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In this issue:
Country summaries
Americas
Asia Pacific
EMEA

Related links:
Global Indirect Tax
GITN archive
Indirect tax rates around the world

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Global Indirect Tax News

Indirect tax updates from around the world

May 2013

Country summaries

Americas

United States: Idaho has introduced an exemption for cloud computing as a service. New Mexico has amended the gross receipts tax deduction for manufacturers. There is more guidance on the refund procedure for certain fuel tax credits. **More**

Uruguay: The tax base for beverages subject to the specific consumption tax has been modified. **More**

Asia Pacific

India: Update on legislative and case law developments. **More**

Malaysia: The tax authorities have issued two GST guides. **More**

New Zealand: Statistics show GST errors are the most common source of shortfall penalties. **More**

EMEA

Belgium: The CJEU has ruled that VAT on intra-group supplies of staff was not deductible. **More**

Bulgaria: The CJEU has ruled on VAT due on the deregistration of a business. **More**

European Union: The European Commission has issued a summary of the responses to a consultation on reduced VAT rates. The CJEU has endorsed VAT grouping legislation. **More**

Germany: New rules have been enacted on the proof of transportation of goods. **More**

Greece*:* Extension granted for filing the annual VAT return. **More**

Hungary: The CJEU has ruled on the VAT treatment of “grant funded” costs. **More**

Ireland: Updates on VAT issues. **More**

Italy: Updates on VAT issues. **More**

Netherlands: The tax authorities are examining VAT debt, and the CJEU has ruled on the VAT treatment of pension fund management. **More**

Poland: The VAT legislation regarding chain supplies has been amended and there are developments on the VAT treatment of insurance on leased goods. **More**

Portugal: The SAF-T (PT) file structure has been changed. Deloitte Portugal will be hosting events to clarify the new transport documentation rules. **More**

Russia: A court has ruled on VAT input tax deductions in respect of exported goods. **More**

Sweden: The CJEU has ruled on the confinement of VAT grouping to a certain business sector. **More**

United Kingdom: Updates on VAT issues. **More**

Americas

United States

Idaho: Exemption introduced for cloud computing as a service

The state of Idaho has introduced a new law that excludes application software accessed over the internet or through wireless media from the definition of taxable “tangible personal property” for state sales and use tax purposes. Such software means the right to use computer software where the software is accessed from a location owned or maintained by the seller or an agent of the seller and is not loaded and left at the location of the user.

The term application software accessed over the internet or through wireless media does not include remotely accessed computer software if the primary purpose of the software is for entertainment use, or if the vendor of the computer software offers for sale, in a storage media or by an electronic download, to the user’s computer or server, and either directly or through wholesale or retail channels, the same computer software or comparable computer software that performs the same functions. The new rule applies as from 3 April 2013.

Scott Schiefelbein, sschiefelbein@deloitte.com, Senior Manager, Deloitte United States

New Mexico: Amendment of the gross receipts tax deduction for manufacturers

New Mexico’s governor recently signed a bill that includes an amendment to the gross receipts tax deduction for tangible property consumed in the manufacturing process.

Effective for gross receipts received on or after 1 July 2013, the bill phases in a deduction from gross receipts for consumables used in manufacturing as follows:

- 20% of receipts received before 1 January 2014;
- 40% of receipts received in calendar year 2014;
- 60% of receipts received in calendar year 2015;
- 80% of receipts received in calendar year 2016; and
- 100% of receipts received on or after 1 January 2017.

For the purposes of the deduction, "consumable" means tangible personal property that is incorporated into, destroyed, depleted or transformed in the process of manufacturing a product and includes electricity, fuel, water, supplies, chemicals, gases, repair and spare parts, and other property used in the manufacturing of a product, but does not include tools or equipment used to create a product. The deduction excludes the generation of power, the processing of natural resources and the preparation of meals for immediate consumption.

