

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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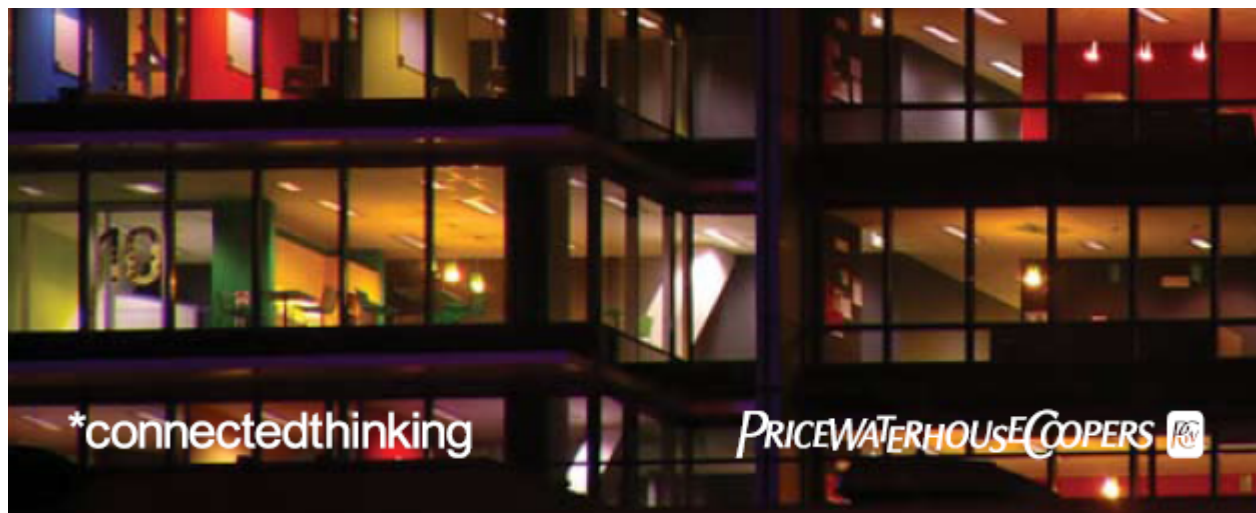
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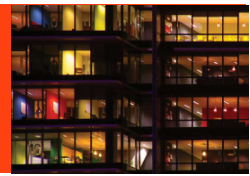
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France

1. Putting cheque books at disposal of clients for free

The Tax authorities reassessed a bank for VAT recovered on the costs of manufacturing and related services for cheque books provided free to clients.

The Administrative Court of Appeal considered that there is a direct and immediate link between putting free cheque books at the disposal of clients and the management of their accounts. Since account management services are eligible for the option to tax and the bank had opted to tax its services, the bank was therefore able to deduct input VAT relating to the cheque books (full deduction due to the direct allocation of the costs).

The court dismissed the application of the rule whereby VAT cannot be recovered on the supply of free items, on the grounds that this rule applies only to goods and not to services, so that services can be provided at a loss leaving the supplier with his right to input VAT deduction.

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Luxembourg

2. New transfer pricing rules for VAT

On 29 October, the Luxembourg government made public a draft bill. One of the envisaged measures is the introduction of transfer pricing rules for VAT. These rules will apply for transactions between related parties, including employees, when at least one party cannot fully recover VAT. Related parties are parties closely linked by family or personal, organizational, ownership, affiliation, economic, financial or legal ties.

The tax administration will be allowed to substitute the price agreed by the parties with the market value.

Where the market value cannot be determined, the value will be for services, the expenses incurred; and for goods, the purchase price of similar items, or the cost price.

This development could have an impact for the financial sector, holdings and for benefits in kind.

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The Netherlands

3. Secretary of the Dutch Ministry of Finance answers questions about asset management services to pension funds

The Dutch parliament asked the Dutch Ministry of Finance whether the Dutch standpoint of excluding the asset management of pension funds from the VAT exemption is in conformity with EU regulations. Furthermore, the parliament asked why the government is against the proposals of the European Commission to introduce a VAT exemption for the asset management of pension funds.

The Dutch Secretary of Finance answered that the Dutch governments view is that the asset management of pension funds does not qualify as collective asset management. Therefore, based on EU regulations, these services do not fall within the VAT exemption. Furthermore, the Dutch government supports the harmonization of VAT in this respect.

