

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.

Cathy Hargreaves (cathy.e.hargreaves@uk.pwc.com)
Global VAT Leader Financial Services

Frans Oomen (frans.oomen@nl.pwc.com)
Partner VAT - Financial Services

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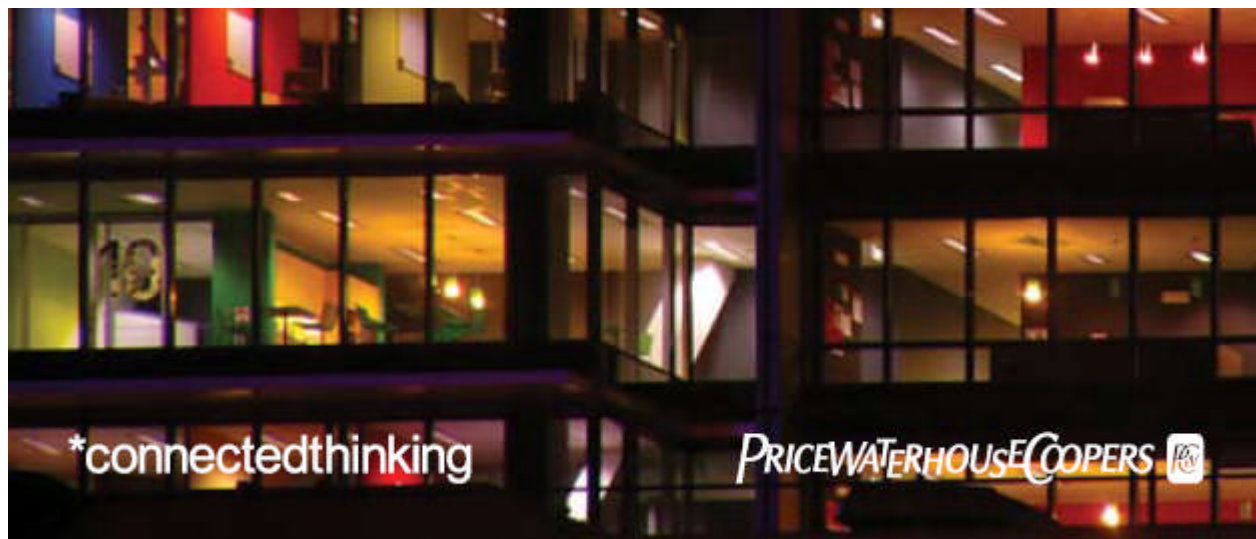
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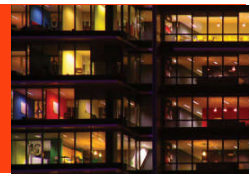
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EU

1. New EU Commission proposals for Financial Services

The EU Commission has published a proposal for a new Directive on the exemption for financial services. Also published is a working paper which provides detailed analysis of the scope of the services to be exempted. Whilst these documents are likely to be subject to further amendments and revision and are not scheduled to be finalised for some time, they do provide a useful insight into the direction the Commission wants to take with regard to the treatment of financial services and also the reasoning behind the Commission's proposals.

For more information regarding this issue, please do not hesitate to contact:

Peter Molnar (+31 20 568 60 64)
Steve Kiberd (+31 20 568 47 34)

Cyprus

2. Guidance expected following ECJ ruling in J P Morgan

The Cypriot VAT legislation exempts from VAT the management of mutual funds. Following the ECJ decision in the J P Morgan / Claverhouse case the Cypriot VAT authorities are re-examining the type of funds the management of which will be included within the exemption. Guidance on this issue is expected from the VAT authorities in September.

For more information regarding this issue, please do not hesitate to contact:

Chrysilios Pelekanos (+357 22 555280)

Denmark

3. National Tax Board binding ruling - Purchase options for immovable property are VAT exempt

Danish National Tax Board, binding ruling, dated 13 June 2007 07-086787 (SKM2007.376.SR)

The National Tax Board has ruled that the VAT treatment of purchase options for immovable property should follow the VAT treatment of the supply of immovable property and thereby be VAT exempt.

