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FSI Indirect Tax News
Financial Services and Insurance updates from around the world

Welcome to the latest edition of Deloitte's Financial Services and Insurance (FSI) Global Indirect Tax Newsletter.

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Issue 6

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In this newsletter, we cover:	**Area in focus** • Transfer Pricing and VAT
	Asia Pacific • **Singapore** – GST treatment of fund management services
	EMEA • **Belgium** – VAT treatment of management services provided to alternative investment funds • **Belgium** – Guidance on how the outcome of the CJEU Skandia decision will affect the Belgian VAT rules • **Belgium** – Guidance following the CJEU's decision in Deutsche Bank (C-44/11) • **Denmark** – VAT treatment of insurance price comparison websites • **Finland** –Supreme Administrative Court decision on the VAT treatment of factoring services • **Germany** – Updated guidance on the VAT treatment of security and custody services • **Hungary** – Guidance following Skandia (C-7/13) • **Italy** – Split payment mechanism introduced • **Italy** – New domestic reverse charge measures introduced • **Poland** – CJEU referral on claims handing exemption • **Portugal** – Supreme Court decision on finance leasing • **Sweden** – Updated guidance on the VAT treatment of insurance services provided in connection with the supply of goods and services • **Sweden** – CJEU ruling concerning incorrect VAT treatment of postal services in Sweden

	• **The Netherlands** – First Tier Court case on the VAT treatment of services provided by stock exchanges and prime brokers • **The Netherlands** – Cost sharing exemption abolished for pension administration services • **The Netherlands** – High Court case on the VAT treatment of an industry pension fund • **UK** – 2015 Budget announces implementation of Société Le Crédit Lyonnais (C- 388/11) • **UK** – Tax authority guidance released concerning tripartite agreements and the scope for employers to recover fund management VAT

Area in focus – Transfer pricing and VAT

There is an inherently close relationship between transfer pricing and VAT, and most decisions made in relation to one will have an impact on the other. Due to the largely exempt nature of the FSI sector the financial implications of small changes in pricing policies or classifications of supplies can be significant. Substantial amounts of irrecoverable VAT may arise as a result of the two matters not being considered together from the outset of internal charging arrangements. However, there are also opportunities for efficiencies if the exact nature of the supplies is considered in greater detail.

As it is becoming increasingly common in many territories to see a joined up approach being taken by transfer pricing and VAT specialists within tax authorities, we thought it may be of interest to outline a few of the key aspects of this relationship that are impacting FSI businesses:

- **The bundling or unbundling of services to reflect the business structure whilst considering the VAT impact.** The bundling of services and corresponding agreements can lead to exempt services being unintentionally grouped with taxable services. This can result in the perception that certain exempt services are ancillary to higher value taxable services when they should in fact be treated as distinct supplies that would not be subject to the reverse charge. In contrast, inadvertent unbundling of services which primarily support an exempt function can have a detrimental impact on a business' VAT position, if elements are subsequently regarded as taxable.

- **Consideration of the VAT and transfer pricing implications of service companies, as organisations are restructured to reflect changes in the regulatory environment.** With the ultimate impact of the *Skandia* CJEU case currently hanging in the balance, the use of cost sharing groups is an option that many are considering within the EU, with the viability of non-EU cost sharing groups still a matter of uncertainty. The interaction with transfer pricing is often a topic of discussion in this area due to the 'exact reimbursement of expenses' condition.

- **Ensuring the correct description of services within transfer pricing agreements can allow for appropriate implementation of VAT exemptions for transfer pricing allocations.** The somewhat ambiguous intersection of technology and financial intermediary services is an area on which light can often be shed if foresight is afforded to the matter. Pre-emptive actions in the form of discussions or seeking clearance from tax authorities has resulted in substantial savings for FSI businesses which may otherwise have been incorrectly assessed for the receipt of software or IP supplies.

