Inside Indirect Tax

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

Developments Summary of the Taxation of the Digitalized Economy

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

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Global E-invoicing & Digital Reporting Tracker

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

Global Rate Changes

— **Belgium:**[i] Between March 1, 2022 and June 30, 2022, Belgium temporarily applies a reduced rate of 6 percent to the sale of electricity for residential contracts. Advance payments for electricity during March will fall under the standard VAT rate of 21 percent. Advance payments in the period from April to June 2022 will be subject to the reduced VAT rate of 6 percent, even if these payments relate to the sale of electricity from July 1, 2022.

— **Ecuador:**[ii] Effective January 31, 2022, Ecuador has reduced the VAT rate for tourism services from 12 percent to 8 percent. The reduced VAT rate applies to services provided during annual listed holidays up to a maximum of 12 days. The tax authority further issued Resolution NAC-DGERCGC22-00000010 establishing rules for invoices and supporting documents reflecting the reduced VAT rate for tourism services.

— **Montenegro:**[iii] Effective January 8, 2022, Montenegro extended the reduced VAT rate of 7 applicable to catering and accommodation services. The reduced rate applies to catering and accommodation facilities for preparing and serving food and beverages, except alcoholic beverages, carbonated beverages with added sugar, and coffee.

— **Norway:**[iv] On February 23, 2022, Norway extended the application of the VAT zero-rate to certain electronic news services in Norway until March 1, 2028.

— **Taiwan:**[v] Between February 7, 2022 and April 30, 2022, Taiwan temporarily exempts from business tax the importation of soybeans, wheat, and corn.

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— **Turkey:**[vi] Effective February 14, 2022, Turley reduced the VAT rate for the delivery of basic foodstuffs from 8 percent to 1 percent, removing the wholesale-retail distinction. With the changes, all sales of qualifying foodstuffs are generally eligible for the 1 percent VAT rate, including wholesale, retail, import, packaged, and unpackaged. Eligible foodstuffs include legumes, rice, water, tea, sugar, salt, oils and fats, cake, pasta, meat, poultry, fish, milk, eggs, vegetables, and vegetable preparations. Turkey further reduced the rate for delivery of electricity for household and agricultural irrigation from 18 percent to 8 percent effective March 1, 2022.

— **Uruguay:**[vii] Uruguay recently extended the reduced VAT rate on sales of goods and services to final consumers paid through debit cards or similar electronic instruments until December 31, 2022. The reduced rate applies when the seller qualifies as a small taxpayer and meets certain criteria. The VAT rate is discounted by 1.64 percent of the value of the sale.

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Overview of Indirect Tax Developments from the KPMG International Member Firms

— **KPMG in Australia** published a report discussing recent findings published by the Australian Tax Office on compliance of taxpayers (mainly financial services and insurance companies) with the requirements to self-assess goods and services tax (GST) on purchases of services from nonresidents.

— **KPMG in Bahrain** published a report discussing two new tax authority guidance documents (VAT return filing guidance and manual for simplified VAT return filing) on VAT return filings for tax periods in 2022.

— **KPMG in Brazil** published a report (in Portuguese) discussing proposed indirect tax changes including measures to replace the current system of indirect taxes (i.e., IPI, PIS, ICMS, COFINS, and ISS) with a new goods and services tax (*Imposto sobre Bens e Serviços*—IBS) or with a related indirect tax social contribution (*Contribuição Social sobre Operações com Bens e Serviços*—CBS).

— **KPMG in Bulgaria** published a report discussing recent changes in the VAT law, which would (1) allow taxpayers to correct wrongly issued tax documents even if there is a stable tax assessment act for the period in which the invoices were issued or reported; (2) clarify the VAT treatment applicable to food vouchers; (3) add zero-rating provisions for the importation and sales of goods by the European Commission or other bodies of the EU relating to the execution of tasks in response to the COVID-19 pandemic and sales of goods and services whose recipients are

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the armed forces of a Member State of the EU; and (4) clarifying the VAT treatment relating to sales to and from the United Kingdom of Great Britain and Northern Ireland post Brexit.

- **KPMG in Cambodia** published a report discussing a recent tax authority guidance clarifying the rules for VAT adjustments. According to the guidance, VAT invoices and VAT monthly tax returns can be adjusted if the sale was canceled, the nature of the sale has changed fundamentally, the previously agreed consideration has changed due to a new agreement because of a price discount or other reasons, or the goods (or a part of the goods) were returned to the seller or the service was not fulfilled. The guidance addresses how the VAT amount can be adjusted if there is an increase or a decrease in the value of the sale.
- **KPMG in Cambodia** published a report discussing guidance issued by the Accounting and Auditing Regulator (ACAR) on the use of the English language in accounting software. The guideline confirms that only enterprises that are using English in their accounting systems are required to submit a notification letter to ACAR. The guideline also clarifies that all enterprises that are required to submit a notification letter must do so via the ACAR e-filing system before March 31, 2022.
- **KPMG in Canada** published a report discussing the 2022 budget of the Province of British Columbia which proposes to require marketplace facilitators to collect and remit provincial sales tax (PST) on certain sales and leases made in British Columbia effective July 1, 2022. In addition, the budget would require marketplace facilitators to charge PST on marketplace facilitation services they provide to sellers, effective July 1, 2022.
- **KPMG in Canada** published a report discussing the 2022 budget of the province of Alberta proposes to require online marketplaces to collect and remit the tourism tax levy on behalf of short-term rental hosts in Alberta.
- **KPMG in Chile** published a report discussing the provisions in Law No. 21,420, which are generally effective April 1, 2022 and include repealing the special VAT credit for construction companies and broadening the taxable event for the provision of services. In addition, the report discusses the introduction of a new VAT refund procedure for nonresident digital services providers.
- **KPMG in Cyprus** published a report discussing an announcement by the Ministry of Finance allowing taxpayers to pay VAT in installments. On February 9, 2022, the Cypriot Ministry of Finance announced that taxpayers may remit VAT payments for the tax periods ending December 31, 2021 in three equal installments due on February 10, March 10, and April 10, and will not be subject to the imposition of additional tax and penalties. The installment payment option is available only if the VAT return is filed timely and discloses the total amount of VAT payable.
- **KPMG in the Czech Republic** published a report discussing a recent judgment of the Supreme Administrative Court (SAC) on the evidence required for a buyer to recover VAT incurred on internet advertising expenses. According to the SAC, a screenshot or the administrator account from which the internet advertising was arranged are the only

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ways to record and prove advertising that takes place exclusively online. A confirmation of advertising provided by an advertising agency is not sufficient. Taxpayers incurring such expenses should therefore have not only relevant accounting documentation, but also documentation of sufficient quality proving that the advertising has taken place, whether these are dated screenshots showing the advertising at different times or otherwise temporally identifiable records.

- **KPMG in India** published a report discussing indirect tax measures in the budget for 2022-2023 presented on February 1, 2022. The measures would (1) extend the time limits by two months (up through November 30 of the subsequent financial year) regarding the availability of GST credits, the issuance of credit notes, the rectification of details reported in periodic monthly return; and the rectification/omission of the tax-collection-at-source details; (2) allow the transfer of balances in GST cash ledgers between distinct persons; and (3) introduce a requirement that the filing of the GSTR1 return (i.e., the return for sales) for a subsequent period is only allowed when the GSTR1 and GSTR 3B (i.e., the return summarizing all sales and purchases) for the previous tax period have been filed. Further, Special Economic Zone (SEZ) reforms would include changes to the customs administration of an SEZ. Customs duty exemptions on capital goods would be gradually phased out.
- **KPMG in India** published a report discussing a recent Delhi High Court decision in which the court held that an Indian entity making a payment to a foreign taxpayer was permitted to withhold tax at the rate of 8 percent instead of 10 percent as provided under the applicable tax treaty because the payment was already subject to the 2 percent equalization levy (i.e., India's digital services tax).
- **KPMG in Ireland** published a report discussing possible changes to Irish VAT compliance requirements. Since the Irish tax authority and the EU commission have both initiated a review of the VAT compliance regime to modernize VAT reporting, the report notes that the VAT compliance regime in Ireland is expected to change, most likely within the second half of this decade. While it is unclear what these changes may be, businesses can begin to think ahead to determine that their current VAT processes meet "best practices". Expected changes may include digital VAT reporting, periodic reporting using SAF-T, continuous (real-time) reporting, and e-invoicing. Further, the report notes that the currently fragmented nature of digital reporting requirements across the EU (as well as outside the EU) poses a significant challenge for businesses and notes that harmonization may take more time to achieve.
- **KPMG in Germany** published a report discussing the latest VAT developments in the country, including two German federal tax court decisions on the distinction between damages and remuneration as well as on the VAT treatment applicable to restaurant transactions performed by a bakery. The report further discusses guidance from the tax authorities on the VAT treatment of private use of electric vehicles and the transfer of e-bikes and bicycles to employees, as well as changes to the Intrastat reporting requirements effective 2022.

