



Inside Indirect Tax

August 2022



About this Newsletter

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

KPMG Publications

KPMG TaxNewsFlash Newsletter on COVID-19 Measures

KPMG TaxNewsFlash Newsletter on COVID-19 Measures

KPMG publishes a dedicated [TaxNewsFlash newsletter](#) reporting indirect and other tax measures adopted by countries around the globe in response to the coronavirus (COVID-19) pandemic. We encourage readers subscribe to this newsletter as jurisdictions adopt or amend their measures at a frantic pace. The most common indirect measures adopted include delays in VAT return filing and payment deadlines, relief from late payment interest and penalties, accelerating VAT refunds, and other targeted measures such as exempting certain medical equipment.

Developments Summary of the Taxation of the Digitalized Economy

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

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

Overview of Indirect Tax Developments from KPMG International Member Firms

- **KPMG in Bolivia** published a [report](#) discussing revised tax administrative and procedural measures passed by the Bolivian parliament on July 25, 2022. These measures include a reduced penalty for non-payment of taxes, an extension of the period for voluntary disclosure, and measures regarding entities or persons who conduct economic activities in Bolivia but are not registered for VAT purposes.
- **KPMG in Bulgaria** published a [report](#) discussing tax measures in the State Budget Act for 2022, which was promulgated on July 5, 2022. The VAT measures in the law include the introduction of a VAT zero-rate for bread and flour, and a 9 percent reduced VAT rate for central heating and natural gas services through July 1, 2023. In addition, Bulgaria extended the requirement for the purchaser of domestic sales of scrap and cereals to self-assess VAT under the reverse charge mechanism.
- **KPMG in Cambodia** published a [report](#) discussing additional guidelines issued on June 7, 2022 for the implementation of VAT on tangible fixed assets. The guidance supplements existing guidance regarding the VAT treatment of tangible fixed assets that an enterprise has but which have not been used for more than one year in the conduct of the business. It clarifies the proper VAT implications of fixed assets, depending on the circumstances, and provides criteria for VAT exemptions. Based on the instruction, the documentation process is vital to mitigate the risk of a “deemed sale” issue. This includes proper bookkeeping, maintaining sufficient supporting documents, and notifying the tax authority, as necessary.
- **KPMG in Canada** published a [report](#) discussing the reduction in the regulatory fee on business insurance coverage. The fee applies to businesses and individuals who purchase insurance coverage for risks in Alberta from an unlicensed insurer. Effective May 31, 2022, the regulatory fee related to these insurance premiums will be reduced from 50 percent to 10 percent of the premium paid. Generally, affected insured persons must disclose the insurance coverage and pay this fee within 30 days of receiving the insurance coverage. Businesses and individuals that do not disclose and timely pay the fee are subject to an additional 10 percent penalty (reduced from 50 percent) calculated on the regulatory fee.
- **KPMG in Canada** published a [report](#) discussing recently issued guidance for the new luxury tax on aircraft. The report notes that the government has finalized the effective date of the rules for aircrafts to be September 1, 2022, which is the same date as for vehicles and boats included in the scope of the new tax (i.e., “subject” items). The government also announced that it intends to release draft regulations related to the new tax to (1) clarify that the existing transitional rules will continue to apply to all subject items, including aircraft; (2) relieve the new tax on sales of certain aircraft for export at the time the sale is completed by a registered vendor, even if the exportation occurs at a later time; and (3) simplify and reduce the reporting requirement for certain automotive vendors. Businesses are generally required to register under the Canadian Revenue Agency’s luxury tax system before selling or importing items subject to the new luxury tax. These businesses may also need to be registered before purchasing an inventory of subject items for these purchases to qualify for exemption certificates and relieving of the new tax.

- **KPMG in France** published a [report](#) discussing revised guidelines regarding the option to apply VAT on the provision of financial services that are otherwise VAT exempt. Under the Finance Law for 2022, the VAT option for financial services is now applicable to operations (or transactions) that the taxpayer determines as being within the scope of the provisions. The provision allows for the option to be applied “à la carte” and is no longer an “all-in” option. Therefore, the taxpayer is not bound to apply VAT to every financial operation or transaction within the scope of the option, but can select operations by categories, by client profile, or even on an operation-by-operation basis. The revised guidelines cover the following areas: (1) the “free choice” character of the option, (2) the formal requirements and the effective date, and (3) the treatment of cross-border operations or transactions.
- **KPMG in Germany** published a [report](#) discussing recent VAT developments, including recent ECJ cases, on the VAT treatment of intra-EU drop shipments under the triangular simplification and the VAT adjustment for a company that has not exercised its entitlement to deduct VAT before the deadline for doing so expires. The report further discusses the introduction of a reduced VAT rate for sales made by charitable organizations, the revised interest rate on tax deficiencies and refunds, and rulings from the German federal tax court.
- **KPMG in Gibraltar** published a [report](#) discussing tax measures in the Gibraltar budget for 2022 which was delivered on June 28, 2022. The proposed indirect tax measures in the budget include an import duty waiver for all commercial imports except certain commodities, the revocation of the 10 percent flat rate of import duty on all personal imports over GBP 25 (\$30.50) in value except specified commodities, the introduction of a GBP 3 (\$3.66) levy per night for hotel stays and a GBP 1 (\$1.22) environmental levy per passenger on cruise ships, and a review of the existing penalties regime.
- **KPMG in Hungary** published a [report](#) discussing the extension of the financial transaction tax to cross-border payment services. Effective July 1, 2022, Hungary expanded the scope of the financial transaction tax to service providers providing cross-border payment services, credit and loan-related services, currency exchanges, and mediated currency exchange services in Hungary. “Cross-border services” are defined as the provision of financial services or auxiliary financial services in a country other than the country in which the seat, place of business, head office or branch of the service provider is located, and the place of business or permanent residence of the customer using the services is not in the country in which the service provider has its seat, place of business, head office or branch. This means that non-Hungarian entities or branches providing these payment services to Hungarian customers will be affected by this change. These providers are required to register by September 1, 2022, if they became subject to the financial transaction tax on July 1, 2022. If their liability begins after July 1, 2022, they are obligated to register by the 1st day of the month following the day when tax liability has arisen. The general tax rate is 0.3 percent of the amount of the transaction but capped at HUF 10,000 (\$26) per transaction. Some transactions are exempt from the tax such as bank transfers up to HUF 20,000 (\$52.24) initiated by private individuals.
- **KPMG in India** published a [report](#) discussing various GST rate rationalization and clarification measures recommended by GST Council in a meeting held on June 28-29, 2022. The recommended measures include trade facilitation and streamlining GST compliance and rate changes effective from July 18, 2022. These include increasing the GST rate for utensils (from 12 percent to 18 percent), and agricultural products processing machinery (from 5 percent to 18 percent), among others. The GST Council further recommended revoking the 5 percent concessionary rate for petroleum, coal bed methane,

and introducing a 12 percent rate instead. In addition, it recommended that the GST exemption for some services be withdrawn, including for transportation by rail, storage or warehousing of certain commodities, and fumigation. Further, the Council issued several clarifications on the rates that should apply to various goods and services. For instance, it clarified that electric vehicles whether fitted with a battery pack or not are eligible for the concessional GST rate of 5 percent. It agreed also that the renting of a vehicle with a driver to transport goods should attract an 18 percent rate. However, if the cost of fuel is included in the price, the rate should instead be 12 percent. The Council also agreed to waive the late fee for Forms GSTR-4 for the 2021-22 fiscal year provided they are filed by July 28, 2022, rather than by June 30, 2022. It also agreed to extend the deadline for Form GST CMP-08 for the first quarter of FY2022-23 until July 31, 2022 (from July 18, 2022). It also agreed to launch a public consultation on comprehensive changes to form GSTR-3B. Subsequently, the Indian Central government issued notifications implementing the recommendations effective July 5, 2022.

- **KPMG in India** published a [report](#) discussing a recent decision of the Rajasthan High Court in *Baker Hughes Asia Pacific Limited* on the refund of GST credits under an inverted tax structure (i.e., when the GST rate on sales is lower than the GST rate on purchases). In the case, the taxpayer sold goods at a concessional GST rate to a company granted exclusive rights by the Indian government to carry out petroleum operations. The Indian tax authority, relying on a Circular, denied the taxpayer's refund claim on the ground that a refund under the inverted tax structure is not available when the transactions relating to the GST credit and sales are the same, leading to no value addition on the goods sold. The court however held that the Circular was a subordinate legislation in conflict with the parent legislation and thus could not be applied to deny the taxpayer's refund claim. Moreover, the taxpayer's refund claim related to a period prior to the issuance of the guidance and thus cannot be relied on.
- **KPMG in India** published a [report](#) discussing a recent decision of the Karnataka High Court in *DPJ Bidar – Chincholi (Annuity) Road Project Private Limited* on the GST treatment of deferred payments for road construction. In the case, the high court ruled that the guidance from the Central Board of Indirect Taxes and Customs (CBIC) stating that deferred payments paid for the construction of roads is not GST exempt was invalid.
- **KPMG in Indonesia** published a [report](#) discussing new implementing regulations for the recent VAT reform law. The new regulations address VAT on foreign e-commerce transactions; sales of certain liquefied petroleum gas, tobacco products, subsidized fertilizer for the agriculture sector (other VAT base regime); self-construction activities and sales of certain agricultural products, used motor vehicles and certain taxable services; taxable and non-taxable goods and services subject to regional tax; transactions with the government; trading of crypto assets; financial technology (fintech); and VAT invoicing and administration.
- **KPMG in Italy** published a report discussing the nonbinding opinion of the Advocate General (AG) of the Court of Justice of the European Union (ECJ) in *Airbnb Ireland and Airbnb Payments UK*, [Case C-83/21](#), in which the AG opined that the tax regime in Italy for short-term rentals imposing obligations on property intermediaries does not violate the freedom to provide services and does not preclude the obligation to collect and transmit information or to withhold tax. However, the AG found that an obligation to appoint a tax representative constitutes a disproportionate restriction on the freedom to provide services.

- **KPMG in Malaysia** published a [report](#) discussing several indirect tax bills which were presented to parliament on July 20, 2022. The proposed amendments will affect the following indirect tax regimes customs, excise, free zones, tourism, windfall profit levy, and departure levy. The amendments propose to empower the Minister of Finance to extend the periods stipulated in relevant legislations due to the occurrence of any public emergency or public health crisis, and to vary the terms and conditions as determined in relevant legislations, provided that reasonable notice is given to the person bound by the terms and conditions.
- **KPMG in Mexico** published a [report](#) which notes that the tax authority published an updated list of foreign providers of digital services who are registered for VAT in Mexico. As of June 30, 2022, 155 entities are registered under the regime.
- **KPMG in Mexico** published a [report](#) discussing a recent decision of the Mexican Supreme Court, in which it held that conditions regarding the procedure file 85/CFF in which the notice of fiscal liquidation of legal entities is authorized is unconstitutional. The procedure file 85/CFF establishes as a condition that there are no omissions, differences, and inconsistencies in the declaration for early termination of provisional payments, withholdings, or other amounts in relation to the e-invoices (CFDI), files, documents, or databases that the tax authorities have in their possession or to which they have access. The court found the conditions were not provided for in the federal law or regulations and exceeded the purpose of the early notification.
- **KPMG in the Netherlands** published a [report](#) discussing the temporary tax rate on energy and fuel. On June 28, 2022, the Dutch Senate passed a law to reduce the VAT rate on energy from 21 percent to 9 percent for the period July 1, 2022, through December 31, 2022; and to reduce the excise duty on fuel by 21 percent with a retroactive effect from April 1, 2022.
- **KPMG in the Netherlands** published a [report](#) discussing a change to the Dutch policy statement on VAT fixed establishments that was published on July 5, 2022. On June 14, 2002, the Dutch Supreme Court ruled that a transaction within a legal entity is not subject to VAT if it is conducted between branches in different countries. In its judgment, the Supreme Court opined that a Dutch VAT group comprises the entire legal entity (i.e., both the Dutch fixed establishment and the foreign head office). The ECJ in its judgments in *Skandia*, [Case C-7/13](#) (September 17, 2014), and *Danske Bank*, [Case C-812/19](#) (March 11, 2021), called this Dutch line of reasoning into question. In those cases, the ECJ concluded that a VAT group constitutes a separate taxpayer that is not linked to any foreign fixed establishment or a foreign head office. In the revised policy, the Ministry of Finance abandons the line of reasoning put forth by the Supreme Court in 2002. Cross-border transactions within a legal entity may now be subject to VAT if the entity is a member of a VAT group in a different country. In the policy statement, the term “VAT group” is defined as a VAT group that is in an EU Member State. It is clear from the explanatory note that the policy statement does not apply to non-EU-based VAT groups.
- **KPMG in Pakistan** published a [report](#) discussing tax measures in the Finance Bill for 2022. The legislation includes measures affecting the income tax, withholding tax, capital value tax, sales tax, excise tax and customs duties laws. The report also notes that the Finance Bills 2022 of the provinces of Punjab and Khyber Pakhtunkhwa have been enacted; they also include certain tax-related measures.

