Welcome to the latest edition of EY VAT News, which provides a round up of indirect tax developments over the summer. Headlines include the following:

- EY will be holding an indirect tax breakfast seminar on Thursday, 29 September at our More London Place offices. We will assess the ripple effects of the Brexit vote on indirect tax as well as providing an update on other current indirect tax issues and developments. Please contact Alex Dixon to reserve your place.
- HMRC has issued Revenue and Customs Brief (14)2016 on pensions. The Brief confirms a 12 month extension to the transitional period, allowing parties operating defined benefit schemes, to continue to use the 70/30 split (an HMRC concession) to recover VAT until 31 December 2017.
- Egypt will be replacing its existing sales tax system with VAT at a rate of 13%. Please contact Andrew Bradford for further information.

If you would like to discuss any of the articles in this week's edition of EY VAT News in more detail, please speak with your usual EY indirect tax contact or one of the people below.

In this edition:

**Events : Indirect tax breakfast seminar**

**Consultations : HMRC takes forward Making Tax Digital roadmap, Introduction of the soft drinks industry levy and other consultations**

**HMRC Material : R&C Brief 14(2016) : Pension schemes : Transitional period extended**

**HMRC Material : R&C Brief 13(2016) : VAT liability of a dwelling formed of more than one building**

**HMRC Material : Guidance on domestic reverse charge for telecommunications services**

**First Tier Tribunal : Decision : VAT liability of fractional ownership interests in property**

**Upper Tribunal : Decision : VAT treatment of payment handling services**

**Court of Appeal : Judgment : Charity was conducting an economic activity**

**Court of Appeal : Permission to appeal requested : London Clubs Management Ltd**

**Supreme Court : Permission to appeal results**

**CJEU : New referrals**

**CJEU : Calendar update**

**Middle East : VAT Developments : The introduction of VAT in Egypt and GCC countries**

**EY Global Tax Alerts : Recent indirect tax developments around the world**
Events

Indirect tax breakfast seminar

EY will be holding an indirect tax breakfast seminar on Thursday, 29 September at 8:30 am at our offices at 1 More London Place. Three months on from the EU referendum, the seminar will ask how indirect tax is being affected and what happens next. We will assess the ripple effects of the Brexit vote on indirect tax and provide an update on other current indirect tax issues and developments.

This interactive session will present an excellent opportunity to understand the important indirect tax challenges that businesses are dealing with.

If you have any particular issues you would like to be covered at the event please let us know. Please contact Alex Dixon for further information.

Consultations

HMRC takes forward Making Tax Digital roadmap

HMRC has launched six Making Tax Digital consultation documents together with a summary document. The consultations follow on from the Making Tax Digital roadmap, published in December 2015, which set out the plans to deliver a fully digital tax service by 2020.

Our external EY Global Tax Alert outlines the important themes and implications of the consultations. Comments on the consultations issued to date are requested by 7 November 2016.

Comment: Although not focused on large or international businesses, the consultations are in line with a wider, global trend towards the digitisation of tax administration. Businesses operating in multiple jurisdictions will need to be aware of the extent to which governments have implemented digital tax administration in the countries where they operate and implement consistent processes in multiple countries to comply effectively with developing rules.

Introduction of the soft drinks industry levy

HMRC and HM Treasury have issued a consultation document on the new soft drinks industry levy, which is due to be introduced from April 2018. The levy was originally announced by the Government at Budget 2016 and is targeted at producers and importers of soft drinks that contain added sugar. The aim of the levy is to encourage companies to reformulate their product mix to reduce added sugar in their products with an ultimate aim of reducing childhood obesity. The consultation sets out proposals concerning how the levy will be designed and implemented.

Comments on the consultation are requested by 13 October 2016. Legislation providing for the introduction of the new soft drinks industry levy will be included in Finance Bill 2017.