The exemption applies also to the consideration paid for extending the option's validity period as well as the consideration paid by a third person upon the transfer of the purchase option.

For more information regarding this issue, please do not hesitate to contact:

Anette Henriksen (+45 39 453 903)

France

4. Cross-border grouping authorised by the Policy Division of the French tax administration (Direction de la Législation Fiscale)

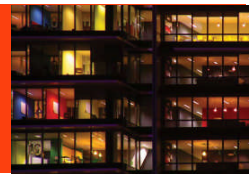
Under article 261 B of the French tax code (new article 132-1-f of Council Directive 2006/112), the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering to their members the services directly necessary for the exercise of this activity, are exempt from VAT where these groups merely claim from their members exact reimbursement of their share of the joint expenses.

Neither article 261 B of the FTC nor the administrative doctrine lays down specific conditions relating to the nationality of the group or of its members.

The Policy Division of the French tax authorities recently reversed, by ruling, their longstanding position and agree now to apply the exemption to cross-border grouping, regardless whether the grouping and/or some of its members are based in an EU Member State that has not implemented the exemption referred to by article 132-1-f of Directive 2006/112 (tax ruling no. 2007/11 of 20 March 2007).

5. New tool developed by Landwell & Associés / PwC France for the calculation of the VAT impact of exempt activities

Landwell/PwC France has developed a software tool that allows financial businesses to calculate or to review the impact of opting/desopting to tax financial transactions, their VAT recovery position and the value of their VAT adjustments.



The tool is in line with the new VAT recovery principles and rules to be in force as from 1 January 2008 (see the previous FS VAT Alert 2007-5).

For more information regarding these issues, please do not hesitate to contact:

Nathalie Martin (+33 1 56578629)
Stéphane Henrion (+33 1 56574139)

Poland

6. Securitisation - recent court practice in Poland)

Recent decisions by the Polish administrative courts have established a line of practice with regard to the VAT treatment of securitisation transactions. For Polish VAT purposes, settlements between the entity transferring its receivables within the securitisation transaction (originator) to the SPV should be qualified in the following way:

- The transfer of receivables by the originator to the SPV should be considered as an integral element of a complex financial service rendered by the SPV. **Therefore, transfer of the receivables within the securitization transaction should not be considered as a separate service subject to VAT taxation.**
- The service supplied by the SPV, consisting mainly of providing the originator with financial resources to be used for its business activity, should be qualified as a complex financial intermediary service, subject to VAT exemption.

The above does not exclude that the originator may render some ancillary activities in favour of SPV (e.g. debt collection and administration), which constitute separate services subject to VAT taxation based on general rules.

For more information regarding this issue, please do not hesitate to contact
Marcin Chomiuk (+48 225 234 760)

United Kingdom

7. Court of Appeal rules that offshore planning for insurance companies may be abuse of law

The Court of Appeal has upheld an appeal by HM Revenue & Customs (HMRC) that offshore planning arrangements implemented by a UK insurance company were abusive.

The case concerned the routing of VATable charges to an associated offshore company to create an entitlement to VAT recovery for the insurer. The offshore company was also entitled to VAT recovery via the 13th Directive reclaim procedure.

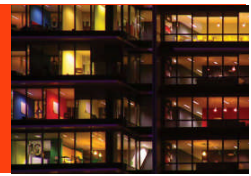
The court ruled, among other things, that a transaction must not only be genuine but also a "normal commercial operation" and that the commercial benefits of the structure cited by the appellant were "of no practical significance" and therefore should be disregarded.

This ruling is the first UK application of the abuse principle since Halifax. The broad approach taken by the court, and the willingness to disregard ancillary commercial benefits, may encourage HMRC to further challenge planning arrangements.

8. Tribunal decision on scope of the exemption for insurance intermediaries

The appellant company was a professional body which exclusively endorsed the services of an associated insurance broker in its publications to members and on its website. It charged taxable advertising fees to the broker, but also received a commission share from the broker if its members took up insurance policies with the broker.

