



Inside Indirect Tax

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About this Newsletter

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

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KPMG Publications

Developments Summary of the Taxation of the Digitalized Economy

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

Global E-invoicing & Digital Reporting Tracker

KPMG has released an [Electronic Invoicing \(e-invoicing\) and Digital Reporting Global Tracker](#), providing a summary of tax administration developments relating to e-invoicing and digital reporting around the world. Tax authorities across the globe are constantly striving for visibility into a taxpayer's end-to-end sales process using technology tools that automate the tax reporting process, such as e-invoicing, digital reporting, and e-accounting. These technologies when used by tax authorities can be disruptive and require radical changes in the way taxpayers interact internally as well as with their customers, related parties, and the tax authorities.

Overview of Indirect Tax Developments from KPMG International Member Firms

- **KPMG in Albania** published a [report](#) discussing tax law amendments that became effective in 2023. Among other things, Albania (1) extended the list of VAT-exempt transactions to fuel wood, (2) extended the import VAT exemption to goods destined for realization of projects financed based on a donation or grant agreement entered by the Albanian Council of Ministers, subject to certain conditions, and (3) introduced a new VAT regime for energy producers trading through the Albanian Power Exchange. In addition, Albania introduced a temporary windfall profits tax on energy producers until December 31, 2024 and increased the excise tax on all products and subproducts subject to the tax.
- **KPMG in Chile** published a [report](#) discussing amendments to the VAT law that broaden the scope of the VAT system to all sales of services (previously only selected services were subject to VAT) effective January 1, 2023. With the amendments, all services rendered in Chile are subject to VAT even if the beneficiary is not domiciled or resident in the country. In addition, VAT applies on all services provided from abroad when they are used in Chile unless they are subject to withholding tax or a specific VAT exemption applies. Nonresident providers of taxable services are required to register for and collect VAT on taxable cross-border services provided to final consumers in Chile, while Chilean business customers are responsible to self-assess VAT on the receipt of such services. Finally, the amendments clarify that medical services and services provided by a professional service company are excluded from the scope.
- **KPMG in the Czech Republic** published a [report](#) on a recent decision of the Supreme Administrative Court (SAC) on zero-rating intra-EU sales of goods when the sale to a customer is not proven. In the case, a Czech taxpayer sold rapeseed oil to businesses in Poland, declared the related transaction in its VAT return as a zero-rated intra-EU sale of goods. The tax authority disagreed with this treatment and assessed VAT on the transactions arguing that the taxpayer had not proven that the sale occurred to the entities designated as the recipients of the goods. While there was no doubt that the goods had been transported to

Poland, the supporting documentation did not fully match the data reported by the company, and the reported recipients did not declare the acquisition of goods from the Czech Republic and the related VAT in their Polish VAT returns. Referring to the recent judgment of the Court of Justice of the European Union (ECJ) in *Kemwater ProChemie Case C-154/20* (January 28, 2022) the SAC dealt with whether its conclusions can be applied by analogy to the case under consideration. In particular, the SAC considered whether the zero-rating should be sustained if no specific recipient is identified and if the facts of the case imply that the goods were sold to another taxpayer. In this regard, the SAC also drew attention to the fact that the goods were transactions amounting to tens of thousands of euros which aids in concluding that the sales were made to a taxpayer. Given the contradictory domestic case law, the SAC referred a preliminary question to the ECJ as to whether the conclusions of the *Kemwater ProChemie* judgment could be applied in this case. The case is pending before the ECJ.

- **KPMG in Cyprus** published a [report](#) discussing a new registration requirement for self-service establishments. To be included in the new Register, such establishments must be registered for tax purposes (with a tax identification number and VAT registration number, if applicable), and the property must be insured. The registration fee is EUR 222 per establishment for three years. Once registered, establishments can be advertised and rented, and the special mark and registration number from the Deputy Ministry of Tourism must be listed on each platform where the establishment is advertised, as well as in all relevant transactions. Income derived from the rental of any establishment is subject to income tax and VAT and is also subject to overnight fees to the local authorities.
- **KPMG EU Tax Center** published a [report](#) discussing recent tax developments in the EU, including the implementation of the DAC7 marketplace reporting requirements in several EU countries and an OECD consultation on the removal of unilateral digital services tax under Pillar One.
- **KPMG in Germany** published a [report](#) discussing tax measures in the 2022 Annual Tax Act that was published on December 22, 2022. Among other measures, the legislation includes (1) the transposition of the EU's [Council Directive \(EC\) 2020/284](#), which introduces certain record-keeping and reporting obligations for payment service providers for VAT purposes effective January 1, 2024, and (2) the introduction of a VAT zero-rate for the purchase and installation of photovoltaic systems, including energy storage units, effective January 1, 2023. To read KPMG's previous discussion of the EU's directive regarding the recordkeeping and reporting obligation for payments service providers, please click [here](#).
- **KPMG in Germany** published a [report](#) discussing recent VAT developments including recent rulings of the German federal tax court on the VAT requirements for individuals selling via online marketplaces and the VAT treatment applicable to vouchers before a tax reform clarifying their treatment effective 2019. The report further discusses guidance issued by the German federal ministry of finance regarding the reduced VAT rate applicable to natural gas and when VAT is due when a service is only partially performed.
- **KPMG in Italy** published a [report](#) discussing tax measures in the 2023 budget law. These include (1) the introduction of measures to help reduce VAT fraud by strengthening checks prior to the allocation of VAT numbers and introducing a new reporting obligation for electronic marketplaces facilitating the sale of certain goods; (2) the introduction of reduced VAT rates for pellets, the natural gas sector, early childhood products, and absorbent feminine hygiene products; and (3) the postponement of the effective date of the plastic and sugar tax to January 1, 2024.

- **KPMG in Malaysia** published a [report](#) noting that the launch of the official portal for the implementation of the sales tax on low-value goods which is effective from April 1, 2023. Taxpayers may submit their registration application using the portal. To read KPMG’s previous discussion of Malaysia’s proposed sales tax on low-value goods, please click [here](#).
- **KPMG in Malaysia** published a [report](#) discussing a draft service tax guide on goods delivery services. Currently, only licensed courier service providers for parcels not exceeding 30kg (66lb) each are liable to be registered and charge service tax. In its 2022 budget announcement, Malaysia proposed that the scope be expanded to include goods delivery services regardless of the status of the service provider (i.e., whether licensed or not), but excluding delivery services for food or beverages, and logistics service providers. The proposal, which was initially scheduled to be effective July 1, 2022, was subsequently postponed to January 1, 2023, and has now been pushed to a later date to be announced.
- **KPMG in Malaysia** published a [report](#) summarizing recent indirect tax developments in the country, including amendments to the sales tax exemptions and the postponement of the implementation of excise duty on premixed beverages.
- **KPMG in Mexico** published a [report](#) in Spanish discussing recent indirect tax measures in the Miscellaneous Tax Resolution for 2023, including amendments to the e-waybill CFDI supplement; the extension of the deadline period to comply with version 4.0. of the e-invoice (CFDI) until March 31, 2023; and a requirement for digital services providers to update their activity description on the tax authority’s portal.
- **KPMG in Mexico** published a [report](#) noting that 177 companies are registered under the Mexico VAT on digital services regime as of December 31, 2022.
- **KPMG in the Netherlands** published a [report](#) discussing a guidance clarifying the VAT deduction exclusion on promotional gifts and staff benefits. The decree precludes the recovery of VAT on promotional gifts and staff benefits if they were provided free or below cost by the business. In this regard, no adjustment is necessary if the total purchase and production costs (the cost price) of the benefits are less than EUR 227 (excluding VAT) per year per recipient. If the threshold is exceeded, the total VAT amount incurred is not recoverable.
- **KPMG in the Netherlands** published a [report](#) discussing plastic taxes in Europe. The report notes that the use of environmental taxes to drive the sustainability agenda is on the rise, and new regulations and legislation are being introduced on a global scale at a rapid pace. While a “plastic tax” is not a new concept, it is quickly becoming a legislative discussion point in several regions and countries as governments implement various environmental protection methods to combat climate change and tackle waste and pollution.
- **KPMG in North Macedonia** published a [report](#) discussing a recent proposal to amend the VAT law. The proposal, if adopted, would amend the VAT sourcing rules to harmonize them with the sourcing rules applicable in the EU, including a requirement for nonresident providers of digital services to consumers in North Macedonia to register for and collect VAT. The proposal would further amend the list of goods and services subject to the reduced tax rate and introduce e-invoicing requirements.

- **KPMG in the Philippines** published a [report](#) discussing a recent tax authority guidance that taxpayers are no longer required to file monthly VAT returns. Beginning January 1, 2023, taxpayers must file the corresponding quarterly VAT return (BIR Form No. 2550Q) within 25 days following the close of each taxable quarter. The guidance also provides for the transitory provisions during its initial implementation, particularly for taxpayers with a fiscal period of accounting.
- **KPMG in the Philippines** published a [report](#) discussing a recent tax authority guidance regarding the submission of the inventory list and whether health maintenance organization (HMO) plans acquired by registered export enterprises for their employees are subject to VAT. The tax authority has limited the submission of the inventory list and prescribed schedules to soft copies instead of requiring both hard and soft copies. Further, HMO plans which are acquired by registered export enterprises for employees directly involved in operations of the registered project or activity and forming part of the employee's compensation package can be considered necessary expenses directly and exclusively used in the registered project or activity and thus may be subject to VAT zero-rating.
- **KPMG in Poland** published a [report](#) discussing proposed changes to enforcement proceedings including recovery of VAT that would enable compulsory recovery of VAT settled under special procedures. This relates to taxpayers with a place of residence or seat outside Poland, filing VAT returns in other countries.
- **KPMG in Poland** published a [report](#) discussing recent indirect tax developments in the country. These include the launch of a public consultation on the new logical structure of internal records kept by the members of a VAT group (i.e., the JPK_GV(1) structure). The structure enables VAT group members to submit to the tax office, starting from July 1, 2023, records of activities performed within the VAT group for monthly periods by the 25th day of the month following each subsequent month. Further, the report discusses the extension of the temporary retail tax exemption for the sale of motor fuels through June 30, 2023 and of the property tax exemption for rail freight terminals through January 1, 2024.
- **KPMG in Poland** published a [report](#) noting that the government proposed the Slim VAT 3 Package. If approved, it would further simplify and accelerate VAT settlements, improving liquidity and reducing formalities for companies in international trade. To read KPMG's previous discussion of the Slim VAT 3 package, please click [here](#).
- **KPMG in South Africa** published a [report](#) discussing a change in the VAT treatment of "scrip-lending transactions" effective from April 1, 2023. Scrip-lending involves the lending of shares and other securities to a borrower who agrees to return the same quantity of similar securities to the lender on an agreed future date. Despite the term "lending," ownership in the securities transfers to the borrower, with the result that the borrower takes the risk and/or benefit in the price fluctuation of the securities and is entitled to any dividends which may be declared in respect of such securities for the period of the loan. Lenders generally charge a scrip-lending fee to the borrower, and the loan agreement most often provides that the borrower also needs to pay any dividends or interest accrued to it to the lender (i.e., so-called manufactured dividends or manufactured interest). Because scrip-lending is not without risks, the loan agreement typically requires that the borrower provides collateral to the lender, and the borrower is generally entitled to receive interest from the lender on the collateral provided. The South African Revenue Service (SARS) in December 2022 issued a draft binding general ruling (draft BGR), effective from April 1, 2023. Under the draft BGR, SARS now considers

scrip-lending transactions to constitute the provision of credit. SARS further considers that since the scrip-lending fee does not relate to any service other than the scrip-lending transaction, but solely for the use of the securities, the scrip-lending fee is also an exempt financial service.

