case C-127/22, in which it held that writing off goods and selling them as waste subject to VAT does not constitute a change in the factors used to determine the amount to be deducted for VAT purposes and therefore does not require an adjustment of the VAT initially deducted. Writing off goods and voluntarily destroying them does constitute a change in these factors. However, if the destruction is duly proved or confirmed, and the goods had objectively lost all usefulness in the taxpayer's economic activities, it does not give rise to a VAT adjustment obligation. Finally, the ECJ held that national laws cannot allow for the adjustment of the VAT deducted upon acquisition of goods that have become unusable in the taxpayer's economic activities and are subsequently sold or destroyed.

On May 4, 2023, the ECJ published its decision in *Finanzamt X*, Case C-516/21, in which it held that the leasing of permanently installed equipment and machinery is not subject to VAT if it is ancillary to the leasing of a building, and the leasing agreement is concluded between the same parties. This is the case only if the transactions form a single economic transaction, and the leasing of the building is exempt from VAT.

On May 11, 2023, the ECJ published its decision in *MOMTRADE RUSE*, Case C-620/21, in which it held that social services provided to natural persons living in a different Member State than the service provider may be exempt from VAT. According to the ECJ, it does not matter if the service provider used a company established in that other Member State to contact their customers. The nature of those services and the characteristics of the service provider must be considered to determine if they fall under the category of VAT exempt "services closely linked to social assistance and social security" under the laws of the Member State where the organization is located. An organization providing social services can be considered as having a social character if it is registered with a body governed by public law of the Member State of origin in accordance with the legislation of that Member State. However, this registration is sufficient only if it is subject to prior verification by the competent national authorities of the social character of that organization.

On May 17, 2023, the ECJ published its decision in *État belge TVA – Véhicules vendus pour pieces*, Case C-365/22, in which it held that end-of-life motor vehicles acquired from individuals and intended to be sold "for parts" without the parts being removed are considered second-hand goods. This applies if the vehicles still include parts that maintain their functionality and can be reused as such or after repair, and if it is established that those vehicles remained in the same economic cycle because of the reuse of parts.

On May 17, 2023, the ECJ published its decision in *SA CEZAM*, Case C-418/22, in which it held that a national legislation penalizing the failure to declare and pay VAT with a flat-rate fine of 20 percent of the unpaid VAT, before subtracting any deductible VAT incurred from purchases, does not violate the EU VAT Directive or the principles of proportionality and fiscal neutrality.

On May 25, 2023, the ECJ published the nonbinding Opinion of its Advocate General (AG) in *GIS*, Case C-249/22, in which the AG opined that a Member State may consider the activity of a public service broadcaster as a taxable activity, with the result that the broadcaster is entitled to deduct the VAT paid. As the VAT deduction results in a loss of revenue for the government, this loss of tax revenue may be offset by an additional surcharge on the program fee that is allocated to the state budget.

On May 25, 2023, the ECJ published its decision in *W. Sp. z o.o.*, Case C-114/22, in which it held that the EU VAT Directive, read in the light of the principles of fiscal neutrality and proportionality, precludes national legislation that deprives a taxpayer of the right to deduct VAT solely because a taxable economic transaction is considered fictitious and invalid under national civil law. This is true without establishing that the criteria for classifying the transaction as fictitious under the EU VAT Directive are met or, in cases in which the transaction has been carried out, that it is the result of VAT evasion or abuse of rights.

Source: European Union; Bulgaria - ECJ Decides on Whether Sealing of Business Premises Together with Administrative Penalty is Proportionate for Failing to Issue Invoice: *Mv. - 98* (Case C-97/21) (VAT), (May 4, 2023), News IBFD; European Union; Bulgaria -ECJ Decides on Adjustment of Deductible VAT When Goods Are Written Off from Inventories But Are Sold Later: *Balgarska telekomunikatsionna kompania* (Case C-127/22) (VAT), (May 4, 2023), News IBFD; European Union; Belgium - ECJ Decides on Whether Resale of Scrapped Vehicles to Third Parties Constitutes Second-Hand Goods Supplies: *État belge* (TVA – *Véhicules vendus pour pièces*) (Case C-365/22) (VAT) (May 17, 2023), News IBFD; European Union; Belgium - ECJ Decides on Proportionate Calculation of VAT Penalties Applied for Failure to Submit VAT Returns: Cezam (Case C-418/22) (VAT), (May 17, 2023), News IBFD; European Union; Austria - ECJ Advocate General Opines on VAT Treatment of Public Service Broadcasters' Programme Fees: GIS (Case C-249/22) (VAT), (May 25, 2023), News IBFD; European Union; Poland ECJ Decides on Right to Deduct VAT Related to Acquisitions of Trademarks Made Under False Pretences: *Dyrektor Izby Administracji Skarbowej w Warszawie (TVA – Acquisition fictive)* (Case C-114/22) (VAT), (May 25, 2023), News IBFD.

European Union: Crypto Asset Reporting Rules Adopted by Finance Ministers

On May 16, 2023, the Economic and Financial Affairs Council of the EU (ECOFIN) reached an agreement on the proposal to extend the Directive on Administrative Cooperation (DAC) to cover, among other things, the exchange of information on crypto-assets, as well as tax rulings for individuals (DAC8). If enacted, the DAC 8 proposal will require reporting crypto-asset service providers (RCASPs) to report on reportable transactions and transfers involving crypto assets and e-money. The proposal aligns with the Regulation on Markets in Crypto-Assets (MiCA), which was also adopted by the ECOFIN on May 16, so that reporting crypto-asset service providers would either be entities that are registered under MiCA or entities that provide crypto-asset services under MiCA but are not required to register for MiCA.