Barb Dickerson, bdickerson@deloitte.com, Director, Deloitte United States

More guidance on refund procedure for certain fuel tax credits

The American Taxpayer Relief Act of 2012 (ATRA), signed into law by the U.S. president on 2 January 2013, retroactively extended various termination dates applicable to certain federal alternative energy tax credits that expired on 31 December 2011. In most cases, the credits were extended through calendar year 2012 and are now scheduled to expire on 31 December 2013.

Unlike prior retroactive extensions, no U.S. Congressional guidance was provided as part of the ATRA regarding the procedure for claiming credits related to qualifying sales or use during 2012. However, on 1 February 2013, the U.S. Internal Revenue Service (IRS) issued a frequently asked questions document on the fuel tax credit extensions, and on 3 April 2013, the IRS issued more guidance addressing the filing of credit claims for the first three quarters of 2012.

Jennifer Shaunty, jshaunty@deloitte.com, Partner, Deloitte United States

Uruguay

Changes to calculation of tax base for beverages subject to IMESI

Uruguay's specific consumption tax (IMESI) is levied at various rates on the first sale made by importers and manufacturers of certain products, including certain alcoholic and non-alcoholic beverages, cosmetics, tobacco, fuel and automobiles. IMESI generally is calculated by applying a specific rate to the tax base (which may be calculated differently depending on the type of product).

Beverages subject to the IMESI are listed and classified into several categories to which different tax rates apply. Among these categories, different beverages include whisky, vermouth and champagne. Fine wines and certain juices also are listed as subject to IMESI.

As a general rule, the tax base for beverages subject to IMESI is calculated as the higher of the average selling price and a notional value (which is set as a fixed amount per unit sold). These notional values, which are amended annually by executive decree, are increased with effect from 1 May 2013.

The decree also changes the method for calculating the average selling price for beverages. Previously, the price was calculated for each category of beverage, but as from 1 May 2013, the price must be calculated for each product, taking into account, for example, qualities, maturing, taste or other attributes that distinguish the beverage.

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Asia Pacific

India

2013 Finance Bill enacted

The 2013 Finance Bill was enacted as the Finance Act 2013 with effect from 10 May 2013. Enactment of the bill signifies the date from which the tax law changes are effective.

Due date for filing of service tax return extended

The Central Board of Excise & Customs (CBEC) has extended the date for submission of the service tax return for the period October 2012 to March 2013 from 25 April 2013 to 31 August 2013.

Service tax Voluntary Compliance Encouragement Scheme Rules, 2013 notified

The Ministry of Finance has notified the rules governing the Voluntary Compliance Encouragement Scheme announced in the budget and now part of Finance Act 2013:

- The scheme is in respect of service tax liability for the period 1 October 2007 to 31 December 2012 that remains unpaid as of 1 March 2013;
- The prerequisites for an application to declare tax liability under the scheme are as follows:
    - No notice or order of determination may have been issued to the applicant before 1 March 2013 in respect of the relevant tax liability for any past period; and

  - No inquiry or investigation or audit by way of search, summon, audit or requirement to produce accounts and records is pending as on 1 March 2013.
- A declaration must have been made to the designated authority in the prescribed form on or before 31 December 2012, along with proof of payment of 50% of such liability; the balance of the liability must be paid by 30 June 2014; and
- Once the amount is paid, it will not be refundable under any circumstances.

The scheme will provide immunity from interest, penalties or any proceedings under the service tax law.

The Rules, which apply as from 13 May 2013, deal with registration, the procedural aspects of declarations, etc. under the scheme. The CBEC also clarified certain issues regarding the applicability and scope of the scheme.

Exemption for services received against specified duty credit scrip

The Ministry of Finance has notified the conditions subject to which exemption from service tax can be claimed against utilization of duty credit scrip issued under the following schemes of Foreign Trade Policy:

- Focus Market Scheme;
- Focus Product Scheme; and
- Vishesh Krishi and Gram Udyog Yojana.

The abovementioned schemes are export promotion schemes intended to increase the competitiveness of Indian products in export markets. Subject to the fulfillment of specified parameters, qualified exporters are eligible for a duty credit scrip under the relevant scheme based on which they can claim an exemption from the payment of duty on the procurement of goods. The exemption for goods has now been extended to services received by duty credit scrip holders under the relevant schemes.