Clearly, as we move further towards increased sharing of information from global reporting of revenues, this is likely to raise the profile of transfer pricing, which will in turn have an effect on VAT. In particular, the progression of the OECD's BEPS action plan is sure to put the spotlight on the allocation policies of global FSI businesses, and this is a topic that will be covered further in forthcoming editions.

Back to top

Asia Pacific

Singapore – GST treatment of fund management services

The Inland Revenue Authority of Singapore (IRAS) has issued its revised GST e-tax guide for the fund management industry. The guide clarifies IRAS's final position on management services provided to funds (other than trust funds).

IRAS's position was that if a fund had no other permanent establishment (PE) and relied wholly on a Singapore Fund Manager (i.e., a prescribed fund manager in Singapore that holds a capital markets services licence under the Securities and Futures Act (Cap. 289) or someone who is exempted under the Act from holding such a licence) to administer the fund, the fund would be deemed to have a PE in Singapore through the Singapore Fund Manager and so GST would need to be charged on the fund management fees. The implication of this was that the fund would not be able to recover any of the GST as it would not be registered or registerable for GST.

IRAS has consulted further to clarify their position, which is now set out in the final version of the e-tax Guide. Their position is that:

- Prior to 1 April 2015, funds that belong in Singapore by virtue of their Singapore Fund Manager can take advantage of a concession so that GST need not be charged.
- On and after 1 April 2015, IRAS has confirmed that GST is not chargeable on services supplied by Singapore Fund Managers as follows:

  (a) Services supplied to qualifying funds (i.e., funds that satisfy conditions of the Income Tax Concession under Sections 13CA or 13X of the Income Tax Act as at the last day of its preceding financial year) that are incorporated or registered outside Singapore and belong in Singapore only due to their whole reliance on a Singapore Fund Manager; and

  (b) Services supplied to overseas fund managers that are incorporated or registered outside Singapore and belong in Singapore only due to their whole reliance on a Singapore Fund Manager, subject to the conditions that the services supplied to the overseas fund managers must be in relation to the services supplied, or to be supplied, by the overseas fund managers to a qualifying fund incorporated or registered outside Singapore and the qualifying fund belongs outside Singapore or belongs in Singapore only due to its whole reliance on a Singapore Fund Manager.

For clarity, whole reliance can be determined by reviewing the extent to which the Singapore Fund Manager carries on the business of the Fund, i.e., where the Singapore Fund Manager is the sole contracting fund manager for the fund and has the overall responsibility to oversee or carry out the activities of the fund. Where such activities do not amount to whole reliance, the services provided by the GST-registered Singapore Fund Managers as described above should be reported as zero-rated supplies in the GST returns of the Fund Manager.

Practical implications

The remission now granted by IRAS means that Singapore Fund Managers have certainty on their activities. In addition, there may be grounds to recover the GST charged on past fund management services provided to funds which were treated as having a fixed establishment in Singapore through the activities of the Singapore Fund Manager.

Further, Singapore Fund Managers may now have an option to apply for exemption from GST registration if they make wholly or substantially zero-rated supplies.

The clarification also confirms that qualifying funds can seek a remission of the GST they incur via a periodic Statement Of Claim, although it should be noted that not all of the GST incurred is recoverable under this process.

Back to top

EMEA

Belgium – VAT treatment of management services provided to alternative investment funds

On 30 March 2015, the Belgian Tax Authorities (BTA) confirmed that the management of alternative investment funds (AIFs) can continue to be treated as VAT exempt. The announcement was made following some changes to the Belgian legislation governing collective investment funds (CIFs) and AIFs in May 2014.

Under the Belgian VAT Code, management services provided to eligible CIFs can be treated as VAT exempt. The definition of what constitutes a CIF, for the purposes of the VAT exemption, is based on the Belgian Act governing the management of CIFs, which was modified in May 2014. Pursuant to the changes, AIFs are governed by a different piece of Belgian legislation. Consequently, AIFs do not currently fall within the definition of a CIF under the Belgian VAT Code. The BTA confirmed that the relevant provision in the Belgian VAT Code will be updated to include a reference to eligible AIFs. At this stage it is unclear if all types of AIFs will be covered by the VAT exemption going forward.