- **KPMG in Switzerland** published a [report](#) discussing draft legislation on a tonnage tax approved by the Swiss National Council on December 13, 2022. The proposal would introduce an alternative and optional tax regime for the international shipping industry similar to those in other countries including Germany, France, Cyprus, and the United Kingdom. The tonnage tax regime would replace income tax at the communal, cantonal, and direct federal levels, and the taxable basis of a company would be determined based on the net tonnage of ships (freight capacity). The draft legislation will be considered by the Council of States.
- **KPMG in Trinidad and Tobago** published a [report](#) discussing proposed tax measures in the Guyana 2023 national budget. Among other measures, these include introducing a VAT exemption for the sale of residential properties and new electric motor vehicles as well as introducing an excise tax exemption for petroleum products while fuel prices remain elevated.

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Global Rate Changes

- **Botswana:**ⁱ Effective January 13, 2022, Botswana extended the application of the temporary 12 percent reduced VAT rate through March 31, 2023. The reduced rate was originally scheduled to return to 14 percent on February 3, 2023. However, the zero-rating of cooking oil and liquified petroleum gas ended on February 2, 2023.
- **Brazil:**ⁱⁱ On December 21, 2022, Brazil published [Provisional Measure 1147/2022](#) zero-rating the Social Integration Program and the contribution for the financing of social security (PIS/COFINS) for passenger airline companies (not cargo). The measure will apply through December 31, 2026.
- **Brazil:**ⁱⁱⁱ On January 2, 2023, Brazil published [Provisional Measure 1157/2023](#) zero-rating the Social Integration Program (PIS/PASEP) and the contribution to the financing of social security (COFINS) on diesel oil, biodiesel, and liquefied petroleum gas until December 31, 2023; the same treatment will be applied to alcohol, aviation kerosene, vehicular natural gas, and gasoline until February 28, 2023. In addition, the Provisional Measure suspends, until February 28, 2023, the payment of the PIS/PASEP and COFINS levied on purchases in the domestic market and on imports of oil made by refineries to produce fuels.
- **Cyprus:**^{iv} The Cyprus Tax Department recently issued two notices regarding the VAT rate applicable to products and services related to COVID-19. The [first notice](#) provides that effective January 1, 2023, COVID-19 in-vitro diagnostic tests and COVID-19 vaccines and related services are no longer eligible for the VAT zero-rate. As such, the applicable VAT rates are 19 percent for COVID-19 in-vitro diagnostic tests and related services and 5 percent for COVID-19 vaccines. However, the [second notice](#) provides that as per a Decree of the Council of Ministers dated January 13, 2023, the VAT zero-rate will again apply to COVID-19 in-vitro diagnostic tests and vaccines with effect from January 13, 2023, through March 31, 2023.

- **Czech Republic:**^v The Czech Ministry of Finance recently proposed merging the country's reduced VAT rates of 10 percent and 15 percent into a single reduced rate of 13 percent or 14 percent. The standard VAT rate of 21 percent would be maintained. The Ministry of Finance expects to present a proposal to the parliament in May 2023. If approved, the change to a single reduced rate would apply from January 1, 2024.
- **Ecuador:**^{vi} On January 18, 2022, Ecuador published [Resolution No. NAC-DGERCGC23-00000001](#) amending the VAT withholding rate on sales of petroleum derivatives to distributors to 9.5 percent for super gasoline and to 2 percent for extra or eco-country gasoline and diesel gasoline.
- **Ecuador:**^{vii} On December 23, 2022, Ecuador published [Circular No. NAC-DGECCGC22-00000010](#) clarifying which imported goods are eligible for the VAT zero-rate pursuant to Executive Decree No. 1232 of 2008. Goods subject to the VAT zero-rate that are not required to be listed in Executive Decree No. 1232 of 2008 (and amendments) include the following: certified seeds, bulbs, plants, flowers, foliage and cut branches, plant cuttings and roots; fish meal and balanced food, forage preparations with added sugar molasses, and other preparations that are used as food for animals raised for human consumption; fertilizers, insecticides, pesticides, fungicides, herbicides, agricultural oil used against Black sigatoka, antiparasitic and veterinary products; and for tractors of up to 300 hp, parts and spare parts and tiers, including tractors and vehicles used in the cultivation of rice or other agricultural crops or agricultural activities; plows, harrows, furrowers, and pourers; and harvesters, planters, grass trimmers, portable spray pumps, sprinklers and sprinklers for irrigation equipment. Alternatively, goods that must be listed in Executive Decree No. 1232 (and amendments) are taxed at a VAT zero-rate include the following: raw material and inputs for the agricultural, aquaculture, and fishing sector, imported or purchased in the domestic market; raw material and inputs for the preparation of balanced food or other preparations for animals that are raised for human consumption; and elements and machinery for agricultural use, aquaculture and fishing, parts, and pieces.
- **Finland:**^{viii} Finland temporarily introduced a VAT zero-rate applicable to passenger transport services between January 1 and April 30, 2023. The VAT zero-rate applies to all passenger transport services provided in Finland, such as transportation by train, coach, taxi, plane, or ship. The change does not affect passenger transport between Finland and other countries because these services were subject to the VAT zero-rate before this measure. The VAT zero-rate also applies to any advance payments for passenger transport services, where payment is made between January 1 and April 30, 2023, and does not apply to prepaid travel that takes place during the period where the payment was made before the four-month window. In addition, Finland has reduced the VAT rate on electricity from 24 percent to 10 percent.
- **France:**^{ix} On December 30, 2022, France published the Finance Law for 2023 which entered into force on January 1, 2023. Among other measures, the Finance law extends the application of the reduced 5.5 percent VAT rate on goods aimed at limiting the spread of COVID-19 through December 31, 2023; reduces the VAT rate applicable to foodstuffs for animals raised for food for human consumption as well as to products of agricultural origin, fishing, pisciculture or poultry farming normally intended for use in agricultural production from 10 percent to 5.5 percent.
- **Iceland:**^x On December 30, 2022, Iceland published [Law No. 128/2022](#) which, among other things, extends the VAT exemption for qualifying electric, hydrogen, or plug-in hybrid vehicles through 2023, up to a maximum exemption of ISK 1.3 million and extends the VAT exemption for electric and hybrid mopeds through 2023, up to a maximum of ISK 5.5 million.

- **Ireland:**^{xi} On January 20, 2022, the Irish Revenue published Revenue e/brief 15/23 confirming the continuation of the VAT zero-rate for COVID-19 testing kits from January 1, 2023, (this treatment was previously subject to a temporary zero rate up until December 31, 2022, as a result of an EU Commission derogation). The Covid-19 testing kits must conform to the essential requirements of all relevant European Medical Device Directives. This measure will apply on an administrative basis pending the enactment of the appropriate legislative provision.
- **Ghana:**^{xii} Effective January 1, 2023, Ghana increased the standard VAT rate from 12.5 percent to 15 percent.
- **Kazakhstan:**^{xiii} Effective January 1, 2023, Kazakhstan introduced a VAT exemption for raw cane, certain chemicals required for producing pesticides, and the sale of gold to jewelers.
- **Mongolia:**^{xiv} On November 11, 2022, Mongolia approved the State Budget Law for 2023, which includes a VAT and Customs duty exemption for the importation of new buses with a passenger capacity of 45 persons for the exclusive purpose of public transportation and excise tax rate changes for alcoholic beverages.
- **Montenegro:**^{xv} Effective December 16, 2022, Montenegro introduced a reduced 7 percent VAT rate on baby diapers, feminine hygiene products, and the sale, installation, and import of solar panels.
- **Poland:**^{xvi} On January 11, 2023, the Polish Minister of Finance published a draft decree to apply a VAT zero-rate to free-of-charge deliveries of goods or provisions of service to the Governmental Agency for Strategic Reserves, healthcare entities, and local government units aimed at supporting victims of the conflict in Ukraine. The decree became effective the day following its promulgation.
- **Romania:**^{xvii} On December 30, 2022, Romania published [Order No. 4635/2022](#), implementing the EU Commission's [Decision 2022/1108](#) from July 1, 2022 concerning import duties and VAT exemptions granted for goods intended for distribution or provided free of charge to individuals fleeing Ukraine. The exemption is applicable retroactively for the period from February 24, 2022 until December 31, 2022 for qualifying goods imported by charitable or philanthropic organizations authorized by the Romanian Customs Authority. The list of goods qualifying for the exemption provides the related custom codes and includes items such as food, clothing, hygiene and sanitary products, vehicles, and furniture. Taxpayers that made imports without exemption from import duties and VAT prior to the date of entry into force of Order No. 4635/2022 (i.e., December 30, 2022) and were subject to the provisions of [Decision 2022/1108](#) may claim reimbursement of import duties and VAT at the competent customs authorities.
- **Romania:**^{xviii} On December 29, 2022, Romania published [Order No. 4634/2022](#) updating the types of agricultural-related transactions that are subject to the 9 percent reduced VAT rate. The reduced VAT rate applies to the delivery of fertilizers and pesticides normally used in agricultural production, seeds, and other agricultural products intended for sowing or planting, and for the provision of services of a kind normally used in agricultural production. The order extends this list to include specified pesticides and additional services such as artificial seeding in animals and seed multiplication. The order is effective from January 1, 2023.
- **Romania:**^{xix} Effective January 16, 2023, Romania [introduced](#) a 5 percent reduced VAT rate for the delivery and installation of photovoltaic panels, solar thermal panels, and high-efficiency low-emission heating systems. The reduced rate also applies to installation kits, as well as to complete solutions.

- **Romania:**^{xx} Effective January 1, 2023, Romania repealed the reduced VAT rate applicable to specified non-alcoholic beverages that contain added sugar and/or are flavored. In addition, Romania increased the reduced VAT rate applicable to accommodation, restaurant, and catering services from 5 percent to 9 percent. Finally, Romania applies a reduced VAT rate of 5 percent to firewood, in the form of trunks, hubs, vines, branches or similar forms, delivered to individuals and/or legal entities.
- **Taiwan:**^{xxi} Taiwan has extended the tax relief measures announced in response to Russia's invasion of Ukraine. Among other measures, this includes extending the VAT zero-rate that applies to imported soybeans, wheat, and corn until March 31, 2023 (previously set to expire on December 31, 2022), reducing the commodity tax on cement by 50 percent, and cutting taxes on gasoline and diesel through March 31, 2023.
- **Ukraine:**^{xxii} On December 31, 2022, Ukraine published [Law No. 2836-IX](#) providing a temporary VAT exemption for specified imported goods during the period of martial law, but no longer than May 1, 2023; a temporary VAT exemption for specified goods donated for the energy production sector until May 1, 2023; and VAT and excise tax exemptions for specified imported donated goods. The law entered into force on January 3, 2023.
- **Ukraine:**^{xxiii} On January 2, 2023, the Ukrainian State Tax Service clarified that the 7 percent reduced VAT rate on transactions involving the provision of temporary accommodation services by hotels and similar entities has been extended for 2023.