Other HMRC consultations

HMRC has also published the following consultations over the Summer:

Remote Gaming Duty – Treatment of free plays in remote gaming duty

Aggregates Levy – Whether to exempt aggregate extracted when laying underground pipes

Tackling the Hidden Economy: Sanctions

Tackling the Hidden Economy: Extension of Data-gathering Powers to Money Service Businesses

Tackling the Hidden Economy: Conditionality
HMRC Material

R&C Brief 14(2016) : Defined benefit pension schemes : Transitional period extended

HMRC has issued Revenue and Customs Brief (14)2016.

The Brief confirms a 12 month extension to the transitional period, allowing parties operating defined benefit schemes to continue to use the 70/30 split (an HMRC concession) to recover VAT on pension related costs until 31 December 2017.

The Brief confirms that taxpayers who may have already made changes to their pensions structure and/or contractual arrangements may continue with those arrangements. Alternatively, taxpayers may revert back to the previous treatment during the transitional period.

The extension of the use of the concession comes as a result of the need to resolve wider issues associated with alternative solutions to the 70/30 split including regulatory, tax, accounting and commercial issues.

In view of the latest guidance, affected parties may wish to use this time to review the options available to them.

Please contact Janet Waweru for further information.

R&C Brief 13(2016) : VAT liability of a dwelling formed from more than one building

HMRC has issued Revenue and Customs Brief 13(2016).

The brief explains a change in policy relating to the treatment of dwellings that have been formed from either the construction of new buildings, or from the conversion of non-residential buildings into dwellings. HMRC now accepts that single dwellings can be formed from more than one building.

Guidance on domestic reverse charge for telecommunications services

HMRC has issued guidance on the domestic reverse charge for wholesale supplies of telecommunication services. It explains how businesses’ VAT invoices will be affected by the reverse charge.

First Tier Tribunal

Decision : VAT treatment of fractional ownership interests in a property

Fortyseven Park Street Limited

The First Tier Tribunal held that the supply of fractional interests in a property were taxable as supplies of accommodation in a hotel or similar establishment.

The First Tier Tribunal has released its decision in this appeal concerning the VAT liability of supplies of fractional ownership interests in a property. The Appellant sold fractional interests in residences at a London Mayfair Property. In return for a substantial upfront price, a purchaser acquired the ability to occupy a residence at the property for a maximum number of nights each year and to access a range of related benefits during that period. These included the option for the purchaser to exchange stays at the property for stays in other properties and to realise rental income in respect of their residence.

The Appellant argued that it supplied the grant of a licence to occupy land, which fell within the land exemption. HMRC contended that the Appellant provided a taxable supply of the right to participate in a plan, comprising of a bundle of benefits, including the provision of an opportunity for a member to occupy a residence; or alternatively, if the Appellant was held to make a supply of an interest in land, HMRC contended that it would be excluded from the land exemption as the provision of “accommodation” in a “hotel, inn, boarding house or similar establishment”.

The First Tier Tribunal held that the Appellant made supplies of a licence to occupy land but agreed with HMRC that these supplies were taxable as the provision of accommodation in a hotel, inn, boarding house or similar establishment. Appeal dismissed.
Comment: Businesses supplying fractional interests in properties/with timeshare arrangements may wish to consider the implications of the decision.

Upper Tribunal

Decision : VAT treatment of payment handling services

DPAS Limited

The Upper Tribunal has referred the case to the CJEU to decide whether payment services provided direct to patients are exempt.

The Upper Tribunal has released its decision in the case of DPAS Limited. The case considered whether the taxpayer, which operated dental payment plans on behalf of dentists, was entitled to exempt its charges made directly to patients for the provision of payment handling services. The taxpayer had restructured its contractual arrangements following the CJEU's judgment in the case of AXA UK plc, in which it was held that the service of collecting payments provided to dentists was specifically excluded from the exemption as it amounted to the collection of debts.