Input tax credit restricted to tax actually deposited into government treasury

All of the Indian states have transitioned to the VAT regime and have adopted the tax credit method. The state VAT authorities have encountered instances where tax collected by a selling registered dealer has not been deposited with the government treasury, but the purchasing dealer claimed an input tax credit based on an invoice. To prevent such losses, the states are restricting the input tax credit to the purchasing dealer to the extent tax has been paid by the selling dealers. This principle has now been implemented by the state of Gujarat. As from 1 April 2013, a registered purchasing dealer in Gujarat can claim input tax credit on goods only to the extent of tax deposited with the government treasury by a selling registered dealer.

Carry forward of excess input tax credits

As from 1 April 2012, the maximum input tax credit that may be carried forward to the next year by a registered dealer in the state of Maharashtra is increased to INR 0.5 million. The registered dealer can claim a refund of input tax in excess of that amount if certain conditions are satisfied.

Conflicting decisions on eligibility for CENVAT credit

The Ahmedabad and Bangalore benches of the Tribunal have both heard cases regarding the eligibility for a CENVAT credit (input tax credit under the excise and service tax laws) for service tax paid on services provided by a commission agent.

The Bangalore bench, relying on the decision of the Punjab & Haryana High Court in the case of *CCE, Ludhiana vs. Ambika Overseas*, held that the CENVAT credit was available on the grounds that the commission agent's services qualify as input services. However, the Ahmedabad bench relied on the decision of the Gujarat High Court in the case of *CCE, Ahmedabad vs. M/s Cadila Healthcare Ltd*, which distinguished the *Ambika Overseas* decision. The Ahmedabad Tribunal held that the commission agent's services do not qualify as input services since they do not fall within the scope of "activities relating to business".

Court rules on monthly lease rental to be included in state VAT turnover

The Haryana High Court has considered whether the aggregate of monthly rentals payable under a lease agreement should form part of the sales turnover for the month in which goods are delivered for leasing purposes.

Relying on the Supreme Court decision in *20th Century Finance Corporation Ltd*, the High Court observed that the taxable event is the transfer of the right to use the goods, not the delivery of the goods. The right to use the goods is dependent on the monthly payment of rent by the lessee. Therefore, the court held that the monthly rental received or receivable was included in the turnover for that period.

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Malaysia

New GST guides released

The Malaysian Customs authorities have issued two GST industry guides: GST Guide on Leasing and GST Guide on Hire Purchase and Credit Sale. Both guides are available from the GST Portal of the Royal Malaysian Customs website. The guides aim to assist readers and the industry in understanding GST and the implications and treatment of leases, hire purchase and credit sales. The GST Guide on Leasing is available via this **link** and the GST Guide on Hire Purchase and Credit Sale via this **link**.

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New Zealand

GST errors are the most common source of shortfall penalties

The New Zealand tax authorities have released statistics relating to shortfall penalties imposed under various taxes in 2012. In the total number of individual cases where shortfall penalties were imposed, GST errors dominated at 59% of the penalties in 2012 and 55% in 2011. GST shortfall penalties were imposed more than twice as often as income tax penalties (which made up 25% of the number of shortfall penalties in 2012).

These statistics show that GST is an area of risk in New Zealand and the authorities are increasing the number of audits in this area. There also are more instances of the authorities wanting further details before paying out GST refunds.

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Europe

Belgium

CJEU holds that VAT charged on intra-group supplies of staff was not deductible

The Court of Justice of the European Union (CJEU) has gone straight to judgment in the Belgian case of ***Petroma Transports SA and Ors***, which concerns VAT on intra-group charges for supplies of staff between various entities. The Belgian tax authorities took the view that the invoices contained insufficient details about the charges and disallowed the input tax claims made by the recipient businesses. The latter corrected the invoices manually after the VAT audit had started and the tax authorities had taken the decision to deny the deduction right.

The CJEU decided that the Belgian law requirements for information to be shown on VAT invoices were permitted by EU law and that the tax authorities were, therefore, entitled to deny input VAT claims where those requirements were not complied with.