The VAT tribunal in the UK rejected HMRC's argument that the commission share was also a taxable advertising or promotion service and held that in fact it was exempt as an insurance intermediary service.



9. Changes to UK implementation of invoicing directive

There have been further developments regarding the UK's implementation of the EU invoicing directive. Specifically, a UK supplier of exempt cross border services will now only be obliged to issue an invoice for his supply if the Member State of the recipient requests that one is issued. This would seem an unlikely eventuality in most cases. In addition, the proposed changes to the UK's invoicing regulations will now come into effect from 1 October 2007, as opposed to the original deadline of 1 August.

*For more information regarding these issues, please do not hesitate to contact:
Martin D. Kelly (+44 131 260 4150)*

Contact

For more information, please do not hesitate to contact your local PricewaterhouseCoopers Indirect Tax expert or one of the experts mentioned below:

Austria

Christine Sonnleitner
tel: +43 1 50188 36 05
christine.sonnleitner@at.pwc.com

Belgium

Ine Lejeune
tel: +32 9 268 8300
ine.lejeune@pwc.be

Bulgaria

Tania Pavlova
tel: +359 2 91 003
tania.pavlova@bg.pwc.com

Cyprus

Chrysilios Pelekanos
tel: +357 22 555280
chrysilios.pelekanos@cy.pwc.com

Czech Republic

Vaclav Patek
tel: +420 251 152 569
vaclav.patek@cz.pwc.com

Denmark

Jan Huusmann Christensen
tel: +45 39 459 452
jan.huusmann.christensen@dk.pwc.com

Estonia

Tanja Kriisa
tel: +372 6 141 970
tanja.kriisa@ee.pwc.com

Finland

Juha Laitinen
tel: +35 89 228 01409
juha.laitinen@fi.pwc.com

France

Stéphane Henrion
tel: +33 1 56574139
stephane.henrion@fr.pwc.com

Germany

Sylvia Neubert
tel: +49 69 958 56235
sylvia.neubert@de.pwc.com

Greece

Mary Psylla
tel: +30 210 687 4444
mary.psylla@gr.pwc.com

Hungary

Tamas Locsei
tel: +36 14 619 358
tamas.locsei@hu.pwc.com

Ireland

John Fay
tel: +35317048701
john.fay@ie.pwc.com

Italy

Nancy Saturnino
tel: +39 02 9160 56 02
nancy.saturnino@it.pwc.com

Lithuania

Kristina Bartuseviciene
tel: +370 5 2392 365
kristina.bartuseviciene@lt.pwc.com

Luxembourg

Michel Lambion
tel: +352 494 848 3126
michel.lambion@lu.pwc.com

Malta

David A. Ferry
tel: +356 256 46712
david.ferry@mt.pwc.com

The Netherlands

Frans Oomen
tel: +31 20 568 47 81
frans.oomen@nl.pwc.com

Norway

Yngvar Engelstad Solheim
tel: +47 95260657
ynvar.engelstad.solheim@nl.pwc.com

Poland

Marcin Chomiuk
tel: +48 225 234 760
marcin.chomiuk@pl.pwc.com

Portugal

Mario Braz
tel: +351 21 7914 4053
mario.braz@pt.pwc.com

Romania

Diana Coroaba
tel: +40 212 028 693
diana.coroaba@ro.pwc.com

Slovakia

Eva Fricova
tel: +421 2 59 350 613
eva.fricova@sk.pwc.com

Slovenia

Crtomir Borec
tel: +38 614 750 152
crtomir.borec@si.pwc.com

Spain

Miguel Blasco
tel: +34 9 1568 4798
miguel.blasco@es.landwellglobal.com

Sweden

Lars Henckel
tel: +46 85 553 3326
lars.henckel@se.pwc.com

Switzerland

Tobias Meier Kern
tel: +41 58 792 43 69
tobias.meier@ch.pwc.com

United Kingdom

Cathy Hargreaves
tel: +44 207 212 5575
cathy.e.hargreaves@uk.pwc.com

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