In November 2015, the Upper Tribunal held that the restructuring of DPAS' contractual arrangements was not an abusive practice and to the extent that existing patients had signed and returned the acceptance form in relation to the new contractual arrangement, the taxpayer was supplying services to the patients rather than the dentists. The Upper Tribunal did not reach any conclusion on whether these services were exempt, directing instead that final determination of this matter should be reserved until after the CJEU's judgments in the cases of Bookit Ltd (Bookit) and National Exhibition Centre Ltd (NEC).

On 26 May 2016, the CJEU released its decisions in the cases of National Exhibition Centre Ltd (NEC) and Bookit Ltd (Bookit) and held that, card handling services provided in relation to customers making advance bookings for concert and cinema tickets events, failed to qualify for exemption from VAT. Following the release of the Bookit and NEC CJEU judgments, the Upper Tribunal in the current case requested further written submissions from HMRC and DPAS. The Upper Tribunal has now decided to refer the DPAS case to the CJEU for further guidance.

Please contact Simon Harris for further information.

Court of Appeal

Judgment : Charity was conducting an economic activity

Longridge on the Thames

The Court of Appeal held that the First Tier Tribunal and the Upper Tribunal, which had found in the taxpayer's favour, had misdirected themselves in following domestic authority in considering whether the provision of services for payments received by a charity constituted an economic activity for VAT purposes, rather than considering more recent clarification provided by the Court of Justice of the European Union (CJEU) which focuses on whether there is a direct link between the service and payment.

The Court of Appeal has delivered its judgment in the case of Longridge on the Thames. The taxpayer, a registered charity educating young people in water borne activities, considered that construction work in relation to a new building should be zero-rated on the grounds that the building was intended for use solely for relevant charitable purposes i.e. for non-economic activities. Although it charged fees for its courses and other facilities, the taxpayer contended that it did so in pursuing its charitable objects, reflected by the fact that such courses and facilities were substantially subsidised by donation income received and by the time and skills provided to it by a large volunteer body. HMRC disagreed, contending that the taxpayer was carrying out economic activities.

The Court of Appeal considered that the motive for supplying the service i.e. to further its charitable objectives (a factor which the First-tier Tribunal had focused on) was not conclusive in determining the character of the supply. Neither did it consider it relevant that the consideration received was below market value, involved a concession, or that the taxpayer's activities were non-profit making. The Court of Appeal held that in line with EU case law, there was a direct link between the supply of services made by Longridge and the consideration received which, coupled with the activities being permanently and regularly
carried on, amounted to an economic activity and meant that the construction services received could not qualify for zero-rating.

Comment: Consideration should be given to situations where clients may have relied on income being treated as non-business and whether this could now be open to challenge. This case could also provide an opportunity to revisit prior decisions where HMRC has challenged whether a client is performing an economic activity and eligible for VAT registration/VAT recovery.

Please contact Dermot Rafferty for further information.

Permission to appeal: London Clubs Management Ltd

HMRC has applied for permission to appeal the Upper Tribunal’s decision in favour of London Clubs Management Ltd. The case concerns the liability to gaming duty (in respect of the playing as stakes in casino games) of free bet vouchers or ‘non-negotiable’ chips (collectively referred to as ‘Non-Negs’) which were provided by the taxpayer free of charge to selected customers as a promotional tool to encourage them to visit its casinos and play casino games.

Supreme Court

Permission to appeal results

The Supreme Court has published its permission to appeal results for the July to mid-August period. Where the Supreme Court has refused leave to appeal, the Court of Appeal’s decision is now final.

- Finance and Business Training Ltd v HMRC - the Supreme Court has refused the taxpayer’s request for permission to appeal. The Court of Appeal held that the VAT exemption for university education contained in UK law was consistent with EU law. The taxpayer was not a college of a university and, therefore, it was not an eligible body for the purposes of the education exemption.