The proposal covers both domestic and cross-border exchanges and transfers of reportable crypto-assets. In some cases, reporting obligations will also cover non-fungible tokens (NFTs). The information will be reported on an aggregate basis by type of reportable crypto-asset. In line with MiCA, reportable crypto-assets include any crypto-asset other than a Central Bank digital currency, electronic money, electronic money token, or any crypto-asset for which the reporting crypto-asset service provider has adequately determined that it cannot be used for payment or investment purposes.

A reportable user would be an EU-resident individual or an entity that is a customer of a reporting crypto-asset service provider for the purposes of reportable transactions. When an individual or a legal entity, other than a financial institution or a reporting crypto-asset service provider, acts for the benefit or on the account of another individual or company, the latter individual or company would be considered as the user. When a service provider facilitates payments in crypto-assets for or on behalf of a merchant, the customer that is the counterparty to the merchant must be treated as a crypto-asset user.

RCASPs will be required to carry out specific due diligence procedures depending on whether the crypto-asset user is an individual or a legal entity. The aim of the procedures is to allow providers to identify, through self-certification, whether their clients are reportable or not. The proposed rules also prescribe the information that RCASPs are required to collect when the customer is a legal entity. The procedures apply in determining whether the crypto-asset user is a reportable user or a legal entity, other than one benefiting from a carve-out, with one or more controlling persons that qualify as reportable persons. The process also includes a self-certification to allow the RACSPs to determine the tax residence of the legal entity or controlling person. RACSPs would need to confirm the reasonableness of the self-certification.

Reporting EU crypto-asset service providers are required to disclose the information in the Member State where they are resident for tax purposes. In the case of third-country service providers active in the EU, DAC8 distinguishes two situations. Non-EU crypto-asset service providers regulated by MiCA would perform the DAC8 reporting in the Member State where these companies are authorized. Non-EU companies falling outside the scope of MiCA would be required to elect a single Member State to register and carry out their reporting obligations. RCASPs would be required to disclose the reportable information to the relevant authorities no later than January 31 of the following calendar year.

As to next steps, the proposed Directive will be adopted formally by the EU Council once the European Parliament has given its non-binding opinion. EU Member States would need to transpose the Directive into national authority by December 31, 2025. The rules would then become applicable from January 1, 2026 (with some exceptions). For more information, please click here.

European Union: Proposal to Expand VAT Obligations for Remote Sellers of Imported Goods

On May 17, 2023, the European Commission (EC) published the first draft of proposals for a reform of the EU Union Customs Code (UCC). The proposals include measures to introduce a new "EU Customs Data Hub" that would allow businesses importing into the EU to log all the information on their products and supply chains into a single online environment, enable the use of artificial intelligence, encourage a smarter approach to customs check, and make changes to cross-border e-commerce process and procedure.

For VAT, the EC proposes to remove the EUR 150 consignment threshold currently applicable to determine the liability of vendors and e-commerce platforms when selling imported goods to consumers in the EU. If enacted, removing the threshold will also extend the application of the "import one-stop shop" (IOSS) simplification, the deemed seller regime, and the special arrangements simplification introduced under the EU VAT e-commerce package in 2021. These measures are all currently limited to imports with an intrinsic value not exceeding EUR 150.

The IOSS simplification allows non-EU traders to register for VAT in only one EU Member State, while still collecting VAT in all Member States, and with the designated Member State remitting the collected VAT to the Member States in which sales were made. The deemed seller regime makes marketplaces and platforms liable for VAT when they facilitate the sale of goods to consumers, removing the obligation for individual sellers to register and account for VAT. The special arrangements simplification, under certain conditions, requires postal operators, express carriers, customs agents, and other operators who fulfil the customs import declarations on behalf of the customer to declare and remit the collected VAT on those imports.

The reforms also include a proposal to introduce the concept of a "deemed importer." It defines this concept as any person involved in distance sales of goods to be imported from third territories or countries and who is authorized to use the IOSS simplification. Under this proposed regime, traders would incur a customs debt when the payment for the sale is accepted and would be able to apply a simplified tariff treatment for sales made to consumers when determining the appropriate customs value. Under the simplified tariff treatment, the deemed importer would be able to apply one of the "bucket" tariffs to the customs value. The deemed importer would therefore have all the information required, including the duties due by reason of importation, to properly calculate the taxable amount upon which VAT must be applied. For more information, please click here.

São Tomé and Príncipe: VAT Regime Introduced Effective June 1, 2023

Effective June 1, 2023, São Tomé and Príncipe introduced a new VAT regime. The VAT will replace the general consumption tax, the tax on services, the tax on alcohol, spirits and cigarettes, the tax on telecommunications and hotel services, and the restaurant tax regimes. The VAT imposes a standard VAT rate of 15 percent and a reduced rate of 7.5 percent on basic food items while exports are zero-rated. The following sales are exempt from VAT: financial services, insurance and reinsurance, the transfer of investment gold, the transfer of the right of ownership of immovable property intended for residential purposes, excluding the first transfer, and the leasing of immovable property intended for residential purposes.

All taxpayers are required to register for VAT. However, taxpayers with gross receipts below STD 1 million in the previous calendar year, but not lower than STD 100,000, are subject to a flat rate mechanism of 7 percent on monthly gross receipts. For taxpayers with gross receipts below STD 100,000, the flat rate is set at 2 percent of 1/12th of STD 100,000, or STD 166.7 per month. Nonresidents are also generally subject to VAT return and payment requirements if they make sales in Sao Tome and Principe. If the nonresident does not have a permanent establishment in Sao Tome and Principe, they may register under the simplified regime, or appoint a tax representative to fulfill their obligations. All VAT registered taxpayers must file electronically monthly VAT returns the last day of the month following each month. (N.B. The currency is pegged to the Euro at a stable rate of 24,500 STD equal to EUR 1)

Source: Orbitax, Sao Tome and Principe VAT Regime in Force from June 2023, May 31, 2023.

