

Tax & Business News

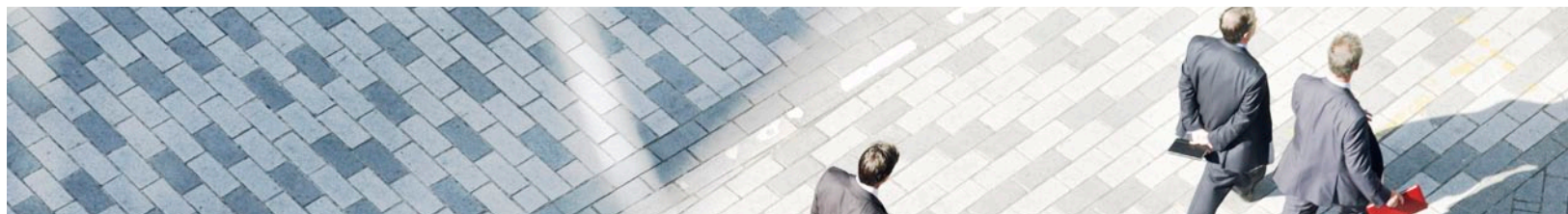
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Tax, accounting, advisory and assurance newsletter

August 2011

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Theme of the month

News in VAT treatment of the Financial services

Nordea Pankki Suomi Oyj (SWIFT) C-350/10

The European Court of Justice (“ECJ”) has held that the VAT exemption for financial services does not extend to supplies of the Society for Worldwide Interbank Financial Telecommunication (SWIFT), which are used for the purposes of

interbank ‘settlement’ payments. The ECJ has ruled that transactions that fall under the VAT exemption must have the effect of transferring funds and entail changes of a legal and financial character and must be more than a data-handling system.

The ECJ argued that SWIFT was only responsible for the secure transmission of the messages and the transactions could only be effected by the financial institutions themselves. Even though the SWIFT services were essential to the overall exempt activity, the exemption need not extend to each individual process necessary for activity itself to take place.

All recipients of SWIFT services should consider the implication of this decision particularly where cross-border services will entail the need to self account for VAT.



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Taxes

The Advocate-General (“AG”) has issued an opinion on the VAT treatment applicable to the transfer of non-performing receivables in the case GFKL Financial Services (C-93/10).

GFKL Financial Services AG (“GFKL”) purchased from a bank a portfolio of defaulted debts, for a discounted price. All rights and risks connected with the portfolio of receivables were



transferred to GFKL. The German Federal Tax Court referred the case to the ECJ to ascertain whether

such a purchase is within the scope of VAT, if so whether it represents „debt collection and factoring“ and if it does, what the taxable amount should be.

The AG considers that there is no service within the scope of VAT performed by GFKL to the Bank upon purchasing the portfolio of debts. However, should the ECJ disagree with this point of view, the AG proposes the following:

- VAT exemption does not apply in respect of this service since it represents debt collection; and
- the taxable amount is represented by the difference between the amount that GFKL will eventually collect from the debtors and the price paid by GFKL to the Bank.

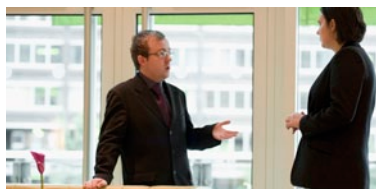
Should the ECJ agree with the AG’s opinion no VAT would be due for the acquisition of the portfolio of defaulted debts acquired at a discounted price to the extent that there is no direct link between the service provided and the consideration received.

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Does VAT correction have preferential insolvency treatment?

Regarding correction of the VAT amount with respect to claims against debtors in insolvency



proceedings, the General Financial Directorate (GFR) confirmed that the VAT Act considers this correction to be a separate taxable supply. Using the transitory provisions, this correction can also be made with respect to the claims that arose prior to 1 April 2011. The information from the GFR further states that the claim of the tax administrator, which arose due to the debtor’s correction of the VAT amount (applicable to claims against debtors in insolvency proceedings), is the VAT claim for the same tax period. In accordance with the provisions of the Insolvency Act, it is a claim against assets.

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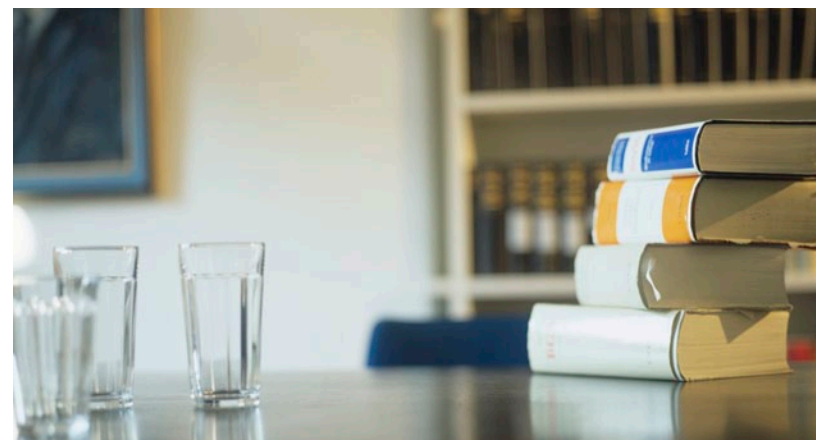
Judgement on dividends paid to foreign holding

Czech companies owned by a foreign holding company may enjoy a decision from the Supreme Administrative Court (SAC). This decision relates to a particular case of dividends paid to a Dutch holding company. The SAC in this dispute did not actually confirm that the use of the Dutch holding company would represent hidden legal action or abuse of the law. The success of the PwC team that worked on this tax dispute can be seen in the SAC’s statement that the application of zero withholding tax on dividends paid by Czech companies in the Netherlands

was correct. This procedure was carried out in complete accordance with the agreement on the avoidance of double taxation.