The BTA acknowledged that investment managers may also be able to secure VAT exemption for the management of certain funds, including some AIFs, if the funds that they are providing management services to satisfy the tests set out in the CJEU judgments in *Wheels* or *ATP*.

Belgium – Guidance on how the outcome of the CJEU *Skandia* decision will affect the Belgian VAT rules.

On 9 April 2015, the BTA released its guidance on how the outcome of the *Skandia* judgment of last year (*Skandia America Corp. (USA)*, C-7/13) will affect the Belgian VAT rules (Decision ET. 127.577 dated 3 April 2015).

In *Skandia*, the CJEU ruled that supplies of services from an overseas head office to a branch, which is part of a VAT group in a Member State, should be subject to VAT.

Going forward, the BTA requires the application of VAT on such transactions. This requirement must be implemented by 1 July 2015 at the latest.

Analysis of the *Skandia* judgment by the BTA

Based on the former CJEU *FCE Bank* case, transactions between the head office and an establishment of the same company fall outside the scope of VAT. However, in the *Skandia* case, the CJEU ruled that this principle does not apply if the establishment is part of a VAT group with other legal entities established in an EU Member State. Any supplies of services made by the overseas head office to this branch are considered to be made to the VAT group as a whole and are hence subject to VAT. As a result, the VAT group is required to account for VAT on these supplies under the reverse charge rule.

The BTA has now aligned its position with these principles. Cross-border transactions for consideration between establishments of the same legal entity will be subject to VAT if one or both establishments are, in their country of residence, part of a VAT group including other legal entities. The BTA expect businesses to apply these rules by 1 July 2015 at the latest.

The current anti-avoidance provisions in the Belgian VAT Code which treat certain services as subject to VAT when rendered from a foreign establishment to a Belgian establishment that is part of a VAT group are no longer relevant and will be abolished. No changes are expected in respect of the VAT treatment of cross-border transfers of goods within one legal entity, as these are already assimilated to taxable supplies in all cases.

Practical consequences for businesses having multiple establishments

Businesses established in Belgium with establishments abroad and having implemented VAT grouping arrangements will have to carefully review all service flows within their legal entity, both from an inbound and an outbound perspective.

For example, if a Belgian establishment, member of a Belgian VAT group, receives services from an overseas establishment (EU or non-EU), these services are subject to VAT payable by the VAT group through the reverse charge rule. The BTA specify that this applies even if the services are not recharged to other members of the VAT group.

The taxpayer will need to determine whether these services are taxed or exempt as well as define the taxable base. Moreover, an invoice needs to be issued or drafted internally and all the transactions need to be reported in the VAT return of the VAT group. The same obligations apply if the foreign establishment rendering the services is part of a VAT group in another Member State, even if no Belgian VAT group has been set up.

Where a Belgian establishment, part of a Belgian VAT group, is itself supplying services to an establishment abroad, the BTA also consider that this is a taxable service which, under the general B2B rule, should be taxed in the country of the receiving establishment. Also here, the Belgian establishment may be obliged to issue an invoice mentioning ‘reverse charge’ and report the transaction in its VAT return and European Sales Listing, even if the receiving country may not (yet) consider this as a taxable transaction.

The taxable nature of transactions within one legal entity means that these transactions also influence VAT recovery (the pro rata calculation). In this respect, the BTA already highlight that, given the separation between the establishments on account of the VAT group, VAT related to costs made by a head office for the benefit of establishments abroad will not be recoverable unless these costs are recharged to those establishments.

With these guidelines, the BTA has adopted a position which will have a significant impact on the administrative burden of companies operating through a branch structure (e.g., VAT reporting obligations, adapting invoice references, etc.). In addition, the VAT charged to a VAT group by a foreign establishment will be a cost in so far as the VAT group does not have the (full) right to recover this VAT.

Given the deadline of 1 July 2015, institutions working through branches will have to urgently assess the financial and organisational impact of these rules within their business. As the settlement of transactions within a single legal entity is often effected at year end closing, the financial impact may cover transactions during the full year, unless action is taken in this respect.