- **KPMG in Panama** published a [report](#) (in Spanish) discussing Executive Decree No. 25 dated June 27, 2022. The Decree establishes the timetable for using authorized fiscal equipment and electronic invoicing.
- **KPMG in the Philippines** published a [report](#) discussing several tax authority guidance regarding receipts and invoices that were published on Jun 30, 2022. Revenue Regulations (RR) No. 06-2022 prescribes the policies and guidelines for the removal of the five-year validity period on invoices of taxpayers who apply for the authority to print, register a computerized accounting system (CAS)/component of CAS, and use cash register machines and point-of-sale machines. Revenue Regulations No. 08-2022 prescribes the policies and guidelines for the issuance of electronic receipts or sales or commercial invoices and the implementation of electronic sales reporting system. Revenue Regulations No. 09-2022 prescribes the policies and guidelines for the admissibility of sales documents in electronic format.
- **KPMG in Poland** published a [report](#) discussing recent VAT developments, including a recent ECJ decision on the VAT treatment of chain transactions, an ECJ AG opinion on the validity of the Polish excise duty regulations, and a decision of the Supreme Administrative Court on the application of the punitive provision of the VAT law when no fraud has occurred.
- **KPMG in Poland** published a [report](#) discussing the launch of pre-consultation regarding assumptions for implementation of the common European regulatory framework for reporting income earned through the use of digital platforms under [DAC7](#). The draft assumptions provide for a raft of sanctions for non-compliance including removal from the register of VAT taxpayers and financial penalties ranging from PLN 100,000 (\$22,031) to as much as PLN 5,000,000 (\$1,101,575).
- **KPMG in Poland** published a [report](#) discussing recent real estate tax developments, including a scheduled increase to the maximum real estate tax rate, and a recent Supreme Administrative Court decision on tax-deductible costs of sale of real estate acquired under a contract of transfer of title to secure a promissory note.
- **KPMG in Romania** published a [report](#) discussing recent tax law changes. The VAT law changes include repealing application of the reduced VAT rate non-alcoholic drinks; increasing the reduced VAT rate applicable to hotel accommodation, restaurant, and catering services from 5 percent to 9 percent; and extending application of the reduced 5 percent VAT rate for wood and firewood until December 31, 2029. In addition, Romania increased the excise tax for alcoholic beverages and cigarettes by approximately 5 percent, effective August 2022.
- **KPMG in Slovenia** published a [report](#) discussing the increase in the “fire fee” rate from 5 percent to 9 percent effective October 1, 2022. The “fire fee” is an amount that is paid from the insurance premium the policyholder pays for an insurance contract issued against fire risk.
- **KPMG in Tanzania** published a [report](#) discussing tax measures in the Finance Act for 2022, including an expansion of the scope of capital goods that qualify for VAT deferral, amendments to the VAT exemption schedule, and amendments to the excise tax regime.

- **KPMG in Uganda** published a [report](#) discussing tax measures in the budget for 2022, including proposals amending the definition of an exempt import, clarifying the VAT treatment of sales to the government, adding organizations on the list of Public International Organizations entitled to a VAT refund, and amending the list of transactions exempt from VAT exemptions.
- **KPMG in the United Arab Emirates** published a [report](#) discussing a recent tax authority guidance that establishes a one-year time limit for tourists to claim VAT refunds on purchases made in the country. It provides that such time limit is to be duly disclosed in the VAT refund operator’s published list of terms and conditions. In addition, the VAT refund operator must return any unclaimed VAT amounts to the tax authority within one month of the expiration of the prescribed time limit.

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Global Rate Changes

- **Belgium:**ⁱ Belgium recently [announced](#) an extension of the 6 percent reduced VAT rate for electricity until December 31, 2022. The reduced rate was scheduled to expire on September 30, 2022. Belgium further clarified that the 6 percent reduced VAT rate for natural gas and district heating will also apply to natural gas and heating through heat networks until September 30, 2022 (this expiration date was not extended). Further, the 6 percent reduced rate for heat pumps will not apply to “hybrid” installations (i.e., installations that, in addition to electricity, also use other energy sources).
- **Botswana:**ⁱⁱ On July 27, 2022, Botswana temporarily reduced its VAT rate from 14 percent to 12 percent and introduced a zero rate for cooking oil and liquid petroleum gas. The rate reduction applies from August 1, 2022, to January 31, 2023. On August 11, 2022, Botswana published [guidance](#) on the transitional rules regarding the temporary VAT rate reduction.
- **Brazil:**ⁱⁱⁱ Brazil recently amended the rates for the Social Integration Program (PIS) and Social Security Financing (COFINS) for petrochemical plants and chemical industries. This includes PIS and COFINS rates of 1.26 percent and 5.8 percent, respectively, for the period January to March 2022 and rates of 1.65 percent and 7.6 percent, respectively, for the period April to December 2022. For all of 2023, PIS and COFINS rates of 1.39 percent and 6.4 percent will apply.
- **Bulgaria:**^{iv} On July 13, 2022, Bulgaria [clarified](#) the application of the temporary VAT rate reduction (from 20 percent to 9 percent) for central heating and natural gas and a zero rate for bread and flour. It provided details on the scope of products for which the temporary rates will be applied and includes specific examples of products that will remain subject to the standard 20 percent VAT rate. For example, it specifically mentioned that the VAT zero rate for bread does not apply to sandwiches, hamburgers, pasta, croissants, and pastries.
- **Guyana:**^v On July 21, 2022, Guyana [proposed](#) two bills, which would reduce the final tax on mining activities from the maximum of 3.5 percent to 2.5 percent and exempt cement, cement board, sheetrock, and lubricating oil from VAT.
- **Italy:**^{vi} On August 9, 2022, Italy announced an extension of the temporary reduced VAT rate of 5 percent on natural gas for domestic (civil) and industrial purposes to October, November, and December 2022. The reduced rate applies to invoices issued for estimated or actual consumption in these months. Further it also extended the 25 percent tax credit for electricity and natural gas expenses of qualifying energy intensive Companies, the 15

percent tax credit for electricity expenses of other qualifying companies; and the reduced 5 percent VAT rate on natural gas used for transportation purposes until September 20, 2022.

- **Norway:**^{vii} On July 14, 2022, the European Free Trade Association (EFTA) Surveillance Authority [announced](#) that it approved Norway to continue applying a zero VAT rate on certain electronic news services until March 1, 2028. The zero-rating was originally scheduled to expire on March 1, 2022. The extended zero-rating is limited in scope as it applies only to electronic news services distributed via broadcasting and on-demand services, mainly containing audio or audio-visual content.
- **Paraguay:**^{viii} On July 11, 2022, Paraguay [announced](#) that the provision of qualifying transport services is subject to the standard VAT rate of 10 percent on 50 percent of the service price. Qualifying transport services include national medium and long-distance passenger transport that is not already VAT exempt; passenger transport provided through school (bus) transport, taxis, and similar modes; and national and international cargo transport. The reduced rate applies from July 12, 2022, through September 30, 2022.
- **Poland:**^{ix} On July 15, 2022, Poland [introduced](#) a VAT zero rate on specified fertilizer products from July 16, 2022 through October 31, 2022, and on specified medicinal products retroactive to May 17, 2022.
- **Romania:**^x On July 15, 2022, Romania [published](#) an Ordinance in which it announced that the following services have been included in the scope of services subject to the 9 percent reduced VAT rate: accommodation in the hotel sector or in sectors with a similar function, including land rental for camping; restaurant and catering services, with the exception of alcoholic beverages and certain non-alcoholic beverages; and delivery of chemical fertilizers and chemical pesticides of the type normally used in agricultural production. Romania further announced that the provision of dwellings with a maximum area of 120 square meters and maximum value (including land) of RON 600,000 (\$126,110) and limited to a single purchase by a natural person is included in the scope of services subject to the reduced 5 percent VAT rate.
- **Slovakia:**^{xi} Effective January 1, 2023, Slovakia will introduce a 5 percent reduced VAT rate for rental housing.
- **Slovenia:**^{xii} Slovenia announced plans to reduce the VAT rate on natural gas, electricity, remote heating, and firewood for heating from 22 percent to 9.5 percent from September 1, 2022 through May 31, 2023.
- **Thailand:**^{xiii} On June 28, 2022, the Thai Revenue Department [announced](#) that the cabinet approved a royal decree establishing a conditional VAT exemption for qualified data center businesses that provide specific data hosting services. The conditional exemption applies to such items as servers and related equipment for the purpose of storing, processing, and connecting electronic data through the internet; and information resources to provide disaster recovery sites, connections with internet service providers or cloud service providers, managing services, and security services. The exemption is available for qualified data center business operators that comply with all rules, procedures, and conditions as prescribed by the Revenue Department and have notified their intention to request the exemption within 5 years from the date the royal decree comes into force.

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Indirect Tax Developments and News from Around the World

The Americas

United States: Comprehensive Interim Guidance Issued on Taxability of NFTs in Washington State

The Washington State Department of Revenue recently issued an “interim” statement on the tax treatment of non-fungible tokens or NFTs. At this point, the Washington guidance is the most comprehensive document issued by any state taxing authority addressing the tax issues associated with NFTs. Its coverage includes, but not limited to, determining the taxability, selling price of NFTs, and the sourcing rules that apply to retail sales of NFTs, confirming that marketplace facilitators will be required to remit taxes on sales of NFTs, and providing guidance on the Business and Occupation (B&O) tax treatment of income from sales of NFTs. The B&O tax is a variable rate gross receipts tax levied instead of a corporate net income tax.

After first explaining what NFTs are, the document generally describes terms used by industry participants. The guidance describes an NFT as a “unique digital identifier that cannot be copied, substituted, or subdivided, that is recorded in a blockchain, and that is used to certify authenticity and ownership of a specific type of product.” NFTs are distinguishable from cryptocurrency, which is fungible, based in part on the unique nature of NFTs.

With respect to the tax treatment of NFTs, the Department notes that it is critical to consider: a) whether the transaction is comprised of multiple components or merely a digital code which grants the owner access to a digital good, b) the taxability of each underlying component, and c) the identity of the parties to the transaction (e.g., is the purchaser a consumer or reseller?) Generally, the selling price of an NFT is measured by

the consideration received by the seller, whether from the purchaser or a third party. The Department anticipates that, in some cases, consideration will be received in the form of cryptocurrency. If a seller receives cryptocurrency in exchange for an NFT, the value of the cryptocurrency tendered must be converted to U.S. dollars as of the time of the sale.

The guidance sets forth certain types of arrangements involving NFTs, including one situation in which the object of the purchase is a standalone digital product (i.e., the NFT itself). Examples include digital artwork, photographs, video clips, autographs, etc. The Department notes that with respect to this type of transaction, the sale of a digital product is generally subject to Washington State retail sales tax, and the seller will also be subject to retailing B&O tax measured by the gross proceeds of the sale.

The Department anticipates that sales of NFTs may entitle the purchaser to a digital product (i.e., the NFT itself) and one or more other products or services. In these situations, the seller must determine the taxability of each good or service included in the sale. When considering transactions that involve the sale of products that both do and do not constitute a “retail sale,” for one nonitemized price, the “bundled transaction” statutes control whether the entire sale price is subject to retail sales tax or whether each item provided is taxed separately.

With respect to the sourcing of sales of NFTs for sales tax purposes, the guidance reminds taxpayers of the sourcing rules for retail

sales of digital products and addresses how income from sales of NFTs will be sourced for B&O purposes. The document includes four examples of sales transactions involving NFTs.

Finally, the guidance indicates that persons meeting the definition of marketplace facilitator under Washington law will be required to collect retail sales tax on taxable transactions involving NFTs. Further, marketplaces taking a commission from retail sales of NFTs sourced to Washington are subject to B&O tax under the service and other activities category.

The Department notes that the statement is not intended to be comprehensive, and that it anticipates conducting future stakeholder efforts with the goal of developing more permanent and comprehensive guidance. For taxpayers that require binding guidance, the Department encourages requests for binding letter rulings on the topics addressed in the interim guidance. Please stay tuned to TWIST for more updates on state tax issues associated with NFTs.

Chile: Proposal to Expand Nonresident Digital Services Rules to All Remote Services

On July 7, 2022, the Chilean government submitted to the parliament a [tax reform proposal](#), which proposes to amend the VAT obligations of nonresident service providers. The proposal would expand the scope of the current rules, which are limited only to digital services, and apply them to all services provided by nonresidents. The proposal would further amend the geolocation rules so that a consumer is deemed to be in Chile if one of the geolocation elements is in Chile instead of two. The tax reform further proposes to include a deeming provision to consider a service as being used in Chile when, at the

time of registering into the system of the service provider, the user states that he is resident in Chile for tax purposes, not just VAT. In addition, the tax reform would further expand the scope of the simplified compliance mechanism to include all remote services providers, clarify the responsibility of financial intermediaries required to withhold VAT when the nonresident is not registered for VAT, and clarify the responsibility of intermediaries such as marketplaces so that the Chilean tax authority can explicitly require intermediaries to collect VAT on any remote services they facilitate through their platforms.

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Europe, Middle East, Africa (EMA)

European Union: Roundup of Recent ECJ Cases

On May 5, 2022, the ECJ published its decision in *BV*, [Case C-570/20](#), in which it held that the fundamental right guaranteed by Article 50 of the Charter of Fundamental Rights of the European Union (right not to be tried or punished twice in criminal proceedings for the same offense) does not preclude national legislation to allow the duplication of administrative and criminal proceedings and penalties in situations of fraudulent concealment or omissions on a

VAT refund. The offense must be clearly defined by law and by case law, and it must be reasonably foreseeable at the time the offense is committed that that it is liable to be the subject of a duplication of proceedings and penalties of a criminal nature. However, the Charter does not preclude national legislation which does not ensure proportionality between the seriousness of the offense and the severity of all the combined penalties.