Saudi Arabia: Overview of Recent Indirect Tax Developments

On April 14, 2023, the Saud Arabia government announced four new special economic zones (SEZs) (i.e., King Abdullah Economic City (KAEC) in Makkah province, Ras Al-Khair in the Eastern province, Jazan in the Jazan province, and Cloud Computing in Riyadh. SEZs will offer tax incentives such as VAT zero-rating for intra-SEZ goods and a customs duties deferral for goods inside the SEZ. The SEZs are divided into industries, with each focusing on different sectors such as automobile supply chainS, shipbuilding, food processing, and cloud computing services. The government further launched a public consultation on draft legislation regarding the tax and customs treatment of the SEZs. For more information, please click here.

The Zakat, Tax and Customs Authority (ZATCA) recently announced the fourth and fifth waves for implementing phase 2 of the e-invoicing requirement. Taxpayers with revenues subject to VAT exceeding SAR 150 million for the year 2021 or 2022 must comply with phase 2 of the mandate beginning November 1, 2023. Phase 2 consists of integrating taxpayer e-invoicing solutions with ZATCA's Fatoora platform, including additional data fields, and complying with the specified format. The fifth wave of implementation includes all taxpayers with revenues subject to VAT that exceeded SAR 100 million during 2021 or 2022. VAT-registered taxpayers meeting the criteria need to integrate e-invoicing solutions with the Fatoora platform starting from December 1, 2023. To read KPMG's previous discussion of Saudi Arabia's e-invoicing measures, please click here. For more information, please click here and here.

The ZATCA recently published a guideline for the VAT exemption of real estate transactions and its effect on the proportional deduction formula. The guidelines aim to clarify the method, requirements, and obligations for exempting real estate sales from VAT, as well as the impact on businesses engaged in Shariah-compliant financing products involving real estate. Since October 4, 2020, real estate transactions have been subject to a 5 percent Real Estate Transaction Tax (RETT) instead of VAT. This has led to a reduction in the VAT recovery apportionment ratio for these businesses. To address this issue, ZATCA has provided an alternative method of proportional deduction for real estate financiers licensed by the Saudi Central Bank making sales of Shariah-compliant financing products that involve the purchase and sale of real estate to the recipient who is benefiting from the funding. This alternative method excludes exempt real estate sales made as part of a financing arrangement from the proportional deduction calculation, thus aiming to provide a more accurate reflection of the use of overhead costs for taxable and exempt sales and ensuring a fairer tax treatment for businesses involved in real estate financing.

On May 30, 2023, the ZATCA launched a public consultation on proposed amendments to the VAT executive regulations. The proposed changes include requiring online shops to display their registration certificate, setting standards and conditions for registration requirements, adding fees and commissions for life insurance contracts as part of the exempt provision of financial services, and setting conditions for qualifying international shipping for zero-rated sales. The proposed changes also increase the limit of tax correction from SAR 5,000 to SAR 15,000 and reduce the limitation period from 5 to 3 years.

Source: Orbitax, Saudi Arabia Guideline on VAT Exemption of Real Estate Supplies and its Effect on Proportional Deduction Formula, May 26, 2023; Saudi Arabia; GCC - Zakat, Tax and Customs Authority Launches Public Consultation on Amendments to VAT Executive Regulations, (May 31, 2023), News IBFD.

Slovak Republic: Guidance on VAT Treatment of Cryptocurrencies

On May 30, 2023, Slovakia's tax authority issued a guidance summarizing the VAT treatment of transactions involving cryptocurrencies. Per the guidance, cryptocurrency is a crypto asset that functions exclusively as a unit of account and payment. Cryptocurrency is not considered a security or a financial instrument, as it does not meet the respective definition in the law on securities and investment. The guidance further clarifies that the sale of goods or services remunerated in cryptocurrencies will be treated (for VAT purposes) in the same way as any other sale. In line with the ECJ decision in *Hedqvist*, Case C-264/14 (October 22, 2015), the exchange of cryptocurrencies for fiat currencies or for other cryptocurrencies is considered a taxable transaction, but will be exempt from VAT. If providers of digital wallet services provide services for consideration (e.g., administration, management of a digital wallet, storage, and transfer of cryptocurrency) and there is a direct connection between this consideration and the provided services, the providers can be considered as taxpayers and their services fall within the scope of VAT; they may, however, be VAT-exempt.

Source: Slovak Republic - Tax Authorities Clarify Application of VAT to Transactions Involving Cryptocurrencies, (May 31, 2023), News IBFD.

Ukraine: Overview of Recent Indirect Tax Developments

On April 10, 2023, the Ukrainian State Fiscal Service (SFS) clarified that transactions involving the contribution of assets to a legal entity's capital are subject to VAT.

On May 2, 2023, the SFS clarified that advertising services, including those delivered through electronic resources, are subject to VAT and are provided in the place where the service recipient is registered to do business or where they reside. If a nonresident provides services to a Ukrainian resident, the resident must determine and remit the VAT due if the nonresident is not registered as a VAT payer. A Ukrainian-resident taxpayer must further draw up and register a VAT e-invoice indicating the amount of VAT accrued on the transaction. If the recipient is not registered as a taxpayer, the VAT due must be calculated using a form approved by the SFS.

On May 4, 2023, the SFS clarified that a taxpayer must determine its VAT liabilities for the sale of goods or services on the earlier of the date on which payment for the goods or services is deposited in the VAT payer's bank account or the date on which goods or property rights are shipped or transferred, or on which a document confirming the provision of the services is executed. If payment for goods or services is made in digital currency, the VAT obligation arises on the date the digital currency is credited to the VAT payer's electronic wallet. If goods or services are sold in exchange for cash, the VAT liability arises on the date of receipt of funds at the taxpayer's checkout counter or, in the absence of a checkout counter, on the date the cash is collected at a banking institution serving the taxpayer. For exports of goods, the VAT liability arises on the date on which a customs declaration documenting the exports is executed. If documents confirming the provision of the goods are drawn up electronically, they are deemed to be executed on the date stated in the documents regardless of the date on which the documents were digitally signed.