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- **KPMG in Kenya** published a report discussing a recent High Court judgment holding that the VAT regulations issued in 2017 were invalid because the appropriate process for legislative review of the regulations was not timely completed.
- **KPMG in Lithuania** published a guide on key tax aspects related to the real estate sector in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Lithuania, Montenegro, Poland, Romania, Serbia, Slovakia, and Slovenia. It addresses the following topics: VAT, corporate income tax and capital gains, tax depreciation, tax implications of financing investments (thin capitalization, dividends, withholding tax, interest, and losses carried forward), real estate tax, and real estate transfer tax.
- **KPMG in Luxembourg** published a report discussing a tax authority guidance on the real estate related tax obligations applicable for selected investment fund vehicles holding Luxembourg real estate. While the real estate tax levy applies only to revenue derived from Luxembourg-based real estate, the guidance provides a reminder that all "non-transparent" Luxembourg investment fund vehicles having a legal personality distinct from their shareholders and that are not incorporated under the legal form of a Luxembourg limited partnership (SCS) must file a specific notification before May 31, 2022—even if not owning Luxembourg real estate.
- **KPMG in Mexico** published a report (in Spanish) discussing an extension of the deadline for using version 4.0 in the mandatory issuance of e-invoices (CFDI) until June 30, 2022. After June 30, 2022, all CFDI issued by Mexican taxpayers must comply with the provisions under version 4.0 and may no longer use version 3.3. The extension also applies to the introduction of version 2.0 of withholding and payment information regarding CFDI.
- **KPMG in Mexico** published a report (in Spanish) discussing the miscellaneous tax resolution for 2022 (*resolución miscelánea fiscal para 2022*), which was published on February 18, 2022. The tax resolution provides that the cancellation of a CFDI may be made no later than the month in which the annual income tax return corresponding to the fiscal year in which the aforementioned receipt was issued must be filed.
- **KPMG in Nigeria** published a report discussing a recent Tax Appeal Tribunal (Lagos) judgment holding that the definition of stock-in-trade for VAT deduction purposes is not limited to raw materials, but includes the VAT incurred on the purchase of natural gas and diesel, short-term spare parts, and other manufacturing consumables used in the direct production of the taxpayer's products.
- **KPMG in Panama** published a report (in Spanish) discussing Resolution No. 201-0251, which was published on January 12, 2022 and establishes deadlines regarding the adoption of the electronic invoicing system of Panama (*sistema de facturación electrónica de Panamá*—SFEP), as well as for the implementation of this system by a qualified authorization provider (*proveedor de autorización calificado*—PAC). The Resolution provides information for users to implement and use different billing methods.

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— **KPMG in Philippines** published a report discussing Revenue Memorandum Circular No. 21-2022 that provides workaround procedures for claiming of VAT incurred on purchases or the import of capital goods.

— **KPMG in Poland** published a report discussing a Regional Administrative Court decision allowing a taxpayer to submit a VAT correction to benefit from VAT bad-debt relief as the court considered that the national provisions relating to VAT bad debt relief were not in line with the EU VAT Directive.

— **KPMG in Qatar** published a report discussing the introduction of a new "passenger air ticket tax" on travels through airports in Qatar. The new tax is intended to fund security and air freight infrastructure and applies to all tickets issued on or after February 1, 2022.

— **KPMG in Serbia** published a report discussing a regulation, effective December 25, 2021, which introduces measures to harmonize rules for the issuance and content of VAT invoices with new regulations on e-invoicing. To align with the new e-invoicing rules, the regulations provide that if a VAT invoice is issued via an e-invoicing system, it need not contain information on the place of issuance of the invoice. It also provides that the date of an advance payment is a new mandatory element of an advance payment invoice. Moreover, the regulations provide that an invoice issued by a taxpayer that records a sale made via an electronic fiscal device is considered to be a VAT invoice within the meaning of the VAT provisions. The regulations further include measures addressing the treatment of advance payments.

— **KPMG in Singapore** published a report discussing tax measures in the budget for 2022, including a proposed GST rate increase and a carbon tax hike. The budget also proposes to amend the GST as it relates to travel arranging services. Currently, services comprising the arrangement of international transport of passengers and insurance related to such transportation are zero-rated. Services comprising the arranging of accommodations are standard rated if the property is located in Singapore, and zero-rated if the property is located outside Singapore. Under the proposed change, if the customer of the service belongs in Singapore, the travel arranging service will be standard rated. Conversely, if the customer of the service belongs outside Singapore and the direct beneficiary either belongs outside Singapore or is GST-registered in Singapore, the travel arranging service will be zero-rated.

— **KPMG in Slovenia** published a report discussing amendments to the Slovenian VAT law effective January 22, 2022. The amendments include (1) provisions transposing the EU VAT e-commerce package into Slovene law (which was implemented in Slovenia as of July 1, 2021); (2) allowing taxpayers to recover VAT incurred on the purchase of electric passenger vehicles, if intended for business purposes; (3) clarifying the VAT identification requirements of persons "without a seat" in Slovenia; (4) clarifying in which period VAT incurred on expenditures become deductible; (5) clarifying that issuance of a paper invoice for the sale of goods and services is required only if requested by the customer; (6) introducing a simplified VAT system for farmers; and (7) clarifying the information to be provided with VAT returns (without VAT ledgers).

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- **KPMG in South Africa** published a report discussing the carbon tax measures in the budget for 2022. South Africa introduced a carbon tax effective June 1, 2019. The carbon tax law sets out how the tax will be managed for Phase 1 (initially due to end on December 31, 2022), but is silent on the specifics of Phase 2—intended to run from January 1, 2023 through December 31, 2030, leaving many companies with unanswered questions regarding the future financial impact of the tax. The carbon tax legislation specifies that the initial rate of the carbon tax of R120 per ton will be increased by consumer price inflation (CPI) +2 percent per year until December 31, and thereafter the rate of tax will be increased only by CPI (the carbon tax rate is R144 per ton for the 2022 calendar year). The budget for 2022 includes several changes to the carbon tax legislation, including (1) an extension of savings tax incentives until December 2025; (2) an extension of the electricity price neutrality commitment until December 31, 2025; and (3) an increase from 30 percent to 50 percent of the maximum trade exposure allowance available to entities that are trade exposed effective January 1, 2023.
- **KPMG in Sweden** published a report (in Swedish) discussing proposals to amend the "chemical tax" regime. The "chemical tax" is imposed on chemicals associated with or used within certain electronic products that are sold in or brought into Sweden and applies to "white goods" and other electrical goods (such as computers, tablets, televisions, phones, games consoles, and routers). The proposals, if implemented, would allow taxpayers a 50 percent deduction for products that do not contain bromine or chlorine and a 95 percent deduction for products that do not contain phosphorus. Moreover, the proposals would set the tax rates at SEK 11 ($1.11) per kilogram of the taxable item's net weight for white goods and SEK 154 ($15.47) per kilogram for other electronics, for a maximum of SEK 470 ($47.23) per item. The proposal would further revise the general rule on exemptions from the chemical tax so that liability does not arise for goods already in Sweden when previously owned by someone other than a warehouse owner, taken to a point of sale for retail sale, or used for purposes other than sales. In addition, the proposal would introduce a general exemption from the chemical tax for goods manufactured before July 1, 2017. The proposals would also extend the tax liability for warehouse owners so that tax liability arises when a product is taken to a point of sale that is not its own. Finally, the proposals would introduce a system of flat-rate taxation for imports and unauthorized importations when it is not possible to read the net weight of an item from the customs declaration. Taxpayers would be allowed two months to submit in writing, to the Swedish Customs, information about calculating the tax according to the standard rules. The amendments regarding certain imports are proposed to be effective December 31, 2022, whereas the other amendments are proposed to be effective July 1, 2023.
- **KPMG in Sweden** published a report (in Swedish) discussing a recent tax board ruling addressing whether certain industrial activities qualify for a tax exemption under the energy tax law. In the case at hand, a company conducted grain processing at facilities that required large investments in machinery such as scales, dryers, aspirators, and crushers. The question

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was whether the business's activity was industrial according to the energy tax law and thus eligible for the tax exemption for the consumption of electricity and fuel in the manufacturing process. The tax board considered that the activity described in the ruling application could be considered industrial even though the Swedish standard industrial classification (SNI) code for the activity was not industrial. Furthermore, the tax board held that the company's main activity must be industrial, but what constitutes the company's main activity would need to be determined based on energy consumption. The conclusion in this matter was that the company's activities were considered industrial for purposes of the energy tax law.