On June 30, 2022, the ECJ published its decision in *Megatherm-Csillaghegy*, [Case C-188/21](#), in which it held that the EU VAT Directive precludes a national provision that deprives a VAT registered taxpayer, whose tax identification number has been revoked and then reinstated, of its right to deduct VAT in the period preceding the revocation, even if the substantive requirement for the right to deduct VAT is satisfied and the taxpayer has not acted fraudulently or abusively to benefit from that right.

On July 7, 2022, the ECJ published its decision in *X*, [Case C-194/21](#), in which the ECJ ruled that the EU VAT Directive does not preclude a taxpayer who failed to exercise the right to deduct VAT before the expiry of the limitation period in national law from being denied the possibility of subsequently making that deduction, by way of an adjustment, at the time when those goods or services are first used for the purposes of taxed transactions, even where no abuse of rights, fraud or loss of tax revenue has been established.

On July 14, 2022, the ECJ published the nonbinding Opinion of its AG in *Luxury Trust Automobil GmbH*, [Case C-247/21](#), in which the AG opined that stating “exempt intra-EU(intra-EU) triangular transaction” on an invoice is not in itself sufficient to transfer the VAT liability from an intermediary company to the buyer in a chain transaction. The AG further opined that an invoice that contains the required indication “Reverse charge” can still be issued subsequently if the recipient of the sale receives the invoice.

On July 15, 2022, the ECJ published its decision in *Arvi ir ko v.*, [Case C-56/21](#), in which it held that the [EU VAT Directive](#) does not preclude national legislation which makes the right of a taxpayer to opt to charge VAT on the sale of immovable property conditional on the transfer of that property to a taxpayer who, at the time of conclusion of the transaction, is already registered for VAT purposes. The EU VAT Directive does further not preclude national legislation and practice under which

the seller of immovable property is required to adjust the deduction of VAT on that property following the refusal to recognize the seller’s right of option for taxation with respect to that sale on the ground that, at the time of the sale, the purchaser did not satisfy the conditions required of the seller to exercise that right. Although the actual use of the immovable property in question by the purchaser in connection with activities subject to VAT is irrelevant in that regard, the competent authorities are nevertheless required to ascertain whether there has been fraud or abuse on the part of the taxpayer who intended to exercise the right of option for taxation with respect to the transaction in question.

On August 1, 2022, the ECJ published its decision in *Navitours*, [Case C-294/21](#), in which it held that a Member State must tax passenger transport performed by a service transport provider established in that Member State within a territory which, pursuant to an international treaty concluded between that Member State and another Member State, constitutes a joint territory under joint sovereignty of the two Member states and which is not subject to any exception provided for by EU law, provided that those services have not already been taxed by the other Member State. The taxation by one of the Member States of those services prevents the other Member State from taxing them in turn, without prejudice to the possibility for those two Member States to regulate in another way the taxation of services performed within that territory, inter alia by means of an agreement, provided that non-taxation and double taxation is avoided.

On August 1, 2022, the ECJ published its decision in *Uniqa Asigurări SA*, [Case C-267/21](#), in which the ECJ ruled that claims settlement services provided by third-party companies in the name and on behalf of an insurance company do not qualify as services of consultants, engineers, consultancy bureau, lawyers, accountants, and other similar services. Therefore, when such services are

provided to individuals established outside the EU, the service should be sourced in the EU Member State where the service provider is located and not where the consumer is established.

Source: Taxnotes, Austrian Luxury Car Firm Owes VAT for Incorrect Invoice, AG Says, July 15, 2022; Taxnotes, Taxnotes, Lithuania's Limitation on VAT Option Justified, CJEU Holds, July 1, 2022; Polish VAT Laws Applied to Nonexempt EU Goods Violate EU Law, July 8, 2022; European Union; France – ECJ Decides on Duplication of Proceedings and Penalties Related to VAT Returns: BV (Case C-570/20) (VAT), (July 4, 2022) News IBFD; European Union; Netherland – ECJ Decides on Whether Input VAT Deduction Is Allowed

Although Time Limit to Make It Has Passed: Staatssecretaris van Financiën (Forclusion du droit à déduction) (Case C-194/21) (VAT), (July 7, 2022), News IBFD; European Union; Poland – ECJ Decides on Place of Taxation of Intra-EU Supply in Chain Transactions: Dyrektor Izby Skarbowej w W. (Qualification erronée d'opérations en chaîne) (Case C-696/20) (VAT), (July 7, 2022), News IBFD; European Union; Romania – ECJ Decides That Claims Settlement Services Provided in the Name and On Behalf of an Insurance Company Are Out of the Scope of Supplies of Services Carried Out as Part of the Professions Listed in Article 56(1)(c) of the VAT Directive: *Uniqa Asigurări SA* (Case C-267/21) (VAT), (August 1, 2022) News IBFD.

European Union: Overview of Recent Indirect Tax Infringement Procedures

On July 22, 2022, the EU Commission sent letters of formal notice (the first step of an infringement procedure) to the UK in which it launched four new and additional infringement procedures against the United Kingdom for not complying with significant parts of the Protocol on Ireland/Northern Ireland. When the UK left the EU on January 1, 2021, the EU rules no longer applied to the UK. The Protocol on Ireland/Northern Ireland, however, clarifies that certain trade and customs rules as well as VAT rules pertaining to goods remain applicable to Northern Ireland for a transitional period. The letters of formal notice request the UK tax authorities to take swift remedial actions to restore compliance with the terms of the Protocol. The UK has two months to reply to the letters, after which the Commission stands ready to take further measures. Specifically, the infringement procedures were launched in respect to (1) failure to comply with the applicable customs requirements, supervision requirements, and risk controls on the movement of goods from Northern Ireland to Great Britain; (2) failure to notify the transposition of EU legislation laying down general EU rules on excise duties, which will become applicable from

February 13, 2023; (3) failure to notify the transposition of EU rules on excise duties on alcohol and alcoholic beverages, which facilitate access for small and artisan producers to lower excise duty rates, among other provisions; and (4) failure to implement EU rules on VAT for e-commerce, namely the Import One-Stop Shop (IOSS).

The EU Commission further sent letters of formal notice to Belgium, Greece, Spain, Austria, and Portugal for failing to transpose a [Directive \(EU\) 2019/2235](#) establishing the indirect tax rules that should apply to equipment for the defense of Europe effective July 1, 2022. The Directive aligns the VAT and excise duty treatment of defense efforts undertaken within the EU and within the North Atlantic Treaty Organization (NATO) umbrella. It introduces an exemption from VAT and excise duties for sales to armed forces when these forces are deployed outside their own Member State and take part in activities under the Common Security and Defense Policy. Sales to armed forces participating in a NATO defense effort can already benefit from such exemptions. According to the EU Commission, by aligning the tax treatment of both defense

efforts, the directive contributes to improving European capabilities in the field of defense and crisis management and strengthening EU security and defense.

On July 15, 2022, the EU Commission sent reasoned opinions (the second step of an infringement procedure) to Greece, Latvia, and Portugal for failing to notify the measures to transpose the [Excise Framework Directive \(Recast\) \(2020/262\)](#), laying down the general arrangements for excise duty and repealing and replacing [Excise Directive \(2008/118\)](#) into their national legislation. Member States were required to transpose this Directive by December 31, 2021. The infringement procedures were initiated on January 27, 2022, by way of a letter of formal notice sent to 16 EU Member States. Greece, Latvia and Portugal have not, as of the date of the reasoned opinion, notified any transposition measures of the directive into their national legislation to the European Commission. They now have two months to comply with the transposition obligation and notify the European Commission of the actions taken on this matter. If they fail to comply with this obligation within 2 months, the European Commission may decide to refer the cases to the ECJ.

In addition, the EU Commission sent a reasoned opinion to Portugal for failing to ensure the transposition of the new EU rules on the harmonization of the structures of excise duties on alcohol and alcoholic beverages ([Council Directive 2020/1151](#)). The directive sets up an EU-wide certification system for small and artisan alcohol producers, which facilitates their access to low excise duty rates across the EU. Member States were required to transpose this directive by December 31, 2021. In January 2022, the Commission sent letters of formal notice to 11 Member States, including Portugal, after they had failed to fully transpose the Directive.

On July 15, 2022, the EU Commission sent a reasoned opinion to Greece for failing to fulfill its obligations under the [EU VAT](#)

[Directive](#) regarding the exemption of certain postal services. The infringement procedure was initiated on June 9, 2021, by way of a letter of formal notice sent to Greece for the broad application of the VAT exemption for postal services. Under the Greek legislation, all postal services provided by the Hellenic Post ([EΛΤΑ](#)) are considered exempt from VAT (including certain services individually negotiated with the customers such as bulk mail); it is not limited to those postal services that meet only the essential needs of the population, which does not comply with the aim of the exemption that is to encourage certain activities of public interest. The European Commission decided to send a reasoned opinion because Greece has not provided a satisfactory response to the letter of formal notice regarding the situation. If within 2 months, Greece continues failing to comply with the VAT directive, the European Commission may decide to refer the case to ECJ.

On July 15, 2022, the EU Commission issued a reasoned opinion to Cyprus for failing to transpose the measures adopted by [Council Directive 2021/1159](#) of July 13, 2021, amending the EU VAT directive with regard to the temporary exemptions on importations and certain goods in response to the COVID-19 pandemic. The procedure was initiated on January 27, 2022, when the EU Commission decided to send a letter of formal notice to Bulgaria, Cyprus, Greece, Ireland, Latvia, Portugal, and Slovenia regarding the absence of transposition of the temporary COVID-19 exemptions into their domestic legislation; the exemptions were to have been adopted and published by the concerned EU Member States by December 31, 2021. Since the date of the formal notice, Cyprus has not notified the EU of any transposition measures. A reasoned opinion has therefore been sent by the European Commission to Cyprus which now has 2 months to respond and take the necessary measures after which the Commission may decide to refer the case to the ECJ.

On July 15, 2022, the European Commission announced that it closed the infringement procedure against Hungary regarding the illegal application of the VAT reduced rate for Internet access services, as well as those involving Malta, Poland, and Portugal, regarding the application of reduced VAT rates to children's diapers.

Source: Taxnotes, Protocol on Ireland/Northern Ireland: Commission launches four new infringement procedures against the UK, July 22, 2022; CCH, Global VAT News & Features, EU States Reprimanded For Failing To Ensure Defense VAT Break, (Jul. 21, 2022); CCH, Global VAT News & Features, EU Takes Three States To Task On New Excise Tax Directives, (Jul. 18, 2022); European Union; Greece; Latvia; Portugal – European Commission Insists that Greece, Latvia and Portugal Transpose New EU Excise Framework Directive into Domestic Legislation, (July 20, 2022) News

IBFD; European Union; Greece – European Commission Urges Greece to Comply with EU VAT Rules Related to Exemption of Postal Services, (July 20, 2022) News IBFD; CCH, Global VAT News & Features, Greece Told To Abolish VAT Exemption For State Postal Service, (Jul. 18, 2022); European Union; Cyprus – European Commission Urges Cyprus to Implement New Temporary VAT Exemptions in Response to COVID-19 Pandemic, (July 20, 2022) News IBFD; European Union; Hungary – European Commission Closes Infringement Procedure Against Hungary Regarding Illegal Application of VAT Reduced Rate for Internet Access Services, (July 20, 2022) News IBFD; European Union; Malta; Poland; Portugal – European Commission Closes Infringement Procedures Against Malta, Poland and Portugal Regarding Application of VAT Reduced Rates to Children's Diapers, (July 20, 2022) News IBFD.

European Union: Overview of Recent Indirect Tax Developments

On June 28, 2022, the EU Commission published the [Annual Report on Taxation 2022](#). The report, among other things, covers developments related to the current digital and green transitions with important consequences for VAT and other indirect taxes. Regarding the digital transition and its impact on VAT, the report highlights the importance of virtual presence and the cross-border nature of activities. The report explains how the adoption of the VAT e-commerce package on July 1, 2021, has facilitated the new commercial landscape and VAT collection coming from these virtual cross-border transactions and provides some data on the first results of the application of this package. It further explains the next steps announced in the Tax Action Plan and the Commission Work Program regarding the VAT in the Digital Age initiative proposed to be adopted by the end of 2022. They will mainly address the following issues: VAT digital reporting requirements and e-invoicing; VAT treatment of the platform economy; and single VAT registration in the

EU. The report further discusses the rise of multisided platforms, intangibles assets including cryptocurrencies, and the role of administrative cooperation. The report posits there is some level of tax evasion associated with transactions carried out through digital platforms. In view of the rapid development of these platforms, several initiatives to tackle the evasion have been launched, including [Amending Directive to the 2011 Directive on Administrative Cooperation \(2021/514\) \(DAC7\)](#), adopted in March 2021. DAC7 creates an obligation for digital platforms to report the income earned by EU sellers on their platforms. In addition, the report points out the increasing importance of intangible assets and highlights the importance of working on developments to ensure that information related to crypto assets is made available to tax authorities. The report also discusses the digitalization of tax services and collection and use of data and administrative cooperation with a focus on the importance of the improvements in the use of technology by

tax administrations and the large pool of data collected that could improve taxpayer services and alleviate compliance burdens. Finally, with respect to the green taxation transition, the report provides an overview of the green taxation measures in the European Union; describes how taxation can contribute to the European Green Deal, including proposals for a revision of the Energy Taxation Directive and the EU Carbon Border Adjustment Mechanism (CBAM); and presents the reforms already implemented by some EU Member States in the field of environmental taxation.