In general, the following two important observations stem from the tax audit and subsequent litigation: firstly, a foreign holding company should have a business, legal or other justification for its existence, not only a tax one. Secondly, the foreign holding company should be the real owner of the dividends, not just the paying agent.

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Accounting

Impact of new IFRS

In May 2011, the International Accounting Standards Board (IASB) issued the long-awaited IFRS 10 – ‘Consolidated financial statements’. Additional new standards that focus on reporting by consolidated groups have been issued as well. These include IFRS 11 – ‘Joint Arrangements’; IFRS 12 – ‘Disclosure of interests in other entities’; and consequential amendments to IAS 28 – ‘Investments in associates’.

definition is supported by extensive application guidance that addresses the different ways in which a reporting entity (investor) might control another entity (investee). The changed definition and application guidance is not expected to result in widespread change in the consolidation decisions made by IFRS reporting entities, although some entities could see significant changes. The new standard is effective for annual periods beginning on or after 1 January 2013; earlier application is permitted.



IFRS 10 replaces all of the guidance on control and consolidation in IAS 27 – ‘Consolidated and separate financial statements’, and SIC-12 – ‘Consolidation – special purpose entities’. IAS 27 is renamed ‘Separate financial statements’; it continues to be a standard dealing solely with separate financial statements.

IFRS 10 changes the definition of control so that the same criteria are applied to all entities to determine control. This

In the next issue of TBN, we will inform you about changes introduced by IFRS 11 – ‘Joint Arrangements’; IFRS 12 – ‘Disclosure of interests in other entities’; and IFRS 13 – ‘Fair value measurement’.

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Employees

Need to replace driver's licence?

Foreigners who are not EU citizens and who reside in the Czech Republic on long-term visas or long-term residency permits for more than one year must apply for a Czech driver's licence. In exchange for the licence issued by a foreign state, the municipality with extended powers will provide the individual with a new licence. Replacement of permits from countries outside the EU is possible only for documents issued in accordance with the International Convention on Road Traffic*. The Convention specifies the parameters that this document must meet. In some cases, replacement is possible on the basis of a bilateral agreement between the Czech Republic and the foreign state (such as Japan or Korea). In certain cases, however, the exchange is not possible. Then the foreign national is authorised to drive a motor vehicle in the Czech Republic on the basis of a valid international driving licence, or after completion of standard training in driving school. For driving licences issued by EU member states, the exchange is possible only after the condition that the foreign nationals have resided in the CR for at least 185 days is met.

Jana Zelová

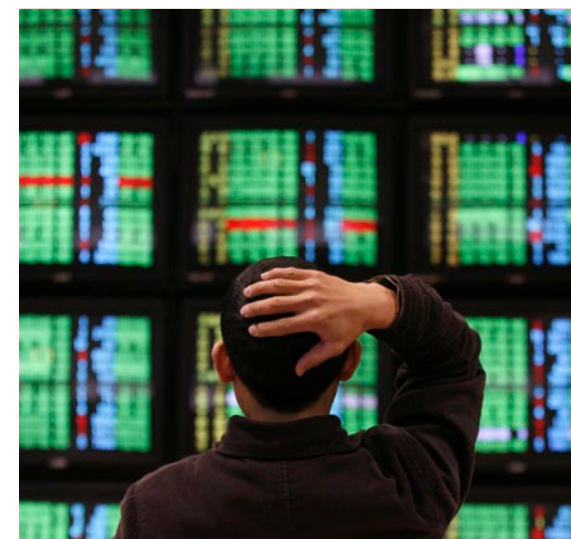
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* Geneva, 1948; Vienna 1969

Market

London dominates as European IPOs are boosted by natural resource demand in a hostile market

Companies in the mining and oil and gas sectors have dominated the initial public offerings (IPO) market in Europe. Hostile market conditions have dented the price and number of flotations, but there was still a 48% increase in the value of IPOs in Europe in the second quarter this year compared to the same quarter of 2010. It as found by PwC's quarterly IPO Watch Europe survey.



**Invitation**

PwC Academy, in collaboration with Hospodářské noviny, introduces a joint programme:

PwC Academy of Leadership in Finance

Our group of experts in the field of human resources and training, along with professionals from HN, prepared a unique educational programme. Its aim is the education of managers who want to systematically lead their teams to achieve better results.

Why participate?

- Within this unique programme we will introduce you to the most appropriate methods and practical approaches to leadership in various fields.
- We believe and we will prove it to you that the basis for the success of a good manager is in leadership of his or her team.
- You will become a part of the PwC business community and thus gain access to our know-how as well as to the know-how of our partners.

Topics of each half-day module:

- 1) "Continuous Professional Development: Keeping the CFO's knife sharp!"
- This module will be delivered in English.
- 2) „How can I develop a good team?“
- 3) „How can I determine whether investments in education are bearing fruit?“

Time schedule:

1st Module - 20 October 2011, 8:30 - 12:00

2nd Module - 21 November 2011, 8:30 - 12:00

3rd Module - spring 2012, 8:30 - 12:00

Price:

CZK 5 000 per module

How to register:

If you are interested, please send an email to the.academy@cz.pwc.com.
For further information, contact Martina Kopsová, tel: +420 251 151 816

We are looking forward to your participation.

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