

Editorial

We are pleased to present you with 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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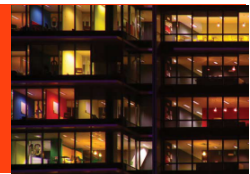
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BELGIUM

1. Royal Decree on VAT grouping published

Referring to FS VAT Alert 2006/11 in which we announced VAT grouping would be introduced with effect as from 1 April 2007 in Belgium, we are now pleased to confirm that the Royal Decree (no. 55) has been published on 15 March 2007.

The Royal Decree confirms that taxable persons established in Belgium that are legally independent, but are closely bound to one another by financial, economic and organisational links can opt for VAT grouping.

However, in case a top holding opts for VAT grouping and has a direct holding of more than 50% in its Belgian based subsidiaries, VAT grouping is obligatory between these subsidiaries (50% rule). Only where proof can be provided there are no economic or organisational links, can these subsidiaries be excluded from the VAT group (opt-out possibility).

The Royal Decree also outlines when a VAT group starts, how long it should last (i.e. minimum 3 years) and when a VAT group comes to an end. Furthermore, it deals with the appointment of the representative member to the Belgian tax administration and comments on insolvency procedures.

At this stage, PwC Belgium is assisting the Belgian FS Industry Association in providing input to the Belgian tax administration on the draft administrative circulars dealing with auditability rules and with the practical implementation of VAT grouping (i.e. rules on the notion of VAT grouping and the capacity of the various members and on the determination of the right to deduct VAT).

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FRANCE

2. Unbundled commissions (distinction between research and execution services)

Although discussions with the French financial markets authority (AMF) regarding the regulatory aspects of this issue are ongoing, it has not been possible to establish a dialogue with the French tax authorities (DLF) regarding the tax treatment of unbundled commissions.

On the regulatory side, the AFEI-AFG good practice charter (a charter prepared by the trade associations which defines the framework for services between management companies and brokers) should be updated in the very near future.

From a tax, and in particular a VAT point of view, discussions are well underway between market operators, tax and legal specialists and the trade associations, focusing on VAT issues relating to unbundled commissions and, in particular, the need for consistency between the legal, regulatory, billing and accounting aspects in order to determine the appropriate VAT treatment. Landwell & Associés will continue to work closely with the trade associations.

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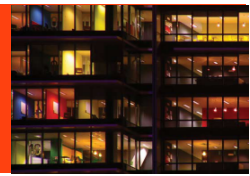
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IRELAND

3. Guidelines on VAT treatment of seconded staff costs

The Irish Revenue have issued revised guidelines in relation to the VAT treatment of charges made in respect of the secondment of staff to companies established in Ireland from related foreign companies.

The newly announced Revenue concession, which is effective from 1 January 2007, means there will no longer be a requirement to account for the reverse charge on supplies of staff where all the following criteria are met:



- the staff are seconded from a foreign company into an Irish company or branch within the same group structure (as defined);
- the Irish company or branch must exercise control and day-to-day management over the secondee, or the secondee must have managerial responsibilities over the Irish company or branch;
- PAYE and PRSI (withholding and social security taxes) must be operated in respect of the remuneration of the secondee as per the current rules regarding inbound secondees, either by the Irish or the foreign company.

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SWITZERLAND

4. Amendments taxation of collective investments

As per 1 January 2007 the new law for collective investments (KAG) has come into force, introducing a wider choice of regulated collective investment vehicles such as SICAVs, SICAFs and Limited Partnership for Collective Investments (in addition to the already existing investment fund without legal personality).

The Swiss Federal Tax Administration has published a draft of a guideline which basically states that the only change to the administration of collective vehicles will be that the retention fees paid for the distribution of foreign collective investment vehicles authorized for public distribution in Switzerland will no longer be exempt with credit but exempt without credit.

As the previous practice of treating these retention fees as exempt with credit was never properly communicated by the Swiss FTA in the past, it may be worthwhile checking whether any additional recovery of input VAT from earlier periods is possible.

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UNITED KINGDOM

5. Advocate General opens the door for extension of VAT exemption to closed-ended Collective Investment Schemes and Investment Trusts

JP Morgan Fleming Claverhouse Investment Trust plc & the AITC v Commissioners of HM Revenue & Customs

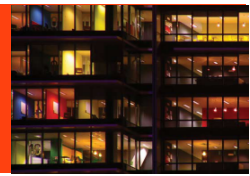
The Advocate General has delivered an opinion in the JP Morgan Claverhouse case that offers support to the Appellant's claim that VAT exemption for the "management of special investment funds as defined by Member States" should extend to the management of Investment Trust Companies. Should the ECJ ultimately follow the opinion it could open the door to VAT exemption for many other investment vehicles.

The case arose from a challenge made by JP Morgan Claverhouse to the imposition of VAT on the fees charged to it by third parties for the management of the Investment Trust's assets, arguing that the services fell within the fund management exemption in article 135(1)(g) of the EC VAT Directive (formerly 13B(d)(6) of the EC Sixth VAT Directive).

The AG's opinion proposes that the ECJ should hold that the words 'special investment funds' are capable of including closed ended investment funds, such as investment trust companies.

The AG also recommends that Member States have full discretion to define which special investment funds qualify for VAT exemption, but such discretion must be exercised in accordance with the principle of fiscal neutrality which requires all similar and competing special investment funds to be treated equally for VAT.

Finally, the AG has advised that article 13B(d)(6) (135(1)(g) EC VAT Directive) has direct effect, despite the discretion that a Member State has in applying the exemption, where that discretion has been applied in a manner that offends the principle of neutrality.



All taxpayers potentially affected by the case – including funds, fund managers, and (following Abbey National) fund administrators - should take immediate steps to assess the impact of the judgment on their VAT and contractual position.

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6. HMRC guidance on the VAT treatment of hedging transactions

Revenue & Customs Brief 05/2007

HM Revenue & Customs (HMRC) have published a Revenue Brief which sets out their views on the VAT treatment of hedging transactions following their defeat in the Willis Pension Trustees Ltd (Willis) case.

The Willis case concerned a pension fund which held substantial investments in overseas equities. As Willis was liable to make pension payments in sterling, and the sterling value of its overseas investments fluctuated with exchange rates, it entered into a large number of FOREX transactions with a view to hedging its position.

HMRC took the view that Willis had made supplies of services for VAT purposes to the extent that it made a profit from the FOREX transactions.

The Tribunal decided that Willis had made supplies to the counter-party banks, but these supplies were not made for any consideration. The Tribunal also indicated that the same principles could apply to other financial transactions such as interest rate swaps if they are entered into for hedging purposes.

Revenue Brief 05/2007

HMRC has now set out its policy in relation to the Willis decision. HMRC have sought to narrow the application of the decision, and now consider that FOREX transactions are supplies where a business adopts “a spread position”, even if this is done to reduce an “exposure position in forex that you hold”.

In HMRC’s view, a business adopts a spread position if it is able “to set the selling price” even if only “mimicking market movements”.

HMRC have also sought to confine the Willis principles to FOREX transactions, although they admit that Willis could apply in particular cases to other transactions.

The attempt by HMRC to restrict the Willis decision to FOREX transactions appears flawed, and should not prevent businesses from arguing that interest rate swaps, contracts for differences and other derivative instruments should be ignored where they are entered into for hedging purposes.

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