On June 27, 2022, the EU Commission launched an [initiative](#) to evaluate the application of the administrative cooperation framework and the fight against VAT fraud. The initiative called for evidence from stakeholders such as Eurofisc (a network of national anti-VAT fraud experts), the EU Agency for Law Enforcement Cooperation (Europol), the European Anti-Fraud Office (OLAF), and the European Public Prosecutor's Office (EPPO), and tax and customs authorities in all EU Member States to provide their feedback. The initiative will focus on the effort to combat VAT fraud under [Council Regulation 904/2010](#), with particular attention to the provisions included in 2018 which focus on administrative inquiries made by EU Member States about taxpayers not established in their countries and cooperation between tax and customs authorities. The initiative is intended to also evaluate how

the [EU VAT e-commerce package](#) and the functioning of the One-Stop-Shop (OSS) mechanism. The initiative will also analyze the VAT Information Exchange System (VIES) as a key element of VAT cooperation.

On July 1, 2022, the European Commission adopted a decision enabling EU Member States to temporarily waive customs duties and VAT on imports from third countries of "life-saving goods" (including food, blankets, tents, electric generators, and other life-saving equipment) destined for Ukrainians affected by the war. The waiver applies to goods imported by state organizations (public bodies and bodies governed by public law including hospitals, governmental organizations, regional governments, communes/towns, etc.) and charitable or philanthropic organizations approved by the competent authorities of the EU Member States. The measure applies retroactively from February 24, 2022 and will be in place through December 31, 2022.

Source: European Union – European Commission's Annual Report on Taxation 2022 Analyses VAT in Digital Age and Environmental Taxes Developments, (July 4, 2022), News IBFD; European Union – European Commission Launches Initiative to Evaluate Administrative Cooperation and Fight Against Fraud in VAT, (July 4, 2022) News IBFD; European Union; KPMG TaxNewsFlash, EU: Waiver of customs duties and VAT on import of "life-saving goods" to Ukraine, July 1, 2022.

European Union: Report on VAT in the Digital Age

On July 21, 2022, the European Commission published its report on VAT in the Digital Age, which is broken down into five parts, including an [executive summary](#) and four volumes.

The [Digital Reporting Requirements](#) (DRR) report presents the results of a study of the current domestic DRR of the EU Member States' tax authorities. This report shows an impact assessment of the costs and benefits of the DRR for: (1) tax authorities for which the assessment shows a significant net benefit;

(2) domestic operators, which face increased costs in proportion to the complexity of the DRR adopted, but receive some benefit due to fewer requirements to provide additional information; and (3) multinational companies, which significant costs due to the lack of DRR harmonization among EU Member States. The report further identifies problems related to DRR and includes four policy options: (1) maintain the "status quo" by not introducing any harmonization measure; (2) introducing non-binding recommendations for EU Member

States on DRR and derogating the applicable legislation to introduce mandatory e-invoicing; (3) not introducing an EU DRR standard but rather a new provision in the EU VAT Directive requiring taxpayers to record transactional data according to a pre-determined format; and (4) introducing a partial or total harmonization of the EU DRR. According to the report, total harmonization of the EU DRR would have the largest positive impact across the categories considered.

[The VAT Treatment of the Platform Economy](#) report presents the findings of assessment of the role and scope of the platform economy and provides a classification of platforms and platform economy providers. The main problematic areas related to the platform economy include (1) the unclear and unharmonized VAT rules concerning the taxable status of the provider, the nature of the platforms' facilitation services, their sourcing rules, and their reporting and record-keeping obligations; (2) the difficulties in enforcing VAT compliance in the platform economy; and (3) the lack of VAT equality and neutrality. The report identifies several policy options, including (1) not introducing new measures; (2) clarifying the existing VAT rules with respect to the nature of the services and introducing a presumption on the status of platform providers and streamlining the recordkeeping obligations; (3) extending application of the deemed seller rules to platforms facilitating the provision of a limited number of accommodation and transport services; (4) extending application of the deemed seller rules to platforms facilitating all accommodation and transport services; and (5) extend the application of the deemed seller rules to platforms facilitating any type of service. According to the report, although option 2 would improve VAT compliance, the effects would be limited compared to the introduction of the deemed seller policies (options 3, 4, and 5).

[The Single Place of VAT Registration and Import One-Stop Shop \(IOSS\)](#) report summarizes the transactions that require VAT

registration by non-established businesses and identifies the following challenges for such entities: (1) businesses are often required to register for VAT purposes in EU Member States where they are not established; and (2) the growth in remote sales of imported goods (i.e., goods shipped from outside the EU-to-EU consumers) increases the number of entities required to comply with VAT and the importance of achieving compliance. The report puts forth four policy options for the One Stop Shop (OSS) (i.e., the EU-wide compliance mechanism for B2C remote sales of services and for B2C remote sales of goods within the EU) and three for the IOSS (i.e., the EU-wide compliance mechanism for B2C sales of goods that are shipped from outside the EU-to-EU consumers). The options for the OSS include: (1) not taking any measures; (2) expand the OSS to domestic B2C sales of goods by non-established vendors; (2) expand the OSS to cover B2B transactions; and (4) expanding the scope of the VAT self-assessment mechanism. Options for the IOSS include: (1) not taking any measures; (2) removing the current EUR 150 (\$154.7) threshold of the IOSS; and (3) making the IOSS mandatory. The report summarizes and compares the impacts of the options, concluding that OSS option 3 is likely to generate more substantial benefits, and, IOSS options 2 and 3 are expected to generate at least some additional benefits.

[The Consultation activities](#) report contains a summary of the targeted consultation activities and presents the synopsis of the public consultation. According to the report, 272 stakeholders participated in the consultation activities, including general businesses, VAT practitioners, and tax authorities. The public consultation ran from January 20, 2022 through May 5, 2022. A total of 193 responses were received from 22 EU Member States and five non-EU countries.

Source: European Union – European Commission Publishes Reports on VAT As Part of Digital Age Initiative, (July 27, 2022), News IBFD

Italy: Overview of Recent Indirect Tax Developments

The Milan Public Prosecutor's office recently announced that it has reached an agreement with an online streaming platform that adopts an innovative and unique approach to the issue of whether a foreign company, active in the digital economy, created a permanent establishment (PE) in Italy. In the case at hand, the authorities found that the presence of an advanced technological infrastructure on the Italian territory at data centers belonging to third parties could be considered to be a fixed place of business, even in the absence of any staff in Italy. The infrastructure was used exclusively by the platform for facilitating the transmission of information (thus qualifying the data centers as servers). The primary role of the so-called "content delivery network" was not ancillary or auxiliary to the platform's business activity. The settlement resulted in the platform paying approximately EUR 56 million (\$63.31 million) for taxes, interest, and penalties for the open years (2016 – 2019).

On July 6, 2022, the Italian tax authority (ITA) issued [Letter No.365/2022](#) in which it clarified the VAT treatment of the transfer of cadastral property involving a transfer deed of an unfinished building with lapsed titles. In the case at hand, a court had appointed a custodian for the sale of a property that was subject to an enforcement procedure pending before the court. The ITA clarified that the provision of a building by a taxpayer at a time before the date of its completion is taxable, and the transfer concerning the property would be subject to VAT and to registration tax, mortgage, and cadastral tax of a fixed amount of EUR 200 (\$203) each.

The ITA recently published [Ruling Answer No. 278/2022](#) in which it clarified that taxpayers established outside the EU cannot transfer a nonresident VAT refund entitlement claimed under the procedure set out in the Italian VAT Act to third parties. Such transfer is currently only available to taxpayers established in Israel, Norway, and Switzerland. Further, it notes that the transfer of VAT refund entitlements under an earlier law, Decree-

Law No. 70/1988, refers only to VAT refund entitlements claimed in annual VAT returns and that the law only recently extended this possibility to quarterly VAT refund claims, further proving that there was no intention to recognize this benefit for nonresident taxpayers not registered in Italy for VAT purposes.

The ITA recently issued [Ruling Answer No. 299/2022](#) in which it clarified that if a financial advisor provides various services aimed at finalizing a sale of shares, these transactions qualify as a single financial service that is VAT exempt.

On June 21, 2022, Italy published Decree Law No. 73/2022 in which it provided tax simplification measures aimed at reducing the administrative burden on taxpayers and improving tax collection. With respect to VAT, the Decree – Law clarifies that the reduced VAT rate of 10 percent applies to the provision of qualifying services in more comfortable hotel accommodations provided to persons recovering in qualifying health institutions and their companions. It further clarifies that Intrastat returns must be electronically filed by the last day (previously, the 25th day) of the month following the relevant period and that purchases of goods and services not exceeding EUR 5,000 (\$5,158) whose place of sale is outside Italy under the VAT Act are excluded from reporting invoice details of cross-border transactions (*esterometro*). In addition, Italy will not apply penalties for omitted or incorrect transmissions starting from July 1, 2022 (previously, January 1, 2022). Finally, the Decree Law extends until December 31, 2026 the application of the self-assessment requirement for the following domestic sales: mobile phones; game consoles, tablet PCs and laptops and integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end user products; the transfer of allowances to emit greenhouse gases, as defined in the Greenhouse Gas Emission Allowance

[Directive \(2003/87\)](#) and other units that may be used by operators in compliance with the directive; gas and electricity certificates to a reseller; and gas and electricity to a reseller. The Decree Law must be converted into enacted law by the parliament (with possible amendments) within 60 days from its publication.

On July 25, 2022, the ITA published [Letter No. 387/2022](#) in which it clarified the determination of tax advantages obtained under the group VAT regime. In the case at hand, a taxpayer exercised an option as the parent of a group company under the group VAT regime in 2019. The taxpayer subsequently underwent a restructuring, resulting in the erroneous inclusion of additional companies in the group that did not fulfill the financial constraint requirement as specified in the subsequent interpretation given by the revenue agency. The taxpayer sought clarification as to the tax advantage obtained, and the requirements for the group to regularize the erroneous inclusion of the companies. The ITA clarified that the tax advantage should be quantified based on what would have occurred if the companies wrongly included had not participated in the group, and the entry of the companies in the group could be postponed without requiring rectifications to the existing obligations.

On July 26, 2022, the ITA published [Letter No. 388/2022](#) in which it clarified the applicability of the 5 percent reduced VAT rate to the sale of wheeled ultrasound machines and related accessories under the special measures adopted during the pandemic. In the case at hand, the taxpayer produces diagnostic systems, including wheeled ultrasound scanners and related accessories. The tax agency ruled that the reduced VAT rate of 5 percent applies to the sale of specified products produced by the taxpayer from January 1, 2021; the VAT exemption applies to specified products for activities carried out until December 31, 2020. In this respect, the ITA held that the concessions apply to the accessories of the wheeled ultrasounds machines, subject to specified conditions.

On July 26, 2022, the ITA published [Letter No. 389/2022](#) in which it clarified the applicability of the 5 percent reduced VAT rate to the sale of vascular access instruments. In the case at hand, the taxpayer sells medical devices to national distributors. The ITA denied the application of the reduced VAT rate, clarifying that the reduced VAT rate is provided for the goods specifically indicated in the list of subsidized products for which the classification codes are also assigned. The vascular access instruments that can benefit from the reduced rate are characterized by a specific the TARIC code (Integrated Tariff of the European Communities). This classification must be considered exhaustive and not merely exemplary.

On July 26, 2022, the ITA published [Letter No. 390/2022](#) in which it clarified the VAT treatment of a temporary consortium company. In the case at hand, a company was a part of a temporary group of companies that had bylaws allowing issuance of VAT invoices on a pro-rata basis. The companies intended to establish a consortium company for contract work execution. The taxpayer sought clarification as to the VAT treatment of the services provided by the consortium company to the consortium members. The ITA clarified that the services provided by the consortium company to its members cannot be understood as services provided to a client. In addition, the individual consortium member is required to issue the VAT invoices on a pro-rata basis for the costs incurred by the consortium company in its own name to the contracting company.

On July 26, 2022, the ITA published [Letter No. 392/2022](#), in which it clarified the application of VAT on subcontracted shipping services used for exports to a non-EU country. In the case at hand, a shipping company sought clarification as to whether VAT would apply to the shipping services provided by its agent for the purpose of exporting goods to a non-EU country. The ITA clarified that shipping services provided directly from an EU country to an exporter, importer, or the consignee of goods in a non-EU country are zero-rated.

However, in the case at hand, the shipping services are provided by a subcontractor, which amounts to an indirect sale of goods to a non-EU country. Therefore, the shipping services do not qualify for the zero-rating.

Source: Italian Tax Authorities Expand Concept of Permanent Establishment for the Digital Age, Bloomberg Law News, July 13, 2022; Italy Tax Agency Clarifies VAT Treatment of Cadastral Property Transfer, Bloomberg Law News, July 11, 2022; Italy – Tax Authority Clarifies VAT Exemption for Supplying Financial Consultancy Services, (July 1, 2022), News IBFD; Italy – Italy Gazettes Urgent Tax Simplification Measures, (July 7, 2022), News IBFD; Italy – Tax Authorities: Non-EU Taxpayers

May not Transfer VAT Refund Entitlements to Third Parties, (July 8, 2022) News IBFD; Italy Tax Agency Clarifies Determination of Tax Advantage Under Group VAT Regime, (July 28, 2022) Bloomberg Law News; Italy Tax Agency Clarifies VAT Treatment for Temporary Consortium Company, Bloomberg Law News, July 29, 2022; Italy Tax Agency Clarifies VAT Treatment of Sale of Wheeled Ultrasound Machines Due to Coronavirus, Bloomberg Law News, July 29, 2022; Italy Tax Agency Clarifies VAT Treatment on Sale of Vascular Access Instruments, Bloomberg Law News, July 29, 2022; Italy Tax Agency Clarifies VAT on Subcontracted Transport Services Used for Exports to Non-EU Country, July 29, 2022, Bloomberg Law News.