— **KPMG in Switzerland** published a report discussing the VAT implications of increased private share for company cars. Effective January 1, 2022, Switzerland increased the private share for company cars by 0.1 percent, which will affect the recovery of VAT incurred on the purchase of these cars. Companies that submit monthly VAT returns will implement this change in their VAT returns by March 31, 2022. For companies that submit quarterly VAT returns, the changes must be implemented in Q1 2022 VAT returns due by May 31, 2022. Companies applying the net tax rate (SSS) or the flat tax rate method (PSS) (as opposed to the effective reporting method) that purchase services or supplies that are provided to their employees are to declare the private shares as taxable gross receipts in their bi-annual VAT return.

— **KPMG in Switzerland** published a report discussing proposed changes to the Swiss stamp tax regime. The Swiss Parliament in late December adopted a reform of the withholding tax and stamp tax legislation, which is set to enter into force on January 1, 2023. The reform includes: (1) exempt interest on Swiss bonds issued on or after January 1, 2023 and distributions of qualifying interest from Swiss investment funds from the 35 percent withholding tax; (2) subject manufactured payments on an underlying Swiss source of income to the 35 percent withholding tax; and (3) exempt transactions in domestic bonds, the issuance of units in qualifying foreign money market funds and the transfer of equity investments of more than 10 percent from stamp tax. However, a referendum campaign has been launched against this reform. If 50,000 signatures are collected by April 6, 2022 to file a referendum request. If the deadline is met and a public referendum is called, the stamp tax reform will not be effective January 1, 2023. The public vote would likely not take place until 2023, meaning the reform would not be able to enter into force before January 1, 2024 (if approved).

— **KPMG in Trinidad and Tobago** published a report discussing tax measures in Guyana's 2022 national budget, which, among other things, includes VAT and excise tax exemptions for certain imports and sales of goods.

— **KPMG in the United Arab Emirates (UAE)** published a report discussing an amended voluntary disclosure user guide for VAT and excise tax purposes, which was recently published by the tax authority. On June 28, 2021, the UAE introduced several provisions, including reductions in penalties when taxpayers submit voluntary disclosures. It was aimed at encouraging taxpayers to correct any mistakes made in previously filed returns. Under the amended program, the voluntary disclosure penalties

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no longer depend on the taxpayer's/tax authority's overall net balance resulting from the correction, but instead are calculated on the amount of the correction made in the submitted voluntary disclosure. The updated voluntary disclosure user guide further explains the requirements and procedures specifically related to the submission of voluntary disclosures for active and deregistered tax groups.

- **KPMG in Vietnam** published a report discussing a draft decree amending and supplementing several articles to facilitate tax declaration and payment, including clarifying that e-commerce platform operators are required to declare and pay taxes on behalf of domestic and nonresident individuals who sell goods and services on the e-commerce platform through an online ordering function.
- **KPMG in Zimbabwe** published a report discussing the tax measures in the Finance Act 2021, which include: (1) a revised definition of "tax invoice" or "fiscal tax invoice" for invoices produced by a registered operator and printed by a fiscal electronic register or fiscal memory device; (2) a rule that tax invoices generated before December 31, 2021 may be claimed no later than March 31, 2022; (3) a requirement that tax clearance certificates may not be issued to non-compliant taxpayers; and (4) increased threshold amounts for mandatory VAT registration.

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Indirect Tax Developments and News from Around the World

The Americas

United States: IT Security Services Taxable Protective Services in New York

On January 14, 2022, the New York Tax Appeals Tribunal affirmed an Administrative Law Judge (ALJ) determination concluding that a taxpayer was providing taxable protective services. *Matter of Secureworks, Inc*. Under New York tax law § 1105(c)(8) protective and detective services are specifically enumerated taxable services. These services include "alarm or protective systems of every nature, including . . . protection against burglary, theft . . . or any other malfunction of or damage to property or injury to persons…". The taxpayer at issue was an IT security services provider that offered various managed and monitored security services enabling customers to prevent, detect, respond to, and predict cyberattacks. As a result of these services, customers were made aware of potential threats in critical areas of their IT infrastructure. After a rather contentious audit, the taxpayer was ultimately assessed sales tax based on customers whose devices had New York IP addresses. The taxpayer protested the assessment, and the matter went before an ALJ who concluded that the taxpayer's services were protective services subject to tax. The taxpayer appealed.

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Before the Tribunal, the taxpayer generally argued that its services were not taxable because they did not attempt to prevent unauthorized access to a customer's computer network, nor did the services try to identify the individuals attempting the unauthorized access to the customer's systems. In other words, the taxpayer's services identified potential threats but did not take actions to directly stop those threats or identify the parties involved. The taxpayer further claimed that under a prior Tribunal decision, *AlliedBarton*, a service must directly guard or protect persons or property to be deemed a taxable protective service under Tax Law § 1105(c)(8).

At the outset, the Tribunal observed that the law broadly defined the types of services included in the scope of protective services. In addressing the specific categories of services, the Tribunal noted that when it provided device management services, the taxpayer used its industry experience and information collected from other customers to configure devices to prevent connections from outside threats. The taxpayer argued that it was not actively or directly guarding customers' IT infrastructures and therefore the device management services were similar to the reception services found to be nontaxable in *AlliedBarton*. The Tribunal disagreed. While it may not have been taking overt action to block attempted threats the moment they occurred, the taxpayer was nevertheless actively protecting its customers' networks from threats. Next addressing the taxpayer's monitoring services, the Tribunal found them to be analogous to an alarm system because the taxpayer reviewed network events to notify customers of potential threats. The Tribunal agreed that the taxpayer's vulnerability scanning services and targeted threat hunting services were integrated services because they involved providing protective services along with an information services component. When a service is integrated, determining whether it is subject to tax requires assessing the primary function of the service. In the Tribunal's view, the primary function of both services was to protect its clients' networks from malicious activity. The information services provided to customers were incidental to the taxable protective services. Regarding the taxpayer's incident response service that helped clients analyze and contain breaches, the Tribunal noted that these services prevented a breach from spreading further and were also taxable protective services.

Brazil: Administrative Tax Court Clarifies Concept of "Imported Software" for PIS/COFINS Purposes

On October 27, 2021, the Administrative Court for Federal Tax Appeals of Brazil (CARF) published Decision No. 3201-009.359 regarding whether revenues derived by Brazilian companies from the local distribution of software that was developed abroad are subject to the federal social contributions taxes (*Programa de Integração Social* (PIS) and *Contribuição para o Financiamento da Seguridade Social* (COFINS)). PIS/COFINS are federal social contribution taxes charged on gross receipts from the sale of goods and services. PIS/COFINS apply also to the import of goods and payments to nonresidents for services provided to Brazilian taxpayers but not on the export of goods and services. PIS/COFINS are charged under either a cumulative system or a noncumulative system. Under the noncumulative system, which applies to all taxpayers except those subject to the cumulative system, taxpayers are allowed a credit for PIS/COFINS paid on purchases used

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directly in the manufacturing process and for resale. Under the cumulative system, PIS/COFINS is charged at every stage of production. Rates under the cumulative regime are lower than under the noncumulative regime.

In the case at hand, the taxpayer was a Brazilian company that purchased the right to distribute and license software to Brazilian customers from a nonresident company. The taxpayer treated revenues from the sublicensing of software to Brazilian customers as subject to PIS/COFINS contributions under the cumulative regime (3.65 percent rate). However, the tax authorities held the position that the PIS/COFINS cumulative regime provisions do not apply to revenues derived by Brazilian companies from "the sale, licensing or assignment of the right of use of imported software." Since the software was developed abroad, for the tax authorities, the cross-border transfer of the software rights to the Brazilian company must be characterized as an import of software. Consequently, revenues derived from the distribution or licensing of such software by the Brazilian company to its local customers may not be taxed under the cumulative regime.