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Indirect Tax Developments and News from Around the World

The Americas

United States: Kentucky Supreme Court Holds that Purchases are Exempt Supplies, Not Taxable Replacement Parts

On December 15, 2022, the Kentucky Supreme Court published its judgment in *Century Aluminum of Kentucky, GP v. Dep't of Revenue* in which it clarified the distinction between exempt supplies and taxable repair parts. Under Kentucky law, "supplies" purchased by a manufacturer for use in the manufacturing process are tax-exempt, but "repair, replacement, or spare parts" are not. To be classified as a "supply" an item must be tangible personal property, be consumed in manufacturing or industrial processing, be used directly in manufacturing or industrial processing, and have a useful life of less than one year. "Repair, replacement or spare parts" are tangible personal property used to maintain, restore, mend, or repair machinery

or equipment. The Kentucky Supreme Court concluded that certain purchases by an aluminum manufacturer qualified as exempt supplies. In the court's view, the plain language of the definition of repair, replacement, and spare parts restricted the use of such parts to maintaining, restoring, mending, or repairing the actual manufacturing machinery or equipment. As such, tangible personal property that maintained the "manufacturing process," but did not actually replace an existing part of the permanent machinery, did not fit within the definition of a taxable repair part. The court concluded that the question as to whether tangible personal property is a tax-exempt supply or a taxable part, if all the other characteristics of a tax-exempt supply are

met, may be resolved by whether the tangible personal property has the characteristics of being consumed in the manufacturing process and having a useful life of less than one year. “With the conclusion that specific tangible personal property is a supply, its

defining characteristics exclude it from being categorized as a repair, replacement or spare part, and the statute cannot be construed in an absurd, inconsistent manner to allow the same tangible personal property to be viewed also as a part.” For more information, click [here](#).

Argentina: Special VAT Withholding Regime for Digital Platforms

On January 23, 2023, the Argentinian tax authority (*Administración Federal de Ingresos Públicos (AFIP)*) published [General Resolution 5319](#) updating the domestic VAT withholding regime applicable for digital platforms that was introduced in 2010. The regime requires digital platforms to act as VAT withholding agents for the sale of products and provision of services performed through the platforms by local vendors. Among other changes, the new General Resolution provides that 20 companies managing electronic commerce digital platforms are required to act as withholding agents (previously, there were only 2 companies obliged to apply this VAT withholding system). The General Resolution updates the withholding tax rates applicable on the total amount of the transaction as follows: 1 percent if the seller or service provider is a VAT registered taxpayer; 3 percent, 5 percent, or 7 percent for sellers or service providers that

are VAT registered taxpayers that have failed to comply with certain obligations (formal non-compliance); 7 percent if the seller or service provider is registered under the simplified tax regime and performed transactions through the platform that exceeded the total annual gross receipts amount required to qualify for such simplified tax regime; and 8 percent for non-registered taxpayers. Withholding agents should consult the AFIP regarding the tax status of the local vendors. Withholding agents are able to accept only sellers or service providers that are registered with the AFIP as taxpayers, employees, pensioners, or persons without any economic activity. The provisions of General Resolution 5319 are effective from April 1, 2023.

Source: Argentina – Tax Authorities Update Special VAT Withholding Regime for Digital Platforms, (January 30, 2023), News IBFD.

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Europe, Middle East, Africa (EMA)

European Union: Proposal to Move Preliminary VAT Rulings to General Court

In December 2022, the Court of Justice of the European Union (ECJ) submitted a [request](#) to the European Parliament and the EU Council to entrust the General Court of the European Union (i.e., the lower EU court) to deal with certain preliminary ruling requests on VAT, excise duties, customs codes and tariff classification, passenger compensation, and greenhouse gas emissions allowance trading. The request is based on Article 281 of the Treaty on the Functioning of the

European Union (TFEU). The request also includes increasing the ability of the ECJ to determine whether certain appeals are allowed to proceed. This request is due to the ever-increasing volume and complexity of preliminary ruling requests. The cases affected by the proposal involve areas that raise few issues of principle and for which there is a substantial body of case law of the ECJ that could guide the General Court in the exercise of its new jurisdiction and prevent the potential

risk of inconsistencies in the case law. The request further notes that if the General Court were to take on preliminary rulings, it would reduce the ECJ's caseload by approximately 20 percent.

European Union: Roundup of Recent ECJ Cases

On November 14, 2022, the ECJ published its decision not to analyze the issues presented in *Gencoal*, [Case C-669/21](#), because the referring court did not provide enough information concerning the facts and reasons why an ECJ position is necessary for the dispute to be solved. The issue involved the correct period in which to apply for a VAT refund for taxpayers not established in the territory of application but established in another Member State.

On December 8, 2022, the ECJ published the nonbinding Opinion of its Advocate General (AG) in *Finanzamt X*, [Case C-516/21](#), in which the AG opined that the leasing of a building with permanently installed equipment and machinery can be exempt from VAT as the leasing of immovable property, provided that the lease of the equipment and machinery constitutes an ancillary service to the leasing of the building.

On December 9, 2022, the ECJ published its decision in *Navigator Pulp Figueira*, [Case C-459/21](#), in which it held that in the light of the principle of equivalence, national law can deny or restrict the right to deduct VAT incurred on expenses relating to certain vehicles, travel and accommodation, as well as representation expenses, even if those expenses benefit from an allegedly more favorable tax regime as to deductibility under national law.

On December 21, 2022, the ECJ published its decision not to analyze the issues presented in *Fallimento Villa di Campo*, [Case C-250/22](#), because with the information provided by the referring court, it could not assess whether the answer to the questions posed is necessary to enable that court to give its decision. The issue presented was whether the

Source: European Union – ECJ Asks Parliament to Reassign VAT Preliminary Ruling Requests to the General Court, (January 8, 2023), News IBFD.

transfer of a business, which is indissociable, constitutes multiple sales of goods with a right to deduct VAT even when the requirements laid down by EU law are not met.

On January 8, 2023, the ECJ published its decision in *A.T.S. 2003*, [Case C-289/22](#), in which it held that even if a chain transaction appears to be economically irrational or not reasonable, that is not sufficient cause to characterize it as fraud and deny the right to deduct VAT. However, if the elements constituting VAT fraud are proven and a fictitious invoicing chain is in place, this can justify the refusal of the right to deduct VAT.

On January 12, 2023, the ECJ published the nonbinding Opinion of its AG in *Fluvius Antwerpen v. MX*, [Case C-677/21](#), in which the AG opined that legal and illegal sales of electricity must be treated the same for VAT purposes. As a result, the unlawful use of electricity is considered a sale of goods for consideration if the remuneration to be paid according to the law is dependent on consumption as it is for lawful usage. Finally, additional sales of electricity that a distribution network operator makes can also be regarded as an economic activity, and negligible activities can be present only if the body governed by public law is not regarded as a taxpayer based on other activities.

Source: European Union; Portugal – ECJ Decides on Correct Period to File VAT Refund for Non-Resident Taxable Persons: *Gencoal* (Case C-669/21) (VAT), News IBFD; European Union; Germany – ECJ Advocate General Opines Leasing a Building with Permanently Installed Equipment and Machinery Is Exempt from VAT Where It Constitutes a Simple Supply: *Finanzamt X* (Case C-516/21) (VAT))

– Details, (January 26, 2023), News IBFD; European Union; Portugal – ECJ Decides on VAT Right to Deduct Expenses for Vehicles, Travel, Accommodation and Representation: *The Navigator Company and Navigator Pulp Figueira* (Case C-459/21) (VAT), (January 26, 2023), News IBFD; European Union; Italy – ECJ Decides on Whether Transfer of Business Constitutes Multiple Supplies: *Fallimento Villa di Campo* (Case C-250/22) (VAT), (January 26,

2023), News IBFD; European Union; Hungary – ECJ Decides on Right to Deduct VAT in Supposedly Fictitious Invoicing Chain: *A.T.S. 2003* (Case C-289/22) (VAT), (January 26, 2023), News IBFD; European Union; Belgium – ECJ Advocate General Opines on Unlawful Usage of Electricity and Whether it Constitutes Supply of Goods for Consideration: *Fluvius Antwerpen* (Case C-677/21) (VAT), (January 13, 2023), News IBFD; (January 16, 2023), News IBFD.

European Union: Update on European Commission Infringement Proceedings

On January 26, 2023, the European Commission announced that an infringement procedure against Germany regarding the non-application of the special VAT regime for travel agents was closed. The infringement procedure was opened on February 27, 2012, through a letter of formal notice. The European Commission argued that Germany had failed to correctly apply the rules of the special VAT regime for travel agents because the program was applicable only to travel agents dealing with private travelers, and not with all customers, and travel agents were allowed to set one single profit margin for all sales of travel packages, regardless of the customer's VAT status.

On January 26, 2023, the European Commission announced the closing of infringement procedures against Ireland and Portugal regarding the transposition into national law of the [temporary VAT exemptions](#) in response to the COVID-19 pandemic. The infringement procedures were opened on January 27, 2022, through a letter of formal notice.

On January 26, 2023, the European Commission sent a reasoned opinion (second step in the infringement process) to Spain for failing to notify the Commission of the measures taken to transpose the [Excise Framework Directive \(Recast\) \(2020/262\) into national law](#). The framework lays down the general arrangements for excise duty applicable as of February 13, 2023. EU Member States were required to transpose this Directive into their national legislation

by December 31, 2021. The infringement procedure was initiated on January 27, 2022, through a letter of formal notice.

The European Commission recently launched infringement proceedings against Belgium, Estonia, Greece, Spain, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, and Slovenia for failing to notify the Commission, or only partially notifying the Commission, of national measures transposing the seventh Directive on Administration Cooperation (DAC 7) in tax matters into national law. The deadline for this was December 31, 2022. Under DAC7, digital platform operators are required to report income earned by sellers on sales of goods, accommodation, personal services, and transportation services on their platforms.

Source: European Union; Germany – European Commission Closes Infringement Procedure Against Germany Regarding Special VAT Travel Agent Scheme, (January 27, 2023), News IBFD; European Union; Ireland; Portugal – European Commission Closes Infringement Procedure Against Ireland and Portugal Regarding Implementation of Temporary VAT Exemptions in Response to COVID-19 Pandemic, (January 19, 2023), News IBFD; European Union; Spain – European Commission Urges Spain to Transpose EU Excise Framework Directive into National Law, (January 27, 2023), News IBFD; CCH, Global VAT News & Features, Fourteen EU States Failed To Properly Implement DAC7, Commission Says, (Jan. 30, 2023).