The decision reinforces the need to comply with local invoicing requirements, but reiterates that deduction is possible if the invoices are corrected before the tax authorities concerned have made a decision to deny the VAT deduction.

Ivan Massin, imassin@deloitte.com, Director, Deloitte Belgium

Bulgaria

CJEU rules on VAT due when a business deregisters

The CJEU has proceeded straight to judgment in the Bulgarian case of **Hristomir Marinov** on the VAT due on a "deemed supply" of vehicles "on hand" when the taxpayer was removed from the VAT register (apparently for failure to pay VAT due on reported transactions). The taxpayer contended that the tax authorities were demanding too

much VAT on the "deemed disposal" of various vehicles that were retained when the business was deregistered. It seems that the sum sought by the tax authorities might have been based on the original cost of the vehicles.

The CJEU agreed with the taxpayer that the "deemed disposal" was of the vehicles in their depreciated state and, hence, the VAT due should be based on their condition and state at the time of the deemed supply.

Georgi Sarakostov, gsarakostov@deloittece.com, Partner, Deloitte Bulgaria

European Union

European Commission's summary of responses to consultation on reduced VAT rates

The European Commission has published a summary report of the responses to its consultation on reduced VAT rates. The consultation was launched on 8 October 2012 and ran until 4 January 2013. The report summarises the 333 responses (138 of which came from national associations) and notes that the targeted nature of the consultation was probably the reason for relatively few responses from academics, tax advisers and practitioners. The focused nature of the consultation probably explains the support for retention, and arguments for extension, of the reduced rates provided for in European VAT law.

According to the summary "... the input provided by the stakeholders is an important part of the assessment process of the VAT rates structure that the Commission announced in its Communication on the Future of VAT."

VAT grouping rules endorsed by CJEU

The CJEU has dismissed the European Commission's challenges to the VAT grouping provisions in the Czech Republic, Denmark, Finland, the Netherlands and the United Kingdom. The Commission contended that, by allowing "non-taxable persons" to be included in VAT groups, the grouping provisions in these member states went further than was permitted by EU law.

The CJEU has rejected that contention, delivering broadly similar decisions in the five similar cases brought by the Commission. The decisions confirm that EU law does not prevent "non-taxable persons" (such as holding companies) from being included in VAT groups and endorses the existing law and/or practice.

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Germany

Proof of transportation for cross-border supplies

Since 1 January 2012, the German Ministry of Finance has required German suppliers to hold a "*Gelangensbestätigung*", i.e. a confirmation signed by the recipient that the goods arrived in the country of destination, as well as a copy of the invoice relating to

the intra-EU supply, as evidence of the intra-EU transaction. However, there was a transitional period, which was extended while the Ministry of Finance considered responses from industry and trade associations about the practical implementation of the new regulations.

The new rules regarding the *Gelangensbestätigung* have now been enacted and will apply from 1 October 2013. In some circumstances, alternative means of providing evidence will be acceptable.

Existing documentation on EU cross-border supplies should be reviewed before the new rules become effective in October 2013.

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Greece

Extension granted for filing the annual VAT return

The Greek Ministry of Finance has issued a decision granting an extension to companies for filing their annual VAT return for the year to 31 December 2012.

The decision extends the final date for the electronic filing of the annual 2012 VAT return, which was 20 May 2013, to 10 June 2013, provided that all VAT returns for the 2012 year are filed and all the VAT payable for the 2012 year is paid by 4 June 2013.

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Hungary

CJEU rules on VAT treatment of “grant funded” costs

The CJEU has gone straight to judgment in the Hungarian case of **Alakor Gabonatermelő és Forgalmazó Kft.** about the recovery of VAT on subsidised costs, and “unjust enrichment”.

The taxpayer argued that it should be allowed to recover the full amount of VAT on expenditure that was partly subsidised from government and EU funds, following the CJEU judgment in *PARAT Automotive Cabrio*. Since the “disallowed VAT” was included in the grant funding, the Hungarian government took the view that it was inappropriate to allow a further VAT refund.