Belgium – Guidance following the CJEU's decision in *Deutsche Bank* (C-44/11)

On 10 April 2015, the BTA released its guidance on the implementation of the CJEU's decision in *Deutsche Bank,* which concerned the VAT treatment of discretionary investment management (DIM). In *Deutsche Bank*, the CJEU concluded that DIM is a taxable service for VAT purposes. The BTA's guidance follows the CJEU's decision that DIM should be treated as subject to VAT. In its guidance, the BTA also gives its official position on the VAT treatment applicable to non-discretionary investment management (NDIM). The BTA makes the distinction between advisory services linked to investment management (which is subject to VAT) and the operation consisting in actually buying and selling securities (the latter operation being VAT exempt, based on article 135(1)(f) of VAT Directive 2006/112/EC). This is an important clarification as, after Deutsche Bank, the BTA consider that NDIM should also be fully subject to VAT. The guidance will take effect on 1 July 2015.

Denmark – VAT treatment of insurance price comparison websites

The Danish Tax Board handed down a binding ruling stating that the provision of a web-based insurance comparison service, for insurance cover from various insurance companies, is a taxable supply of services. In this case, the supplier hosted a price comparison website which contained direct links to insurance company webpages.

The supplier received commissions from the insurers based on the number of contracts of insurance that arose from its introductions. Essentially, the supplier provided an internet 'click through' service, as well as providing quotes and comparative pricing for insurance products, to the insurance companies' webpage which enabled the two parties (i.e., the insurance company and the individual) to enter into a contract of insurance.

The Danish Tax Authorities (DTA) consider that click through/price comparison websites are distinguished from other web-based financial intermediary services (for example, crowd funding websites) because the supplier does not act on behalf of a financial service provider and has no involvement with the underlying financial product.

This ruling appears to narrow the previously broad interpretation of the VAT exemption for intermediation services applied by the DTA, especially in circumstances where the services consist, for the most part, of an automated function without any human involvement.

Finland – Supreme Administrative Court decision on the VAT treatment of factoring services

The SAC ruled, in the case KHO: 2014:191, on the VAT treatment of income derived from servicing a portfolio of purchased receivables. In this case, a business transferred all of its receivables to the taxpayer (A Oy). All rights to the receivables were transferred to A Oy. Furthermore, A Oy serviced the portfolio of receivables in its own name and was responsible for any costs that it incurred in relation to servicing the portfolio. A Oy paid the transferor a portion, based on an agreed percentage, of the income generated from servicing the portfolio.

The SAC stated that the service did not sufficiently resemble the service provided by GFKL Financial Services in the CJEU case (C-93/10) and therefore could not be treated as outside the scope of VAT. Instead, the SAC considered that A Oy's service was similar to the service outlined in the CJEU's decision in *MKG-Kraftfahrzeuge-Factoring* (C-305/01) and A Oy's service should therefore be subject to VAT.

Germany – Updated guidance on the VAT treatment of security and custody services

On 3 February 2015, the German Ministry of Finance provided the German Credit Sector Association with an updated list of the VAT treatment applicable to security and custody services transactions. The detailed list covers the VAT treatment of services provided in relation to the following areas:

- Services related to the issue of securities

- Securities related services (services provided by bank to stockholders)
- Safekeeping and administration of securities
- Portfolio management
- Investment advice/Financial consulting
- Management of investment funds
- Derivative Transactions:
  - transactions on EUREX
  - transactions on the commodity futures exchange
  - OTC transactions
- Greenhouse gas emissions trading

In total, 119 different types of transactions are listed within the updated list. This listing is expected to have implications for all businesses conducting or planning to engage in securities transactions on the German market.

