

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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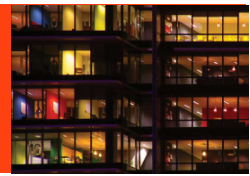
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Belgium

1. Services regarding claim handling

The Belgian VAT administration has recently published another decision in order to clarify some aspects of the exemption for insurance intermediaries (Decision E.T. 103.851/3 of 20 January 2007). Where a taxable person, acting as an agent, intervenes in concluding an insurance contract, its services are exempt from VAT.

Moreover, management services (e.g. calculation and collection of premiums, claims handling) with respect to the insurance contract are also exempt, provided they are performed by an agent who intervenes in concluding the underlying contracts or by the agent who takes over (part of) the insurance portfolio at hand.

Only in case of claim handling, the exemption also applies to the services of agents who do not conclude or take over the underlying contract.

Finally, the Belgian VAT administration confirms that people charged with claims handling are still able to refer to the Andersen judgement and can opt to charge VAT on such services. However, it should be noted that this choice, in principle, is irrevocable.

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Denmark

2. National Tax Board binding ruling: Management services considered as taxable portfolio management services

Danish National Tax Board, binding ruling, dated 20 February 2007, 07-032661 (SKM2007.131.SR)

The National Tax Board has ruled that the supply of management services consisting of the management of a computer system and daily collecting of information from computer systems such as FED (deposit portfolios) and VPK (prices etc.) are to be considered taxable portfolio management services.

The ruling stated that the output of the computer system was used for the purpose of offering services in relation to the customer's deposits and the securities held therein and thus taxable services.

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3. National Tax Board binding ruling: Economic activity in relation to a fund investing in securities

Danish National Tax Board, binding ruling, dated 20 February 2007, 07-033085 (SKM2007.133.SR)

In another ruling from the National Tax Board a fund was carrying out portfolio investment. This activity was not considered an economic activity and thus the fund was not supplying VAT exempt financial services for consideration. In relation to the special Danish Payroll Tax ("lønsafgift") the fund was not considered a taxable person.

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4. National Tax Board binding ruling: Administrative services related to securities not considered VAT exempt

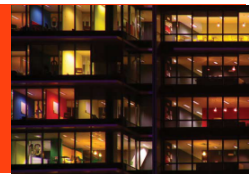
Danish National Tax Board, binding ruling, dated 27 April 2007, 07-072536 (SKM2007.295.SR)

The National Tax Board has ruled that a number of administrative services related to securities should be regarded as VAT taxable security management, while many of the Danish service providers have treated these services as VAT exempt financial services.

According to the Tax Board, the exemption could be applied only in cases where these services are ancillary to a VAT exempt principal service, such as the sale or purchase of securities, or if the services are provided to an investment fund.

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EU/Belgium

5. Reference for a preliminary ruling regarding the exemption for cost sharing associations

AXA Belgium SA, C-168/0, OJ C 129 of 09.06.2007, p.8

On 29 March 2007, the Court of Appeal of Brussels lodged a reference for a preliminary ruling to the European Court of Justice over whether or not article 132(1)(f) of the EC VAT Directive must be interpreted as meaning that Member States may grant an exemption from VAT only where independent groups of persons supply services exclusively for the benefit of their members, to the exclusion of non-members.

Following the reference for a preliminary ruling we will now await the point of view of the European Court of Justice in this case.

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EU/Germany

6. VAT exemption of sub-negotiation of credit / ECJ disagrees with German Federal Tax Court (FTC)

Volker Ludwig, 21 June 2007, C-453/05

On 21 June 2007 the ECJ decided that the sub-negotiation of credit is VAT exempt although the sub-agent has no contractual link with any of the parties to the credit agreement to the conclusion of which he has contributed. The fact that the sub-agent establishes direct contact with only one of those parties does not harm the VAT exemption.

This decision conflicts with the current German legal practice which states that the sub-negotiation of credit is taxable for VAT purposes (FTC-decision of 9 October 2003).

For the exemption to apply, the FTC required that an agent:

- needs to be linked contractually to one of the parties concluding the credit agreement; and

- needs to be remunerated by one of the parties for his intermediary services.

The German fiscal authority followed the FTC.

In the light of the present ECJ decision the FTC has now to revise its view. Tax payers who have held open their remedial proceedings due to the referral to the ECJ for a preliminary ruling can now argue for the application of the VAT exemption based on this case.

The ECJ further decided that the analysis of the financial situation of canvassed clients might qualify as ancillary service to the negotiation of credit and therefore be VAT exempt as well.

Strong indices for this are that the advisory services are only remunerated in case the client enters into a credit agreement and that they are rendered only in a preliminary phase and are limited to helping the client choose which financial products are best adapted to his situation and to his needs. It is for the national court to determine whether that is the case in the proceedings before it.