The CJEU has decided that a refusal to repay the tax was permitted by EU law, provided the economic burden of the refusal was neutralised. It seems likely that, in a case where the grant funding was provided on a “VAT inclusive” basis, the national court will conclude that this was the case and that the taxpayer will be denied the windfall of a further repayment.

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Ireland

Ryanair VAT refund claim on share transactions

Ryanair made a claim for a refund of VAT of EUR 770,000 for professional services related to its unsuccessful bid to take over Aer Lingus in 2006.

The Irish Revenue Commissioners said that the legal and stockbroking fees incurred in the takeover bid were not VAT deductible as they did not relate to Ryanair's core economic activity of air transport. Ryanair appealed this decision to the Appeals Commissioners and subsequently the High Court and was surprisingly unsuccessful with both appeals.

There was no dispute about the fact that the company intended to make taxable supplies to Aer Lingus if the bid was successful.

Decrease in the farmer's flat rate addition

The basis for the farmer's flat-rate addition is to provide compensation to flat-rate farmers who, being unregistered, generally cannot reclaim the VAT incurred on business purchases. Finance Act 2013 has introduced a reduction in the flat rate addition from 5.2% to 4.8% effective from 1 January 2013. As a result, systems will need to be adjusted to factor in the decrease of the flat rate addition paid to unregistered farmers.

Electronic invoicing

Finance Act 2013 includes significant changes to the application of electronic invoicing. With effect from 1 January 2013, one of the conditions to use electronic invoicing is that certain "business controls" be in place to ensure authenticity of origin, integrity of content and a reliable audit trail. Finance Act 2013 provides that regulations will be introduced at a later date with regard to evidence of those "business controls".

Receivers/liquidators – Capital Goods Scheme (CGS)

Where there is a VAT-exempt sale of a property resulting in a CGS claw back, legislation is being introduced to have this liability rest with the liquidator/receiver. The tax authorities' position is that the change is a clarification of existing law.

Introduction of boxes ES1 and ES2 to VAT return form

Boxes ES1 and ES2 were introduced to the VAT return with effect from the January/February 2013 return. These are used to record cross-border B2B supplies of services to and from Ireland.

Finance Act 2013

FA 2013 introduced changes to VRT (Vehicle Registration Tax), carbon taxes and excise duty and the cash receipts basis of accounting for VAT.

Lorraine Morrison, lomorrison@deloitte.ie, Assistant Manager, Deloitte Ireland

Italy

New offsetting threshold of tax credits from 2014

A recent decree amends the maximum threshold for offsetting tax credits via the F24 form (form used to pay taxes by Italian taxpayers) to EUR 700,000 with effect from the 2014 year; the current threshold is EUR 516,456.90.

The decree also allows the offset of commercial receivables with the public administration and amounts due under litigation procedures. The provision has been in force since 9 April 2013, but its actual implementation is conditional on operative decrees which have still to be issued.

Filing of "Spesometro"

On 15 April 2013, the Italian tax authorities confirmed, through a press release, the postponement of the due date for filing the client and suppliers list or "Spesometro". A new deadline has not yet been set.

Implementation of Invoicing Directive

In a recent circular, the Italian tax authorities commented on the changes to Italian VAT legislation that came into force on 1 January 2013 (see GITN January 2013). The circular covers changes to the content of invoices and, in particular, the requirement to include:

- The VAT number of the Italian purchaser where the purchaser is VAT-registered;
- The EU VAT number of the purchaser where the purchaser is VAT registered in another EU member state; and
- The Italian tax code number of a natural person, where applicable.

The circular also notes that an invoice in a foreign language must now include not only the VAT amount in euro, but also the taxable amount in euro.

Clarification of chargeable event for services

In a recent circular, the Italian tax authorities have clarified the definition of when cross-border services (single or periodical/continuous supplies) are executed.

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Netherlands

Tax authorities to examine VAT debts

Amounts of VAT receivable or payable are often identified when financial statements are prepared. When overpaid or underpaid VAT is identified, the tax authorities must be advised. If underpaid VAT is not declared, the Dutch tax authorities can impose a penalty of up to 100% of the undeclared VAT; VAT of EUR 1,000 or less may be settled in the next VAT return.

