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## Editorial

We are pleased to present you the PricewaterhouseCoopers Financial Services VAT Alert containing the latest European VAT news in the sector. This Alert is intended as an easy tool for you to keep track of the ever changing VAT in the Financial Services Sector. If you have any queries or need assistance, please contact us.

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## Index

### European Union

1. Working Paper on VAT grouping published
2. Council consensus on reforming the place of supply rules for services
3. AG's Opinion on investment holdings and VAT recovery published

### Belgium

4. New Circular on VAT grouping in Belgium published

### Germany

5. Federal Ministry of Finance issues new decree on the VAT exemption of sub-negotiation of credits

### United Kingdom

6. HMRC clarifies policy on exempt insurance distribution
7. Apparent HMRC policy change over treatment of payroll services
8. Jersey publishes draft regulations on special GST regime for international services entities (ISEs)





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## European Union

### 1. Working Paper on VAT grouping published

The VAT Committee has published a Working Paper (based on consultations with Belgium, Czech Republic, Ireland, Romania, Spain and the UK) which contains a set of guidelines developed by the VAT Committee regarding the implementation of VAT grouping.

The guidelines confirm a number of criteria for VAT grouping, including the condition that only taxable persons may join a VAT group. This can include the permanent establishments (local branches) of foreign companies.

Membership of a VAT group confers a new (single) taxable person identity which will be dissociated from the taxable person identity that each member constituted together with its permanent establishments abroad. As a result, all transactions between a VAT group member and its permanent establishments abroad will be treated as transactions between two separate taxable persons. Thus, according to the VAT Committee intra-company charges should be taxable under these circumstances and the principles established in the FCE ruling will not apply.

*For more information, please contact your local PwC Indirect Tax expert.*

### 2. Council consensus on reforming the place of supply rules for services

The Council on Economic and Financial Affairs (ECOFIN) has agreed to formally adopt key elements of the "VAT package", covering changes to the place of supply of services, as well as certain reporting requirements and simplification procedures for cross-border trade.

Business-to-business (b2b) supplies of services will be taxed where the recipient is established (with the exception of certain specific services, eg services related to land). Business-to-consumer (b2c) supplies of services will generally continue to be taxed where the supplier is established.

However, certain specified types of supply (notably telecommunications, broadcasting and

electronic services) will be taxed at the place where the consumer resides.

The "one-stop" system will be expanded to cover telecommunications and broadcasting services, and to include businesses established in the Community. This simplifies procedures for registrations and declarations of VAT by businesses trading in Member States where they are not established.

The Intrastat / VIES system for reporting intra-Community supplies of goods will be extended to cover supplies of services.

The EU Eighth VAT Directive has been rewritten to produce a more simplified procedure, which includes a detailed timetable for processing claims and the right for businesses to receive interest on overdue refunds.

The change in the general rule on the place of supply of b2b services will have implications for outsourcing structures (especially those using non-EU suppliers whose services are not currently subject to the reverse charge) and for the level of EU Eighth Directive reclaims.

The above measures will generally enter into force on 1 January 2010, although changes to the taxation of certain services provided to private consumers will not be implemented until 2015.

*For more information, please contact your local PwC Indirect Tax expert.*

### 3. AG's Opinion on investment holdings and VAT recovery published

The Advocate General (AG) has issued his opinion in the *Securenta* (C-437/06) case, concerning the apportionment of input VAT to non-economic activity.

The case involves a German taxpayer, a public company, which carried on the business of acquiring, managing and selling real estate, securities, financial holdings and investments of all types.

It raised capital for investment by the issue of shares and "atypical silent partnerships" (similar to non-voting preference shares). The German tax authorities disallowed 68% of its non-attributable input VAT as relating to these share issues.



The AG concluded that input VAT related to the issue of shares or "silent partnerships" is only recoverable to the extent that it is attributable to economic activity. The AG considered that the method of apportionment between economic and non-economic activity is not prescribed by the EC Sixth VAT Directive and is a matter for Member States, subject to the principle of neutrality.