On May 8, 2023, the SFS clarified that a nonresident becomes a registered taxpayer in Ukraine when they register in the VAT register or from the first day of the tax period applicable 10 calendar days after the submission of a VAT registration request. If a nonresident registers on a day other than the first day of the calendar period, the first reporting period starts on the day of registration and ends on the last day of the first full reporting period. The nonresident is considered registered as a taxpayer in Ukraine from the date of its entry in the VAT register. Any VAT-liable transactions carried out from the date of registration must be included in the nonresident's VAT base and reflected in their VAT return filed for that period, and any VAT due must be remitted. Nonresidents must register for VAT if their aggregate proceeds from the sale of taxable goods or services exceed UAH 1 million over 12 consecutive months.

On May 9, 2023, the SFS clarified the VAT consequences when a creditor to a debt obligation transfers its rights to another person under a debt assignment agreement. Under a debt assignment agreement, a creditor is replaced by another person by way of a transfer or assignment to that person of the original creditor's right to claim the amount owed. The rights of the original creditor are transferred or assigned to the new creditor in the amount and under the conditions that existed at the time of the assignment unless an agreement or law stipulates otherwise. The SFS clarified that entering into a debt assignment agreement does not lead to any VAT consequences because the assignment agreement does not involve the transfer of goods or services. Only the obligation to pay is transferred.

On May 12, 2023, the SFS clarified that freight forwarding services are considered to have been provided in the place in which the service recipient is registered to do business or, in the absence of such a place, in the place of its permanent or preferred residence. Freight forwarding services provided by nonresidents to Ukrainian residents are subject to VAT in Ukraine. The VAT due on the transaction is calculated at a general rate of 20 percent of the contractual value of those services. The recipient of the services must draw up and register a VAT e-invoice indicating the amount of VAT accrued on the relevant transaction. If the recipient is not registered as a taxpayer in Ukraine, the VAT due must be calculated using a form approved by the SFS.

Source: Taxnotes, Ukraine Clarifies VAT Timing and Application (May 11, 2023); Taxnotes, Ukraine Releases Three VAT Guidance Letters (May 22, 2023).

United Kingdom: Overview of Recent Indirect Tax Developments

On April 17, 2023, the First Tier Tribunal (Tax Chamber) (FTT) published its decision in *Innate-Essence Ltd.*, [2023] UKFTT 371(TC) on whether turmeric shots sold by a British wellness company are food that qualifies for VAT zero-rating, rather than beverages, as they are consumed for their long-term health benefits instead of recreationally. The UK VAT law zero-rates food for human consumption but excludes beverages from this treatment. The law does not provide a specific definition of beverages. In the case, the taxpayer marketed turmeric shots on its website as "used extensively by elite athletes and non-athletes alike to support daily performance, whether on the field or at home, as well as an aid in recovery from the activity of day-to-day life." As such, the taxpayer classified them as food eligible for the VAT zero-rate. HMRC argued that the turmeric shots were beverages because they had many of the beverage hallmarks established by case law. The FTT carried out a multifactorial assessment that considered marketing, consumption circumstances, and retail product placement. It found that the shots have an unpleasant taste, are consumed for long-term health benefits, and are marketed for supporting daily performance and recovery in both elite athletes and non-athletes. Additionally, turmeric shots are placed in refrigerated cabinets in retail stores, separate from the beverage section, and are not consumed in social situations due to their small size and strong taste. Based on these factors, the FTT agreed with the company's classification of turmeric shots as food, making them zero-rated for VAT purposes.

On May 1, 2023, HMRC published an updated guidance on using the second-hand motor vehicle payment program to make claims on VAT returns. The program allows VAT-registered businesses in the UK to claim a VAT-related payment on their VAT Return for eligible second-hand motor vehicles bought in Great Britain and moved to Northern Ireland or the EU for resale. The payment amount is calculated using the VAT fraction on the value of the vehicle at the time it is moved to Northern Ireland. Businesses must keep records of the calculations and claim the payment on their VAT Return for the period in which the vehicle was moved. Taxpayers may use the program only for eligible motor vehicles that are moved from Great Britain to Northern Ireland after April 30, 2023. For vehicles moved to Northern Ireland before May 1, 2023, taxpayers may use the VAT margin program instead – if they still had the vehicles in stock on May 1, 2023, and they are resold by October 31, 2023. If they are resold after October 31, 2023, taxpayers will have to account for VAT on the full selling price of the vehicle.

On May 3, 2023, the FTT published its decision in *St. Patrick's International College Ltd.*, [2023] UKFTT 408 (TC). The decision addressed whether alternative education providers can claim a VAT exemption for specific educational institutions. The UK VAT Law exempts from VAT, education by eligible bodies. An eligible body that may benefit from the exemption includes higher education institution, universities, and education corporations, which are charitable entities. In the case, three alternative education providers, who are members of the Global University Systems Group, challenged an HMRC decision denying their VAT exemption claims. They argued that their sales are exempt because their objectives are like those of educational institutions covered under the exemption provision and the UK VAT law wrongfully defines eligibility for the VAT exemption by referring to the narrow classification of organizations instead of the organizational objectives. The FTT disagreed with the taxpayer and held that alternative education providers — institutions providing higher education courses that aren't considered higher education institutions or further education corporations under U.K. law — do not receive direct grant funding from the Higher Education Funding Council for England. For this purpose, higher education institutions are universities, colleges of universities, higher education corporations and certain bodies designated by the UK Secretary of State for Education. The UK regulatory regime related to degree-awarding powers and university titles does not apply to the providers. Therefore, they are not in a comparable situation. The FTT further rejected arguments that the taxpayers are nonetheless entitled to an exemption under another section of the UK VAT law allowing for an exemption regardless of whether the university is an eligible body if the educational or vocational training is funded in a particular way. It held that the providers' course fees are not ultimately a charge to funds provided by the UK Secretary of State.