United Kingdom: Overview of Recent Indirect Tax Developments

On July 18, 2022, the UK’s England and Wales Court of Appeal (Civil Division) issued its decision in *Tower Bridge GP Ltd*, [2021] UKUT 30 (TCC), regarding whether a company can exercise its right to deduct VAT despite the fact that it held no valid VAT invoice for the transaction. The court further discussed whether HMRC had the discretion to deny the company the right to deduct VAT based on the invoice provided for the transaction. In the case at hand, between May 18, 2009, and June 3, 2009, Cantor Fitzgerald Europe Ltd. (CFE), a member of the Cantor Fitzgerald VAT group, purchased 17 separate carbon credits from Stratex Alliance Ltd. with a VAT liability of about GBP 5.6 million (\$6.8 million). Tower Bridge, a representative member of the VAT group, claimed a VAT deduction on its June 2009 return. In June 2009, CFE requested Stratex’s VAT registration number and corrected invoices. At the time of the taxable transactions, CFE was unaware that Stratex was a fraudulent trader. However, Stratex failed to provide CFE with the updated invoices or registration documentation. In December 2012, HMRC denied Tower Bridge’s claim to deduct the VAT incurred on the carbon credit purchases from Stratex because the invoices did not include a VAT registration number or the name of the

customer, which is required under the UK VAT regulations. HMRC further refused to exercise its discretion to allow the deduction of VAT because Stratex was not VAT registered, the transactions were connected to fraudulent activity, and Tower Bridge did not conduct sufficient due diligence related to the transactions. Tower Bridge argued that it had the right of deduction under the EU VAT Directive because the right was an “integral part of the common system of VAT” and that HMRC did not lawfully exercise its discretion by rejecting the company’s VAT deduction. The Court of Appeal cited ECJ case law ruling that tax authorities should allow taxpayers to correct an invalid invoice if a defective invoice was initially provided. However, in this case, Tower Bridge’s invoice could not be corrected by subsequent evidence because Stratex was never registered for VAT. It added that including a VAT identification number is an obvious component of the tax authority’s ability to check on whether the seller has paid VAT. Even if HMRC made errors in reaching its original decision, remanding the question would inevitably result in the same outcome. Therefore, since the taxpayer did not present a compliant invoice in support of its claim to deduct VAT, the Court of Appeal ruled in favor of HMRC.

On July 5, 2022, the UK's Upper Tribunal (Tax and Chancery Chamber) issued its decision in *HMRC v Netbusters*, [2022] UKUT 175 (TCC), on whether a company that provides fields and courts for recreational soccer and netball leagues is entitled to a VAT exemption for both the provision of facilities and ancillary administrative services. In the case at hand, the taxpayer sets up soccer and netball leagues renting fields and courts from third parties such as schools and park authorities to provide space for the teams to play. The company handles every aspect of league administration but does not provide managers for the individual teams. The teams pay the taxpayer a single fee that covers both the cost for using the fields or courts and the league administrative services. HMRC argued that the land rental and administrative league services were separate transactions — the former being VAT exempt and the latter being subject to the standard VAT of 20 percent. Based on that finding, it denied the taxpayer a GBP 414,622 (\$506,142) refund for overpaid VAT, and assessed the company an additional GBP 818,185 (\$998,783) for a seven-year period. In 2020, the First-Tier Tribunal (FTT) found in favor of the taxpayer holding that while the company provided equipment, referees, awards, and administrative services, those services were ancillary or incidental to its provision of soccer fields and netball courts. In its decision, the Upper Tribunal rejected HMRC's argument that the FTT did not properly consider the range of services provided by taxpayer. Referring to article 135 of the EU VAT directive, which generally exempts from VAT, transactions that involve the sale of land or "the leasing or letting of immovable property," the Upper Tribunal highlighted that "the grant of facilities for playing any sport or participating in any physical recreation" is listed as a VAT-exempt activity. The Upper Tribunal further agreed with the FTT, holding that the competitive league services did not represent significant added value to the provision of fields and courts, which constituted the grant of a license to occupy land.

On July 20, 2022, the UK's First Tier Tribunal (Tax Chamber) issued its decision in *Lynton Exports (Alsager) Ltd.*, [2022] UKFTT 224 (TC), on whether HMRC could deny a company the right to deduct VAT when the taxpayer did not know the transactions at issue were connected to VAT fraud. In the case at hand, the taxpayer exported confectionery and soft drinks. HMRC denied the taxpayer's claim to deduct VAT arguing that the related transactions were connected to a fraudulent VAT scheme and that the taxpayer knew, or should have known, about the fraud because of the taxpayer's dramatic increase in gross receipts. The FTT found that HMRC's evidence did not justify denying the company the right to deduct VAT as the burden of proof should fall on HMRC that the taxpayer knew, or should have known, that the transactions related to tax fraud, and it did not prove this. The FTT further held that the taxpayer did not have actual knowledge of the fraud. The FTT rejected HMRC's argument that the transactions were suspicious and "displayed a risk" of being connected to VAT fraud and that that reasoning is not sufficient to conclude that the taxpayer should have known of the fraud.

On June 28, 2022, HMRC updated the [Tax Agent Toolkit on input VAT](#), which is aimed at supporting tax agents and advisers in completing VAT Returns on behalf of clients. The toolkit covers a prohibition on applying the Lennartz approach to purchases of land, buildings, aircraft, ships, boats, and other vessels made on or after January 1, 2011. Under the Lennartz approach when a business purchases an asset, or services resulting in the construction of a new asset which has mixed business and private use (but generally not mixed business and non-business use), the VAT may be claimed in full at the time of purchase. Output tax, however, must subsequently be declared to reflect private use. The toolkit further covers extension of the Capital Goods Scheme (CGS) to certain purchases of aircraft, ships, boats, and other vessels made on or after January 1, 2011; extension of the requirement to make

payback and claw back adjustments when the VAT deduction is claimed or restricted, based on intended levels of business use, and that intention changes before use occurs; treatment of VAT incurred for international transactions, special methods for apportioning VAT incurred by businesses, non-businesses, and partially-exempt businesses; and recordkeeping requirements.

HMRC recently published the [outcome](#) of its consultation for implementing reporting rules for digital platforms based on the [OECD Model Reporting Rules](#). The consultation ran from July 30, 2021, through October 20, 2021. The rules would require digital platforms to report a wide array of transaction data, including information on the income realized by those offering accommodation, transport, and personal services through platforms. Platforms would further be required to provide a copy of the information to the seller to assist the seller in declaring the correct amounts for tax purposes. Participating countries are to share the information received under a new information exchange framework the OECD has developed. The data would be sent to the jurisdiction in which the sellers are residents (or rental property is located). The consultation received a total of 28 written responses from platforms, advisers, representative bodies, and sellers. Most respondents were supportive of the proposals put forward in the consultation document, although opinions varied on some specific issues. The UK government will publish draft regulations for an eight-week technical consultation in September. The regulations will seek to clarify details about the application of the regime in response to certain concerns raised by stakeholders during the concluded consultation. In addition, HMRC announced that it would not adopt the optional exclusion for “small” platforms that facilitate the provision of services for total payments of less than EUR 1 million (\$1,031,680), but

would include the “occasional” seller exclusion to reduce burdens on platforms. Moreover, HMRC stated that the reporting rules would apply to the sale of goods facilitated on platforms. The new rules would apply from January 1, 2024, with the first reports due by January 31, 2025.

HMRC recently updated its guidance on the scope of the recently introduced zero-rating for energy-saving materials. The guidance explains that, from April 1, 2022 until March 31, 2027, the UK applies a zero VAT rate to the installation of certain specified energy-saving materials in, or in the curtilage, of residential accommodation in Great Britain. In Northern Ireland, the reduced VAT rate of five percent continues to apply, subject to certain conditions. These reliefs were earlier repealed while the UK was a Member State of the European Union due to a successful challenge to them before the ECJ. The zero rate applies to the installation of such items as solar panels, heat pumps, and insulation. The relief will also apply to wind and water turbines which were previously.

Source: Taxnotes, *Company Can’t Deduct VAT Without Valid Invoice, U.K. Court Says*, July 20, 2022, Taxnotes, *Sports Services Company Scores Victory in U.K. VAT Dispute*, July 11, 2022; Taxnotes, *British Company Wasn’t Involved in VAT Fraud, U.K. Tribunal Says*, July 26, 2022; United Kingdom Tax Agency Updates Toolkit on Input VAT, July 1, 2022, Bloomberg Law News; United Kingdom Tax Agency Updates Toolkit on VAT Partial Exemption, July 5, 2022, Bloomberg Law News; CCH, *Global VAT News & Features, UK Agrees Changes To Reporting Rules For Digital Platforms*, (Jul. 26, 2022); Orbitax, *UK Consultation Outcome on Reporting Rules for Digital Platforms*, July 25, 2022; CCH, *Global VAT News & Features, UK Updates VAT Guides On New Energy-Saving Materials Reliefs*, (Jul. 19, 2022).

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India: Overview of Recent Indirect Tax Developments

On June 29, 2022, the Indian Central Board of Indirect Taxes and Customs (CBIC) posted online the consolidated text as of March 30, 2022, of the [Central GST Act 2017](#).

On July 5, 2022, the CBIC issued [Notification No. 10/2022](#) in which it set the central GST filing exemption threshold for the 2021-22 financial year to INR 20 million (\$251,648).

On July 5, 2022, the CBIC issued [Notification No. 13/2022](#) in which it announced specific amendments to the central GST provisions effective March 1, 2020. The amendments include extending the deadline for issuing orders to recover unpaid tax, partly unpaid tax, or wrongly claimed GST credits for the financial year 2017-18 to September 30, 2023. The Notification also excludes the period from March 1, 2020 to February 28, 2022 for computing the limitation period, issuing an order to recover erroneous refunds, or filing a refund application.

On July 6, 2022, the CBIC issued [Circular No. 171/03/2022](#) in which it clarified the demand and penalty provisions under the Central GST Act for transactions involving “fake invoices.” The Circular clarifies the application of the provisions when a registered person issues invoices to recipients without selling goods or services to enable them to fraudulently claim GST credits.

On July 6, 2022, the CBIC issued [Circular No. 172/04/2022](#) in which it clarified several GST issues, including application of the Central GST Act to GST credits used by a recipient of deemed export sales for claiming a refund, the GST liability connected to certain contractual prerequisites employers require of employees, the use of amounts available in the electronic credit ledger and the electronic cash ledger to pay tax and other liabilities, and the expansion of the scope of GST credits to include goods or services that an employer must provide to employees.

On July 6, 2022, the CBIC issued [Circular No. 174/06/2022](#) in which it clarified the procedures for claiming the GST re-credit in the electronic credit ledger when a taxpayer pays back refund amounts paid to them in excess or error. The circular includes categories of refunds for which Form GST PMT-03A can be used to re-credit, procedures to re-credit the refund amount in the electronic credit ledger, including penalties and interest; and a model written request to re-credit the amounts when paid back using Form GST DRC-03.

On July 17, 2022, the CBIC issued [clarifications](#) in the form of FAQs on the GST rules for pre-packaged and labeled goods. The FAQs clarify that a 5 percent GST rate applies on pre-packaged and labeled items up to 25 Kg, effective July 18. Pre-packaged items above 25 Kg in a single packet are exempt from GST. The FAQs further clarify that GST applies to packages containing multiple retail packages. Moreover, the FAQs clarify that the manufacturer, wholesaler, or the retailer would be entitled to deduct GST charged by the seller.

On August 1, 2022, the CBIC issued [Notification No. 17/2022](#), in which it announced the reduction of the annual gross receipts threshold for filing an electronic invoice when selling goods and services to a registered person. Effective October 1, 2022, the threshold has been reduced from INR 200,000,000 (\$ 2,500,000) to INR 100,000,000 (\$ 1,300,000).

On August 3, 2022, the CBIC issued [Circular No. 178/10/2022](#), in which it clarified the GST applicability on liquidated damages, compensation, and penalties from breaches of contracts. The clarification explains the definition of the provision of a service activity for tax purposes, examples of activities that constitute a provision of services, the conditions to be met for an agreement constituting a taxable transaction to exist, the

definition and examples of liquidated damages; and the taxability of various activities considered a provision of services.

The GST investigation wing of the Indian tax authority recently issued Instruction No. 02/2022-23 and Instruction No. 03/2022-23, to lay down guidelines for arrest and bail for certain offences and for issuance of GST summons under the GST Act respectively.

Instruction No. 02/2022-23 was made in reference to a decision of the Indian Supreme Court in *Siddharth v State of Uttar Pradesh* on conditions precedent to making arrests by tax officers. The guidance provides that the following conditions must be present for GST officers to make an arrest, (i) the reasons to arrive at a decision to place an alleged offender under arrest must be ambiguous and clear, with credible material, (ii) the arrest must not be in a routine and mechanical manner, (iii) approval for the arrest should be granted if presence of a guilty mind. In addition, once these conditions are satisfied, officers have to determine if the answer to the following question is in affirmative: (a) whether the person was concerned in the non-bailable offense, or credible information is received or a reasonable suspicion exists, of his having been so concerned (b) whether the arrest is necessary to ensure proper investigation of the offence (c) whether the person is likely to tamper with the evidence or tamper the investigation of the offence or influence witnesses (d) whether the person is the mastermind of effecting a proxy transaction under a dummy GSTIN (e) unless the person is arrested, his presence before investigation officer cannot be ensured. The guidance also provides that arrests should not be made where tax demand is based on a difference of opinion regarding the interpretation of the law.