*For more information, please contact your local PwC Indirect Tax expert.*

## Belgium

### 4. New Circular on VAT grouping in Belgium published

VAT grouping was introduced into Belgium with effect from 1 April 2007. A first administrative circular with respect to VAT grouping was published on 1 December 2007.

This administrative circular letter gives a detailed understanding into the general rules of VAT grouping in Belgium.

Some of the key issues covered in the administrative circular are:

- Financial link:
  - can be proven via a shareholder who does not want or cannot be a member of the VAT group (e.g. passive holdings, company established outside Belgium or natural person);
  - is assumed if 10% or more of the shares are, directly or indirectly, in the same hands;
  - can also be proven via assumptions mentioned in the Belgian Company Code if the 10%-rule referred to above is not applicable;
- Right to deduct VAT via the real use method - use of CPU time:
  - CPU time can be used as repartition key to calculate the right to deduct VAT (as mentioned in point 19 of administrative circular 95/010 of 26 July 1995).

A second administrative circular about the obligations to be fulfilled by a VAT group and its members should be also published within the next weeks.

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## Germany

### 5. Federal Ministry of Finance issues new decree on the VAT exemption of sub-negotiation of credits

The German Federal Ministry of Finance issued a decree on 29 November 2007 confirming the application of the decision of the European Court of Justice from 21 June 2007 ("Volker Ludwig"). The ECJ decided that the sub-negotiation of credit is VAT exempt even where the sub-agent has no contractual link with any of the parties to the credit agreement to the conclusion of which he has contributed. Furthermore, the fact that the sub-agent establishes direct contact with only one of those parties does not harm the VAT exemption.

Thus, the Federal Ministry of Finance stated in the decree that the current conflictive German legal practice is no longer applicable. This ruling has to be applied in Germany to all pending cases with immediate effect. All services which are rendered to clients before 1 January 2008 can be treated according to the previous German legal practice.

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## United Kingdom

### 6. HMRC clarifies policy on exempt insurance distribution

HMRC has published Revenue & Customs Brief 69/07, clarifying its policy on the VAT treatment of 'insurance introductory services' following the VAT Tribunal's decision in the InsuranceWide.com case (see FS VAT Alert - edition 2007/10).



The Brief states that the decision confirms HMRC's current published policy and notes that the decision does not have implications for providers of insurance-related services which HMRC already accept as falling within the exemption. The Brief emphasises the importance of the nature of the services rather than the means by which they are provided.

HMRC sees the decision as applying, in particular, to marketing services (e.g. internet 'click-through' services) where the supplier does little more than put one party in touch with the other. HMRC sees such services as taxable regardless of whether they are supplied by an insurance agent or broker.

However, where the supplier is playing a more active role beyond mere introduction and "is clearly acting as an insurance agent", the services will be VAT exempt.

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#### **7. Apparent HMRC policy change over treatment of payroll services**

The UK VAT Tribunal has ruled that payroll services supplied by a UK company to a Guernsey customer were liable to UK VAT. Historically, HMRC has treated such supplies as outside the scope of UK VAT when supplied to non-UK customers. Therefore this case raises a number of significant issues, including the question of whether UK businesses should account for reverse charge VAT on payroll services supplied from outside the UK.

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#### **8. Jersey publishes draft regulations on special GST regime for international services entities (ISEs)**

The States of Jersey has opened a public consultation on draft regulations which include details of the proposed special GST regime for international services entities (ISEs). This measure is aimed principally at the financial services sector and would allow firms operating outside Jersey to fall outside the GST system on payment of an annual fee.

Under the Goods and Services Tax (Jersey) Law 2007 (which introduced the concept of ISE status), an entity would only be eligible for ISE status if it did not make any supplies to Jersey residents. The proposed regulations would allow an entity to apply for ISE status if supplies to Jersey residents are less than 10% of total turnover. In addition, the proposed regulations would automatically make banks, trust companies and fund functionaries eligible for ISE status.

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