The UK Government recently announced that it intends to update the Terminal Markets Order (TMO) legislation to clarify the VAT treatment of exchange-traded commodity transactions and will launch a consultation on the technical details later in 2023.

Following the Bank of England Monetary Policy Committee vote on May 11, 2023, to increase the Bank of England base rate from 4.25 percent to 4.5 percent, HMRC interest rates for late payment and repayment will increase to 7 percent. HMRC interest rates are linked to the Bank of England base rate.

Source: Taxnotes, Turmeric Shots Are Zero-Rated as Food for U.K. VAT Purposes, May 3, 2023; United Kingdom Tax Agency Updates Guidance on VAT Related Payment Claims on Specified Exported Vehicles, Bloomberg Law News, May 4, 2023; Taxnotes, Alternative Education Providers Cannot Claim U.K. VAT Exemption, May 11, 2023, News IBFD; CCH, Global VAT News & Features, UK Pledges Review Of VAT Rules For Commodities Trading,(May 2, 2023); CCH, Global VAT News & Features, UK To Raise Interest On Late Tax Payments,(May 12, 2023).

Back to top

Back to top

Trade & Customs (T&C)

Australia: Free Trade Agreement with UK in Effect

On May 4, the Australian Ministry of Trade and Tourism announced that the Australia-United Kingdom free trade agreement is expected to enter into force on May 31, 2023, following the completion of UK domestic processes. The agreement includes measures providing a duty exemption for most Australian exports and imports and phasing out the export tariff quotas on beef, sheep meat, sugar and dairy, as well as the import tariff quota on certain cheese and steel products. To qualify as originating, goods must be wholly obtained, produced exclusively from originating materials, or meet the product-specific rules, which include both change of tariff classification and regional value content. Goods transported through a non-party will maintain originating status only if they do not enter free circulation and undergo limited operations related to transportation.

Claims for preferential tariff treatment under the agreement can be made with a declaration of origin completed by the producer or exporter or the importer's knowledge that a good is originating. For more information, please click here.

European Union: Proposed Reform to Customs Code

On May 17, 2023, the European Commission (EC) published the first draft of the Union Customs Code - Reform (New UCC), which is expected to replace the current system of transaction-oriented declaration and control. Among other things, the New UCC provides that the EU will establish a customs agency that will operate between the Member States and the EC, dealing with information technology, data, and risk management, and liaising with organizations such as Europol and Frontex. The EU Customs Authority will play a leading role in establishing "Customs acting as One" or "One Customs" to simplify the cross-border movement of goods.

The New UCC also proposes to impose a default 10 percent import duty on B2C transactions up to an amount of EUR 150 in exchange for a simplified declaration process. It introduces the concepts of "importer" and "carrier." An importer means any person who has the power to determine and has determined that goods from a third country are to be brought into the EU and will be the only one person responsible for customs purposes. A carrier is the person responsible for bringing goods into the EU. It provides that there must be enhanced cooperation between carrier and importer so that requested customs information can be verified in advance to the extent possible.

Further, the New UCC provides for the introduction of a crisis management mechanism, which requires the EU Customs Authority to prepare procedures and protocols for all types of crisis situations. Moreover, it proposes to introduce a "EU Customs Data Hub" by 2037 that will make it easier for EU Member States to exchange data with each other and will form the basis for a single customs declaration system for both import and export and will be directly applicable in all EU Member States. The New UCC further proposes a "Trust and Check Trader" program that appears to replace the current "Self-Assessor" program. The program would operate as a status granted to a person who meets specific criteria, including the absence of serious infringement, high level of control of operations and flow of goods, financial solvency, safety and compliance standards, and an electronic system providing real-time data on the movement of goods. The customs authorities will perform a comprehensive audit of the authorized operator's activities and internal records at least once every three years. The use of the Trust and Check Trader will be linked to the entry into force of the EU Customs Data Hub. It will not become active until 2037 at the earliest. For more information, please click here.

Back to top

Back to top

In Brief

- **Aruba:**[xiii] On May 26, 2023, Aruba's government presented draft legislation to parliament that proposes to levy indirect taxes at the border, effective July 1, 2023. If the bill is enacted, businesses and private consumers will be subject to the business turnover tax (BBO), health tax (BAZV), and the additional funding tax (BAVP) upon the import of goods. However, businesses may claim a deduction for the taxes they have paid in respect to commercial goods under certain conditions. To read KPMG's previous discussion of this measure, please click here.