Italy: Overview of Recent Indirect Tax Developments

The Italian Tax Authority (ITA) recently issued Ruling Answer No. [429/2022](#) and Ruling Answer No. [442/2022](#) clarifying the procedure to be followed by nonresidents when registering for VAT in Italy. In the case at issue, an Italian citizen, resident in the United Kingdom and registered in the civil registry of non-resident Italians (*Anagrafe degli Italiani Residenti all'Estero, AIRE*), did not carry on any business activities in the United Kingdom but intended to commence a professional activity in Italy. The tax authorities clarified that the individual should register in Italy for VAT purposes and obtain a VAT identification number and declare as fiscal domicile the place in Italy at which the professional activity would be carried on. According to the Italian VAT Act, a person who carries on a professional activity in Italy is deemed to be a taxpayer in Italy when one of the following requirements is met: the person is resident in Italy and not domiciled abroad; the person is resident abroad but domiciled in Italy; or the person is resident or domiciled abroad but has a fixed establishment in Italy. In addition, in Ruling Answer No. [442/2022](#), the ITA clarified the procedure that a non-resident entity must follow to appoint a VAT representative in Italy. Specifically, the deed of appointment must be in the form of a public deed, a registered private deed, a letter recorded by the competent tax authority office, a deed authenticated by a qualifying foreign notary public, or a deed authenticated by the relevant Italian Consul General. A VAT representative can act in Italy for multiple nonresident taxpayers by obtaining a separate VAT identification number for each represented person. However, a nonresident taxpayer can only have one VAT representative in Italy. For obtaining a VAT identification number, the VAT representative must file within 30 days from the commencement of the activity in Italy form IVA AA7/10, if the represented person is a legal person, or form IVA AA9/12, if the represented person is an individual.

The ITA recently issued Ruling Answer No. [487/2022](#) clarifying how a VAT group should determine the resident taxpayer that should act as VAT representative for the group when the controlling company is established abroad and cannot act in such a role. According to the ITA, the role of group representative must be attributed to the participant that has the greatest level of gross receipts for VAT purposes or revenues for corporate income tax (CIT) purposes, in absolute values.

The ITA recently issued Ruling Answer No. [488/2022](#) clarifying that advance payments follow the VAT treatment of the sales with which they are associated, provided that such sales are clearly identified. If the advance payment refers to multiple sales which are subject to different VAT treatments, the amount paid must be proportionally allocated to each sale, based on impartial and objectively verifiable criteria consistent with the nature of the relevant transactions. If the advance payment is higher than the final consideration due, the seller is entitled to issue a credit note without any time limitations, because the adjustment derives from the original agreement between the parties.

The ITA recently issued Ruling Answer No. [507/2022](#) clarifying that the issuance of utility tokens during an initial coin offer as a means of collecting financial resources falls outside the scope of VAT. In the case, a company providing copyright protection of musical works through blockchain authentication intended to issue a utility token, granting the purchaser the right to buy services at a discounted price. The sale was intended to generate financial resources for completing its technical infrastructure and temporarily covering its general costs. The utility token was a type of crypto asset intended to provide digital access to a good or service, available on distributed ledger technology (DLT) and only accepted by the issuer, as identified in the [Proposal for a Council Implementing Decision \(COM\(2020\) 593 final\)](#) on markets in crypto assets.

The ITA stated that the sale of the utility token cannot qualify as a sale of vouchers, as the utility token can change in its nature. However, the utility token qualifies as a legitimation document, falling within the scope of the Civil Code, as it gives the holder the right to receive the relevant service. Therefore, the issuance of the utility token falls outside the scope of VAT.

The ITA recently issued Ruling Answer No. [557/2022](#) clarifying that a non-resident taxpayer who is registered in Italy for VAT purposes but does not have a fixed establishment in Italy, is not required to issue invoices in the electronic format through the SDL system (*sistema di interscambio*) for qualifying sales to customers in San Marino. The non-resident taxpayer may issue invoices in the paper format, in three originals.

The ITA recently issued Ruling Answer No. [561/2022](#) and No. [562/2022](#) clarifying that the reduced VAT rate of 10 percent applies to sales of several dietary supplements, including those that contribute to (a) the well-being of hair and nails, (b) reducing tiredness and aiding the normal functioning of the metabolism, and (c) maintaining certain levels of blood glucose.

The ITA recently issued Ruling Answer No. [582/2022](#) clarifying the VAT treatment of various activities connected to the management and functioning of an online game platform dedicated to e-sports. In the case at issue, an entity managed an online game platform and organized e-sport tournaments. Interested users could sign up to participate by paying a registration fee in “betacoin,” after freely downloading the relevant application and registering a personal profile. According to the entity, the betacoin was not a cryptoasset, but was used merely as a marketing tool to identify the user and the games that could be played. A betacoin was sold at the price of one Euro and was not subject to expiry or change in value. The winning player would get an amount of betacoins equal to the sum of the registration fees paid, minus a certain

percentage constituting the remuneration for the matchmaking service provided by the managing entity. These betacoins could be used again on the platform or be redeemed. In any case, the users agreed that the betacoins could only be used on the platform and for the purposes expressly authorized by the managing entity. The ITA clarified that the provision of services to exchange Euros for betacoins falls outside the scope of VAT, because the parties to the transaction do not agree on a remuneration for such activity. Conversely, the fee paid to the managing entity for the matchmaking service is subject to VAT. Further, the sale of betacoins required to register for a tournament cannot qualify as a sale of vouchers. Indeed, the betacoins do not indicate the goods or services to be sold or the identities of their potential sellers, as required by the Italian VAT Act.

The ITA recently issued Ruling Answer No. [591/2022](#) clarifying that transactions between a company representing the temporary association of enterprises (*associazione temporanea di imprese, ATI*) and the Italian army are zero-rated only in situations in which the Italian army is acting on behalf of the North Atlantic Treaty Organization (NATO). Furthermore, sales between the company representing the ATI and the other entities participating in the ATI are not zero-rated if they act as subcontractors under a mandate without a representation agreement.

The ITA recently issued Ruling Answer No. [592/2022](#) clarifying that a taxpayer is entitled to ask for a refund of VAT erroneously charged on exempt financial services. However, this entitlement is only recognized if the one-year term for rectifying the error through the issuance of a credit note expired without any fault of the seller.

Source: Italy – Tax Authorities Clarify VAT Registration Procedure for Non-Residents (January 12, 2023), News IBFD; Italy – Tax Authorities Clarify Identification of VAT Group Representative (January 20, 2023),

News IBFD; Italy – Tax Authorities: Advance Payments Proportionally Follow VAT Treatment of Relevant Supplies (January 20, 2023), News IBFD; Italy – Tax Authorities: Issuance of Utility Token in Initial Coin Offer Falls Outside Scope of VAT (January 12, 2023), News IBFD; Italy; San Marino – Tax Authorities Clarify That Qualifying Non-Resident Taxable Persons Are Not Required to Issue E-Invoices for Supplies to San Marino (January 4, 2023), News IBFD; Italy -Tax Authorities Clarify Reduced VAT

Rate Applies to Certain Dietary Supplements (January 4, 2023), News IBFD; Italy -Tax Authorities Clarify VAT Treatment of Online Games Activities (January 9, 2023), News IBFD; Italy – Tax Authorities Clarify Supplies to Italian Army Are Zero-Rated Only if It Acts on Behalf of NATO (January 5, 2023), News IBFD; Italy – Tax Authorities Clarify Refund Entitlement for Erroneously Charged VAT (January 5, 2023), News IBFD; News IBFD.

Saudi Arabia: Overview of Recent Indirect Tax Developments

The Saudi Arabian Zakat, Tax and Customs Authority (ZATCA) recently issued a circular on the VAT treatment of real estate loan portfolio insurance. The circular provides that in the case of the real estate loan portfolio insurance, the financial institutions, not the borrower, should be considered as the customer for VAT purposes provided all of the following facts apply: (1) the financial institutions enter into insurance contracts directly with the insurers, (2) they pay the insurance premium themselves and on their own account, (3) the insurance contracts cover the entire loan portfolio, and (4) the institutions are entitled to make a claim against the insurer if the insured event occurs. The circular further states that when the financial institutions incur a portfolio insurance expense and do not recharge this expense to the borrowers, this insurance must not be seen as provided by the financial institutions to the borrowers, and similarly, it will not be treated as a nominal sale. For more information, please click [here](#).

The ZATCA recently issued a circular on the VAT treatment of certain transactions in the financial services industry, including the zero-rating of certain financial services and the VAT regime of credit card payment-related services. According to the circular, services provided to non-residents, even by a Saudi branch, should be considered as zero-rated exports of services. However, ZATCA acknowledges that it is often difficult to verify that the customer does not have a branch or a fixed establishment in Saudi Arabia (which

would disqualify the transaction as an export of service). Thus, the circular provides that the certificate of incorporation issued by foreign authorities would be sufficient evidence of the customer's residence in such a foreign country. In addition, the circular states that the VAT zero-rate may be applied if the Saudi resident person, other than a customer, is receiving a direct benefit in Saudi Arabia, but is able to deduct VAT in full. Further, the circular provides that income received by an issuing bank from a non-resident payment network operator (PNO) will be treated as consideration for the service provided by an issuing bank to the acquirer bank and cannot be zero-rated just because the PNO is a non-resident. If such a service is provided by a Saudi bank to a nonresident bank, the issuing bank would need to charge VAT. If the service is provided by a nonresident bank to a Saudi bank, the latter would need to self-assess VAT under the reverse charge mechanism. The circular further clarifies that if there is any offset of the service fee charges in card payment arrangements, the gross value of each service needs to be considered for VAT purposes, not just the net amount. Finally, the service fee charges in card payment arrangements must be taken into consideration in the VAT recovery apportionment. For more information, please click [here](#).

On December 23, 2022, the ZATCA announced that the second phase for implementing e-invoicing will be effective from July 1, 2023. This phase will cover taxpayers whose sales subject to VAT exceeded SAR

500 million for the year 2021. These taxpayers will be required to integrate their e-invoice generation solution (EGS) with the ZATCA's e-invoicing (*Fatoorah*) platform and generate additional fields in their database and on tax invoices needed for integration and compliance features. Tax invoices must be generated in XML format or a PDF/A-3 (with embedded XML). As during phase one, taxpayers under phase two will be given six months during

which they can integrate their EGS with ZATCA's Fatoorah portal to issue valid tax e-invoices. Effective January 1, 2024, non-compliance may be subject to penalties. The ZATCA further issued an updated, detailed e-invoicing guideline in December 2022, which includes further details on integration with ZATCA's Fatoorah platform, failure scenarios and FAQs. For more information, please click [here](#).

Spain: Overview of Amendments to VAT Law and Recent Indirect Tax Developments

On December 23, 2022, Spain enacted the [General State Budget Law for 2023](#). Among other measures, the Budget amends the use and enjoyment (U&E) VAT sourcing provisions to limit their application to business-to-business (B2B) sales of reinsurance and capitalization services, and financial services as well as the hiring of means of transport and business-to-consumer (B2C) sales of intangibles (e.g., transfer of copyrights, patents, licenses, trademarks, advertising services, services of consultants, engineers, lawyers, etc.) and the hiring of means of transport. Under the U&E provision, the standard sourcing rules are not applicable in transactions with non-EU countries (i.e., if the vendor or the customer is outside the EU), and the transaction is effectively used and enjoyed in Spain. Further, the law excludes several transactions from the application of the VAT self-assessment mechanism. These include the leasing of real estate that is not VAT exempt and intermediation in the leasing of real estate, – where such services are provided by persons or entities that are not established in Spain – the sale of goods made by the underlying seller to the marketplace facilitating the sale of goods through a digital interface which is located in the territory of application of VAT, and exports of goods made by an exporter other than the transferor or the acquirer not established in the territory of VAT application, or by a third party acting in the name and on behalf of the said exporter. In addition, the law amends the VAT recovery rules on bad debts to align them with the

EU legislation and case law. Finally, the law introduces changes to the Spanish VAT law on the taxation of e-commerce to align more with the EU VAT law in this regard. To read a report prepared by the KPMG International member firm in Spain, please click [here](#).