Instruction No.03/2022-23 provides that summons should not be issued to senior management officials such as CMD/MD/CEO/CFO at the first instance. They should only be summoned where there is clear

indication of their involvement in the decision-making process which led to loss of revenue. Summons by superintendents are required to be issued with prior written permission from an officer not below the rank of Deputy/ Assistant commissioner, with reasons to be recorded in writing for such issuance. Summons should be avoided to call upon statutory documents already available in the GST portal. The generation and quoting of document ID is mandatory on communication issued by officers of CBIC to taxpayers. Further, it also provides that all persons are bound to appear before the officers concerned. If the summoned person does not join the investigation after issuance of three summons a complaint before the jurisdictional magistrate can be filed.

Source: CCH, Global VAT News & Features, India Eases GST Registration Rules For E-Commerce Sellers,(Jul. 7, 2022); India Customs Agency Issues Circular Clarifying Procedures for Claiming GST Re-Credit in Electronic Credit Ledger, July 11, 2022, Bloomberg Law News; India Customs Agency Issues Circular Clarifying Various Issues Pertaining to GST, July 11, 2022, Bloomberg Law News; India Customs Agency Issues Notification Setting Threshold for Central GST Filing Exemption, July 8, 2022, Bloomberg Law News; India Customs Agency Announces Extension to Recover Central GST, Exclusion Period for Central GST Calculations, July 7, 2022, Bloomberg Law News; India Customs Agency Issues FAQs on GST Rules for Pre-Packaged, Labeled Goods, July 21, 2022, Bloomberg Law News; India Customs Agency Posts Consolidated Text of Central GST Act 2017, Bloomberg Law News, July 7, 2022; India Customs Agency Issues Notification Updating Annual Turnover Threshold for Electronic Invoicing of Goods, Services, Bloomberg Law News, August 4, 2022; India Customs Agency Clarifies GST on Liquidated Damages, Compensation From Contract Breaches, Bloomberg Law News, August 11, 2022; KPMG International member firm.

New Zealand: Overview of Recent Indirect Tax Developments

The New Zealand Inland Revenue Department (IRD) recently released a draft public ruling on the GST treatment of directors' and board members' fees titled [PUB00424: Goods and services tax – Directors' fees and boards members' fees](#). The publication addresses the application of the GST to payments made to a director of a company, to a board member appointed by the Governor-General or Governor-General in Council, and to a board member of an organization who is not appointed by the Governor-General or the Governor-General in Council.

On July 17, 2022, the IRD issued [Technical Decision Summary No. 22/13](#) in which it clarified the GST exemption for the sale of portable units of accommodation. In the case at hand, the taxpayer sought a refund for GST paid to rent portable units of accommodation

to others on a weekly payment basis, plus a delivery and installation services fee. The taxpayer claimed that the sales were exempt from GST. The tax counsel held that the provision of portable units of accommodation does not qualify for a GST-exemption because the transaction merely amounted to the provision of physical structures and not the right to stay, and the portable units did not qualify as a principal place of accommodation or dwelling.

Source: New Zealand – Inland Revenue Releases Consultation Publications on Deductions, Government Grants and GST, (July 19, 2022), News IBFD; New Zealand – Inland Revenue Releases Consultation Publications on Deductions, Government Grants and GST, (July 19, 2022), News IBFD.

Nepal: Nonresident Digital Services Providers Subject to VAT and DST

On July 7, 2022, the Nepalese tax authority issued a "Notice Regarding Digital Service Tax (DST) and Value Added Tax for Nonresident," which provides that nonresident digital services providers are required to register for, collect, and remit VAT effective May 29, 2022, and for digital services tax effective July 17, 2022. On July 8, 2022, Nepal also published a new directive clarifying the implementation of the new VAT and DST rules.

The regime defines digital services as services for which information technology is essential and which are provided through self-automated internet with minimal human intervention and shall include the following: (1) advertisement services; (2) cinema, television, music, over the top (OTT) and other similar membership based services; (3) data storage services; (4) cloud services; (5) gaming; (6) services related to mobile applications; (7) online market place services and goods and services to be provided through it; (8) sales and updates of software; (9) download of data, images and similar services; (10) consultancy, skill development and training services; (11) any other similar services.

The regime applies to only sales made to consumers in Nepal. A "consumer" means a person having a normal place of residence in Nepal who consumes goods or services. However, a person who buys goods/services for commercial purposes or use in a business through a separate arrangement, will not be considered a consumer. For sales made to businesses, the VAT self-assessment mechanism will apply. A consumer is in Nepal if any of the following information indicates that they are in Nepal: bank account information, IP address, payment details, billing address, or SIM card/telephone landline.

Taxpayers are required to register for VAT if they meet the registration threshold of NPR 2 million (\$16,500) total sales to Nepalese customers in a 12-month period. Taxpayers can complete the registration online under a special registration mechanism with the Large Taxpayer Office (LTPO). Taxpayers meeting the registration threshold are required to apply for registration within 30 days of becoming liable for VAT. Taxpayers who do not meet the registration threshold but expect that their gross receipts will exceed the threshold

may voluntarily apply for registration. Once a registration application is submitted, the LTPO shall register and provide a registration certificate within 7 days. In addition, taxpayers are required to issue invoices to consumers, which can be in an electronic format. Taxpayers are further required to file their VAT returns and pay VAT monthly.

In addition, nonresident providers of digital services to consumers in Nepal are subject to the 2 percent DST. The DST applies on the value of digital services (same definition as VAT) provided by a nonresident to consumers in Nepal if their taxable sales exceed NPR 2 million threshold. Taxpayers liable for DST can do business in Nepal only after obtaining a Permanent Account Number (PAN) in Nepal. Taxpayers are required to apply for a PAN within 30 days of the NPR 2 million threshold.

However, any person who wants to register voluntarily can apply for the registration at any point of time. An application for obtaining a PAN should be submitted electronically with the requisite documents. DST returns must be filed and paid annually within 3 months from the end of the financial year.

Source: Nepal Tax Agency Posts Notice on Digital Service Tax, VAT for Nonresident Taxpayers (Corrected), July 12, 2022, Bloomberg Law News; Nepal Tax Agency Explains Procedure for VAT on Digital Services by Nonresident Taxpayers, July 28, 2022, Bloomberg Law News; Nepal Tax Agency Explains Procedure for Digital Service Tax, Bloomberg Law News, July 28, 2022

Singapore: Tax Board Decides on Non-Monetary Consideration for GST Purposes

On June 6, 2022, the Singapore GST Board of Review published its decision in *GEV* regarding whether the sale of products at a discounted price by a taxpayer involved “a consideration not wholly consisting of money” to make the value of the transaction based on its open market value. In the case at hand, the taxpayer was a GST-registered direct selling company that distributed certain nutritional and personal care products. Under its business model, the taxpayer sold the products to its members at a discounted price, which would then sell them to end consumers. A member would be given tiered rates of discount ranging from 25 percent to 50 percent depending on sale volume. The Inland Revenue Authority of Singapore (IRAS) took the view that consideration for the sale to its members comprised (1) the monetary consideration paid for the discounted price and (2) non-monetary consideration in the form of services provided by members to promote and sell the products. As the consideration comprised monetary and non-monetary components, the value of the sale should be the open market value (OMV) of the products pursuant to the GST Act, and not merely the monetary consideration. Further,

it accepted that the OMV of the products was the price of the goods with a 25 percent discount (since a 25 percent discount was given to all members). The taxpayer took the position it was making sales to its members solely for monetary consideration and the value of the products should therefore be the transaction price. In its decision, the GST Board of Review agreed with the IRAS and decided that the sale of the products was partially made for “a consideration not wholly consisting of money” and the value of the transaction should be based on its OMV.

Regarding what constitutes non-monetary consideration, the GST Board of Review rejected the common law conception of “consideration” due to concerns that this could be “extremely broad” and took a two-prong approach. First, the consideration must be independent of and not ancillary to the purchase, disposition or use of a good, such that the seller receives a “separate or severable benefit from the transaction apart from the monetary transaction.” Reasonable restrictions on the manner of sale, disposition or use of the discounted product do not have

an independent economic value to the seller separate from the monetary transaction from which they arise. Second, the contractual undertaking incurred by the buyer should provide a benefit to the seller that “goes beyond the monetary transaction,” such as promises that promote the sale of goods or services to other buyers, impose behavioral or commercial constraints on the buyer, grant exclusive rights of sale to the seller, or ascribe rights or privileges to the seller that are not related to the transaction.

Finally, the GST Board of Review held that there were two “contracts” in such a transaction – one for the sale of the products and another concerning the non-monetary

obligations undertaken by a member in return for grant of membership – as there was “a direct causative and contractual link between the purchase by the member of discounted price products and the various obligations undertaken to the [taxpayer] in the terms of membership.” In this case, the membership obligations and right to purchase discounted goods were set out in the same contractual documents and therefore formed part of the same transaction.

Source: Singapore – Singapore Tribunal Introduces New Test for Identifying Non-Monetary Consideration under GST Act, (August 1, 2022), News IBFD

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Trade & Customs (T&C)

China: Readjusted scope of voluntary disclosures of customs adjustments

In June 2022, China Customs issued Announcement No. 54 on handling matters concerning active disclosure of tax-related violations; it is effective from July 1, 2023 to December 31, 2023. Per the announcement, the “active disclosure” system of Customs is a management model in which import and export enterprises pass self-inspection and report their violations of customs supervision regulations to Customs in writing; in return,

Customs will deal with them “leniently” in accordance with the law after verification. This system is in line with the common practice of international customs and implements a concept of “facilitation of integrity and punishment for untrustworthiness.” Announcement No. 54 further readjusted the scope and handling principles of voluntary disclosure of tax-related violations. For more information, click [here](#).

European Union: World Trade Organization Rules Against Turkey on Discriminatory Practices Regarding Pharmaceutical Products

On July 26, 2022, the European Commission issued a release announcing an appeal arbitration award by the World Trade Organization (WTO) in the case the EU brought against Turkey on pharmaceutical products. According to the EC release, the appeal award finds that Turkey’s localization measure discriminates against foreign pharmaceutical products, as it is not a form of government procurement

of pharmaceutical products. Neither is it designed to achieve public health objectives or secure compliance with laws requiring Turkey to confirm accessible, effective, and financially sustainable healthcare for its population. The discriminatory practices require foreign pharmaceutical producers to move their production to Turkey to be eligible for reimbursement under Turkish social security schemes. As such, it is incompatible

with Turkey's WTO commitments. The panel also found that Turkey cannot prioritize reimbursement reviews and marketing

applications of domestic pharmaceuticals over foreign ones. For more information, click [here](#).

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In Brief

- **Armenia:**^{xiv} On June 29, 2022, the Armenian State Revenue Committee [clarified](#) the VAT rules for nonresident businesses. Nonresident providers of digital services to consumers in Armenia must register for and collect VAT effective January 1, 2022. Nonresidents should use the e-VAT system for submitting VAT returns. Finally, the Armenian State Revenue Committee clarified that it included bank vouchers in five different currencies to facilitate nonresident payments.
- **Australia:**^{xv} On July 26, 2022, the Australian Taxation Office updated its [guidance](#) on the GST self-assessment requirement when an Australian business purchases “things” other than goods and property from a nonresident vendor. According to the guidance, the self-assessment requirement applies if all the following circumstances are present: (1) the business purchases a thing solely or partly for the purpose of a business that you carry on in Australia; (2) the purchase is partly of a private or domestic nature or relates partly or solely to making exempt sales; (3) the sale is for payment; and (4) the purchaser is registered or required to be registered for GST. In addition, Australian businesses may be required to self-assess GST on imported low value goods if they have a value of \$1,000 or less and are not tobacco, tobacco products or alcoholic beverages.
- **Austria:**^{xvi} On July 19, 2022, Austria published a bill on DAC7 and further amendments to other tax laws (*Abgabenänderungsgesetz 2022*). DAC7 allows EU Member State tax authorities to collect and automatically exchange information on income earned by sellers on digital platforms. Additionally, the bill introduces a VAT exemption of the domestic part of international railway tickets, extends the VAT regime for intra-EU drop shipments under the triangulation simplification, introduces new rules on the entitlement to interest on excess VAT and VAT refunds, and introduces a definition of the point in time at which the right to deduct VAT arises in the case of sales of services by entrepreneurs using the cash accounting mechanism. Most of the measures take effect January 1, 2023.
- **Bahamas:**^{xvii} Effective August 1, 2022, the Department of Inland Revenue (DIR) of the Bahamas introduced a new VAT withholding mechanism on sales of construction services, building supplies, repairs and maintenance of capital goods, and commercial leases above \$10,000. Under the withholding regime, purchasers qualifying as withholding agents are required to remit 40 percent of the VAT applicable to the sale to the tax authorities rather than pay the full amount of VAT to the vendor. As of August 1, 2022, the following ministries will be appointed as VAT withholding agents: the Ministry of Works and Utilities; the Ministry of Education, Vocational and Technical Training; the Ministry of Public Service; and the Treasury Department.
- **Belgium:**^{xviii} Belgium's Ministry of Finance recently outlined measures to include in a future tax reform package. The Ministry of Finance is considering simplification of the rate system by merging the 6 percent and 12 percent reduced rates into a new 9 percent reduced rate. Moreover, the Ministry proposes to zero-rate fruit and vegetables, medicines, personal hygiene products, and public transportation services. In addition, Belgium would permanently apply a reduced VAT rate to sales of electricity.