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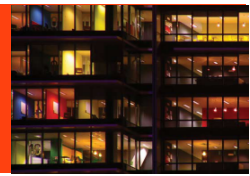
EU/The Netherlands

7. Opinion AG - Services under a contract of employment not supplies for VAT purposes

J. A. van der Steen, 21 June, C-355/06

In a case referred by Gerechtshof Amsterdam (Regional Court of Appeal, Amsterdam), the Advocate General has concluded that a natural person who supplies services to a taxable person (in this instance a limited company) pursuant to a contract of employment is, in that context, not himself a taxable person because he is not independently carrying out an economic activity, therefore such services are outside the scope of VAT.

It should be noted that both the EU Commission and the Netherlands Government submitted written observations supporting the Advocate-General's view. Therefore, it seems almost certain that the ECJ will rule accordingly when it issues its judgment.



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8. Revision of the rules governing the VAT deduction rights

*Decree no. 2007-566 of 16 April 2007 /
Administrative note 3 D-1-07 of 9 May 2007*

A recently issued decree and administrative note have modified the rules governing the VAT recovery rights by persons who are partially liable for VAT, i.e. those who carry out transactions within the scope of VAT and transactions outside the scope of VAT, and those who carry out VATable transactions and VAT exempt transactions.

The new provisions introduce a more "mathematical" approach to the determination of VAT deduction rights. Although the direct attribution method will continue to take priority, the deductible proportion of VAT on company's expenses will be determined by applying a deduction ratio, which is obtained by multiplying the three following ratios:

- a VAT liability ratio/"coefficient d'assujettissement" (previously the apportionment between "expenses within the scope/expenses outside the scope of VAT"),
- a taxation ratio/"coefficient de taxation"; and
- an eligibility ratio/"coefficient d'admission" (which reflects the eligibility or non-eligibility of the goods for the right to deduct).

For any adjustments which have to be made each year, the variations in these ratios should be taken into account.

The new provisions will come into force on 1 January 2008.

The new rules will have an impact on the input VAT management processes of partially liable persons and their IT systems will have to be adapted accordingly.

Businesses might wish to check whether the new rules have a material impact on the amount of input VAT that they are entitled to recover.

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Germany

9. VAT treatment of trailer fees in the area of fund distribution

Federal Tax Court (FTC), decision V R 31/05

The question in this case was whether ongoing commission payments (trailer fees) a bank received for the negotiation of investments in various funds were part of the consideration for the exempt intermediary service. The value of the trailer fees depended on the value of the investment in the funds on a pre-determined future date. The Finance Office considered that the trailer fees were subject to VAT.

The FTC followed the decision of the Düsseldorf Finance Court from 16 February 2005 (Az. 5 K 2030/03). The FTC confirmed that the trailer fees were part of the consideration for the exempt intermediary service - the assumption that the fees are consideration for a separate, additional service was rejected.

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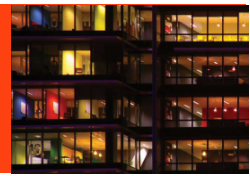
Italy

10. Ministry clarifies the place of supply for debt collection and related services

Ruling no. 130 of 6 June 2007

The Italian Ministry has recently clarified the place of supply rules for debt collection and services related to it.

A request for a ruling was submitted by a German Bank, which had entered into factoring agreements with various Italian banks, engaged an Italian firm to manage and collect debts purchased in Italy.



The Italian firms were contracted to carry out the following services:

- credit administration (including debt collection);
- management of the procedures (including the establishment; and management of judicial proceedings);
- compliance services (e.g. fulfil the legal obligations concerning anti-recycling and privacy).

On the basis of this agreement, the German bank asked the Italian tax authorities for a ruling on the place of supply of such services.

The Ministry of Finance has defined two relevant concepts in the ruling issued upon this request:

- First of all, 'debt collection', which includes the credit administration and the management of the procedure, has a financial nature and therefore, when supplied to an entity registered in another Member State, is outside of the scope of Italian VAT;
- Secondly, 'compliance services', providing their nature is strictly technical and specialised, should be classified alongside technical and legal advice and assistance services. The Ministry of Finance stated that services consisting of actually applying for or receiving 8th Directive refunds qualify as services provided by consultants, lawyers, accountants and similar services.

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- the draft regulations will be amended to make it clear that the requirement to issue VAT invoices for exempt supplies only arises where an invoice is required by the Member State of receipt; and
- the requirement will only apply, in practice, if the customer requests a VAT invoice.

This represents a substantial change from the original proposals and may address some of the concerns raised (particularly by the FS sector) over the invoicing changes.

HMRC has also confirmed that the timetable for implementation remains 1 August 2007.

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11. Tax authorities announce changes to invoicing regulations

Following "strong representations" HMRC has acknowledged that the proposed invoicing regulations, as drafted, could have "serious and unintended effects on the finance sector".

HMRC has announced the following changes to its approach:

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