On December 28, 2022, Spain [approved](#) measures for registration, reporting, record keeping, and other procedures with respect to the special tax on single-use plastic packaging, which is effective January 1, 2023. Covered taxpayers are required to register under the regime by January 31, 2023, as follows: (a) manufacturers must register in the territorial registry of the tax management office in which the establishment in which they carry out their activity is located; (b) intra-EU acquirers must register in the territorial registry of the tax management office of their tax domicile; and (c) a representative of non-resident taxpayers (to be appointed prior to when the first transaction subject to this special tax occurs) must register in the tax management office of its tax domicile. Further, the law introduces two new forms to be filed by the taxpayers: Form 592 to be filed by manufacturers and intra-EU acquirers to self-assess tax in the appropriate period (monthly or quarterly basis as with VAT obligations) and Form A22 to request refunds of the tax under specified circumstances. Payment of tax will be made within the first 20 calendar days following the end of the taxable period (first 15 days in case of a direct bank payment). Finally, manufacturers are required to maintain computerized accounts. Intra-EU acquirers

must keep a record book of stock through the electronic office of the Spanish tax authorities. The accounts and the book of stock shall be filed with the Spanish tax authorities through electronic means within the month following the taxable period to which it refers. A transitory provision allows for the possibility of filing the accounts and book of stock for the first half of 2023 by July 2023.

On December 28, 2022, Spain [approved](#) measures for registration and reporting the tax on waste disposal into landfills and waste incineration and co-incineration (waste tax), which is effective January 1, 2023. The tax rate ranges between EUR 0 and EUR 40 per metric ton, depending on the type of waste. The Spanish autonomous communities would be able to manage the tax within their territory. The following taxpayers must register in the territorial registry of the establishment in which the activity is carried out, by January 31, 2023: (a) individuals or entities managing authorized landfills, publicly or privately owned, where waste is delivered for disposal; (b) individual or entities managing authorized incineration facilities, publicly or privately owned, where waste is delivered for disposal or energy recovery; and (c) individuals or entities managing authorized co-incineration facilities, publicly or privately owned, where waste is delivered for disposal or energy recovery. In addition, the law requires taxpayers to submit returns (Form 593) to the tax management office in which the taxpayer's establishment carries out the activity, is located, in each of the autonomous communities if the taxable

activity is carried out in such a jurisdiction. If the taxpayer owns several establishments located in the same autonomous community, the tax management office may permit the filing and payment of a single centralized self-assessment in an authorized collaborating entity. The filing of Form 593 is not required in those autonomous communities that assume the management of the tax and, accordingly, must approve their own models. Filing of tax returns is required on a quarterly basis. Tax payments should be made within 30 days after each taxable period (25 days in case of a direct bank payment).

According to news reports, Spain has delayed until 2024, the implementation of the proposed reporting obligation on a cryptocurrency holder, which was expected to be released in January 2023 (for transactions realized in 2022). The proposal was published for public consultation in July 2022, and would require reporting of cryptocurrency account balance information, transactions, and cryptocurrencies held abroad.

Source: KPMG International member firm in Spain; Spain – Government Approves Registration, Reporting Measures for Special Tax on Single-Use Plastic Packaging, (January 9, 2023), News IBFD; Spain – Government Approves Registration, Reporting Measures on Waste Tax, (January 9, 2023), News IBFD; Spain – Spain Delays Implementation of Reporting Obligations on Cryptocurrency Holders Until 2024, (January 9, 2023), News IBFD.

United Kingdom: Overview of Recent Indirect Tax Developments

On January 4, 2022, the UK tax authority (HMRC) [announced](#) the implementation of a new VAT penalty regime effective from January 1, 2023. The regime was previously scheduled to apply from April 1, 2022 but was delayed to January 1, 2023. Under the regime, a penalty point will be given for every late return and a GBP 200 (\$242.3) penalty will be levied once the penalty points threshold is reached and, again, for every subsequent

late submission while at the threshold. The penalty point threshold is set by the accounting period as follows: annually – a 2 penalty point threshold, quarterly –4 penalty points, monthly –5 penalty points. Generally, penalty points will be removed after 24-months of compliance. Penalties will also apply to late payments. A charge of 2 percent will apply for VAT outstanding after 15 days and again after 30 days. A further penalty will then be applied

at a rate of 4 percent a year from the 31st day until payment is made. Penalties can be avoided by agreeing to a time-to-pay arrangement with HMRC. To allow a period of familiarization with the new system, HMRC will not charge a first late payment penalty until after December 31, 2023, provided full payment or a time-to-pay arrangement is made within 30 days of the payment due date. Finally, interest will be charged on the late payment of VAT at the Bank of England base rate plus 2.5 percent.

On January 6, 2023, HMRC released a form for taxpayers seeking to disclose the use of a sales suppression tool. HMRC is encouraging taxpayers who have used such systems to make a disclosure between January 6, 2023, and April 9, 2023. In exchange, taxpayers can reduce the penalties they face for non-compliance. HMRC further published guidance on its webpage titled [“Make a disclosure about misusing your till system.”](#) This details which taxpayers are eligible to use the disclosure and explains how to inform HMRC of the taxpayer’s intention to make a disclosure. The amnesty follows an international operation by the tax agencies of the US, the UK, Canada, the Netherlands, and Australia (collectively acting as the J5) into an international sales suppression operation.

On January 11, 2023, the UK’s First Tier Tribunal (FTT) published its decision in *TalkTalk Telecom Ltd*, [TC/2014/00781](#), on whether a discount offered, but not taken up, could reduce the consideration for VAT purposes and whether a taxpayer met the conditions under the UK VAT law for this purpose. In the case, from January 1 to April 30, 2014, TalkTalk, a telecommunications provider, offered most of its retail customers the option of receiving a 15 percent discount on its services if their monthly bills were paid within 24 hours; this was called the “Speedy Payment Discount” or “SPD.” TalkTalk accounted for VAT on the basis that the consideration received for VAT purposes was reduced by the discount, regardless of whether customers had in fact paid within the 24 hours. Around 3 percent of customers benefitted from the SPD. TalkTalk considered its approach was consistent with the UK VAT Act which

provides that if goods or services are sold for a consideration in money and on terms allowing a discount for prompt payment, the consideration shall be taken as reduced by the discount, whether or not payment is made in accordance with those terms. That provision was amended with effect from May 1, 2014, so the relevant period lasted only four months. On February 9, 2015, HMRC decided that the SPD offer only reduced the consideration for VAT purposes if customers had actually paid the reduced amount and that there was no reduction when the discount was not taken up. On April 20, 2015, HMRC issued an assessment for GBP 10,606,226 (\$ 12,854,640) to recover the VAT underpaid during that four-month period. TalkTalk appealed HMRC’s decision and the related assessment to the FTT, and the two appeals were consolidated. The first issue was whether TalkTalk had interpreted the law correctly, and the second issue was whether, on the facts of the case, the relevant provisions of the VAT Act applied to TalkTalk.

On the first issue, TalkTalk argued that the meaning of the relevant sections of the UK VAT law was clear, and its interpretation was supported by the history of the legislation. On the other hand, HMRC argued TalkTalk’s interpretation was inconsistent with the EU VAT directive, and even if TalkTalk correctly interpreted the relevant provisions of the domestic VAT law, the FTT still had to apply the principle of conforming construction to rule in the HMRC’s favor. Under that principle, if an EU Member State is trying to enact EU law, which has a direct effect, then so far as is possible, the domestic law should be read as conforming with EU law. The FTT found in favor of TalkTalk. It reasoned that the UK legislation was very clear that VAT was only due on the discounted amount, even if the discount was not taken. In this regard, the FTT held that the principle of conforming construction could not apply to read the UK law as giving effect to the EU law.

On the second issue, HMRC argued that TalkTalk did not meet the conditions to account for VAT on the discounted amount in any event because the relevant provision of the UK VAT law provides that the discount applied only to

services provided “on terms allowing a discount for prompt payment.” Contracts between TalkTalk and its customers were governed by terms and conditions (“the T&C”) published on TalkTalk’s website. The SPD was not referred to in the T&C, but on a separate dedicated page within the same website. TalkTalk argued that the T&C had been modified by the SPD option so that the services had been on terms allowing a discount for prompt payment, and that this applied to both services billed in advance (such as line rental), and those billed in arrears (such as call charges). On this issue, the FTT found for HMRC, ruling that the SPD was an offer by TalkTalk to vary the T&C on a month-by-month basis in relation to charges for services, the timing of payment, and the payment method used by customers. It was only if a customer accepted the SPD offer within the narrow 24-hour window that the T&Cs were varied for that month. The contractual variation happened at the time of the sale and the payment, and thus there were no terms “allowing a discount for prompt payment” on a future date.

On January 23, 2023, the UK’s Upper Tribunal (Tax and Chancery Chamber) published its decision in *WM Morrison Supermarkets Plc, UT/2021/000148*. Morrisons accounted for VAT at the standard rate of 20 percent on several types of food bars sold to its customers despite it considering the bars to be zero-rated for VAT purposes as “food of a kind for human consumption.” The UK VAT law provides an exception to the general rule by excluding confectionery from being zero-rated, which means that chocolates, sweets, and biscuits are standard-rated. Morrison’s therefore requested a refund of the overpaid VAT, which HMRC denied. In an earlier ruling, the FTT had decided that Morrisons’ food bars were confectionery,

not cakes, and consequently must be standard-rated instead of zero-rated for VAT. Using its multifactor assessment, the FTT explained that the bars were sweet and typically were eaten between meals, also highlighting that the bars had bright packaging, like confectionery. The decision notes that the multifactor assessment involves evaluating the characteristics of products to determine whether “the ordinary person on the street” would consider the product a confectionery. It also upheld HMRC’s refusal to pay the disputed VAT. In its appeal to the Upper Tribunal, Morrisons argued that the FTT hearing, which included tastings of several of the products in question, had made two errors: omitting the question of the products’ healthiness and rejecting the relevance of the absence of ingredients typically found in confectionery. HMRC claimed that both alleged errors are immaterial to the outcome of the FTT’s decision and that they would not outweigh the other factors previously decided. Finding in favor of Morrisons, the Upper Tribunal held that the missing elements are relevant, and emphasized that the multifactor assessment is qualitative and that the examination cannot simply consist of counting the number of factors that weigh in favor of one side or the other. It remitted the case to the lower court for a fresh decision.