The CARF considered that software, by definition, is an intangible asset that would never be subject to a formal customs clearance. When the software is transferred from abroad to Brazil through physical support (e.g., a CD, USB drive, or hard disc, etc.), the customs clearance is carried out only over the customs value of the physical support, not on the value of the software contained therein. Therefore, the software, as an intangible asset, could never be subject to a formal import process, as occurs with tangible assets. Given this characteristic, the expression "imported software" contained in the law must be interpreted as referring to software that was developed abroad, regardless of whether it has been transferred to the Brazilian company via the Internet or via physical media. Since the software was developed abroad, the CARF held that revenues derived by the Brazilian company from the distribution/licensing of such software must be subject to the noncumulative regime of PIS/COFINS (9.25 percent).

Source: Brazil – Administrative Tax Court Rules on Concept of "Imported Software" for Purposes of Application of Contributions on Gross Revenues (Feb. 18, 2022), News IBFD.

Dominican Republic: Proposal to Require Nonresident Digital Services Providers to Collect VAT

On February 15, 2022, the Dominican Tax Authorities (DGII), along with the Ministry of Public Finance, requested public comments on a draft Presidential Decree establishing the levy procedure of VAT (ITBIS) on digital services provided by nonresidents to residents. The regulation would be intended to establish a procedure for the registration, administration, and payment of VAT with regard to internet-based digital services provided by nonresident providers that are either consumed or destined for users in the Dominican Republic. The draft Decree does not include any registration threshold.

Digital services falling within the scope of the new rules would be defined as services that are made available to the user through the internet or any adaptation or application of protocols, platforms, or the technology used by the internet through which online services are provided, such as telephone

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calls, radiograms, audio, and video transmission, transmission, and reception of data by Internet Protocol (IP) provided from abroad. Examples include the sale, storage, hosting of computer sites and web pages; the sale of digitized products in general; online advertising; remote, automated maintenance of programs and equipment; remote system administration and online technical support; web services, including data storage; software services; access and/or downloading of images, text, information, video, music, games, including games of chance; provision of databases; online club services; services offered by brokers or their counterparts; service provided by online blogs, magazines or newspapers; the concession, for consideration, of the right to market a good or service on an Internet site.

Digital services would be presumed to be used or consumed in the Dominican Republic in any of the following situations (1) when the IP address or other geolocation mechanism of the recipient's device reflects the service was acquired from the Dominican Republic; (2) when payment for the service is performed using a credit/debit card, bank account or any other means issued or registered in the Dominican Republic; (3) use or receipt of digital service on a mobile device which uses a SIM card (Subscriber Identity Module) with a Dominican country code; or (4) if a user or customer's billing address is in the Dominican Republic.

The draft Decree states that the obligation applies to marketplaces for their sales (e.g., listing fees) made to customers in the Dominican Republic. Moreover, the DGII, once the nonresident provider is registered, may designate it through a General Rule as an agent for the collection or withholding of the VAT that is generated by third parties, whether they are owners, hosts, drivers, or third parties within a commercial operation, when the foreign vendor acts as an intermediary (e.g., marketplaces). To read a report prepared by the KPMG International member firm in the Dominican Republic, please click here.

Puerto Rico: Consultation on Draft Sales Tax Regulations

On January 28, 2022, the Puerto Rican Treasury launched a consultation on draft regulations, which propose to expand and clarify the Sales and Use Tax rules for digital goods. The most significant changes and clarifications by the proposed regulations relate to Non-Fungible Tokens (NFTs). If approved, NFTs would become part of the definition of "specific digital products." It is not clear whether the proposal intends to clarify the scope as including NFTs or to modify the scope to include NFTs; it is clear, however, that if approved NFTs would be subject to SUT. The draft regulations make a distinction between digital transfers and deliveries. Further, the proposed regulations clarify that, since October 2021, the Tax on Imports Monthly Return must be filed not later than the twenty (20th) day of the month following the month in which the transaction subject to the tax takes place. This was already addressed via the Internal Revenue Informative Bulletin 21-08.

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Egypt: Nonresident Selling Goods and Services to Consumers in Egypt Required to Comply with Egyptian Law

Egypt recently amended its VAT law to include the introduction of a new simplified reporting requirements for nonresident digital services providers and sellers of goods. Executive regulations are pending for implementation of the law. The amendments are effective January 27, 2022, but the law grants a 6-month grace period for nonresident providers of digital services, and a 2-year grace period, for nonresident sellers of goods to comply (likely to allow the tax authorities to issue said regulations and further guidance).

According to the law, nonresidents who sell goods and services to consumers in Egypt are required to register for VAT. The obligation will apply to a broad range of services, and we understand that it currently applies to all services provided by a nonresident person to consumers in Egypt. While the sale of goods imported into Egypt is covered by the law, practical implementation issues will have to be clarified during the 2-year grace period. Currently, there is no provision for a nonresident registration threshold in the law. The local VAT registration threshold of EGP 500,000 ($32,000) could apply. Nonresidents will be able to complete the registration using a simplified registration mechanism, with more details about the registration process likely to be addressed in the regulations.

The compliance obligation will apply only to business-to-consumer (B2C) sales, which are defined as any sales made to natural persons. Business-to-business transactions will not create a VAT obligation for nonresidents as the business customer is liable to self-assess VAT under the reverse charge mechanism. While online marketplaces will be liable for VAT for their sales (e.g., listing fees) made to consumers in Egypt, there is currently no clarity on whether marketplaces are required to account for VAT on sales they facilitate for third-party sellers. Finally, nonresidents registered for VAT will likely be required to comply with the mandatory e-invoicing requirement.

European Union: Roundup of Recent ECJ Cases

On February 3, 2022, the Court of Justice of the European Union (ECJ) published its judgment in *B AG*, Case C-515/20, in which it held that the concept of "wood for use as a firewood," as used in the EU VAT Directive designates any wood which, based on its objective properties, is intended exclusively for burning. Therefore, EU Member States that establish a reduced VAT rate for such wood may limit the application of the reduced VAT rate to some categories of wood for use as firewood, subject to compliance with the principle of fiscal neutrality. In addition, the principle of fiscal neutrality must be interpreted as not precluding national law from excluding the sale of wood chips from the reduced rate, even though it grants that benefit to sales of other types of wood for use as firewood, subject to wood chips not being interchangeable, from the point of view of the average consumer, with other types of wood for use as firewood, which question is for the referring court to ascertain.

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On February 10, 2022, the ECJ published its judgment in *Grundstücksgemeinschaft Kollaustraße 136*, Case C-9/20, in which it held that the right to deduct VAT arises at the time the deductible tax becomes chargeable, which occurs when goods or services are sold or, in the event of a national derogation under the EU VAT Directive, when the remuneration is received by the vendor.

On February 10, 2022, the ECJ published its judgment in *Philips Orastie S.R.L.*, Case C-487/20, in which it held that Member States cannot apply a less favorable procedural regime related to VAT refund claims based on an infringement of the common system of VAT than that applicable to similar claims based on an infringement of domestic law in matters of taxes and duties other than VAT.

On February 24, 2022, the ECJ published its judgment in *Suzlon Wind Energy Portugal*, Case C-605/20, in which it held that transactions forming part of a contractual framework that identifies a services provider, the purchaser of the services, and the nature of the services in question, duly accounted for by the taxpayer, with a title that confirms their nature of services and which gave rise to a consideration received by the provider that constitutes the effective counter-value of those services in the form of debit notes, constitute a provision of services for consideration, notwithstanding the possible non-existence of profit by the taxpayer or the existence of a warranty relating to the products subject to the aforementioned services.

On February 24, 2022, the ECJ published its judgment in *SC Cridar Cons SRL*, Case C-582/20, in which it held that the EU VAT Directive (2006/112) and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding national legislation which enables tax authorities to suspend the examination of an administrative complaint against a tax assessment to obtain additional objective evidence when the assessment involves denying a taxpayer the right to deduct VAT on account of that taxpayer's involvement in tax fraud. However, such a suspension should not have the effect of delaying the outcome of the administrative procedure beyond a reasonable time. In addition, the decision for ordering that suspension must be reasoned in fact and law and may be the subject of judicial review. Finally, if it is established that the denial of the right to deduct VAT is in breach of EU law, the taxpayer can obtain reimbursement within a reasonable period and, where applicable, related late payment interest. Under those circumstances, it is not mandatory that, during the period of suspension, the taxpayer should benefit from a suspension of the enforcement of the tax assessment, unless there are serious doubts as to the lawfulness of the tax assessment, and the suspension is necessary to avoid serious and irreparable harm to the interests of the taxpayer.