Hungary – Tax authorities guidance following *Skandia* CJEU decision

In May 2015, the Hungarian tax authorities released official guidance on the implementation of the *Skandia* decision taking a narrow approach like that of Sweden. The tax authorities have confirmed that a VAT group constitutes a single and separate entity (taxable person) for VAT purposes. This overrides the fact that a head office and its branch constitute a single legal entity. The guidance confirms that supplies of services between a domestic head office/branch and its foreign branch/head office will be taxable supplies for VAT purposes. This applies equally to branches/head offices in other EU member states or third (non-EU) countries.

The tax authorities have also confirmed that this treatment is consistent with existing domestic legislation and as such, has effect from 1 January 2008, when the current Hungarian VAT Act came into force.

The guidance has a significant impact on the FSI sector which currently operates many shared service companies from Hungary.

Italy – Split payment mechanism introduced

As of 1 January 2015, a split payment mechanism has been introduced into Italian VAT law. For supplies of goods and services carried out to the State and other kinds of public entities (such as chambers of commerce, universities, local health entities, hospitals, public nursing homes of scientific type, charitable public entities and pension entities), where such supply is not subject to a reverse charge mechanism, VAT will be payable by the public entities.

Furthermore, starting from 1 January 2015, the reverse charge mechanism in Italy has been extended to cleaning, demolition, equipment installation and completion services related to edifices.

This new mechanism could have an impact on the financial service sector, where financial operators provide services to public entities or receive services from cleaning operators for example.

Italy – New domestic reverse charge measures introduced

Pursuant to the Italian Budget, a new mandatory ‘domestic’ reverse charge requirement was introduced, which took effect on 1 January 2015, in respect of:

a) transfers of allowances to emit greenhouse gases;

b) transfers of other units that may be used by operators to comply with Directive 2003/87/EC and the transfers of certificates relating to gas and electricity; and

c) supplies of gas and electricity to a taxable dealer, which could be a bank according to the tax authorities (Circular no. 14/E dated 27 March 2015).

The changes will impact FSI business trading in any of the above.

Poland – CJEU referral on claims handling exemption

The Polish Supreme Administrative Court has requested a ruling on whether art. 135(1)(a) of the Principle VAT Directive covers ‘complex’ claims handling services rendered for the benefit of an insurance company by a third party that does not have any legal relationship with the insured.

In addition to the VAT exemption applied to financial and insurance services and as a result of CJEU rulings on auxiliary services, the current Polish VAT regulations extend the exemption to services that "*constitute an element of the financial or insurance service but itself constitutes a separate whole and is appropriate and indispensable for the provision of the financial or insurance service*".

BRE Ubezpieczenia Sp. z o. o. (the Company) provides insurers with certain claims handling services. The Company applied for a tax ruling from the Polish Minister of Finance to confirm the exemption from VAT for certain claims handling services which it provided. The services in question included the following activities:

1. Receiving and processing claims and damages covered by insurance;
2. Maintaining records of damages in the IT system;
3. Determination of causes and circumstances of accidents, including organising and conducting inspections of objects and locations of accidents, preparation of documents and other activities necessary to establish liability for damages;
4. Conducting necessary correspondence with customers, including the fulfilment of legal obligations to notify the insured and keeping correspondence with other entities whose position is essential in the settlement process;
5. Analysis of documentation and making decisions in matters of claims;
6. Technical evaluation and additional assessments in case of motor insurance claims and preparation of damages reports;
7. Preparation of photographic documentation;
8. Making copies of notification, as required;
9. Preparation of complete documentation required for recognition of reported claim compensation, and placing it in a briefcase claim;
10. Making backups of damages documentation;

11. Providing detailed information about the process of settling the claim, including the rules of conduct in case of damages, the required documents and entitlements;
12. Conducting recourse proceedings, excluding litigation;
13. Recognition of appeals and complaints regarding claims handling;
14. Providing the entitled persons with access to files;
15. Preparation of transfers and remittances in computer system;
16. Receiving and transmitting correspondence regarding claims handling;
17. Conducting reporting of damages; and
18. Other activities necessary for proper claims handling in connection with the activities referred to above.