- **Bosnia and Herzegovina:**^{xix} On July 14, 2022, the Governing Board of the Indirect Taxation Authority proposed amendments to the Book of Rules to further harmonize the country's VAT rules with the EU VAT Directive. The proposal would require nonresident providers of passenger transportation services to register for and declare VAT in Bosnia and Herzegovina, introduce a new definition of building for VAT purposes, clarify the VAT treatment applicable to free zones, and require large taxpayers to submit VAT returns in an electronic format effective January 1, 2023, with other taxpayers following on January 1, 2024.
- **Bosnia and Herzegovina:**^{xx} On July 27, 2022, the Bosnian Herzegovinian Indirect Tax Authority issued VAT ordinance amendments affecting the VAT obligations of foreign passenger carriers. The clarification includes: 1) information on the tax base for passenger transport services performed by a vehicle; 2) procedures for calculating and paying VAT by a foreign passenger carrier; 3) definition of a foreign passenger carrier; 4) obligation of a foreign carrier to provide proof of VAT payments before leaving Bosnia and Herzegovina; and 5) VAT payment procedure for foreign carriers when there's no registered tax agent. The changes were effective immediately.
- **Brazil:**^{xxi} The Brazilian Federal Revenue Office released an updated digital tax bookkeeping system (EFD version 2.8.5) for the state goods and services tax (ICMS) and the industrialized products tax (IPI). The update, announced on July 27, includes the correction of a glitch in the validation of files with a large volume of information.
- **Brazil:** On June 23, 2022, Brazil enacted a new [Complementary Law 194/2022](#) by which it has established that goods and services related to fuels, natural gas, electricity, telecommunications, and public transport are considered essential for consumers. As a consequence, states cannot apply a VAT (ICMS) rate higher than the general rate (which is normally 17 percent or 18 percent, depending on the state) to such goods and services. Under the Complementary Law 194/2022, the ICMS rate on energy, telecommunications, fuel and natural gas is the one applicable to goods in general, according to the law of the state competent to collect the tax in every specific case. Several states, such as São Paulo and the Federal District, recognized the immediate effectiveness of the new legislation.
- **Bhutan:**^{xxii} Lawmakers in Bhutan have shelved plans to implement a goods and services tax (GST). Earlier, the Minister of Finance had asked parliament to approve a two-year delay to July 2024. The regime will now be implemented from a date to be determined in the future when the necessary administrative frameworks are in place.
- **Bulgaria:**^{xxiii} On July 23, 2022, Bulgaria published a [law](#) increasing the country's VAT registration threshold from BGN50,000 to BGN100,000 (USD51,500). The new threshold will enter into force on the first day of the month following the effective date of a decision of the Council of the European Union to grant permission to increase the registration threshold, but not before January 1, 2023.
- **Denmark:**^{xxiv} On June 25, 2022, Denmark published [Executive Order No. 982/2022](#), which establishes reporting and documentation requirements for taxpayers that are not residing in the EU or Norway and claiming certain VAT exemption (with credit). The order further clarifies the VAT deregistration procedure in case of inactivity. The order enters into force on July 1, 2022.
- **Dominica:**^{xxv} On July 26, 2022, Dominica published its 2022-23 budget, which will exempt from all duties, taxes, levies, and charges on all pleasure crafts, and engines for such, imported into Dominica. However, small pleasure boats up to 75 feet long will be subject to a small ship registry fee of \$250 for one year or \$650 for three years. In addition, the government increased the number of VAT free units from 100Kwh to 150 Kwh of electrical

energy provided by DOMLEC to domestic consumers per billing period. Finally, fuel surcharges on DOMLEC electricity services are zero-rated effective August 1, 2022.

- **Dominican Republic:**^{xxvi} The Dominican Tax Authority (DGII) published General Rule No. 01-2020 which provided the guidelines for issuing electronic tax receipts (e-CF), as it relates to electronic invoices. As of August 2022, the electronic invoicing requirement is voluntary to taxpayers. However, the DGII has informed that, as of 2023, it will initiate a staggered plan of mandatory issuance of electronic invoices, starting with large taxpayers. This plan will be followed by mandatory application of electronic accounting, electronic auditing, and electronic auditing. In order to issue invoices electronically, the taxpayer must have (i) a special authorization from the DGII to issue electronic tax receipts and (ii) an invoicing software that allows the taxpayer to generate the invoice in the standard XML format, according to the technical specifications of the DGII. Further, the taxpayer must have a digital signature certificate for tax processes, issued by a service provider authorized by the DGII, and corresponding to the person who will act on behalf of the taxpayer.
- **Ecuador:**^{xxvii} On July 20, 2022, Ecuador published [Resolution No. NAC-DGERCGC22-00000035](#) amending the income tax and VAT withholding rules on payments made through online payment aggregators and marketplaces. The Resolution clarifies the definition of online payment aggregators and marketplaces and establishes specific requirements for qualification under the withholding regime. The Resolution further prohibits the application of the income tax and VAT withholding on payments by credit and debit card-issuing entities to payment aggregators or third parties. Finally, the Resolution establishes transitional rules for existing registered taxpayers to reapply and confirm their registration within 10 business days, failing which their existing registration will be revoked.
- **Fiji:**^{xxviii} On July 29, 2022, Fiji published legislations implementing tax measures under its [2022-23 revised budget](#). . Among other things, the law exempts sales of residential dwellings from VAT; reduces the import VAT to zero percent on electric vehicles; and reinstate the requirement to self-assess VAT on cross-border purchases of services.
- **France:**^{xxix} On June 29, 2022, the French General Directorate of Public Finance clarified the VAT rules applicable to chain sales. Chain sales are the result of successive over-the-counter contracts concluded on the free market and placed in a chain, relating to fungible goods of the same quality and strictly identical contractual conditions, excluding the price. The chaining results in the agreement of the parties to extinguish the obligations of the intermediary vendors by the transfer of the rights to be delivered. It entails extinguishing all obligations arising between successive buyers and sellers because of purchases and sales concluded between the except price differences. The operators in the sector agree that these goods are delivered directly from the first seller to the last buyer. The guidance clarifies that the VAT base for the sale of goods in a closed chain is the price invoiced by the first seller to the last buyer. In addition, the amount invoiced for intermediate operations of the closed and unclosed sectors is subject to VAT. Finally, the guidance clarifies that the compensation paid by the seller to a buyer because of the non-performance of a contract is not subject to VAT.
- **France:**^{xxx} On June 20, 2022, the French General Directorate of Public Finance opened a [consultation](#) simplifying the VAT regime for specific food items. According to the draft rules, foodstuffs for human consumption and products used in their manufacture would be subject to a reduced VAT rate of 5.5 percent. The reduced rate would apply to specific products throughout the food production chain. Moreover, foodstuffs for animals and products used in their manufacture, as well as specific products used for agricultural production would be subject to the 10 percent reduced rate. The draft rules would further introduce a conditional

reimbursement of the overpayment by charging the VAT return filed before December 31, 2024, subject to the delivery to the customer of a corrective invoice replacing and canceling the previous one.

- **France:**^{xxxix} On July 20, 2022, France issued [Decree No. 2022-1033](#) regarding the VAT deduction rights and invoicing obligations for VAT Groups. The Decree provides details on the procedures required by VAT groups to deduct VAT incurred by members of the VAT group. Additionally, it prescribes that invoices issued by members of a group must contain the words “Member of a single taxpayer” as well as the name, address, and individual VAT identification number of this member. The main provisions of the Decree shall enter into force after consultation with the VAT Advisory Committee and, at the earliest, on January 1, 2023.
- **Germany:**^{xxxix} On July 12, 2022, the Ministry of Finance published a draft [bill](#) to implement DAC7 which allows EU Member State tax authorities to collect and automatically exchange information on income earned by sellers on digital platforms effective January 1, 2023.
- **Germany:**^{xxxix} According to news reports, Germany launched a consultation on using software and physical documents for recordkeeping obligations concerning virtual currencies and other tokens. The consultation deals with the obligation to provide relevant data concerning the sale and acquisition such as the date, the method, and cost of acquisition.
- **Ghana:**^{xxxix} On July 25, 2022, the Minister of Finance of Ghana presented the 2022 mid-year budget, which proposes to introduce an electronic invoicing system for VAT collection (e-VAT); broaden the taxation of electronic commerce; zero-rate the sale of locally assembled motor vehicles for a period of 18 months; and introduce an upfront payment of VAT at 12.5 percent CIF value of imports for importers not registered for VAT.
- **Greece:**^{xxxix} Effective September 30, 2023, Greece will amend the VAT exemption procedure when non-EU and domestic goods enter and leave a free zone. The [updated](#) exemption procedure discusses the delivery of domestic goods into a free zone, the exit of domestic goods from a free zone, and the delivery of goods and the provision of services within a free zone. In addition, Greece will update the requirements for management bodies of free zones, setting the stage for the digitalization of certain procedures, particularly the digital submission of documentation for entry, exit and transfer of domestic goods by the management bodies of free zones, or by the companies, through the ICISnet system.
- **Indonesia:**^{xxxix} On July 11, 2022, the Indonesian Directorate General of Taxation (DGT) [explained](#) the VAT treatment for insurance agents. In addition to clarifying the definition of insurance agent, the guidance indicates that commissions or rewards in any form paid to insurance agents are subject to VAT at the standard rate of 10 percent. However, agents who do not have revenues exceeding IDR 4.8 billion (\$320,072) are exempt. The DGT further clarified the compliance requirement for insurance agents, including registration requirements, documentation requirements for proof of payment concerning tax invoices, VAT collection obligations, and reporting obligations of taxable goods and services.
- **Isle of Man:**^{xxxix} The Isle of Man government recently announced it will introduce a new IT system later this year to improve the administration of VAT, customs duties, excise duties, gambling duty, and air passenger duty. The new indirect tax portal will be incorporated into the Isle of Man Online Services facility later this year, under the Customs and Excise button. Implementation will begin in October 2022 and will involve VAT-registered traders only. All other indirect tax regimes will be part of a second phase, which is expected to commence in 2023. All existing Isle of Man government online service accounts will be migrated to

the new system, so no action needs to be taken at this time. There will, however, be some changes for VAT agents, who will be contacted by local authorities. Under the new platform, taxpayers will also be able to update their contact information, see outstanding balances, upload supporting documents, and send messages or enquiries via Online Services

- **Israel:**^{xxxviii} On June 30, 2022, the Israeli tax authority [updated](#) the VAT amounts for invoicing, periodic reports, and penalties, effective July 1, 2022. According to the tax authority, taxpayers can demand a VAT invoice from their vendor if the sale amount is ILS 321 (\$91) or higher. In addition, taxpayers are required to submit periodic reports to their bank for VAT credit surpluses under ILS 19,222 (\$5,442). Non-compliance is subject to a penalty of ILS 223 (\$63) for the late submission of a specific report and a minimum fine of ILS 334 (\$95) for inadequate recordkeeping.
- **Jordan:**^{xxxix} On July 17, 2022, the Jordanian Income and Sales Tax Department clarified that based on the provisions of Regulation 34/2019 the following taxpayers are required to comply with invoicing mandate: (1) service providers, professionals, and craftsmen with annual gross receipts over JOD 30,000 (\$42,313) and 2) sellers of goods with annual gross receipts over JOD 75,000 (\$105,783). The Department further explained that certain taxpayers are not required to issue invoices.
- **Kazakhstan:**^{xl} Effective January 1, 2023, Kazakhstan will amend the electricity use fee for digital mining of cryptocurrencies to the following rates based on the price of the electricity:
 - KZT 5-10 per KWh price – KZT 10 per KWh fee
 - KZT 10-15 per KWh price – KZT 7 per KWh fee
 - KZT 15-20 per KWh price – KZT 5 per KWh fee
 - KZT 20-25 per KWh price – KZT 3 per KWh fee
 - KZT 25 per KWh price and above – KZT 1 per KWh fee

The current rate is KZT 1 per KWh which will continue to apply to entities using renewable energy sources, regardless of the electricity price. If there are no electricity metering devices or they are out of order, the fee for digital mining is calculated at the rate of KZT 25 per 1 kWh of consumed electric energy. In cases of absence of electricity metering devices or it is in a defective condition, the amount of consumed electric energy is calculated based on the maximum capacity of daily electricity consumption. If there are several grounds for applying different fee rates at the same time, the highest fee rate shall apply.

- **Kazakhstan:**^{xli} On July 7, 2022, the Kazakh State Revenue Committee [clarified](#) new rules for claiming the VAT exemption on imports for which the tax payment deadline has been changed and the requirements have been met. The clarification expands the VAT exemption to include authorized economic operators. In addition, it includes goods intended for further export to Eurasian Economic Union (EAEU) member countries. Finally, the State Revenue Committee clarified that the exemption is available if the value of the goods in the import application and the value on the electronic invoice are not lower than the value declared on the goods.
- **Kenya:**^{xlii} The Kenyan Treasury recently released for consultation its draft National Tax Policy, which is intended to guide an effort to comprehensively reform Kenya's tax rules and administrative practices. The Treasury intends to champion the changes in talks with lawmakers and the Kenya Revenue Authority. Regarding VAT, the plan underscores support for implementing a single general rate of VAT. However, if a preferential rate is granted, it should be no lower than 25 percent of the general rate. In addition, the Treasury

recommends limiting the number of transactions that are zero-rated and exempt from VAT. The Treasury further stated that VAT should be collected under the destination principle. The Treasury is also considering progressively increasing tax yields from the emerging digital economy through leveraging technology, investing in training, and developing policies and strategies.