Source: United Kingdom – United Kingdom Introduces New VAT Penalty Regime, (January 9, 2023) News IBFD; CCH, Global VAT News & Features, HMRC Issues Form For Sales Suppression Disclosures, (Jan. 9, 2023); Taxnotes, U.K. Tribunal Finds Telecom Can’t Use Speedy Payment Discount Terms as Basis for VAT Bill, January 11, 2023; Taxnotes, U.K. Tribunal Must Rehear Supermarket’s Food Bar VAT Case, January 25, 2023.

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China: New Draft VAT Law Published

On December 27, 2022, the Chinese National People's Congress (NPC) published the first draft of a new VAT law. In November 2019, the Chinese Ministry of Finance and State Tax Administration jointly issued a VAT Law consultation paper ("the Consultation Paper"), which sought to unify the different VAT regulations applicable to goods and services. After collecting feedback from various stakeholders, they prepared the current draft. The new draft aims to enhance the adoption of OECD International VAT/ GST guidelines into the draft law, in particular by adopting the place of consumption approach in determining whether a transaction is sourced to China, and by allowing refunds of excess VAT credits. The draft law would further upgrade the status of the previously bifurcated VAT pilot program rules (applicable to services) and regulations (applicable to goods) to become a single substantive VAT law. The draft was open to comments through January 28, 2023.

The draft law comprises six chapters (with a total of thirty-seven articles), namely the general provisions, tax rates, taxable amounts, tax concessions, collection and administration, and supplementary notes. Compared with the existing provisional regulations and other relevant regulations, there are some noteworthy changes in the areas of taxable acts, tax jurisdiction, deemed sales, non-taxable items, simplified taxation, withholding agents, VAT credits, non-creditable VAT, mixed sales, VAT credit carry-forward and refund, and consolidated filings.

Among other measures, the draft law provides that when the VAT credit position in a certain period is greater than the VAT collected position, the excess portion may be carried forward for crediting or refund in the next period. The specific mechanism would be prescribed by the competent authorities. Moreover, the draft law defines recoverable VAT as the amount of VAT paid or borne by a taxpayer on the purchase of goods, services, intangible assets, or immovable property in connection with a taxable transaction. It further clarifies that only VAT incurred in connection with taxable transactions is creditable, while purchases for non-taxable items are not creditable.

The taxable transactions under the draft include sales of goods, services, intangible assets, immovable property, and imports of goods. The draft law would reduce the number of tax periods as compared with the existing rules by eliminating the 1-day, 3-day, and 5-day tax periods. The scope of deemed taxable transactions in the draft law would also be narrowed compared to the current VAT regulations. Therefore, consignment sales, inter-province transfers among branches, capital injection, distribution-in-kind to shareholders, and the free-of-charge provision of services would no longer be included in the deemed taxable transactions. Finally, the draft law would remove the requirement to determine whether a foreign entity or individual has a business establishment or agent in China. In these cases, the purchaser will directly be considered the withholding agent. For more information, please click [here](#).

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Korea: Tax Tribunal Clarifies Application of Preferential Tariff Rates Under Free Trade Agreements with the United States and China

The tax tribunal of Korea recently issued rulings concerning obligations to benefit from preferential tariff rates under free trade agreements with the United States and China.

In the first case, an importer applied a zero percent preferential tariff on imported goods under the Korea-United States free trade agreement. Korea Customs Service (KCS) conducted an origin verification and requested the importer to submit data proving the origin of raw materials. The importer submitted the affidavit, datasheet, manufacturing process, and certificate of origin by receiving them from the exporter, but it only described the specification of the finished goods, factory address, and production process of the finished product. Details related to the sale of raw materials, or the origin of raw materials were not shown. Accordingly, KCS denied the application of a zero percent preferential tariff and imposed customs duties, VAT, and penalties. The tax tribunal concluded that the denial of the application of the Korea-United States free trade agreement was valid because documents submitted by the importer and exporter were not sufficient to prove the origin of raw materials.

In the second case, an importer applied the preferential tariff rate under the Korea-China free trade agreement by submitting a non-preferential certificate of origin, and not a certificate of origin according to the form prescribed by the Korea-China free trade agreement. At the time of import declaration, KCS accepted the application of the preferential tariff. However, KCS conducted the origin verification a few years later and collected the customs duties, VAT, and penalty by denying the preferential tariff since the importer did not submit the certificate of origin in the form prescribed by the Korea-China free trade agreement. At issue was whether it was valid to exclude the application of the preferential tariff under the Korea-China free trade agreement because they did not have a valid certificate of origin. The tax tribunal concluded that it was valid to collect customs duties, VAT, and penalties because the importer failed to present the legitimate certificate of origin at the time of importation, regardless of KCS's acceptance. To read a report prepared by the KPMG International member firm in Korea, please click [here](#).

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In Brief

- **Algeria:**^{xxiv} On December 29, 2022, Algeria published the Budget Law for 2023, which reorganized the VAT exemption for hydrocarbon-related activities, expanded the VAT exemption to all acquisitions made by the Red Crescent and associations with humanitarian nature, and clarified the VAT treatment applicable to property development activities and construction operations. The changes are effective January 1, 2023. The Budget Law for 2023 further relaxed the conditions for deducting VAT on invoices by (1) increasing the threshold allowed for the deductibility of VAT on invoices paid in cash from DZD 100,000 to DZD 1,000,000 and (2) allowing the deduction of VAT on invoices paid by bank transfers in addition to other accepted means of payment.
- **Argentina:**^{xxv} On January 23, 2023, the Argentina tax authority (AFIP) published General Resolution 5320/2023 amending the registration and withholding procedures for VAT and income tax to address increases in electronic commerce activity effective April 1, 2023. The Resolution increases the VAT registration and withholding thresholds to monthly activity levels of 10 transactions or more, and monthly total transaction amounts of ARP 200,000 or more. The Resolution further amends the forms, deadlines, and other conditions for tax withholding agents; updates the qualifications for the simplified withholding regime for small taxpayers; and amends the procedure for calculating withholding tax amounts.
- **Argentina:**^{xxvi} On December 29, 2022, AFIP issued General Resolution 5308/2022, which postpones to June 30, 2023, the deadline for passenger transport companies to provide information for reimbursement of VAT related to years 2019, 2020, and 2021.
- **Australia:**^{xxvii} The Australian Taxation Office recently announced that the penalty unit amount for 2023 rose to AUD 275 from AUD 222 effective January 1, 2023. The penalty unit is used to calculate penalties for various tax-related infractions, including failure to lodge (i.e., one unit for every 28 days a return is outstanding for small entities, and 500 units for significant global entities).
- **Australia:**^{xxviii} The Australian government recently announced that the Administrative Appeals Tribunal (AAT) will be replaced with a new federal administrative review body. The government said the AAT will continue to operate until the new body is established. Once the new body is established, any remaining cases will transition to that entity.
- **Belarus:**^{xxix} On January 23, 2023, the Belarusian Ministry of Taxes and Duties issued Guidance Letter 2-1-13/00255 requiring Belarusian resident legal entities, including those operating under the simplified taxation system, and individual entrepreneurs, to self-assess VAT on goods, works, services, or property rights purchased in Belarus from foreign individual entrepreneurs who are not registered with the Belarusian tax authorities. This new guidance applies to sales transactions in which the sale occurred on or after January 1. Previously, this obligation applied only when Belarusian taxable persons purchased goods, works and services, and property rights in Belarus from foreign companies not registered with the tax authorities in Belarus.
- **Brazil:**^{xxx} On January 12, 2023, Brazil published Provisional Measure No. 1.159, which excludes state VAT (ICMS) from the basis for calculating the Contribution for the Social Integration Program (PIS) and the Contribution for the Financing of Social Security (COFINS) effective May 1, 2023. This is in line with an earlier Brazilian supreme court decision that the inclusion of ICMS in the basis for PIS/COFINS was unconstitutional. The Provisional Measure further provides that ICMS levied on purchases cannot be included in the calculation of PIS/COFINS credits.

- **Brazil:**^{xxxix} Effective December 16, 2022, the Brazilian federal Attorney General's Office, the Ministry of Economy, the Ministry of Mines and Energy and the Federal States have reached an agreement to settle existing disagreements involving the collection of ICMS on fuel and electricity. The federal government and the states reached a consensus regarding the recognition of the essential nature of diesel oil, liquified petroleum gas (LPG), and natural gas. With this recognition, the ICMS rate applicable to diesel oil, LPG, and natural gas is limited to 17 percent, allowing a reduction in the price of fuel. To read KPMG's previous discussion of the uniformity of ICMS rates on transactions involving fuel, please click [here](#).
- **Bulgaria:**^{xxxix} On January 17, 2023, Bulgaria published changes to several thresholds for VAT refund claims filed by non-EU taxpayers, including an increase from BGN 50 to BGN 100 in the minimum amount of refund that may be requested for the annual period and an increase from BGN 400 to BGN 800 in the minimum amount of VAT refund requested for a period of less than 1 year but not less than 3 months. In addition, persons requesting VAT refunds will have to declare the ratio between their taxable activities and VAT-exempt activities. Finally, Bulgaria introduced various administrative simplifications. For instance, claimants are allowed to provide relevant electronic certificates issued by other tax administrations as well as copies of the documents related to the incurred VAT (instead of the original copies).
- **Chile:**^{xxxix} On January 15, 2023, the Chilean Ministry of Finance announced that the Finance Committee of the Chamber of Deputies approved VAT reform proposals to encourage the formalization of micro-enterprises and to add anti-avoidance measures. If approved by the parliament, the proposal would defer VAT payments for taxpayers initiating activities and registering sales of up to 2,400 account units (UF) in their first two years, by allowing a 100 percent credit for VAT paid during the first six months, a 50 percent credit for VAT paid during the following six months, and a 25 percent credit for VAT paid during the remaining 12 months. The reform would further modify the VAT refund mechanism for exporters; allow the tax authorities to determine the VAT liability when a taxpayer has not started activities; modify the definition of a special taxable event for the sale of fixed assets; and eliminate the special taxable event for leasing of furnished properties.
- **China:**^{xxxix} On January 9, 2023, China's Ministry of Finance and State Administration of Taxation, and Ministry of Science and Technology jointly issued Announcement No. 1 of 2023 on a VAT exemption and reduction policy for small-scale VAT taxpayers applicable from January 1 to December 31, 2023. A small-scale taxpayer is a taxpayer whose business revenue in the last 12 months is less than CNY 5 million. According to the Announcement, a small-scale taxpayer whose monthly revenue is not more than CNY 100,000 is exempt from VAT. Small-scale taxpayers that are currently subject to the 3 percent flat rate will be subject to a 1 percent flat rate. Taxpayers engaged in services of a productive nature are allowed an additional 5 percent input VAT credit. These taxpayers are those whose aggregated revenues from postage, telecommunications, modern services (such as R&D and technical services), and lifestyle services (including food and beverage, cultural and sports services, education, health care, travel, hotel, entertainment, and citizens' daily services such as funeral services, hairdressing, massage, and elderly care) account for more than 50 percent of their total revenues. This additional credit is increased to 10 percent for taxpayers whose revenues from lifestyle services are more than 50 percent of their total revenues.
- **Denmark:**^{xxxix} On January 5, 2023, the Danish Customs and Tax Administration published Tax Board Binding Answer No. SKM2023.6.SR clarifying the partial VAT deduction right for companies with both -taxable and VAT-exempt activities. In the case, a Danish financial business developed a software platform for the sales of financial services to its customers. It then modified it for securities trading and sold the rights to it to a jointly owned company

to operate and market as part of the joint venture. The platform was available to the taxpayer's customers after the sale. The taxpayer sought clarification on the application of the partial deduction to the sale. The Tax Board observed that the taxpayer used the platform both before and after the transfer. The taxpayer thus met the condition that the transfer constituted delivery of an investment asset that was used in the company. Consequently, the gross receipts from the sale of the rights should not be included in the computation of the VAT recovery apportionment.