On 7 May 2013, the Dutch tax authorities announced on their website that they will be comparing personal or corporate income tax with VAT returns to identify underpaid VAT. The tax authorities indicated that VAT could be reported until 1 June 2013 without a substantial penalty being imposed.

Employer cannot reclaim VAT on pension fund management

Advocate General Sharpston of the CJEU issued her opinion in the Dutch case of ***fiscale eenheid PPG Holdings BV c.s.***, a case about the scope for employers to reclaim VAT on services connected with the management and operation of pension funds and whether the management of such funds can qualify for exemption.

AG Sharpston has followed the decision of the CJEU in the *Wheels Common Investment Fund Trustees Ltd and Ors* case, and her suggested response to the second question in *PPG* is that the CJEU should confirm that the services do not qualify for exemption. With respect to the deductibility of VAT on payments made by PPG, A-G Sharpston expresses sympathy for the view advanced by PPG and the European Commission that the costs are effectively "payroll costs" and hence form cost components of the activities of the group as a whole. However, she was persuaded by the arguments of the Dutch tax authorities and suggested that the CJEU find that PPG was not entitled to deduct the VAT on services supplied to the separate pension fund in connection with its management and operation.

Madeleine Merkx, mmerkx@deloitte.nl, Senior Manager, Deloitte Netherlands

Poland

Chain supplies of goods from 1 April 2013

One of the VAT changes that came into force on 1 April 2013 concerns chain supplies of goods, i.e. situations where goods are sold by a number of entities in a series (chain) of supplies, but are transported directly from the first entity in the chain to the last entity. Under the new wording of the law, if a middleman transports the goods to the next purchaser in the chain, the transportation must be assigned to the supply made to the middleman, unless the delivery terms provide that the transportation should be assigned to the supply made by the middleman. Before 1 April 2013, the supply of transportation services was deemed to be made to the middleman, unless the middleman proved that the transportation services were to be assigned to the supply made by the middleman (in which case the middleman could be able to zero-rate cross-border supplies). In other words, the delivery conditions are now determinative.

This means that a different entity than prior to 1 April 2013 may be allowed to apply the 0% VAT rate in multinational chain transactions involving Poland. Consequently chain supplies that include a middleman that transports the goods should be carefully analyzed.

Insurance of leased goods

As previously discussed (see GITN February 2013), the CJEU suggested in the Polish case of *BGŻ Leasing sp. z o.o.* that, in principle, the lease and the insurance of goods should be regarded as distinct and independent supplies, and the recharge of the exact cost of the insurance provided with a supply of leased goods should be exempt from VAT.

Polish administrative courts recently issued a number of decisions in similar cases. Some of these decisions follow the CJEU decision and treat lease and insurance as separate supplies. However, in other decisions the administrative courts have held that the supply of both the insurance and the leased goods should be treated as one composite supply subject to the standard VAT rate. The courts have stated that, to determine whether the supplies should be treated as joint or independent supplies, many factors specific to the particular transaction must be taken into consideration.

Accordingly, each case should be treated and analyzed individually; businesses currently treating leasing and insurance as separate supplies could be exposed to the risk of VAT arrears.

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Portugal

SAF-T (PT) file structure

An administrative decree introducing changes to the SAF-T (PT) (Standard Audit File for Tax Purposes) file has been published. The degree introduces changes to the software certification rules and will enter into force on 1 July 2013.

"*IVA breakout*" – clarification sessions

Deloitte Portugal is hosting events aimed at clarifying the new transport document rules that enter into force on 1 July 2013. A session will be held on 6 June 2013 in Oporto. For more information and/or registration purposes, please contact: **ptclientsandmarkets@deloitte.pt**.

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Russia

VAT input tax in respect of exported fixed assets

In a decision of 26 February 2013, Russia's Higher Arbitration Court declared a 2012 letter issued by the Ministry of Finance partially invalid. That letter set out the conditions under which VAT input deductions must be repaid in respect of exported goods.

