

Editorial

We are pleased to present you the PricewaterhouseCoopers Financial Services VAT Alert containing the latest European VAT news in the sector. New in this edition is a summary of Australian GST issues affecting the Financial Services Sector. This will be a regular feature from now on.

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

Belgium

1. Refund of VAT for credit insurance companies
2. Interpretation of financial link to VAT grouping

Czech Republic

3. Amendments to the VAT law

Denmark

4. New tax base assessment method for transactions between connected parties
5. Accounting and settlement of reverse charge VAT - Time for a review

France

6. VAT treatment of real estate investment funds

Hungary

7. Bill for New VAT Act as of 1 January 2008

Ireland

8. Proposed new rules dealing with VAT on property transactions

The Netherlands

9. Dutch VAT rate
10. Dutch Supreme Court refers questions to the European Court of Justice on the extent of the exemption for cost sharing groups ("koepelvrijstelling")
11. Dutch Ministry of Finance determined to retain VAT taxable status of asset management services to pension funds
12. Holland Financial Centre foundation

Sweden

13. Changes in the Swedish VAT Act

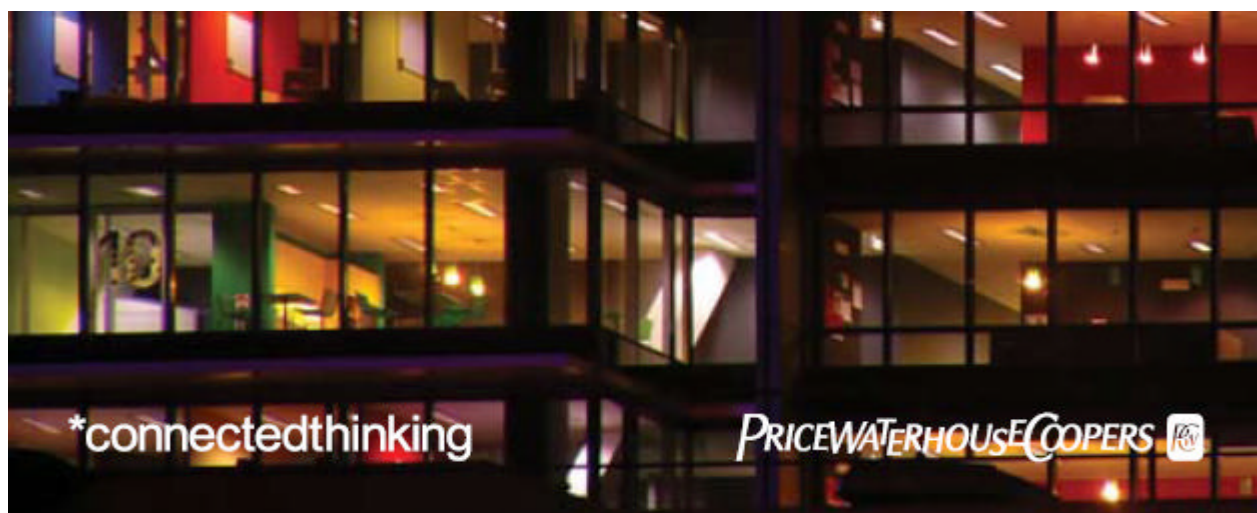
UK

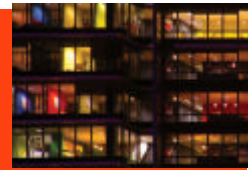
14. EU review of VAT and financial services - Update
15. VAT claims in respect of fund management services

Non EU-news

Australia

16. ATO compliance plan for FS
17. Input tax deduction on acquisitions for the benefit of subsidiaries
18. Test case funding on the meaning of 'arranging' services for securities trading





Belgium

1. Refund of VAT for credit insurance companies

Previously, credit insurance companies were not able to submit claims for VAT refunds in respect of bad debts on behalf of their clients. Based on a new administrative decision, credit insurance companies that are subrogated in the rights of the insured now have the right to claim back VAT instead of the insured (even if the insured is only partially indemnified by the credit insurance company). The new administrative decision came into effect on 1 July 2007.

Credit insurance companies must provide the competent VAT office with special documentation to ensure claims are not made by both the insurer and the insured.

2. Interpretation of financial link to VAT grouping

In accordance with Belgian rules governing VAT grouping, the financial link among company group members is proven when there is a direct or indirect controlling relationship in law or in fact. However, the Belgian VAT administration is of the strict opinion that it is not a sufficient financial link when two or more Belgian group companies are under control of the same parent company / holding not established in Belgium. They argue that there is no financial link as the parent company is not (can not be) part of the Belgian VAT group. The same reasoning is applicable when the parent is a Belgian passive holding company or a private person.

We are still negotiating with the Belgian VAT administration in order to have the draft circulars on VAT grouping amended and clarified in this respect.