On February 24, 2022, the ECJ published the nonbinding Opinion of its Advocate General (AG) in *DSAB Destination Stockholm AB*, Case C-637/20, in which the AG opined that a card, such as a tourist attraction card, that vendors are obliged to accept as consideration for providing certain goods or services at a given place, for a limited period, up to a certain value, falls within the concept of "voucher" under the EU VAT Directive. This applies even if

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all services covered by such a card cannot be used within the given time by an average consumer. Such a card is considered a "multi-purpose voucher" because the tax on the goods and services provided is not known at the moment of transfer of the card.

Source: European Union; Germany – ECJ Decides on Interpretation of Term "Wood For Use as Firewood" in Relation to Reduced VAT Rate: Finanzamt A (Case C-515/20) (VAT), (Feb. 3, 2022), News IBFD; DE: ECJ, Feb. 10, 2022, Case C-9/20, Grundstücksgemeinschaft Kollaustraße 136 v. Finanzamt Hamburg-Oberalster, Case Law IBFD; RO: ECJ, Feb. 10, 2022, Case C-487/20, Philips Orastie S.R.L. v. Directia Generala de Administrare a Marilor Contribuabili, Case Law IBFD.

Poland: Proposed Amendments to VAT Law

Poland recently closed consultations on its simple, local, and modern (SLIM) VAT 3 proposal. SLIM VAT 3 is the third package of changes to Polish VAT rules, intended to simplify compliance for businesses and tackle abuse and fraud. If adopted, the proposal would increase the annual gross receipts threshold to be considered a small taxpayer (which enables more use of cash accounting and quarterly return filing), from EUR 1.2 million ($1.33 million) to EUR 2.0 million ($2.22 million).

The proposal would further introduce new exchange rate rules when invoices are corrected. If a correcting invoice decreases the taxable amount, the same currency exchange rate as in the initial invoice should be applied. If the taxable amount is increased, the correcting invoice should be based on the currency exchange rate of the National Bank of Poland (or the European Central Bank) as binding on the working day preceding the day when a reason to increase the taxable amount occurred. If, due to an error, the tax amount in the initial invoice was too low, the taxpayer should use the same exchange rate in the correcting invoice that was used in the initial invoice.

Moreover, the proposal would amend the rules relating to intra-EU sales. Under the current rules, if a vendor does not hold documents confirming an intra-EU sale, the vendor should declare a domestic sale. Upon the receipt of those documents, the vendor may declare a zero-rated intra-EU sale by correcting the VAT return. Under the proposed amendments, the zero-rated sale may be declared in the tax period when the tax became chargeable. Currently, a taxpayer wanting to deduct VAT connected with an intra-EU acquisition must hold an invoice to be entitled to do so. If the taxpayer does not receive an invoice within 3 months from declaring an intra-EU acquisition, the VAT deduction may occur in the month when the invoice is received. Under the amended rules, the deduction of VAT will be possible in the same period as an intra-EU acquisition takes place.

In addition, the proposal would streamline the VAT recovery rules. Under current rules, a taxpayer may fully recover VAT if the proportion of deductible VAT is higher than 98 percent, and the non-deductible amount is lower than PLN 500 ($116). Under proposed amendments, this amount would be increased to PLN 10,000 ($2,317). Any difference between the initial and final proportion of recoverable VAT must be adjusted by the taxpayer under current rules. According to the proposed rules, if a difference between the

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initial and final proportion does not exceed 2 percent, the adjustment will be discretionary. This discretionary rule will apply if the difference between the deductible amount calculated under the initial and final proportion does not exceed PLN 10,000.

Finally, the proposal would (1) align the VAT exemption for management of investment funds with the EU rules; (2) repeal the requirement to issue a prepayment invoice if the prepayment is received in the same period in which the tax became chargeable on a sale; (3) repeal the requirement for taxpayers using online cash registers (including virtual ones) to print out paper documents; and (4) reduce the administrative penalty applicable when discrepancies between the declared amount of VAT and the amount that the taxpayer should declare arises.

Source: Poland – Ministry of Finance Announces Consultations on SLIM VAT 3 Amendments, (February 8, 2022) News IBFD.

United Kingdom: Overview of Recent Indirect Tax Developments

On February 2, 2022, the UK government issued its Summary of Responses regarding its call for input on the review of the UK funds regime. While VAT changes were not included in the scope of the UK funds regime review, the document acknowledges respondents' feedback that the competitiveness of the UK's VAT regime is a necessary condition for the UK to be an attractive location to domicile funds. The UK government said that it is working toward a consultation on the VAT treatment of fund management fees as part of the UK funds regime review. This consultation on VAT will be published in the coming months. The upcoming consultation will not look at a VAT zero-rate for fund management fees. The Exchequer impact of such a change would be significant and cannot be prioritized in the current fiscal context. However, the government will examine other options to improve and simplify the VAT regime for fund management.

On February 7, 2022, the UK tax authority, HM Revenue & Customs (HMRC), published a Revenue & Customs Brief 2 (2022) regarding the VAT treatment of early termination fees and compensation payments. The Brief replaces one published in September 2020, which was suspended in January 2021, and announces a revised policy effective April 1, 2022. HMRC's previous policy on early termination fees and compensation payments was that they were generally outside the scope of VAT, as they were not considered to be consideration for a sale. The new policy was formulated based on the ECJ decisions in *Meo*, Case C-295/17 (November 22, 2018), and *Vodafone Portugal*, Case C-43/19 (June 11, 2020). Accordingly, HMRC considers that fees charged when a customer terminates a contract early will be considered to be an additional payment for the taxable sale and subject to VAT. HMRC has updated its guidance manuals to clarify when early termination fees and compensation payments are liable to VAT (VATSC05910; VATSC05920; and VATSC05930).

On February 17, 2022, HMRC published a Revenue & Customs Brief 3 (2022) regarding the postponed VAT accounting and businesses registered under the Flat Rate Scheme. Postponed VAT accounting was introduced on January 1, 2021 and allows UK VAT registered businesses to declare and recover import VAT on the same return, rather than paying up front

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when the goods are imported and recovering later. UK businesses that have taxable gross receipts of GBP 150,000 ($197,649) or less in a 12-months period can apply for the Flat Rate Scheme, which allows them to pay VAT at a low flat rate but not deduct VAT incurred on purchases. Businesses registered under the Flat Rate Scheme were asked to include imports accounted for using postponed VAT accounting in the gross receipts that are subject to the flat rate percentage. From June 1, 2022, it will be necessary for in-scope businesses to account for the import VAT outside the flat-rate scheme calculation. HMRC also updated its guidance to reflect the changes announced in the Revenue & Customs Brief (VAT Notice 733, VAT Notice 700/12, Complete your VAT Return to account for import VAT).

On February 25, 2022, HM Treasury launched a consultation on a proposed online sales tax (OST). The consultation poses 40 questions to stakeholders regarding the scope of goods and services that would be included in the tax, the territorial scope of the tax, the definition of an online sale, and whether exemptions to the tax would be appropriate. It also questions at what point in the transaction the OST would be levied, how to structure reporting requirements to tax authorities, and whether an online sales threshold should be applied to smaller or less-online businesses. While the document does not recommend a specific OST rate, HM Treasury notes that proponents have suggested that a rate of 1 to 2 percent "would raise sufficient revenue to outweigh the administrative burden without creating significant distortions." It also notes that an OST would likely benefit from a revenue-based approach, under which retailers would pay more OST the higher the value of their online sales is. The amount of tax due would be a percentage of the value of relevant sales. In the document, HM Treasury acknowledges that determining the OST scope would be challenging as the government would need to determine whether an OST should apply to transactions conducted over the internet in any form or transactions carried out using any remote technology. The document further says that an OST could in theory be applied to the vendor, the marketplace or platform, the delivery company, or the consumer involved in any eligible transaction. The document says that because the purpose of a potential OST is to raise funds to rebalance the taxation of the retail sector, it would make sense for the vendor to pay the tax rather than the consumer. For cross-border transactions, the document says an OST should not give sellers an advantage based on their location. Therefore, the tax would need to be chargeable on both overseas and U.K.-based sellers making sales to customers based in the United Kingdom.