- **Austria:**[xiv] On April 21, 2023, the Austrian Federal Ministry of Finance launched a consultation on a draft bill to transpose into Austrian Law, the EU Directive requiring payment service providers to report on cross-border payments and their recipients effective January 1, 2024.
- **Bahamas:**[xv] The Bahamas government announced several indirect tax measures in its 2023 budget, including a proposal to expand the scope of its first-time home buyer incentives. If enacted, qualifying first-time home buyers may claim a refund of up to BSD 40,000 for VAT paid on construction services and materials purchased, subject to conditions. In addition, the VAT on property transfers below BSD 1 million for individuals will be reduced. The budget further includes measures to clarify the law on foreign yacht charters to ensure operators register and pay VAT, increase the maximum cap on property tax of owner-occupied property, introduce a business license requirement for financial services providers, and repeal the premium tax on insurance.
- **Barbados:**[xvi] Barbados proposed in its 2022 budget to introduce a tax on salty foods in an attempt to discourage the consumption of salty foods. Details on the tax rate and products to which the tax would apply are still pending.
- **Belarus:**[xvii] On May 11, 2023, Belarus published Law No.264-Z ratifying the protocol to the 2014 Treaty on the Eurasian Economic Union (EAEU) regarding the procedures for collecting indirect taxes on digital services. The protocol provides that when the recipient of digital services is an individual in another EAEU country, the vendor must register for and pay VAT in that other country. When the recipient is a legal entity or individual entrepreneur, the vendor must register in the other country only if required by the laws of that country. Otherwise, the recipient is responsible for VAT under the self-assessment mechanism. The EAEU is comprised of Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan.
- **Denmark:**[xvii] On April 24, 2023, the Danish Customs and Tax Administration published Tax Council Binding Answer No.SKM2023.184.SR on whether out of scope sales from a Danish branch to its EU headquarters (HQ) would restrict the VAT recovery position of the Danish branch for general costs incurred. In the case, the Danish branch was considered a fixed establishment in Denmark. Neither the EU HQ nor the Danish branch was in a VAT group. The Danish Tax Council held that the internal services from the Danish branch to the EU HQ should not be included in the computation of the VAT recovery position, and the VAT recovery position of the Danish branch and the EU HQ should be determined separately. The Tax Council observed that this practice may not be in line with the ECJ's decision in *Morgan Stanley & Co. International plc*, Case C-165/17 (January 2019), but until the tax authority publishes guidance announcing its change in practice, the company can rely on the current Danish practice.
- **Denmark:**[xix] On April 26, 2023, the Danish Tax Council held in SKM2023.185.SR that compensation as a result of a voluntary cultivation restriction agreement was not considered a consideration paid for a sale for VAT purposes. As such, the compensation is deemed to be out of the scope of VAT.
- **Egypt:**[xx] The Egyptian Ministry of Finance announced that from July 1, 2023, taxpayers will be able to claim VAT credits and refunds only if they are supported by e-invoices. It further stated that e-invoices or e-receipts should now contain a commodity code under the International Standard Industrial Classification (ISIC), the exchange rate of the central bank, the name of the purchaser (entity, person, foreign firm or person, etc.), the activity code of the company or branch of the issuer, the ID number for purchasers or beneficial owners,

and passport number for foreigners when they exceed a certain amount (based on the tax commissioner's decision), a universal Unique Identifier (UUID) Number, the selling quantity, and a QR Code. To read KPMG's previous discussion of Egypt's e-invoicing measures, please click here.

- **Hungary:**[xxi] On May 22, 2023, the Council of the European Union authorized Hungary to increase its VAT registration threshold from EUR 48,000 to EUR 71,500, through December 31, 2024.
- **India:**[xxii] On May 10, 2023, India's Central Board of Indirect Taxes and Customs (CBIC) extended its B2B e-invoicing requirement to include taxpayers whose gross receipts exceed INR 50 million in any tax period since the 2017-18 fiscal year, effective August 1, 2023. Currently, the requirement applies to businesses with gross receipts of INR 100 million.
- **India:**[xxiii] The CBIC recently announced the launch of a system, the "Automated Return Scrutiny Module," that enables automated review of GST returns. The system will have the capability to select GST returns for scrutiny based on data analytics and risks, and display discrepancies to tax officers. It will further provide a workflow to tax officers to communicate the discrepancies to taxpayers through the GSTN Common Portal. The CBIC intends to deploy the system for GST returns for the fiscal year 2019-20 onward.
- **Luxembourg:**[xxiv] On April 28, 2023, the Luxembourg tax authority published Circular N°807bis, clarifying the VAT treatment of employer-provided cars further to its earlier guidance in Circular N°807 (February 2021), and the ECJ decision in *QM*, Case C-288/19 (January, 2021). Among other things, Circular N°807bis clarifies that the provision of a vehicle by an employer is considered a taxable provision of services, even if a specific car budget or a set criterion that enables the cost to be determined has been agreed upon. For this purpose, taxpayers must compute the applicable VAT based on the normal value or open market value of the service provided. If the employer leases the car, the normal value is, at a minimum, the rent or leasing fees paid by the employer to the car leasing company and all other costs borne by the employer in connection with the car. If the employer is the owner of the car, the normal value is, at a minimum, the depreciated value of the car calculated over a period of 5 years and all other costs borne by the employer in connection with the car. Moreover, taxpayers cannot deduct VAT for the use of the car if the work activities performed fall outside the scope of VAT or are exempt. Finally, the Circular provides that taxpayers may retroactively amend their VAT returns for up to five years to apply this correct VAT treatment.
- **Luxembourg:**[xxv] On May 16, 2023, Luxembourg's parliament adopted a law implementing the EU DAC 7 rules. 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. Further, on May 19, 2023, Luxembourg published a Decree stating that digital platforms must file the registration, notification, and declaration of the information under articles 2 and 4 of the DAC7 implementation law electronically on the secure state platform according to the procedures defined by the administration of direct tax contributions. Finally, on June 12, 2023, the Luxembourg tax authorities published guidance on the registration procedure for reporting platforms.
- **Luxembourg:**[xxvi] On May 5, 2023, Luxembourg's government submitted a bill to the Chamber of Deputies to transpose into Luxembourg law, the EU Directive requiring payment service providers to report on cross-border payments and their recipients effective January 1, 2024.