- **Denmark:**^{xxxvi} On January 17, 2023, the Danish Customs and Tax Administration published National Tax Court Decision No. SKM2023.29.LSR clarifying the VAT liability on the sale of a property to a sister company. In the case, a taxpayer sold a property to a sister company. The taxpayer's holding company later sold the property to an external buyer for a higher price. The tax authority found that the company's VAT must be determined based on the normal market value, which it construed to be the higher price the external buyer paid. The tax court agreed with the tax authority's decision and held that the sister company did not have the right to deduct VAT because its purchase price was lower than the production cost, and the VAT base should be set at the normal market value because the taxpayer and the sister company at the time of sale had the same owner and director.
- **Denmark:**^{xxxvii} On January 19, 2023, the Danish Customs and Tax Administration posted published Board Binding Answer No. SKM2023.31.SR clarifying the VAT deduction right of holding companies. In the case, a holding company intended to purchase management services from its parent company and invoice them to its subsidiaries. The company sought clarification on whether it had a right to deduct VAT on management fees and if its management services are economic activity for VAT deductions. The Tax Board held that the company was liable for VAT when it intended to sell management services to the project companies for consideration. In addition, the company can deduct the VAT incurred on the purchase of the services, because they were purchased exclusively for the provision of management services to the project companies.
- **Estonia:**^{xxxviii} Effective January 1, 2023, Estonia increased the Intrastat reporting threshold for dispatches from EUR 200,000 to EUR 270,000. The Intrastat arrivals reporting threshold remains EUR 400,000.
- **European Union:**^{xxxix} On January 20, 2023, the European Commission launched a [consultation](#) on a draft implementing regulation for the new rules on the exchange of information on income generated by sellers through digital platforms (DAC7). The regulation exempts platform operators outside the EU from the DAC7 reporting requirements when performing commercial activities in the EU if they are already subject to reporting requirements in the jurisdictions that have implemented the OECD marketplace reporting rules. In particular, the regulation would clarify the criteria for assessing and determining the extent to which the national law of a non-EU jurisdiction and an agreement between the competent authorities of a Member State and a non-EU jurisdiction ensures that the information received by that Member State relates to the activities within the scope of the DAC7 reporting rules.
- **France:**^{xl} On December 30, 2022, France published the Finance Law for 2023 which entered into force on January 1, 2023. Among other measures, the Finance Law introduces an alternative procedure (the electronic seal procedure) for e-invoicing, moves the deadline for a VAT group annual declaration listing the members of the VAT group to January 10, and transposes into French law the EU [Directive](#) requiring payment service providers to report on cross-border payments and their recipients effective January 1, 2024. To read KPMG's previous discussion of the EU's directive regarding the recordkeeping and reporting obligation for payments service providers, please click [here](#).

- **France:**^{xlii} On January 18, 2023, the French General Directorate of Public Finance opened a [consultation](#) on proposed new rules for the declaration and payment of import VAT. The proposed rules would refresh the definition of imports subject to VAT and clarify the sourcing rules for imports. The proposed rules would further clarify the determination of VAT on intra-EU acquisitions of goods and imports from non-EU countries as well as the suspension of VAT on specific intra-EU transactions. Finally, the proposed rules would clarify the determination of the tax base in specified circumstances and the conditions for VAT deductions.
- **Germany:**^{xliii} Germany recently decided to delay a requirement for non-EU sellers of travel packages to collect and remit German VAT when selling German travel packages to tourists. Such a requirement was initially to be effective January 1, 2023. However, following talks with the industry in late 2022, the government announced that the change would be delayed by one year, until at least 2024.
- **Ghana:**^{xliiii} On January 19, 2023, Ghana published the [VAT Amendment Act No. 2 of 2022](#), which amends the VAT Act effective January 1, 2023. The amendments introduce new VAT exemptions for specific activities; clarify the transitional provisions for determining when a taxpayer must use an electronic VAT invoicing system; exclude specific activities from the scope of VAT; and introduce additional administrative penalties for noncompliance.
- **Guatemala:**^{xliiv} On December 23, 2022, the tax authority of Guatemala (*Superintendencia de Administración Tributaria – SAT*) announced the launch of the Electronic Tax Book System (*Sistema de Libros Electrónicos Tributarios – LET*) effective January 1, 2023. The LET enables taxpayers to generate purchase and sales books (for maintaining records of transactions) electronically and to interface directly with the SAT to facilitate compliance with the tax process. The use of the LET is free and available 24 hours a day, 365 days a year.
- **Hungary:**^{xliv} On January 5, 2023, the Hungarian tax authority published Information Booklet Nos. 14, 17, 18, and 29, regarding the 2023 VAT invoicing rules. The booklets VAT rules for new taxpayers, including on VAT assessment and payment, tax exemptions, and invoice and receipt issuance requirements; basic rules for issuing invoices and receipts applicable to all taxpayers; special taxation methods; certification requirements for invoices and receipts; tax determination, settlement, and declaration; and the VAT rules for cross-border sales of goods and services.
- **Hungary:**^{xlvi} On January 10, 2023, the Hungarian tax authority published [Information Booklet No. 15](#) regarding the VAT exemption for products sold to foreign passengers. The Booklet clarifies the definition of foreign passengers, including the rules for determining the place of residence of an individual; highlights that for the exemption to apply the consideration paid by the tourist must exceed EUR 175 including tax; and clarifies the refund process including that the exemption applies only if the goods leave the EU within 90 days of their purchase as well as the documentation requirements and the VAT refund claim form.
- **Isle of Man:**^{xlvii} The Isle of Man Treasury recently issued a release on changes in the penalties and interest for late VAT returns and payments effective January 1, 2023. The new rules generally align with the UK rules. Detailed VAT Penalties and Interest Guidance has also been provided. These changes will apply to all VAT returns, including “nil” returns and those seeking a refund of VAT from Customs & Excise. There will also be changes to how late payment interest is charged. The amendment of the Value Added Tax Act 1996 will take effect from 1 January 2023.

- **Kazakhstan:**^{xlviii} On December 21, 2022, Kazakhstan published [Law No. 165-VII KRZ](#) which, among other things, reduces the term for claiming a VAT refund to 75 working days from 155 working days; imposes VAT on temporarily imported goods that remain in Kazakhstan for more than two years; and amends the deadlines for issuing electronic invoices on sales of imported goods.
- **Kenya:**^{xlix} On January 20, 2023, the Kenya Revenue Authority published the [draft Value Added Tax \(Electronic, Internet and Digital Marketplace Supply\) Regulations, 2023](#). If approved, the regulations would amend the current VAT rules applicable to non-resident digital services providers. Among other changes, the regulations clarify that the following services are in scope of the non-resident VAT digital services rules: (1) services that link the vendor to the recipient including transport-hailing services or platforms; (2) the sale of, licensing of, or any other form of monetizing data generated from the users' activities; and (3) facilitation of online payments or exchange of digital assets excluding services exempt in the VAT Act. The regulation would further clarify that non-resident digital services providers are exempted from the requirement to issue an e-invoice and clarify the geolocation rules to determine the location of the customer.
- **Lithuania:**^l On December 22, 2022, Lithuania published [Law No. XIV-1661](#), which increases the minimum fine for unjustified VAT underpayment from 10 percent to 20 percent and increases the maximum fine for unjustified VAT underpayment from 50 percent to 100 percent. The law is effective May 1, 2023.
- **Lithuania:**^{li} On December 21, 2022, Lithuania published [Law XIV-1629](#), which amends the VAT registration anti-avoidance rules for related legal entities that are controlled by the same person alone or together with other related persons effective January 1, 2023. The Lithuanian VAT law provides that small companies with gross receipts of less than EUR 45,000 do not have to register for VAT. However, Lithuania initially excluded from this registration threshold businesses with lower gross receipts when their ultimate owner's annual income exceeded the EUR 45,000 threshold, even when that person's other businesses are legally independent, and the arrangement does not use purely artificial structures. Following an infringement proceeding of the European Commission, Lithuania has now amended the anti-avoidance measure so that it does not apply if a group can demonstrate that (1) none of the management bodies and/or individual members of those bodies is the same person, and (2) their actual economic activities are not of the same nature, and (3) they do not act for each other's benefit or interests.
- **Moldova:**^{lii} On December 30, 2022, Moldova published [Law No. 356/2022](#) on the 2023 state budget, which allows taxpayers to claim a refund of accumulated VAT incurred on expenditures effective January 1, 2023.
- **Moldova:**^{liii} Effective January 1, 2023, Moldova introduced a mandatory electronic tax reporting requirement for all taxpayers, except for individuals not carrying out business activities and not making charity or sponsoring contributions to eligible entities.
- **Namibia:**^{liv} On December 29, 2022, Namibia published the [Value-Added Tax Amendment Act, 2022 \(Act No. 14 of 2022\)](#), which is effective January 1, 2023. The Act, among other things, allows a person carrying on a taxable activity, but not yet making taxable sales, to be registered for VAT purposes. In addition, such a person is allowed to recover VAT incurred when the intent is to make future taxable sales. The Act also amends the VAT deduction by requiring the following conditions must be met: (1) the taxable activity conducted by the registered person during the tax period or during the preceding tax periods is connected with the making of taxable sales; and (2) with respect to VAT paid on imports, the import of goods by the registered person during the tax period or during the preceding tax periods is

connected with the making of taxable sales. The Act further clarifies that when interest or penalties are payable in addition to the amount of VAT due and the total amount due is not paid in full, the payment will be allocated in this order: VAT due, interest due, and penalty due. Finally, the Act zero-rates sales of sanitary pads.