Source: CCH, Global VAT News & Features, UK Promises VAT Review But No Zero Rate For Fund Management Fees (Feb. 16, 2022); United Kingdom – United Kingdom Subjects Early Termination Contract Fees to VAT (Feb. 10, 2022), News IBFD; United Kingdom – United Kingdom Amends VAT Flat-Rate Scheme for Postponed Accounting on Imports (Feb. 21, 2022), News IBFD; Tax Analysts, U.K. Consults on Possible Online Sales Tax (Feb. 28, 2022).

Uzbekistan: Overview of Recent Indirect Tax Developments

Uzbekistan recently extended the VAT exemption for vegetable oils and certain foods until April 30, 2022. The VAT exemption applies to the import of vegetable oil, sunflower and flax seeds, and soybeans; gross receipts from

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the production and sale of vegetable oil (except cottonseed oil); and gross receipts from the sale of meat (cattle, sheep, chickens), live animals (cattle and poultry) and products of their slaughter, potatoes, and frozen fish, as well as their import into Uzbekistan.

On February 7, 2022, the Uzbek State Tax Committee (STC) issued a guidance letter clarifying that VAT taxpayers can now request a VAT refund in their VAT returns by indicating the requested amount of VAT to be refunded or offset toward future VAT liabilities and whether the general or accelerated VAT refund procedure should be applied. The tax authorities must examine that information within 60 days (in the case of the general VAT refund procedure) or seven days (in the case of the accelerated VAT refund procedure) and notify the VAT payer of their decision.

On February 10, 2022, the STC issued a guidance letter in which it clarifies that foreign legal entities that sell goods or services or carry out business activities in Uzbekistan are treated as VAT taxpayers in Uzbekistan. The STC further notes that a representative office of a foreign legal entity is not a VAT payer in Uzbekistan. However, a foreign legal entity that sells goods or services in Uzbekistan and has a representative office there will be recognized as a VAT payer in Uzbekistan regardless of the income generated from those sales transactions.

On February 16, 2022, the STC published a guidance letter clarifying that individual entrepreneurs whose total income for the tax period exceeds UZS 1 billion ($86,730) are automatically switched to the VAT regime from the first day of the month following the month in which that threshold is reached. The tax authorities use an automated system daily to identify taxpayers that are subject to VAT in Uzbekistan. Once identified, the taxpayers are sent notifications that they are mandatory VAT taxpayers and must issue electronic VAT invoices and pay VAT following the generally established procedure. If a taxpayer of the circulation tax becomes a mandatory VAT payer during a reporting month, it must submit both the circulation tax and VAT returns for that month.

Source: Orbitax, Uzbekistan Extends VAT Exemption for Vegetable Oil and Certain Foods (February 28, 2022); Iurie Lungu, Uzbekistan Issues Four VAT Guidance Letters, Tax Analysts (February 23, 2022).

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Trade & Customs (T&C)

Brazil: Customs Enhancements Regarding Physical Controls and Verification of Goods

On February 11, 2022, the Brazilian federal tax authority (*Receita Federal do* Brasil, RFB) published Ordinance RFB 143, which authorizes improvements in the physical controls and verification of goods in connection with Brazil's customs procedures. The Ordinance enables customs inspection actions to be carried out remotely for (1) parking or transit of vehicles; (2) movement, storage, and customs clearance of goods, including those under a special customs regime; (3) loading, unloading, and verification of goods; (4) transit of

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travelers; and (5) handling and storage of international shipments. This will be possible with the use of interface technology known as "*API Recintos*" that will allow integration between the importer's control systems and the control systems of the RFB.

The use of this API Recintos technology will reduce the amount of data required to be captured and recorded at customs facilities and will also dispense with annual audits of customs facilities systems, according to the rules. When these measures are in full operation, the RFB will manage information on access and movement of vehicles and cargo (including videos and images), providing greater security for importers and better control by the customs teams for risk management, surveillance, and repression, and control in certain zones. To read a report (in Portuguese) prepared by the KPMG International member firm in Brazil, please click here.

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In Brief

— **Angola:**[viii] On January 28, 2022, the Angolan tax authority announced the following VAT registration thresholds based on 2021 sales and import volume: (1) taxpayers with annual gross receipts up to AOA 10 million ($21,083) are excluded from VAT; (2) taxpayers with annual gross receipts over AOA 10 million but equal or less than AOA 350 million ($770,000) must update their registration status to qualify for the simplified VAT regime; and (3) taxpayers with annual gross receipts over AOA 350 million fall under the general VAT regime.

— **Anguilla:**[ix] On February 10, 2022, Anguilla's Inland Revenue Department (IRD) announced the launch of a taxpayer and public engagement program in preparation for implementing the new Goods and Services Tax (GST) on July 1, 2022. The GST is replacing Accommodation Tax, Communication Levy, Environmental Levy, Public Entertainment Tax, and Interim Goods Tax (IGT). The standard GST rate will be 13 percent, and the registration threshold is XCD 300,000 ($111,000) of annual gross receipts. The law provides for a VAT zero rate for the following: exports of goods and services; goods imported or sold for fishing or farming; goods used in manufacture in Anguilla; essential foods or other goods; sales of contraceptives and sanitary products; and the sale of electricity by ANGLEC to a domestic meter, up to 130kWh per month. Moreover, the law exempts education services, financial services, international air transportation services, daycare services, medical services and prescription drugs, and the sale or lease of a residential dwelling or vacant land from VAT. Further information can be found on the IRD's GST website and GST Documents Library.

— **Aruba:**[x] The Aruba government recently announced that the Tax Department has been instructed to initiate a process for adopting a VAT system. The Tax Department has organized multiple stakeholder meetings from February 22, 2022 to March 4, 2022 to share information about

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the entire process that led to the fiscal reform, what will follow, and the importance of involvement by unions and the community. Under the new VAT system, VAT exemptions would be granted for hotel room revenue (subject to tourist levy), education, the medical and bank sectors, as well as utilities. The proposed VAT rates would be: (1) zero percent on the export of goods; (2) a 6 percent maximum tax on food and non-alcoholic beverages; and (3) an 18 percent maximum tax on other goods and services (including restaurant dining). The education and medical sectors, as well as banks and utilities, would be exempt from VAT.

— **Australia:**[xi] The Australian Tax Office recently issued a release on the benefits of e-invoicing using the Peppol system, as opposed to paper invoicing. PEPPOL (Pan-European Public Procurement Online) is a set of specifications maintained by the OpenPEPPOL non-profit organization to standardize cross-border, electronically supported procurement procedures. E-invoices are cheaper because they enable process automation and reduce costs. It is accurate and reliable since it uses standardized data that is validated before the e-invoice is sent through the network. Further, e-invoices have shorter payment times, the Australian government pays eligible e-invoices within 5 days.

— **Austria:**[xii] On February 14, 2022, Austria published the Eco-Social Tax Reform Act 2022, which introduces carbon pricing effective July 1, 2022, with a national emissions certificate trading system. This starts with an initial fixed-price phase that includes pricing per metric ton at EUR 30 ($33.16) for 2022, EUR 35 ($38.69) for 2023, EUR 45 ($49.74) for 2024, and EUR 55 ($60.79) for 2025. Effective January 1, 2026, a market pricing phase will be implemented.

— **Cameroon:**[xiii] On December 16, 2021, Cameroon published the Finance Law for 2022 which amends the country's VAT law effective January 1, 2022. The Finance Law extends the scope of VAT to commercial activities of non-profit organizations, ancillary services, and sales related to educational, vocational training, and the health sectors. The law also clarifies that VAT credits generated by non-profit entities are subject to pre-refund audits by competent tax offices and allows absorbed companies, in case of a merger, to transfer VAT credits already validated by competent tax offices and pending refunds to absorbing companies. Finally, the Finance Law exempts from customs duty imports of prefabricated constructions for greenhouses for agricultural use, improved animal breeds and plant seeds, vaccines for animal and veterinary medicine, software for medical use, medical equipment intended to upgrade technical equipment in health facilities (this measure is granted for 24 months), and equipment intended for the development of local intensive wood processing activity.