- **Malaysia:**[xxvii] On June 6, 2023, the Royal Malaysian Customs Department (RMCD) announced the launch of a new voluntary disclosure program for indirect taxes that will run from June 6, 2023, through May 31, 2024. Taxpayers with unpaid tax liabilities due to the RMCD on or before February 28, 2023, may obtain a 100 percent abatement of penalties under the program.
- **Nepal:**[xxviii] On May 29, 2023, the Nepal Finance Minister presented its 2023/24 budget, which includes a proposal to change the VAT tax period from 1 month to 4 months and to introduce a 2 percent luxury tax on certain imported liquors and ornaments as well as services of luxury hotels and resorts.
- **New Zealand:**[xxix] On May 8, 2023, the New Zealand tax authority launched a consultation on Exposure Draft No. PUB00389 to clarify the consequences of registering for GST for a unit title body corporate (UTBC) and the GST treatment of transactions with its members and third parties. The draft interpretation statement notes that a GST-registered UTBC generally encounters two primary types of transactions: provision of services to members for consideration in the form of member levies, and sales from third parties to the UTBC. The UTBC will need to account for GST on membership sales and can generally claim GST on third-party sales. In addition, the fact sheet explains the GST outcomes of transactions a registered UTBC may encounter in relation to sales from members, manager's accommodation, payments for ground rent, and one-off payments. Comments on the draft were open through June 20, 2023.
- **New Zealand:**[xxx] On May 18, 2023, the New Zealand government announced in its 2023 budget that it is considering measures to introduce a Digital Services Tax (DST) if the OECD two-pillar deal does not go into effect.
- **New Zealand:**[xxxi] On May 22, 2023, the New Zealand tax authority issued Question No. QB 23/06, clarifying that a person registered for GST on a payments basis can claim GST deductions only when payment has been made, including goods purchased under a standard sales agreement or 'buy now, pay later" basis. However, if a person enters into a hire purchase agreement for the purchase of goods, they can claim a full GST deduction when they enter into the agreement. If a person enters into a layby sales agreement for the purchase of goods, they can only claim a GST deduction when property in the goods is transferred, usually after the final payment has been made.
- **Norway:**[xxxii] On May 11, 2023, Norway's government presented its proposals for a revised 2023 national budget. The proposals include measures to amend the VAT zero-rate regime for e-newspapers and abolish the temporary customs duty declaration exemption for certain goods with a value below NOK 350 from January 1, 2024, as well as changes to certain customs procedures.
- **Poland:**[xxxiii] On March 28, 2023, the Polish Director of Fiscal Information published individual tax ruling 0114-KDIP1-2.4012.46.2023.1.RD, confirming that the physical movement from Germany to Poland of returned goods, purchased from a taxpayer based in Turkey should be viewed as an intra-EU acquisition of goods when the condition of the goods is not changed during transport.
- **Romania:**[xxxiv] Effective May 25, 2023, Romania transposed into its law, the EU directive on instituting criminal penalties for VAT fraud. The law imposes a 7 to 15-year imprisonment penalty, and the prohibition of the exercise of certain rights for fraudulent schemes of a cross-border nature having the effect of reducing resources of the Union budget by at least EUR 10 million through (1) the use or presentation of false, incorrect, or incomplete

declarations or documents regarding VAT; (2) non-disclosure of VAT information, when this information must be disclosed according to the law; (3) submitting correct VAT declarations to fraudulently mask the non-payment or establishment of improper rights to VAT refunds.

- **Russia:**[xxxv] Russia has proposed an amendment to its VAT law to provide that effective January 1, 2024, sales of goods to individuals (not registered as individual entrepreneurs) in the Eurasian Economic Union (EAEU) member countries (i.e., Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia), through electronic platforms will be sourced to the country of destination, i.e., where the buyer is located. However, for sales to customers that are not in the EAEU area, the transaction will be sourced in Russia if the goods are in Russia at the time of their transfer to the buyer.
- **Singapore:**[xxxvi] On May 19, 2023, Singapore published updated guidance on its 2024 GST rate change. Singapore increased its GST rate from 7 percent to 8 percent effective January 2023 and will further increase it to 9 percent from January 1, 2024. It explains the general transitional rules applicable to transactions spanning the second-rate change, the time of sale rules, the GST rates chargeable and provides information on the issuing of invoices, credit notes, and other requirements.
- **South Africa:**[xxxvii] Effective July 1, 2023, South Africa announced that it will increase the interest rate charged on outstanding taxes and interest rates payable on refunds of tax following successful appeals and certain delayed refunds, as follows: 10.5 percent for from March 1, 2023, to April 30, 2023; 10.75 percent from May 1, 2023, to June 30, 2023; and 11.25 percent from July 1, 2023. In addition, the interest rate for credit amounts (overpayments of provisional tax) is 6.5 percent from March 1, 2023, to April 30, 2023; 6.75 percent from May 1, 2023, to June 30, 2023; and 7.25 percent from July 1, 2023.
- **Uzbekistan:**[xxxviii] Effective May 1, 2023, Uzbekistan introduced a 20 percent VAT refund for tour packages provided to foreign partners through July 1, 2024. Moreover, Uzbekistan introduced an option for taxpayers to pay VAT in interest-free installments over 12 months on the import of vehicles used in business activities, through May 1, 2026. Finally, Uzbekistan provides low-income individuals registered in the Unified Register of Social Security in Uzbekistan with a 12 percent VAT refund on purchases of mutton, poultry, beef, eggs, and vegetable oil. If the goods are purchased from a merchant not registered as a VAT-payer, the government will grant a 1 percent cashback instead.
- **Vietnam:**[xxxix] Vietnam's General Department of Taxation recently announced plans to use artificial intelligence, "The E-invoice Management and Database Analysis System," to detect tax fraud and evasion. The system will compare tax return data with e-invoice data to identify discrepancies and analyze invoices for unusual purchase and sale amounts. It will also filter invoices for certain goods used in tax refund fraud and trace the origins of goods using chain analysis.
- **World Bank:**[xl] On May 23, 2023, the World Bank reported that global revenues from carbon taxes and Emissions Trading Systems (ETSs) reached a record $95 billion in 2022 – a 10 percent increase from the previous year. It noted that the share of global emissions covered by these policies has grown from 7 percent to around 23 percent in the past decade, with a growing interest in these measures among developing economies. ETSs accounted for 69 percent of global government revenues from direct carbon pricing, with the remaining 31 percent from carbon taxes. The report further notes that despite this development, there have been no concrete steps toward minimum carbon prices or aligning policies.

Back to top Back to top

About *Inside Indirect Tax*

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.