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Czech Republic

3. Amendments to the VAT law

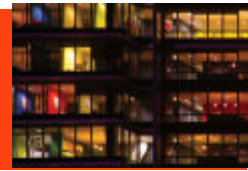
Significant changes to the VAT law have been approved by Senate of the Parliament of the Czech Republic on 19 September 2007 and it has been passed to the President for signature:

- Increase in VAT rate - the reduced VAT rate will increase from 5% to 9% as of 1 January 2008;
- Binding rulings for VAT rate - it will be possible to ask the Ministry of Finance for a binding ruling as to whether a tax rate proposed by a tax payer for a particular transaction is in compliance with the legislation. Based on the proposal, the fee for the request will be CZK 10,000, and one request can only cover the assessment of the VAT rate regarding one item;
- Group registration - The amendment further introduces the instrument of VAT grouping. Persons with a seat, place of business or an establishment in the Czech Republic which are closely linked by financial, economical and organizational relations can form a group on a voluntary basis. It is proposed that companies have to submit their application for group registration by 31 October in the then current year and the fiscal unity will enter into force on 1 January of the next calendar year. According to the proposal, the changes should be effective from 1 January 2008, i.e. VAT grouping will appear in practice as of 1 January 2009.

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Denmark

4. New tax base assessment method for transactions between connected parties

The Danish tax authorities have published a bill regarding an amendment to the Danish VAT act. The bill inter alia contains a proposal concerning transactions between connected parties and the calculation of the tax base. If the bill is adopted in its present wording it will affect several lines of industry, including the financial sector, as the bill enables the Danish tax authorities to calculate the tax base on the basis of the default value instead of the intrinsic value. For the financial sector this may imply for mixed supplies that an estimated split of the VAT taxable supply and the VAT exempt supply is disregarded by the Danish tax authorities in such a manner that the VAT taxable supply is increased and also the VAT amount charged for the buyer, with no or limited right of input VAT deduction.

If the bill passes it enters into force on 1 January 2008.

5. Accounting and settlement of reverse charge VAT - Time for a review

The Danish tax authorities have sent letters to institutional investors in respect of the accounting and the settlement of reverse charge VAT in relation to inward cross-border supplies. This may be a good occasion for financial institutions to review their respective practices and to carry out the necessary adjustments in the case they have not paid enough attention to this matter.

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France

6. VAT treatment of real estate investment funds

The French tax authorities have confirmed real estate investment funds are taxable businesses for VAT purposes and also submit that their asset management is not VAT-exempt (as they are not covered by any exemption provision of the FTC).

From 1 January 2008 each fund will have to determine the deductible VAT for each expense or portion of expense in accordance with the new deduction rules (see FS VAT Alert 2007-5 for more details). Input VAT deduction should be considered per business unit (if any) and for the whole business activity. Each fund will have to follow-up on its annual adjustment of input VAT.

Given the above rules, deciding to hold properties (directly or indirectly) is not totally neutral from a VAT point of view. Simulations may be needed to determine the most cost-efficient business structure.

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Hungary

7. Bill for New VAT Act as of 1 January 2008

The proposed recast of the Hungarian VAT Act will introduce some very significant reforms, many of which will impact on the FS sector.

Instead of the current regime based on references to a statistical register of services, as of 2008 a list of exempt financial services will be introduced following the VAT Directive. FS operators should be aware that the scope of exempt financial services as such will become narrower. However, VAT exempt outsourcing may become possible, offering new VAT optimization and structuring opportunities.



VAT grouping will be totally reworded - the foundation of VAT groups will become less restricted, and will introduce a single taxable personality for the VAT group.

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Ireland

8. Proposed new rules dealing with VAT on property transactions

Under proposed new rules due to be enacted in Ireland in 2008 with an implementation date of 1 January 2009, all leases of property of whatever duration will be exempt from VAT. There will be an option to tax these transactions, but only where the recipient has an entitlement to at least 90% input tax credit.

However, with regard to the possible effects of these measures on the commercial property market the Minister for Finance has announced a measure of relief for such transactions. The relief provides that the current VAT rules can apply to transactions negotiated prior to the publication of the Finance Bill (expected late January/early February 2008), provided that the transactions fulfil some specific requirements and are reported to the Revenue. If the conditions are met, the new provisions will not apply to these transactions.

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The Netherlands

9. Dutch VAT rate

The Dutch government plans to increase the general Dutch VAT rate to 20%, as of 1 January 2009. The current VAT rate is 19%.

10. Dutch Supreme Court refers questions to the European Court of Justice on the extent of the exemption for cost sharing groups (“koepelvrijstelling”)

The Dutch Supreme Court is considering whether the VAT exemption for cost sharing groups can also be applied to charges for individual costs or whether it only applies where services are rendered to all participants and the costs are shared between the participants on the basis of a fixed allocation key. The Dutch Supreme Court has referred this question to the European Court of Justice.