According to the letter, where fixed assets are acquired and an input VAT deduction is made, the tax code requires the repayment of the input VAT deduction where those fixed assets are involved partially or fully in making any supplies that are exported and, therefore, zero-rated for VAT purposes.

According to the Higher Arbitration Court, there is only a requirement to repay the VAT previously claimed as an input tax deduction in respect of fixed assets that are actually exported, and therefore zero-rated. In other words, if VAT input tax is deducted upon the acquisition of fixed assets and those assets are subsequently exported and zero-rated, the VAT must be repaid. However, if the assets are merely used to make supplies that are exported, there is no requirement to repay the VAT deduction.

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Sweden

CJEU holds that VAT grouping can be confined to specific business sector

The CJEU has rejected the European Commission's challenge to the VAT grouping rules in Sweden, which confine VAT grouping to finance sector businesses that are supervised by Sweden's Finance Inspectorate.

The Commission argued that the Swedish approach to VAT grouping breached the principle of equal treatment and that the underlying EU law did not permit a "sectorised" approach to VAT grouping. The Commission's arguments on "equal treatment" were held to be inadmissible, since they were not advanced in the reasoned opinion (which was founded on "fiscal neutrality" rather than "equal treatment").

The CJEU also concluded that the Commission failed to show convincingly that Sweden's decision to limit VAT grouping to entities in the financial sector that are under the supervision of its Finance Inspectorate and which are therefore covered by a public monitoring system, to prevent tax evasion and avoidance, was not well founded. The Commission's application was dismissed.

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United Kingdom

Bad debt relief for solicitors

The Scottish Court of Session has overturned the Upper Tribunal's decision in favour of Simpson & Marwick in a case about the extent of bad debt relief available in situations where it collected the bulk of its fees from an insurer, but, in accordance with long-standing practice, billed the VAT element to a VAT-registered insured client. Where the client did not pay, the firm reclaimed the full amount left unpaid under the bad debt relief rules. The First-tier Tribunal dismissed an appeal against the UK tax authorities' (HMRC's) assessment to claw back much of the amount claimed. On appeal, the Upper Tribunal concluded that the firm was able to reclaim the entire amount left unpaid as bad debt relief on its VAT returns.

The Court of Session has now agreed with HMRC that bad debt relief was due only on the outstanding element, treating that sum as VAT-inclusive.

Ryanair loses “connected flights” cases in Upper Tribunal

The UK Upper Tribunal has found that Ryanair Limited was not entitled to a refund of over GBP 10 million of Air Passenger Duty (APD) on what it claimed were “connected flights” that should have benefitted from exemption. The Tribunal also dismissed an application for judicial review over claims that HMRC was treating Ryanair less favourably than other airlines which, it claimed, had been permitted to account for APD on the basis that flights were “connected”, despite not complying with the detailed rules, and that HMRC should have advised it on changes to its systems that might have allowed Ryanair to claim the exemption sooner.

The allegations of unfairness, and suggestion that HMRC should have advised on ways to change its systems, were considered by the Upper Tribunal in its “judicial review” role and, since the evidence relating to two points raised in the First-tier Tribunal case (which related to whether Ryanair was able to show that the flights were “connected”) was broadly the same as that relevant to the judicial review case, these points also were considered by the Upper Tribunal – and decided against Ryanair.

Payment for repairs was “third-party consideration”

The UK Supreme Court has concluded that payments to garages that repaired vehicles covered by motor breakdown insurance represented “third-party consideration” for the work, and that the repairs were supplied to the vehicle owners, not the insurers. In effect, the judgment restores the decision of the VAT Tribunal and means that the insurers were not entitled to recover VAT on the cost of the repairs.

The case of *WHA Limited and Ors* concerned what the Supreme Court described as “… a scheme … which was designed to minimise the overall liability to VAT of a group of companies involved in motor breakdown insurance.” The decision reaffirms that simply paying the costs of a third party will not necessarily give rise to an input VAT deduction.

Each case will depend on its specific facts and the Supreme Court has emphasised the importance of looking at “economic reality” in determining whether VAT is recoverable as input tax.

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