Back to top Back to top

Footnotes

i. Belgium – Belgium Extends Reduced VAT Rate for Electricity, Gas, Heating Networks, (May 3, 2023), News IBFD

ii. KPMG TaxNewsFlash, Botswana: Transfer duty and VAT amendments, May 3, 2023

iii. Orbitax, Cyprus Provides Temporary Zero VAT Rate for Basic Goods and Extends Zero Rate for COVID Tests and Vaccines, May 11, 2023

iv. Egypt MOF Issues Decision to Suspend VAT on Imported Machinery, Equipment, Bloomberg Law News, May 23, 2023; CCH, Global VAT News & Features, Egypt Eases Conditions for Imported Machinery VAT Perks, (May 22, 2023)

v. Finland, President Ratifies VAT Exemption for Certain NATO Supplies, (May 30, 2023), News IBFD

vi. Grenada - Grenada Introduces 100% Duty Free and VAT Concession for Creative Industry, (May 8, 2023), News IBFD

vii. Ireland - Ireland's Zero VAT Rate for Supply, Installation of Solar Panels Comes into Effect from 1 May 2023, (May 3, 2023), News IBFD

viii. Portugal - Parliament Enacts Several Tax Benefits Under Patent Box Regime, Reduces VAT on Specific Fuels, (May 19, 2023), News IBFD

ix. Rwanda - Rwanda Proposes to Lift VAT on Maize Flour, Rice, (Many 12, 2023), News IBFD

x. St. Lucia - Government to Introduce 2.5% Health and Security Levy, Effective 1 July 2023, (May 9, 2023), News IBFD

xi. United Kingdom - United Kingdom Extends VAT Exemption to Include Medical Services Provided by Non-Registered Staff Supervised by Pharmacists, (May 3, 2023), News IBFD

xii. CCH, Global VAT News & Features, Legislation Tabled for Vietnamese VAT Rate Cut, (May 30, 2023)

xiii. Aruba - Aruba Government Presents Draft Legislation on Indirect Tax Levy at Border, (May 30, 2023), News IBFD

xiv. Austria MOF Seeks Comments on Draft Bill to Amend Reporting Obligations for Payment Service Providers, Bloomberg Law News, May 5, 2023

xv. CCH, Global VAT News & Features, Bahamas Plans Tax Hikes In 2023 Budget, (May 30, 2023)

xvi. Barbados - Barbados to Introduce 'Salt Tax', (May 22, 2023), News IBFD

xvii. Orbitax, Belarus Ratifies Protocol to EAEU Treaty for Indirect Taxes on E-Services, May 25, 2023

xviii. Denmark Tax Agency Explains VAT Deduction for Danish Branch Company in EU Country, Bloomberg Law News, April 27, 2023

xix. Taxnotes, Cultivation Restriction Is VAT Exempt, Danish Council Says, April 27, 2023

xx. Egypt - Government Requires Companies, Industries to Employ Electronic Invoices to Prove Deducted Expenses, (May 1, 2023), News IBFD

xxi. Orbitax, Council Implementing Decision Published Authorizing Hungary to Increase VAT Exemption Threshold, May 31, 2023

xxii. India - India Reduces Turnover Threshold for GST E-invoicing to INR 50 million, (May 12, 2023), News IBFD

xxiii. CCH, Global VAT News & Features, India Launches New GST Tax Risk Detection Tool, (May 19, 2023)

xxiv. Luxembourg VAT Administration Issues Circular on Taxation of Company Cars, Bloomberg Law News, May 4, 2023

xxv. Luxembourg: European Union - Luxembourg Clarifies DAC7 Reporting Obligations, (May 22, 2023), News IBFD

xxvi. Luxembourg - Government Submits Bill to Implement Directive on VAT Data Reporting Requirement for Payment Service Providers (May 8, 2023), News IBFD

xxvii. Malaysia - Malaysia to Implement Voluntary Disclosure Programme for Indirect Taxes from 1 June 2023, (May 30, 2023), News IBFD

xxviii. Nepal - Nepal Proposes Higher Tax Rate for High-Income Individuals, New Luxury Tax, Other Indirect Tax Measures in Budget 2023-24, (May 30, 2023), News IBFD

xxix. CCH, Global VAT News & Features, New Zealand Issues GST Guidance for Unit Title Body Corporates, (May 9, 2023)

xxx. New Zealand Poised to Impose Digital Tax If Global Pact Doesn't Work, Bloomberg Law News, May 18, 2023

xxxi. New Zealand Tax Agency Clarifies Input Tax Deduction for Goods Purchased on Deferred Payment Terms, Bloomberg Law News, May 25, 2023.

xxxii. Norway - Government Presents Revised National Budget for 2023; Proposes to Reduce Taxes on Pensioners, (May 12, 2023), News IBFD

xxxiii. Poland; Germany; Netherlands; Türkiye - Director of Fiscal Information Rules on VAT Treatment of Returned Goods, (May 24, 2023), News IBFD

xxxiv. Orbitax, Imprisonment up to 15 Years for VAT Fraud in Romania, May 31, 2023

xxxv. Taxnotes, VAT on E-Sales in Eurasian Economic Union, May 12, 2023

xxxvi. Orbitax, Singapore Updates Guidance on 2024 GST Rate Change, May 23, 2023

xxxvii. CCH, Global VAT News & Features, South Africa to Ramp Up Tax-Related Interest Rates, (May 16, 2023)

xxxviii. Uzbekistan- Uzbekistan Adopts VAT Incentives for Tourism Industry, (May 12, 2023), News IBFD; Uzbekistan - Uzbekistan Introduces VAT Refund for Low-Income Individuals, (May 4, 2023), News IBFD

xxxix. CCH, Global VAT News & Features, Vietnam Deploys New Indirect Tax Risk Detection Tool, (May 1, 2023)

xl. World Bank - World Bank Announces Record Revenues from Carbon Taxes, (May 25, 2023), News IBFD

kpmg.com/socialmedia

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.