

# VAT brief #1\*

This is the first in a series of briefings which will be issued on a regular basis with the aim to keep you updated on the latest significant VAT developments. In this issue, we will focus on the main changes brought in by the Finance Bill 2005 and the release of two judgements and an opinion from the European Court of Justice.

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## Finance Bill 2005

### VAT self supply of property

A key change announced is the valuation of self-supplies of property with the introduction of deductibility adjustments in place of the existing clawback of all VAT claimed. A critical result of this change is that VAT will still arise on any future disposal of that property despite the self-supply. A related change will also introduce an adjustment enabling VAT previously paid to be recovered in part on disposal of the property. These changes will take effect once the minister makes a commencement order.

### Place of supply of services

The Bill clarifies that the place of supply of intermediary services (which form part of money transfer services, when provided to a non-EU principal but used and enjoyed in the State), is in Ireland. A minor change is also made in the case of electronically supplied services to private consumers residing in Ireland by non-EU businesses, to confirm that where a non-EU supplier provides such services, the place of taxation remains in Ireland.

### Other VAT changes

The Finance Bill also contains a number of other changes; perhaps the most important of which relates to the

broadening of the application of the 13.5% rate on hot food, which may impact particularly on supermarkets. There is also a refinement of the transfer of business rules to bring them more into line with EU law, a clarification as to the time of supply for utilities (i.e. gas, electricity and telecommunication services) provided to private consumers, as well as some changes in property rules concerning surrenders and assignments of leaseholds and disposals of reversionary interests.

### **Insurance related services - European Court of Justice - the Andersen Case C-472/03 - Judgement**

The European Court of Justice released its judgement in the case of Arthur Andersen & Co. Accountants on 3 March. The key question in this case was whether the supply of certain 'back office' services by Andersen to a Dutch life assurance company, qualified as insurance related services performed by an insurance agent and thereby VAT exempt. The ECJ confirmed that these 'back office' services did not fall within the VAT exemption. The court held that an important element of an insurance agent's services was the finding and introduction of prospective customers to the insurers.

Following the Court's decision, the Revenue Commissioners issued a statement indicating that the impact of the judgement would be assessed and that they would consult with the industry prior to any change in practice. They confirmed that, in the meantime, the VAT exemption currently applicable to "back office" services remained in place. However, this judgement, in time, is bound to have a significant impact on the existing VAT treatment of such services and potentially trigger additional costs for the insurance industry.

### **Issue of shares - European Court of Justice - the Kretztechnik Case C-465/03 - Opinion**

The Advocate General has advised the European Court of Justice to regard the listing and issue of shares as a non-economic activity. In doing so, he suggested that costs relating to such operations should be treated as general overheads of the business for VAT recovery purposes.

Should the judgement of the Court support the opinion of the Advocate General, it will provide a strong basis for VAT recovery on costs which would have normally been treated as being non-deductible.

### **Canteen services - European Court of Justice - the Scandic Case C- 412/03 - Judgement**

A recent ECJ decision has supported the position that VAT on the "self-supply" of subsidised staff canteen meals should be accounted for by the employer on the takings received as opposed to the actual cost of providing the service. This would seem to provide further support for businesses to make a claim for VAT overpaid on the operation of a subsidised staff canteen where the tax has been accounted for by reference to cost or by denial of input VAT credits.

While Revenue at present are still not processing VAT repayment claims in respect of canteens pending further review of the impact of this case, those operating subsidised catering facilities for employees would nevertheless be advised to file protective claims at the earliest opportunity.

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