- **Kenya:**^{xliii} The Kenyan Revenue Authority has announced an extension of the deadline for taxpayers to comply with the Tax Invoice Management System (TIMS) regulations. The regulations provide that VAT registered taxpayers must update their systems to generate validated and electronically transmitted tax invoices. Taxpayers are required to comply with the changes by September 30, 2022. All registered VAT taxpayers must transition from using old electronic tax registers from October 1, 2022 or lose entitlement to input tax credits.
- **Latvia:**^{xliv} On July 12, 2022, the Latvian State Revenue Service published updated [information material](#) regarding the VAT treatment of sales of vessels and sales of goods and services to vessels. The information clarifies the scope of VAT, including the zero-rating applicable to the sale of ships and aircraft, their import, and sales of goods and services to them. The information further includes a list of the services subject to VAT under the Law of Ports and clarifies the determination of the VAT rate based on the transaction's place of execution. Finally, the VAT treatment applicable to services provided by subcontractors to the vessels is also clarified.
- **Lithuania:**^{xlv} The Lithuanian government recently [proposed](#) to reduce the VAT rate applicable to non-prescription drugs and medical aids from the current 21 percent to 5 percent effective January 1, 2023. Currently, the reduced VAT rate of 5 percent applies only to prescribed medicines and medical aids.
- **Luxembourg:**^{xlvi} On July 26, 2022, the European Commission proposed to authorize Luxembourg to extend application of the VAT registration threshold of EUR 35,000 until December 31, 2024.
- **Malaysia:**^{xlvii} The Royal Malaysian Customs Department recently confirmed that plans to impose service tax on all goods delivery services will be postponed until further notice. The measure had been included in the 2022 Budget and was due to apply from July 1, 2022. Under current tax law, service tax is levied on courier delivery services for documents or parcels not exceeding 30kg by service providers licensed under the Postal Services Act. However, delivery services provided by unlicensed couriers are not subject to tax. The Budget had proposed that tax should be extended to all delivery services providers, including deliveries from e-commerce platforms. Food and beverages delivery services and logistic services were to be excluded.
- **Moldova:**^{xlviii} On June 30, 2022, the State Tax Service of Moldova (STS) clarified that employment and personnel services that are carried out in Moldova and are provided by a resident of Moldova to a nonresident beneficiary are regarded as an export of services not subject to VAT in Moldova.
- **Mozambique:**^{xlix} On July 22, 2022, the tax authority of Mozambique announced a nationwide campaign to verify compliance with the VAT invoicing rules. The campaign will be conducted through a door-to-door inspection of VAT taxpayers to verify compliance with the obligation to issue invoices or equivalent documents for each transfer of goods or provision of services, while also stressing the importance of invoicing for VAT.
- **Mozambique:**^l On June 30, 2022, Mozambique published Decree No. 30/2022 amending the VAT refund regulations for companies in the prospecting, research, development,

and production phases of the mining, oil and gas industries. In addition, the VAT refund regime applies to entities that contract directly with the entities above and special purpose entities under relevant concession contracts, as authorized by the government. The special conditions enable the taxpayers to settle VAT through a regularization note issued in favor of the vendor, with indication of the invoice amount and the VAT due on the relevant services and goods. Eligible entities may request a regularization of the VAT incurred on expenditures, if they can prove that (1) in the prospecting, exploration, and development phases of the project, they have invested or will invest sums equivalent to USD 25 million in the relevant tax period; and (2) in the production phase, 75 percent of the prior year sales were for exports. Eligible entities must apply to the tax authority and include: (1) a list of goods and services to be acquired and stating the vendor's taxpayer identification number; (2) a statement indicating that the goods and services are intended exclusively for the applicant taxpayer; and (3) export documents for taxpayers in the production phase.

- **Netherlands:**^{li} On July 5, 2022, the Dutch government proposed to introduce a new tax on sugary products and to introduce a VAT zero-rate on fruits and vegetables in 2024.
- **Netherlands:**^{lii} On July 13, 2022, the Dutch Official Gazette published Decree No. 2022-173774, explaining the tax refund provisions due to the temporarily reduced VAT rate on energy effective July 1, 2022. The decree clarifies the calculation criteria for the tax refund and the requirements to apply the temporarily reduced VAT rate in the refund calculation.
- **Nigeria:**^{liii} On July 1, 2022, the Court of Appeal of Nigeria published its decision in *Registered Trustees of Hotel Owners and Managers Association (HOMA) of Nigeria*, Suit No: FHC/L/CS/360/2018, in which it held that the Federal Inland Revenue Service (FIRS) has the power to collect VAT on the sale of goods and services consumed in hotels, restaurants, and event centers in Lagos State. This follows an earlier decision of the Federal High Court holding that, under the Taxes and Levies Act, consumption tax arising from transactions involving the sale of goods and services in hotels, restaurants or event centers is to be collected by the state government and not by the federal government (i.e., the FIRS for federal VAT). The Court of Appeal thus set aside the Federal High Court's judgment. It also struck a counterclaim filed by the Lagos State government against the FIRS and upheld the FIRS' appeal.
- **OECD:**^{liv} The OECD has confirmed that it will deliver a finalized Crypto-Assets Reporting Framework (CARF) later this year, as well as amendments to the OECD Common Reporting Standard to ensure that all countries can benefit from the automatic exchange of tax information. The new CARF is being developed at the request of the G20. It provides for the collection and exchange of tax-relevant information relating to persons engaging in certain transactions in crypto-assets between tax administrations. It covers crypto assets that can be held and transferred in a decentralized manner, without the intervention of traditional financial intermediaries, as well as asset classes relying on similar technology that may emerge in the future. Individuals and entities that, as a business, provide services to exchange crypto-assets against other crypto-assets, or for fiat currencies, would be required to apply due diligence procedures to identify their customers, and then report the aggregate values of the exchanges and transfers for such customers on an annual basis.
- **Paraguay:**^{lv} The parliament of Paraguay is considering a bill to allow persons rendering professional or independent personal services to deduct VAT on purchases of food and personal hygiene goods. In the latest iteration of the bill, the Senate limited the VAT deduction right to 30 percent instead of 100 percent as previously adopted by the Chamber of Deputies. To adopt the bill, both Chambers must agree, and the Executive Branch must approve; the Executive Branch is currently opposed.

- **Peru:**^{lvi} The Peruvian congress is evaluating a bill to apply VAT to digital services provided by nonresident vendors to individuals or legal entities in Peru. Financial intermediaries would be required to withhold VAT on payments made to such nonresident providers.
- **Peru:**^{lvii} The tax authority of Peru recently enacted a new resolution by which they further delayed the introduction of more stringent electronic invoicing rules. Effective June 30, 2022, Peru was due to require large companies to provide to the tax agency their electronically issued invoices within four days of issuance. This requirement has now been delayed until January 1, 2023.
- **Philippines:**^{lviii} On August 17, 2022, the Philippines' House Committee on Ways and Means approved House Bill No. 372, which provides for the introduction of a VAT on digital services rendered by nonresident vendors. The provisions of HB No. 372 appear to be similar to HB No. 7425, which was approved on 3rd reading and transmitted to the Senate during the 18th Congress. (For KPMG's previous discussion on HB No. 7425, click [here](#).) The Committee also approved the proposed Ease of Paying Taxes Act, which would reportedly reduce documentary requirements, allow taxpayers to file their returns in any revenue district office, and remove the annual taxpayer registration fee. It would also simplify the forms and requirements for small taxpayers, facilitate the electronic filing of returns and payment of taxes, and harmonize the rules for substantiating input tax credit eligibility.
- **Saudi Arabia:**^{lix} The Zakat, Tax and Customs Authority (ZATCA) recently issued a paper for public consultation on amendments to certain Excise Tax Regulations. The amendments would allow the licensing of tax warehouses for storage purposes to mitigate the financial impact of cash flows on entities and clarify procedures regarding self-disclosure of all types of taxes that have not been properly. The amendments would further allow taxpayers to self-disclose in case they find that not enough tax was paid or if they find an error in the tax return forms within 15 days of the date of acknowledgement. It would also require that tax payments under an assessment of penalty be made within a period of 15 days, counted from its due date.
- **Saudi Arabia:**^{lix} On June 24, 2022, the ZATCA announced that it has initiated procedures to implement the integration phase of the new e-invoicing (FATOORAH) requirements. The integration phase is being rolled out in waves for targeted taxpayer groups and involves the introduction of technical and business requirements for electronic invoices and electronic solutions, and the integration of these electronic solutions with ZATCA's systems. The integration phase will begin on January 1, 2023 for the first wave, which includes taxpayers with revenue subject to VAT exceeding SAR 3 billion (\$800 million) in 2021.
- **Singapore:**^{lxi} On July 11, 2022, the Inland Revenue Authority of Singapore released a new GST guide for the travel industry, which explains the GST principles and treatment for the sales of travel products, services, and transactions commonly encountered in the travel industry. The guide further covers the Budget 2022 announcement changing the GST treatment of services comprising the arranging of international transport of passengers and related insurance as well as the arranging or facilitating the booking of accommodation ("travel arranging services") effective January 1, 2023.
- **Slovakia:**^{lxii} On July 4, 2022, the president of Slovakia signed Law No.442/2012, which implements DAC7. DAC7 allows the tax authorities of the EU Member States to collect and automatically exchange information on income earned by sellers on digital platforms effective January 1, 2023.

- South Africa:**^{lxiii} On 6 June 2022, the Supreme Court of Appeal of South Africa (SCA) published its decision in *Rennies Travel (Pty) Ltd*, Case No. 207/2021 [2022] ZASCA 83, in which it clarified the VAT treatment of international transport of passengers. In the case at hand, the taxpayer is a travel agency which arranges international travel for its clients, including the sale of airline tickets for international flights. Among other revenue streams, the taxpayer charges an additional or increased commission to the airline if the taxpayer reaches certain targets of international airline ticket sales agreed with the airline (referred to as supplementary commission). The South African Revenue Service (SARS) considered that the taxpayer received the supplementary commission as incentives for promoting sales of international airline tickets above agreed targets, the payment of which was conditional upon the taxpayer achieving the predetermined sales targets. Thus, it does not qualify to be a zero-rated service relating to international transport of passengers. The court, however, held that the meeting of a revenue target is not a separate provision of services and the fact that payment of a supplementary commission was conditional upon reaching the targets, says nothing about the provision of services for which the payment was made. Because the commission was paid for the sale of a particular volume of airline tickets, the SCA held that the supplementary commission paid to the taxpayer was a zero-rated sale of services related to the international transport of passengers.
- South Africa:**^{lxiv} On June 29, 2022, the SARS published an updated version of its [VAT guide](#) for vendors. The guide covers various VAT topics, including: (1) applicable VAT rates for specific transactions; (2) when VAT is due; (3) criteria for electronic VAT payments; (4) requirement to keep records for at least five years; (5) VAT registration requirements for vendors; (6) invoicing and return filing requirements; (7) rules for VAT deductions and accounting; (8) adjustments to the VAT period; (9) procedure for VAT calculations; (10) penalties and interest for noncompliance; (11) rules for exports and imports; (12) circumstances requiring estimated assessments by the commissioner; (13) the self-assessment requirement for certain domestic transactions; and (14) procedures for filing objections, appeals, and rulings.
- Sri Lanka:**^{lxv} On July 1, 2022, Sri Lanka's Inland Revenue Department announced the introduction of a penalty waiver for tax debts cleared by September 30, 2022. The amnesty covers income tax, VAT, PAYE/Advance Personal Income Tax (APIT), WHT/AIT (Advance Income Tax), stamp duty and the betting and gaming levy. It covers payments due as of December 31, 2021.
- Switzerland:**^{lxvi} On July 26, 2022, the Swiss Federal Tax Administration [clarified](#) the VAT exemptions on specified domestic and foreign aviation companies. The guidance clarifies that aviation companies based in Switzerland that are listed in a special registry can obtain certain services tax-free. The FTA keeps a register of the confirmations it issues to aviation companies based in Switzerland, which can be accessed on the FTA website. In applying for admission to the registry, the domestic aviation company prove that it operates commercial aviation and that its transport gross receipts from international flights exceed those from domestic air transport. Foreign airlines that operate commercial air transport that have gross receipts predominantly from international flights can also receive individual services exempt from tax if they can present a valid commercial aviation license from the aviation authority of the country of domicile and none of the specific exclusion to the VAT-exemption regime apply.
- Switzerland:**^{lxvii} On June 29, 2022, the Swiss Federal Council opened a consultation on a [draft VAT ordinance](#) that would require companies to submit reports electronically; make electronic VAT registration mandatory; and set conditions to amend statements manually and electronically. The ordinance, if finalized, would be effective January 1, 2024.

- **Ukraine:**^{lxvii} The Ukrainian tax administration (SFS) recently issued two guidance letters clarifying the VAT treatment of a sale of goods or services under commission and factoring agreements. According to the SFS, the commission payable under a commission sales agreement is subject to VAT at the standard rate of 20 percent even if the goods or services sold under such an agreement are exempt from VAT. In that case, the taxpayer selling the goods or services must, on the date its VAT liabilities arise, issue two VAT invoices: one for the sale of VAT-exempt goods or services and another for the taxable service. In the case of factoring agreements, the SFS considers that if a factoring transaction is executed in exchange for money and does not involve a sale of goods or services, the transaction does not generate any VAT liability.
- **Uzbekistan:**^{lxix} On July 27, 2022, Uzbekistan published [Law No. ZRU-785](#) which exempts imported spare parts for medical equipment and consumables from VAT, effective April 1, 2022 through December 31, 2024.

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About *Inside Indirect Tax*

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

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Footnotes

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