

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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European Union

1. European Commission proposals for modernising the VAT legislation for Financial Services and Insurance published

The European Commission has published its proposals to reform the application of the VAT system to the financial services (FS) and insurance sectors. The proposals will have important implications for all businesses operating in, or otherwise dealing with, the FS sector.

See our separate Alert about the published Commission proposals.

Hungary

2. New VAT Act as of 1/1/2008

On 12 November 2007, the Hungarian Parliament adopted the new VAT Act that will take effect as of 1 January 2008. This will have particular implications for the financial services sector:

VAT grouping – From 1 January 2008 related entities established in Hungary will be entitled to form a fiscal unity without the obligation to involve all the related domestic companies. A VAT group will be regarded as a single taxable person.

Pro-rata calculation - A new and more flexible apportionment regime will be introduced, allowing the application of any methods reflecting the correct deductible proportion as an alternative for the turnover-based apportionment.

VAT exempt financial services - The new exemption regime provides a list of exempt financial services, following the pattern of the EU VAT Directive. This replaces the existing detailed statistical classification list.

Some highlights from the financial services exemptions:

- For services supplied between related insurers, a VAT exemption will apply if a special structure, being a hybrid of the cost sharing scheme and the consortium exemption (see EDM Case), is applied;
- Only the management and safekeeping of materialized securities are excluded from the exemption;
- Investment management exemption explicitly covers the portfolio management of special funds (e.g. pension funds, mutual healthcare funds);
- Factoring will be subject to VAT (currently VAT exempt);
- Currently the interest element of leasing fees is explicitly VAT exempt. The new VAT Act does not provide such regulation, which leads to uncertainties.

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Romania

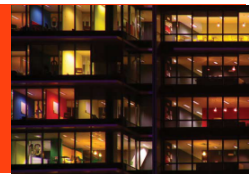
3. Non-binding ruling obtained from tax authorities that the management of pension funds is VAT exempt

Under the Romanian VAT legislation, the management of common investment funds is considered VAT exempt.

The Romanian legislation does not specifically mention that the exemption for management of common investment funds also applies for pension funds. However, PwC has now obtained a non-binding ruling from the Romanian tax authorities stating that the management of pension funds is VAT exempt. In addition, the Romanian tax authorities have ruled that the activities performed by specialized marketing agents within the activity of the private pension funds are also VAT exempt without credit.

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United Kingdom

4. HMRC concedes JP Morgan case: asset management exemption now applies to investment trusts

HM Revenue & Customs (HMRC) has announced that it has withdrawn from the appeal in the JP Morgan case and accepted that the management of investment trust companies (ITCs) is exempt from VAT. In Revenue & Customs Brief 65/07 HMRC also comments on the scope of the concept of "management". The ECJ decided in *Abbey National (C-169/04)*, in the context of AUTs and OEICs, that "management" includes outsourced fund administration that is specific to and essential for the management of the fund. HMRC accepts in the Brief that the same principles apply to the administration of ITCs, even though they are not UCITS funds.

The Brief also states that, while managers are now entitled to exempt their services, HMRC cannot require this until the UK law is amended. As HMRC appears to accept in the Brief, managers remain entitled to charge VAT on their services to ITCs (subject to the wording of the management agreement) until the UK law is amended. Managers are arguably able to decide whether or not to do so on a fund-by-fund basis. This may be beneficial where a manager is incurring large amounts of input tax that will become irrecoverable, and its client obtains high levels of VAT recovery.

5. Collecting monthly instalments from patients and passing on to dentists is separate exempt service: AXA UK Plc (20342)

In a decision which may be significant for a number of businesses, the Tribunal has held that a monthly fee paid by dentists to a dental plan administrator was to be apportioned as relating substantially to exempt financial services involving payments and transfers.

While single versus multiple supply issues will invariably come into play in this and similar situations, the case may challenge whether the exemption is broader in scope than has been considered to date, such that all is required to come within the exemption is to issue the instructions to effect the payment or transfer where the recipient of those instructions is obliged to transfer funds.

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