11. Dutch Ministry of Finance determined to retain VAT taxable status of asset management services to pension funds

The Dutch government is refusing to consider exempting the asset management of Dutch pension funds. In other European countries like Luxembourg and Belgium these services are already VAT exempt.

This position is contrary to the efforts taken by the Dutch Ministry to promote the Netherlands as a beneficial country for financial institutions, thus also to the fact that pension funds are appointed as financial institutions which are especially welcome in the Netherlands.

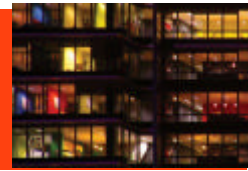
12. Holland Financial Centre foundation

The Holland Financial Centre foundation (hereafter: HFC) was established in July 2007. The HFC is a joint initiative of organizations of the financial sector, such as banks, insurers, pension funds, asset managers, audit firms (including PricewaterhouseCoopers) and the government.

The purpose of HFC is to ensure that the Dutch financial sector retains and strengthens its international position. Therefore the HFC will amongst others participate in consultations with organizations that are involved in the development of the financial sector.

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Sweden

13. Changes in the Swedish VAT Act

New rules will be introduced in Sweden on the valuation of goods and services supplied to or from businesses with a limited right to deduct input VAT and the repayment of input VAT on supplies to non-EU individuals.

For transactions below and above market value between related parties the tax base should be the market value and not the actual compensation received. Market value is defined as the total amount that a buyer in open competition would have to pay to an independent seller for a specific product or service. If there are no established comparable sales of goods the market value will be determined according to special rules such as purchase price etc.

The right to refunds of input VAT is extended to cover supplies of exempt financial services to a non business person living outside the EC.

These amendments are expected to take effect on 1 January 2008. However, the bill has not yet been passed in Parliament, so this date may change.

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14. EU review of VAT and financial services - Update

Following a recent meeting with the European Commission, it is our understanding that the formal proposal for legislation modernizing the exemptions is now due in November, and the Commission has taken on board many of the representations made. However, the implementation of the mandatory option to tax and exempt cost-sharing vehicles is likely to be delayed.

15. VAT claims in respect of fund management services

Following the ECJ ruling in JP Morgan Claverhouse Investment Trust plc and the Association of Investment Trust Companies (C-363/05), HMRC has issued Revenue and Customs Brief 58/07 advising its current position on claims for VAT charged on fund management services provided to investment trust companies (ITCs). HMRC's reference to the ECJ ruling as "guidance to the Tribunal" confirms indications that HMRC will continue with the litigation, suggesting significant further delays will occur in resolving these claims. The Brief also announces that claims in respect of the management of other types of funds will not be entertained, including claims which have already been submitted and appealed to the Tribunal.

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Non EU-news

Australia

16. ATO compliance plan for FS

The Australian Taxation Office (ATO)'s latest Compliance Program includes a special focus on Goods and Services Tax (GST) issues specific to the Financial Services industry. In addition to the general audit focus of the ATO, they identify the following Financial Services issues:

- Supplies of services to associated entities at less than market value;
- Recovery of GST using a fair and reasonable apportionment methodology;
- GST incorrectly recovered on costs related to mergers and acquisitions;
- GST incorrectly recovered on costs relating to 'financial supplies' made before 1 July 2000; and
- GST incorrectly recovered on trustee service costs by including reimbursements out of the trust property as consideration for a service.



The ATO's response to these issues includes possible public rulings, audits, and advice to Treasury to amend the GST law where it is considered necessary.

17. Input tax deduction on acquisitions for the benefit of subsidiaries

The National Tax Liaison Group GST Subcommittee is considering whether a taxpayer which makes acquisitions solely or partly for the purpose of increasing its distributions from a subsidiary should be denied input tax credits to the extent that the acquisitions are made for that purpose. Arguably, if a taxpayer chooses to bear costs that enhance the profitability of its subsidiary, the acquisitions it makes are not eligible for input tax credits to that extent. The Commissioner takes the view that meeting the costs of goods and services for the benefit of subsidiaries constitutes a supply made to the subsidiary in the course or furtherance of the taxpayer's enterprise and the GST Act will deem a taxable supply by the taxpayer to its subsidiary. However, it is unclear whether the Commissioner will then allow full input tax credits based on this supply.

18. Test case funding on the meaning of 'arranging' services for securities trading

The latest Annual Report of the Commissioner of Taxation includes a note that test case funding has been approved for a case involving the meaning of the term 'arrangement' under GST Regulation 70, which provides a 75 per cent reduced input tax credit for acquisitions of 'arranging' services related to securities trading. This is the item most often invoked to claim a reduced input tax credits in corporate restructures and M&A transactions.

The Test Case Funding Program is one whereby the ATO agrees to fund (fully or partially) test cases which are considered to be precedential and important. However, granting test case funding does not necessarily mean that a case will proceed to litigation (it could, for example, be settled out of court).

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