— **Canada:**[xiv] On February 4, 2022, the Department of Finance of Canada released draft legislative proposals relating to the GST treatment of crypto asset mining activities. The proposals would, in most cases, preclude claiming GST/HST credits on activities relating to crypto asset mining and GST/HST from applying to the remuneration received from crypto asset mining activities. The above deeming rules do not apply to a crypto asset mining activity to the extent to which it is performed by a particular person

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for another person (1) who is not a mining group operator (i.e. a person who coordinates the mining activities of a group of persons and then shares any fees, reward or payment it receives for the mining activity with the group), and (2) whose identity is known to the particular person. These new rules are proposed to generally come into force on February 5, 2022. Interested parties are asked to provide comments to the Department of Finance by April 5, 2022.

- **Colombia:**[xv] On February 3, 2022, Colombia published Decree No. 176 requiring that producers of zero-rated goods intending to receive bimonthly automatic VAT refunds must support 100 percent of the VAT incurred with electronic invoices. For the purposes of this calculation, the VAT derived from imports must not be considered. Producers of zero-rated goods that do not comply with the electronic invoicing requirement can request VAT refunds through the ordinary procedure (i.e., from July of the corresponding year and once the income tax return of the relevant year has been filed).
- **Denmark:**[xvi] Following the publication of the Danish Ministry of Culture's paper on the challenges of media consumption in the digital age, Denmark recently proposed a 5 percent tax on gross receipts from streaming. The revenue would be used as a cultural contribution to the production of Danish film and television content. The levy would be imposed on streaming companies and will be designed so that streaming services that invest a certain amount in productions with Danish content would pay a smaller cultural contribution than services that do not.
- **Denmark:**[xvii] On February 8, 2022, Denmark's Expert Group for Green Tax Reform issued its preliminary report on a design strategy for a uniform carbon tax regime. It presents three carbon tax models to be levied on industrial CO2 emissions. The first model contains: a uniform CO2 tax rate of DKK 750 ($111) per ton of CO2 for non-ETS (emissions trading system) companies corresponding to the expected quota price in 2030; and a tax rate of DKK 375 ($55.50) per ton of CO2 for companies that fall under ETS. The second model: a uniform CO2 tax rate of DKK 750 per ton of CO2 for non-ETS companies corresponding to the expected quota price in 2030; a tax rate of DKK 375 per ton of CO2 for ETS-companies; and a reduced tax rate of DKK 100 ($14.80) per ton of CO2 for mineralogical processes. The third model: a uniform CO2 tax rate of DKK 600 ($88.82) per ton of CO2 for non-ETS companies; a tax rate of DKK 225 ($33.30) per ton of CO2 for ETS-companies; and a reduced rate of DKK 100 per ton of CO2 for mineralogical processes. Common to all three models is the shift from energy taxes to carbon taxes, effectively widening the tax base by including industries currently exempt from energy and CO2 taxes and disposing of the base deduction in the current CO2 tax. In addition, all three models contain incentives to achieve negative emissions. The Danish government appointed the Expert Group in 2021 and tasked it with preparing proposals on the regulation of greenhouse gases based on a higher and more uniform CO2 tax in Denmark. The government will discuss the recommendations with stakeholders and the Danish Parliament. Concrete proposals are expected in the fall of 2022.

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- **Egypt:**[xviii] Effective January 1, 2022, Egypt amended its VAT refund process and provided the following steps to apply for VAT refunds: (1) submitting applications and receiving responses to applications; (2) internal correspondence between the investigating departments and other tax departments involved; (3) execution of local entries, documents and export certificates; (4) processing VAT refund applications; (5) clarification of the production rate calculation; and (6) clarification for refunds in cash or by bank transfer.
- **European Union:**[xix] On February 16, 2022, the European Parliament adopted a resolution urging the European Commission and the tax authorities of the EU Member States to improve their cooperation and take actions to reduce the EU VAT Gap, in light of the economic slump caused by the COVID-19 pandemic. The resolution also urges the European Council to adopt the proposal on a definitive VAT system that highlights the principle of taxation in the country of destination as soon as possible. In addition, the European Parliament calls for, among other initiatives, a simplified and modernized VAT system with limits on exemptions and non-standard rates. It expresses its support of expanding the VAT One-Stop Shop, highlighting its importance in adapting to expanding e-commerce markets. Furthermore, the European Parliament considers it necessary to explore harmonized electronic invoicing in all Member States. Finally, the European Parliament instructs its President to forward this resolution to the European Council, the European Commission, and the governments and parliaments of the Member States to assess the current VAT framework and to propose concrete legislative measures, based on the principle of administrative cooperation.
- **European Union:**[xx] On February 10, 2022, the French Presidency of the Council of the European Union held a conference discussing the harmonization of rules for e-invoicing throughout the EU. Currently, electronic invoicing is mandatory in public procurement, but its use in business-to-business transactions is not yet widespread. The conference was intended to provide a forum for sharing implementation experience along with best practices to illustrate the steps necessary to a successful implementation. The conference further covered the different perspectives of Member States, businesses, and tax administrations.
- **European Union:**[xxi] On February 10. 2022, the European Commission proposed to extend the application period of the optional temporary self-assessment under the reverse charge mechanism and the Quick Reaction Mechanism to combat existing VAT fraud. Application of these measures was set to expire on June 30, 2022. However, according to the proposal, this period can be extended until 31 December 2025. The reverse charge mechanism helps to combat VAT fraud, particularly Missing Trader Intra-Community (MTIC) fraud, since it allows designation of the recipient of the sale as the person liable for the payment of VAT, instead of the vendor. Once taxpayers are obliged to use it, VAT cannot be charged on the invoice, vendors will not receive VAT amounts from the customers and thus, vendors will not disappear with the amount of VAT received. In addition, the

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Quick Reaction Mechanism supports the fight against VAT fraud as it allows Member States to introduce a temporary reverse charge mechanism as an exceptional measure in cases where massive fraud has occurred in certain sectors.

- **European Union:**[xxii] On February 15, 2022, the European Commission proposed several initiatives to contribute to European defense and security. They include a VAT waiver on military equipment bought and owned by Member States. The proposal is intended to incentivize the joint procurement and ownership of defense and security capabilities developed collaboratively within the European Union, in the framework of the Common Security and Defense Policy of the Treaty on European Union and within the context of the North Atlantic Treaty Organization (NATO) and national activities.
- **Greece:**[xxiii] On February 7, 2022, Greece published Decision No. A1018 clarifying the VAT treatment applicable to cross-border leasing of professional leisure boats, including when such transactions are subject to the standard VAT rate of 24 percent; the taxation of sailing in international waters or in waters outside the EU; the requirements for proof of residence and proof of distance traveled in non-EU waters; electronic application process for determining taxes payable; and the audit process.
- **Greece:**[xxiv] On February 1, 2022, Greece's tax agency published Circular E. 2010 establishing the following Intrastat reporting thresholds for 2022: EUR 150,000 ($165,000) for intra-EU arrivals; and EUR 90,000 ($99,000) for intra-EU dispatches (unchanged since last year).
- **Guernsey:**[xxv] Following its announcement that it is considering imposing a GST regime, the Guernsey government has begun community outreach activities to urge support for the tax reform measure. The government hosted various events and launched a new website – "Ourfuture" – with information on the tax review and changes to public services to make the territory's finances sustainable in the long term. However, according to recent news, Guernsey may further delay any decision on the implementation of a GST. For KPMG's discussion of the proposed GST regime in Guernsey, please click here.
- **Guinea:**[xxvi] On December 31, 2021, the National Assembly of the Republic of Guinea adopted the Finance Law 2022, which includes the following measures that became effective January 1, 2022: (1) exempt imports of new spare parts and accessories intended for public transport vehicles and vehicles for the transport of goods from VAT; (2) exempt imports of new spare parts and accessories for motorcycles and tricycles from VAT; (3) increase the excise duty rates on imports of cigarettes from 35 percent to 40 percent for 2022; and (4) reduce the tax on telephone consumption from GNF 2 to GNF 1 per second.
- **Ireland:** On February 11, 2022, the Irish Revenue issued Revenue eBrief No. 031/22. The guidance concerns the implementation of a new Code of Practice for compliance interventions which will come into effect on May 1, 2022 and will apply to compliance interventions notified on or after that date. In addition, on February 25, 2022, the Irish Revenue issue the

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following guidance: (1) eBrief No. 043/22 concerning the VAT treatment of staff secondments, (2) eBrief No. 045/22 regarding "Section 56" VAT zero-rating relief, and (3) eBrief No. 046/22 regarding the effective date of VAT Group applications. Finally, on March 7, 2022, the Irish Revenue issued eBrief No. 056/22 regarding the importation of plants and plant products.