- **Nepal:**^{lv} On January 8, 2023, the Nepali Inland Revenue Department published updated [VAT Rules](#) covering: (1) registration requirements; (2) VAT exemptions; (3) tax payment for the sale of goods and services under contracts; (4) temporary registration for taxpayers engaged in taxable transactions in an exhibition, fair, or similar other programs; (5) VAT revenue determination for purposes of registration; (6) cancellation of VAT registrations; (7) filing of VAT returns; (8) assessment and recovery of VAT collected by an unregistered person; (9) VAT deductions; and (10) forms to be used by taxpayers.
- **North Macedonia:**^{lvii} On January 3, 2023, the North Macedonian Public Revenue Office published a guide on the VAT self-assessment requirement under the so-called reverse charge mechanism. The guide defines “reverse charge” and discusses the general principles of VAT, including the application of the reverse charge mechanism. The guide clarifies the transactions to which the reverse charge mechanism applies and the conditions for applying the reverse charge mechanism. The guide further covers the application of the reverse charge mechanism in specific transactions such as construction services, shipment of specified waste materials, and forced collection. Finally, the guide clarifies the compliance requirements, including invoicing and reporting requirements.
- **Norway:**^{lviii} On January 6, 2023, Norway published [Regulation No. FOR-2023-01-05-16](#) amending existing VAT regulations effective January 5, 2023. The amendments require that sales documents state the recipient’s address is outside the VAT territory of Norway for purposes of claiming the zero-rating on the provision of cross-border services. The amendments further specify the required transaction overview information to be maintained by nonresident digital services providers registered under the simplified VAT compliance regime.
- **OECD:**^{lviii} On January 5, 2023, the Organization for Economic Cooperation and Development (OECD) released a [report](#) providing an intergovernmental fiscal outlook and exploring the implications of the Russian conflict with Ukraine as it relates to higher energy prices and inflation. The report starts by providing the economic context for several OECD countries. It clarifies that governments are stepping in to cushion the impact of high energy prices and food costs on households and businesses, which is often done by the central government, although subnational governments are also playing their part in several countries. The most common type of measure implemented across OECD countries is non-targeted price support, followed by targeted income support. Energy tax reductions (e.g., excise duties or VAT/GST reductions) are characterized as untargeted price measures as their effect is to reduce the price of the affected product to all consumers.
- **OECD:**^{lix} On January 24, 2023, the OECD published the [comments](#) received on the Draft Multilateral Convention (MLC) Provisions on Digital Services Taxes (DSTs) and other Relevant Similar Measures. The draft MLC provisions reflect the commitments with respect to the removal of all existing DSTs and other relevant similar measures and the standstill of future measures as part of Pillar One. Notably, several comments called for certainty over which taxes are digital services taxes or similar measures and subject to removal under the Amount A multilateral convention.
- **Portugal:**^{lix} Effective January 1, 2023, Portugal introduced mandatory e-invoicing and the standard audit file for tax (SAF-T) reporting obligation for all VAT registered businesses, including all companies with fiscal representation in Portugal (i.e., non-EU businesses

registered for VAT). To comply with this requirement, companies must (1) issue invoices via certified Portuguese invoicing software that can allocate a unique ATCUD code (an eight-digit code that is allocated by the Portuguese Tax Authority prior to issuing the invoice); (2) include a QR code on the invoices (a unique two-dimensional bar code); and (3) report invoices monthly via a SAF-T billing file (xml file), which contains full details of all local sales.

- **Portugal:**^{lxi} On December 30, 2022, Portugal published Law No. 24-D on the 2023 state budget. The law increases the VAT registration threshold from EUR 12,500 to EUR 13,500 in 2023, to EUR 14,500 in 2024, and to EUR 15,000 in 2025. It also applies the reduced 6 percent VAT rate to specific food items, acquisitions and repairs of bicycles, pellets, and briquettes produced from biomass, boilers and space heaters using biomass, and access to live shows and events.
- **Romania:**^{lxii} On December 29, 2022, Romania published Government Ordinance No. 2.545/6.316/2022 introducing several changes and additional specifications to the RO e-Transport system, which is used to track goods that qualify as high tax risks effective January 1, 2023. The Ordinance changes the categories of road vehicles covered by monitoring in the RO e-Transport system, the total gross mass of the goods covered by the consignment of goods for which there is an obligation to declare in the RO e-Transport system, and considerations in establishing the total value of goods with a high fiscal risk that is the subject of shipments declared in the RO e-Transport System. The Ordinance further covers issues related to the determination of the value of the undeclared goods to be confiscated, modification of the data declared in the RO e-Transport system after obtaining the ITU code (used to further identify the goods), and updates on shipping agricultural products, which are considered goods with high fiscal risk. To read KPMG's previous discussion of Romania's RO e-Transport system, please click [here](#).
- **Romania:**^{lxiii} On January 20, 2023, Romania published Order No. 2509/5672/C/2022 regarding the layout and content of the "Request for Fiscal Registration" form and the related instructions. Until now, both newly established legal entities and individuals have been unable to register for VAT purposes during the initial "Trade Register" procedure. A separate VAT registration procedure must be performed at the tax authority's level. However, the amendment improves the registration procedure by making it possible for newly established legal entities and individuals to immediately request registration for VAT purposes as part of the Trade Register procedure without the need for an additional VAT registration procedure.
- **Sao Tome and Principe:**^{lxiv} The Government of Sao Tome and Principe has reportedly announced that it will introduce a new VAT regime to replace the current consumption tax regime as agreed to with the International Monetary Fund (IMF). The VAT regime would be implemented in 2023, with an expected standard rate of 15 percent, as well as a lower rate for sales of certain basic goods.
- **Singapore:**^{lxv} The Inland Revenue Authority of Singapore (IRAS) recently published several updated GST e-Tax Guides to reflect the GST rate increase from 7 percent to 8 percent effective January 1, 2023. The updated guides include the [GST Guide for Retailers](#), the [GST Guide on Exports](#), the [GST Guide on Reimbursement and Disbursement of Expenses](#), the [GST guide for the Gold Jewelry Industry](#), the [GST Guide for Motor Vehicle Traders](#), and the [GST Guide on Hand-Carried Exports Scheme](#). Further to the updated e-Tax Guides, the IRAS has also updated its website guidance on [Conditions for Claiming Input Tax](#). This includes revised GST treatment of motor car expenses and the removal of COVID-19-related medical expenses following changes to the COVID-19 measures. To read KPMG's previous discussion of Singapore's rate change, please click [here](#).

- **Singapore:**^{lxvi} On December 30, 2022, Singapore published Regulation No. S 1034 amending the GST regulations effective January 1, 2023. Regulation No. S 1034 amends the requirements for simplified invoices and allows taxpayers to claim GST credits for use in reducing GST owed, subject to unlimited carry-forward or carry-back of unused amounts.
- **Slovakia:**^{lxvii} On December 30, 2022, Slovakia published [Law No. 516/2022](#) amending the VAT Act effective January 1, 2023. The Law increases the VAT registration threshold to EUR 49,790 and sets the procedures and requirements for VAT registration exemptions and cancellations. The Law further exempts goods and services purchased or imported by the EU from VAT, if made available free of charge to combat the coronavirus pandemic. In addition, the law amends the VAT deduction obligation rules for the non-payment of VAT and the VAT refund rules. Finally, the Law introduces requirements for payment service providers to report on cross-border payments and their recipients effective January 1, 2024. To read KPMG's previous discussion of the EU's directive regarding the recordkeeping and reporting obligation for payments service providers, please click [here](#).
- **South Africa:**^{lxviii} On January 20, 2023, the South African Revenue Service issued [Binding General Ruling \(BGR\) 63](#) on the VAT deduction procedure for deemed sales of goods repossessed by creditors or surrendered by debtors. The BGR requires creditors to maintain certain records to claim VAT deductions for repossessed or surrendered goods, sets the requirements for deemed sales involving vendor and non-vendor debtors, and establishes standards for determining the outstanding cash value of repossessed and surrendered goods. The BGR applies effective January 1, 2023.
- **Thailand:**^{lxix} On January 13, 2023, the Thai Revenue Department [clarified](#) that taxpayers are not allowed to deduct VAT in cases of transfers of collateral assets for settlement of debts and specified company sales of assets to a trustee, under a resale clause.
- **Türkiye:**^{lxx} On December 30, 2022, Türkiye published [General Communiqué on Value Added Tax No. 44](#) increasing the VAT refund threshold from TRY 25,700 to TRY 57,300 for 2023 transactions subject to a reduced VAT rate. The Communiqué further extends the temporary VAT exemption for certain deliveries of new machinery and equipment until December 31, 2024.
- **Türkiye:**^{lxxi} On December 30, 2022, Türkiye published [General Communiqué No. 544](#) on the Tax Procedural Law increasing the tax penalty amounts for tax year 2023. Effective January 1, 2023, for companies, the first-degree irregularity penalty will be TRY 700 and the second-degree irregularity penalty will be TRY 370. In addition, the special irregularity penalty that applies if delivery notes are not issued is set at TRY 2,200. The special irregularity penalty for not issuing invoices is set at TRY 2,200. Finally, the special irregularity penalty for refusing to provide information is set at TRY 7,500.
- **Türkiye:**^{lxxii} On December 28, 2023, Türkiye published [Presidential Decision No. 6775](#), which increases the minimum amount for VAT refund claims arising from reduced rates or exemptions at TRY 2,000 effective February 1, 2023. In addition, the Presidential Decision extends the scope of revenue-based VAT. Taxpayers that carry out passenger transport activities within city boundaries by way of minibuses and collect revenues from such activities through electronic fare collection systems, may opt for revenue-based VAT taxation. If opted for, the revenue would be subject to the VAT rate of 1.5 percent. However, public transport enterprises owned directly or indirectly by municipalities are excluded from revenue-based taxation.

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Footnotes

- i. Botswana: Reduced VAT rate extended through 31 March 2023, KPMG Tax News Flash January 18, 2023.
- ii. Brazil – Federal Government Reduces Social Security Financing Contribution for Passenger Airlines to 0%, (January 5, 2023), News IBFD.
- iii. Brazil – President Lula Cuts Social Security Contribution Rate on Fuels to 0%, (January 6, 2023) News IBFD.
- iv. CCH, Global VAT News & Features, Cyprus Extends COVID-19 VAT Relief Measures, (Jan. 24, 2023).
- v. Czech Republic – Czech Republic Proposes Converting Multiple Reduced VAT Rates Into Single Reduced VAT Rate, (January 10, 2023), News IBFD.
- vi. Ecuador – Tax Authority Reduces Withholding VAT Rate on Sales of Petroleum Derivatives to Distributors, (January 24, 2023), News IBFD.
- vii. Ecuador – Tax Authority Clarifies Application of Zero VAT Rate on Imports for Agricultural, Aquaculture, Fishing Sectors, (January 11, 2023), News IBFD.
- viii. CCH, Global VAT News & Features, Finland Confirms VAT Zero Rate For Domestic Passenger Transport Services, (Jan. 13, 2023).
- ix. France – Finance Law for 2023 – Direct and Indirect Tax Measures, (January 18, 2023), News IBFD.
- x. Iceland Gazettes Amendments to Various Tax Laws, Bloomberg Law News (January 23, 2023).
- xi. CCH, “Global VAT News & Features, Ireland Introduces Zero Rate VAT For COVID-19 Tests”, (Jan. 23, 2023).
- xii. Bloomberg Law News, “Ghana Tax Agency Posts Amendments to VAT Act”, (January 23, 2023).
- xiii. IBFD, “Kazakhstan Introduces VAT Exemption for Raw Cane, Certain Chemicals”, (January 4, 2023).
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- xvii. European Union; Romania – Romania Exempts Import of Goods Destined for Ukrainian Refugees From VAT and Customs Duties, (January 12, 2023), News IBFD.
- xviii. Romania – Romania Expands Products and Services Qualifying for 9% VAT Rate on Fertilizers, Other Agricultural Products, (January 13, 2023), News IBFD.
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