The Polish Minister of Finance ruled that the services provided by the Company should be subject to the standard rate of VAT. The court ruled in favour of the Company but the Minister of Finance appealed against this decision to the Supreme Administrative Court which suspended the proceedings and decided to ask for a preliminary ruling from the CJEU which has now been listed as *BRE Ubezpieczenia* (C-40/15).

In the Supreme Administrative Court's view there are certain doubts whether the reasoning presented in previous judgements of the CJEU with respect to the exemption from VAT for services auxiliary to financial services should also be applicable to insurance services. If the CJEU rules in favour of the Supreme Administrative Court, this would have a major impact on clients providing claims handling intermediary services within the insurance sector.

Portugal – Supreme Court decision on finance leasing

On 10 July 2014, the CJEU released its judgment in *Banco Mais* (C-183/13) which stated that the Portuguese tax authorities were entitled to apply a 'use-based' partial exemption method to a bank's leasing transactions. Following the CJEU's *Banco Mais* decision, the Portuguese Supreme Court (PSC) handed down a decision in a similar case in October 2014 and followed the CJEU's judgment. In March 2015, another decision of the PSC in a similar case was also released.

However, in the decision released in October 2014, the PSC's decision followed the CJEU's judgment without ascertaining whether the goods and services which were used for taxable and exempt purposes were a consequence of the financing and management of the contracts, rather than the provision of vehicles (which was something that the CJEU stated should be ascertained by the national court to apply the judgment). In the decision released in March 2015, the PSC has referred the case back to the first tier court to establish the relevant facts in order to conclude if the CJEU's judgment should be followed (i.e., in order to ascertain whether the goods and services which were used for taxable and exempt purposes were a consequence of the financing and management of the contracts, rather than the provision of vehicles).

Sweden – Updated guidance on the VAT treatment of insurance services provided in connection with the supply of goods and services

Following the CJEU ruling in *BGZ Leasing* (C-224/11), the Swedish Tax Agency (STA) has issued guidance on the VAT treatment of supplies of insurance services provided in connection with supplies of goods or services. The main points covered in the updated guidance include:

- Warranties are not considered to be insurance services;
- Optional insurance services, which are subject to an additional payment, should be treated as separate supplies; and
- Mandatory insurance services which are included in the price of the goods or services should be treated as ancillary to the main supply.

The guidance indicates that in certain circumstances, supplies of insurance services which are provided in connection with the supply of goods or services could be treated as VAT exempt, even if they are supplied by the same party. This differs from the former practice in Sweden where insurance services were typically considered to be ancillary to the main supply of goods and services, unless the insurance was supplied by a third party insurer. This could potentially lead to an increase in the number of retailers supplying insurance services directly instead of acting in an intermediary capacity.

Sweden – CJEU ruling concerning incorrectly charged VAT on postal services

In March 2014, the European Commission brought Sweden before the CJEU (C-114/14). The Commission argued that the Swedish VAT Act was inconsistent with the EU VAT Directive as Sweden had not incorporated an exemption for supplies of public postal services (art. 132(1)(a)). Sweden opposed the European commission and argued that the exemption was not applicable in Sweden as several postal companies operate in the Swedish market, and none of them supplied **public** postal services.

On 21 April 2015, the CJEU went straight to judgement stating that Posten AB's supplies (the company in question) did in fact qualify as public postal services, and that historically VAT had been imposed incorrectly.

The incorrectly charged VAT impacts Posten AB's customers in the FSI sector. Companies within the Swedish FSI sector should therefore consider the possibilities of reclaiming the VAT paid to Posten AB or take legal action against the State for damages.

The Netherlands – First Tier Court case on the VAT treatment of services provided by stock exchanges and prime brokers

The First Tier Court has ruled on the VAT treatment of services received by the taxpayer, a market maker in the Netherlands, from a number of suppliers (stock exchanges and prime brokers) located outside the Netherlands.

In addition to the membership and brokerage services received by the taxpayer, the suppliers also provided other services including data services, information services, connectivity services, licences and co-location services. The taxpayer considered that these services comprised a single composite supply rendered by the exchange and should be VAT exempt. In addition, the taxpayer took the view that co-location services were directly related to real estate and should be subject to VAT where the real estate is located.