— **Kosovo:**[xxvii] Effective February 1, 2022, Kosovo has mandated the use of electronic filing channels for the declaration of tax due. Taxpayers may use only the tax administration's electronic data interchange (EDI) system to declare taxes and other levies, which is already used by 98 percent of taxpayers to submit declarations. Taxpayers may no longer download electronic versions of forms.

— **Kosovo:**[xxviii] On February 14, 2022, the tax authority of Kosovo announced that nonresidents providing digital services are obliged to register for VAT in Kosovo and charge VAT at the standard rate of 18 percent on their sales to non-taxpayers (consumers) in Kosovo. The following services qualify as digital services: (1) the provision of website, web-hosting, and remote maintenance of software and equipment; (2) the sale of software and their update; (3) the sale of images, text and information, and making databases available; (4) the sale of music, films and games, including prize-winning games and games of chance, political, cultural, artistic, sporting, scientific and entertainment events; and (5) the provision of distance learning.

— **Malawi:**[xxix] On February 18, 2022, the Minister of Finance and Economic Affairs presented the 2022/2023 Budget Statement. If approved, the budget exempts cooking oil and tap water from VAT, repeals the VAT withholding mechanism, and reduces the validity period for claiming VAT credits from 12 months to 6 months effective April 1, 2022.

— **Mauritania:**[xxx] On January 13, 2022, Mauritania published the Finance Law for 2022, which exempts public passenger or freight transport companies from VAT and reduces the VAT rate on the telecommunications sector from 18 percent to 16 percent.

— **Morocco:**[xxxi] The Moroccan tax authority recently issued Circular No. 732 in which it clarified the application of VAT to photovoltaic panels as contained in the Finance Law for 2022. FL 2021 had introduced an exemption on the sales of photovoltaic panels. Effective January 1, 2021, the domestic sale of photovoltaic panels is VAT exempt, while the import of photovoltaic panels were taxed at the standard rate of 20 percent. Effective January 1, 2022, the Finance Law for 2022 provided VAT neutrality for the sale and delivery of photovoltaic panels; the Circular clarifies that the 2022 Finance Law applies to photovoltaic panel stock held as of December 31, 2021 and receivables recorded effective January 1, 2022.

— **Oman:**[xxxii] The Omani Tax Authority (OTA) recently issued a guide clarifying application of the self-assessment requirement under the reverse charge mechanism. According to the guide, while the VAT law and regulations provide for application of the reverse charge mechanism on inter-Gulf Cooperation Council (GCC) transactions and the provision of services by a nonresident to a taxpayer in Oman, the mechanism applies currently only to the provision of services by nonresidents, due to the transitional rules in the

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other GCC countries (i.e., Saudi Arabia, Bahrain, and UAE). Until the GCC member states agree to treat each other as VAT implementing members, inter-GCC transactions will be treated as exports and imports. The guide further explains that the reverse charge mechanism applies when: (1) the taxpayer receives, in his capacity as a customer, services from a nonresident vendor; (2) the services are sourced in Oman; (3) the services are not exempt in Oman; and (4) the vendor is not registered, or required to register, for VAT in Oman. If a customer is not a taxpayer, it will not be required to apply the reverse charge mechanism. However, it must account for the value of the received services in its revenues to determine the VAT registration threshold.

- **Oman:**[xxxiii] The OTA recently issued a guide clarifying the VAT treatment of transactions between Connected Persons. Connected Persons are defined as "two or more persons, one (or more) of whom has control over the others such that he has an administrative authority allowing him to influence the business of other persons financially, economically or organizationally." The guide clarifies that Connected Persons may register as a VAT Group if (1) all the group members are legal entities resident in Oman; (2) all members are VAT registered; (3) no member is a member of another group; and (4) no member is registered in a special regime zone (i.e., free or special economic zones). Once the group is registered, the group is treated as a taxpayer that is independent from the members; one group member must act as a representative of the group and be responsible for the VAT obligations of the group (without prejudice to the joint liability of the members). Moreover, all sales and imports made by, or to, a member of the group are considered as if they were made by, or to, the group representative; and transactions between group members are not regarded as sales for VAT. The guide further provides of when two (or more) persons are considered as connected.
- **OECD:**[xxxiv] The Director of the OECD Centre for Tax Policy and Administration recently announced that Organization for Economic Cooperation and Development (OECD) has begun working to create a new inclusive framework on carbon pricing. The global initiative on carbon pricing will be patterned after the inclusive framework on base erosion and profit shifting (BEPS).
- **Poland:**[xxxv] The European Commission recently authorized Poland to extend the application of its split payment mechanism until February 28, 2025. Under the split payment mechanism, when a taxpayer acquires goods or services from another taxpayer, the portion of the payment to the vendor that is VAT is deposited separately and automatically to a dedicated account of the vendor (an r-VAT account) to satisfy the VAT required to be remitted to the tax authority. The net amount for the transaction is remitted to the vendor. The amount deposited in an r-VAT account earns interest for the vendor and may be used to satisfy its VAT obligations.
- **Poland:**[xxxvi] On February 23, 2022, the Polish Ministry of Finance clarified the new VAT rules for financial services effective January 1, 2022. The new rules provide that financial institutions may opt to charge or exempt VAT on certain financial services provided to taxpayers. Opting for taxation requires institutions to apply VAT for at least two years.

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- **Romania:**[xxxvii] On February 21, 2022, the Parliament of Romania accepted for consideration a bill that would, if approved, introduce a reduced VAT rate of 5 percent for certain car fuels, including leaded and unleaded gasoline, liquefied petroleum gas (LPG) and diesel, effective April 1, 2022.
- **Slovenia:**[xxxviii] On February 9, 2022, Slovenia published Amendments to the VAT rules which include (1) a procedure to calculate the total cost of a vehicle used for non-business purposes; (2) updating the VAT exemption rules for the import and export of specific goods and services; (3) explaining deductions for motor vehicles with no carbon emissions; (4) requirements for VAT calculations; (5) exemption and registration procedures for taxpayers under special VAT arrangements; and (6) updating the procedure for special VAT returns and VAT refunds.
- **Slovenia:**[xxxix] On February 11, 2022, the European Commission proposed to authorize Slovenia to continue exempting those taxpayers whose annual gross receipts are no higher than EUR 50,000 ($54,500) from VAT.
- **Spain:** On February 22, 2022, the Spanish Council of Ministers proposed a bill to implement the new EU Directive on administrative cooperation for taxation and tax transparency for digital platforms (DAC7). The bill would require information exchanges from digital platforms between EU countries and tax authorities; specify information to be shared with the tax authorities; and provide a framework for competent authorities to conduct joint audits. In line with the EU Directive, the Spanish proposed bill sets two different deadlines: (1) the obligation regarding information to be reported will be applicable from January 1, 2023, while (2) the framework for competent authorities will be applicable from January 1, 2024.
- **Sweden:**[xl] On January 28, 2022, the Swedish tax authority clarified that the mutual exchange of services between a card issuer and a network operator is considered a sale subject to VAT when amounts are transferred for consideration.
- **Sweden:**[xli] On February 22, 2022, the Swedish government presented a bill proposing to increase the VAT registration threshold from SEK 30,000 ($3.200) to SEK 80,000 ($8,500) per tax year. Moreover, the bill aims to strengthen the existing incentives in the VAT system to get more people to repair and modify already manufactured goods instead of buying new ones by reducing from 12 percent to 6 percent for repairs done to bicycles, shoes, leather goods, clothing, and household linen. The proposed amendment will enter into force on July 1, 2022.
- **Tanzania:**[xlii] On February 3, 2022, Tanzania Revenue Authority (TRA) has launched an upgraded VAT electronic filing system intended to simplify the filing of VAT returns effective March 1, 2022. The system will be used to file VAT returns, accept electronic fiscal device receipts and invoices for claiming VAT deduction, and accept valid Tanzania single administrative documents (TANSAD) for import VAT deductions. However, the system will not automatically carry forward the repayment position from the February 2022 VAT return unless the repayment amount is verified by the TRA and subsequently allowed to be accounted for in the March 2022 VAT return

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in the new system. Therefore, all traders in a refund position for the return of February 2022 should apply for a VAT refund (for those eligible) or notify the TRA of their positions for audit or verification to ensure it is carried forward in the new system. Moreover, all traders are required to upgrade their electronic fiscal devices to Protocol 2.1 to issue receipts/invoices with verification codes and to use the tax debit numbers from the tax assessments issued by the system.

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