In our view, the Dutch Secretary has not really answered the questions of the Dutch parliament. The EU regulations exempt the management of "special investment funds" as defined by the member states. The Dutch VAT law states only the condition that the asset management should be "collective". Therefore, the question remains whether pension funds should be regarded as "special investment funds".

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Slovakia

4. Proposal for amendment of the Slovak VAT Act

The Slovak Ministry of Finance has proposed an amendment to the Slovak VAT Act that should be effective from 1 January 2008. The amendment clarifies certain provisions, and also introduces new rules for the taxation of certain transactions, i.e. lease agreements and transfers of going concerns.

Leasing - Currently any lease of tangible assets is considered a supply of services for Slovak VAT purposes. According to the proposal, handing over goods pursuant to a contract for the hire of goods for a certain period, which provides that, in the normal course of events, ownership shall transfer at the latest upon payment of the final instalment, should be considered a supply of goods. Lease transactions with an eventual purchase option should continue to be regarded as a supply of services.

TOGC - According to the current Slovak VAT Act, the sale (and the in-kind contribution) of a business or a part of a business as a going concern to a business corporation or co-operative is outside the scope of VAT, unless the acquirer mainly performs transactions exempt from VAT without credit, in which case the transaction is subject to VAT. According to the proposed amendment, if the transfer takes place between a seller and an acquirer where both supply mainly goods and services exempt from VAT without credit (such as between two banks within a group) it will also be outside the scope of Slovak VAT.

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UK

5. Jersey to introduce a Goods and Services Tax (GST) from May 2008

Jersey has passed laws enabling it to introduce a GST, which it intends to do with effect from May 2008 at a rate of 3%. The Jersey GST is closely modeled on the UK VAT system, but with several important differences. In particular, the Jersey system will permit certain 'International Services Entities' (such as financial services firms) to operate wholly outside the GST system.

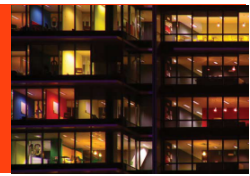
6. WHA petitions the House of Lords for leave to appeal on the abuse principle

We understand that WHA has lodged a petition with the House of Lords for leave to appeal the decision of the Court of Appeal on the abuse principle. If the petition is successful, any subsequent judgment of the House of Lords is likely to have important implications for the landscape of VAT planning in the UK (and possibly further afield).

7. Tribunal decision may restrict VAT exemption for Internet-based insurance distribution

The Taxpayer established a website comparison service for a number of types of insurance cover. The terms and conditions of the website emphasised that the Taxpayer did not sell insurance, and later versions emphasised that it was not an insurance broker or acting as agent for either the users or the insurers.

The Taxpayer argued, by analogy with cases on the scope of the intermediary exemptions in the financial services sphere, that finding and introducing potential customers was sufficient for it to be regarded as an insurance agent.



The Tribunal held that the Taxpayer was not acting as an insurance agent. It rejected the analogy with the financial services cases, holding that the wording of the Directive showed that exemption for insurance intermediaries is more restricted in its scope. The Tribunal was heavily influenced by the fact that the Taxpayer had no power to bind the insurers, which it considered to be "one of the indicia of an agent" (although it stopped short of making this a necessary condition). This decision arguably narrows the scope of the exemption for insurance agents and may affect businesses such as retailers and utility companies, which are active in the insurance distribution market.

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Regarding the lump sum pro rata method for banks, the Swiss VAT Authorities have now for the first time clearly communicated that they reserve the right to change the calculation of the pro rata, which is based on the official profit and loss sheet of the bank, if the Swiss VAT Authority is of the opinion that the profit and loss sheet is not in line with accounting regulations, even if it has been approved by the auditor of the bank.

While the general tendency of the changes is positive, the last issue does raise some questions and could lead to less legal certainty for banks.

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Non EU-news

Switzerland

8. Clarification of matters of interpretation

The Swiss VAT Authorities are currently updating their written instructions for taxpayers and have published drafts for consultation for the insurance sector, the lump sum pro rata method for the banking sector and for real estate.

The most noteworthy suggested changes are the slightly wider scope of exemption for insurance services and insurance agents, the higher VAT recovery rate for insurance companies and the regulation that the transfer of an insurance portfolio is exempt.

For real estate, the Swiss VAT Authorities have now suggested that an option to tax will also be allowed on the sale of properties that were exclusively used for VAT exempt purposes in the past.

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