The court ruled that above services do not qualify as a single composite supply because suppliers do not render the services exclusively to parties such as the taxpayer, but to a wider group of customers, and that the services can also be acquired on a stand-alone basis. According to the court, each of the above services serve their own economic objective and should be treated as supplied separately. Additionally, the court considered it important that these services were also available to non-trading clients outside of the stock exchange.

The court held that aside from the membership and prime brokerage services, the other services should be regarded as taxable supplies as they do not independently possess the specific and essential elements of exempt financial transactions. The court further ruled that the co-location services are subject to VAT because there is no exclusive right of usage of the property for the taxpayer. Consequently, the co-location services could not be regarded as related to real estate and the reverse charge mechanism should be applied.

The decision has been appealed to the Dutch High Court.

The Netherlands – Cost sharing exemption abolished for pension administration services

The cost sharing exemption for pension administration services was abolished as of 1 January 2015.

The Netherlands – Dutch case on the VAT treatment of an industry pension fund

The High Court ruled that the VAT exemption for the management of a collective investment fund (CIF) does not apply to management services provided to a Dutch pension fund.

The pension fund operates a scheme which shares many of the characteristics of a Defined Benefit Scheme. The High Court ruled that although a pension fund can be compared to a CIF in some respects, the essential character of the funds are different, and therefore the exemption cannot be applied. The reasoning of the decision was rather limited and no explicit reference was made to the CJEU's decision in the *ATP* case. An appeal has been lodged to the Dutch Supreme Court.

UK – 2015 UK Budget announces implementation of *Société Le Crédit Lyonnais* (C- 388/11)

On 18 March 2015, the UK Parliamentary Budget was released announcing changes to UK legislation to implement the CJEU's decision in *Société Le Crédit Lyonnais,* whereby the turnover of a bank's foreign branches could not be taken into account in its French pro rata calculation.

Changes to the UK VAT regulations will prevent partly exempt businesses from taking account of the activities of foreign branches when working out how much of the VAT on their overheads can be deducted. This will take effect from the beginning of partial exemption years starting on or after 1 August 2015. A draft of the proposed regulations, and the associated explanatory memorandum has been published for external comment. It includes provisions that will overrule any contradictory terms in existing pro rata methods.

UK – Tax authority guidance released concerning tripartite agreements and the scope for employer to recover fund management VAT

Prior to the CJEU's decision in *Fiscale Eenheid PPG Holdings BV (C-26/12),* where employers incurred fund management costs consisting of both investment management (exempt) and administration (taxable) costs for defined benefit funds, employers could apportion a 70/30 split for recovery of the 30% administrative element of input tax. In addition, any recharges for the management passed on to the fund by the employer did not need to carry any VAT charge.

In November 2014, the UK tax authorities issued guidance in relation to the recovery position which provided that:

- If the employer is the recipient of the fund management supplies, administration and investment management costs do not need to be apportioned – the 70/30% simplification is disregarded. However, the employer must establish that it is the recipient of the supplies to recover any VAT incurred whatsoever.
- Recharges to the fund by the employer must carry VAT as they are regarded as an onward taxable supply by the employer to the fund.
- 'Recipient status' of the employer (bullet 1) is established on a fact-sensitive basis, taking into account the economic reality, in particular the contractual relationship between the parties and the usage of the supplies for the recipient's business activity.

These changes will come into force on 1 January 2016 and further guidance has now been released to elaborate on the issue of tripartite agreements where fund management is provided to the fund but paid for by the employer, for the purposes of the 'recipient status' test.

The tax authorities have recognised the unique nature of defined benefit schemes where employers have an obligation to ensure funds perform to a specified level and the fact that they therefore pay for the management services on behalf of the fund. Consequently, tripartite agreements between employer, fund and fund management provider will be acceptable for the employer’s input tax recovery provided that the contract meets certain criteria set out in the tax authorities’ latest guidance.

Back to top

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