- BPP Holdings Ltd v HMRC - the Supreme Court has granted HMRC’s request for permission to appeal. The Court of Appeal had restored an order barring HMRC from taking any further part in this test case concerning connected supplies of printed matter and education services, and the issue of whether amendments to VAT legislation in 2011 precluded zero-rating for the former. The Court of Appeal held that it was appropriate that compliance with the Tribunal’s rules and directions was given the weight accorded to it by the First Tier Tribunal in this case. The Court of Appeal considered that HMRC had no good reason, indeed no stated reason at all, for its non-compliance. On this basis, the First Tier Tribunal did not make an error of law, with the consequence that the Upper Tribunal should not have intervened.

- Davis and Dann Ltd v HMRC - the Supreme Court has refused the taxpayer’s permission to appeal. This case concerns a “knew or should have known” appeal by HMRC against a background of alleged MTIC fraud. The First Tier Tribunal had found that the taxpayers ought to have known that their purchases were connected with the fraudulent evasion of VAT and, consequently, they forfeited any right to the repayment of input tax. The Upper Tribunal subsequently overturned this decision and allowed the taxpayers’ appeal. However, the Court of Appeal held that the Upper Tribunal was wrong to set aside the First Tier Tribunal’s decision as it did not contain any error of law.

Court of Justice of the European Union (CJEU)

New referrals

The following VAT cases have recently been referred to the CJEU.

A Hungarian referral C-254/16 Glencore Grain Hungary Kft. asking various questions concerning whether national law, which extends the timeframe within which the repayment of overpaid VAT is made, following a tax investigation which led to a fine for non-compliance, is compatible with EU law. The referral also considers the right to default interest.
A French referral C-303/16 Solar Electric Martinique asking whether the sale and installation of photovoltaic panels and solar water heaters on buildings, with a view to supplying electricity or hot water to buildings, constitutes a single transaction that may be characterised as works of construction.

German infringement proceedings C-380/16 European Commission v Federal Republic of Germany concerning the Tour Operators’ Margin Scheme (TOMS). The Commission considers that Germany has failed to fulfil its obligations by excluding travel services used by taxable persons for their business from TOMS and allowing travel agents, to determine on a flat-rate basis the tax assessment base for groups of services within a period rather than on transaction-by-transaction basis.

Comment: Germany's application of TOMS goes against the CJEU's September 2013 judgment, where infringement proceedings were brought against eight EU member states. Any change to the existing German treatment of B2B travel supplies may create an additional VAT cost to travel businesses which are currently registered in Germany. The UK continues to operate aspects of the TOMS scheme incorrectly, issues which may well re-surface in light of these latest infringement proceedings. Please contact Martyne Pearson for further information.

Calendar update

Wednesday 7 September 2016 - Opinion C-453/15 Criminal proceedings against A, B - German referral asking whether a greenhouse gas emission allowance is a 'similar right' within the meaning of what was previously Article 56(1)(a) of the VAT Directive (transfers and assignments of copyrights, patents, licences, trademarks and similar rights) under the old (pre-2010) place of supply rules for services.

Wednesday 7 September 2016 - Hearing C-592/15 British Film Institute - UK referral from the Court of Appeal asking whether the cultural services exemption under Article 13A(1)(n) of the Sixth Directive (now Article 132(1)(n) of the VAT Directive) has direct effect, so as to exempt the taxpayer's supplies (admission to showings of films), in the absence of any domestic implementing legislation. The referral also asks whether any discretion is given to Member States to discriminate between cultural services in their application of the exemption. Please contact Damian Shirley for further information. This case may be of interest to any eligible bodies which supply cultural services, but have been denied exemption by HMRC on the ground that the services in question are not listed in UK law.

Wednesday 7 September 2016 - Hearing C-564/15 Tibor Farkas - Hungarian referral concerning the compatibility with EU law of a national practice whereby the tax authorities seek to penalise the recipient of a supply, for a transaction to which the reverse charge applies, in circumstances where a normal VAT invoice is issued and the supplier and customer account for output tax and input tax respectively in accordance with the normal VAT system.

Thursday 8 September 2016 - Opinion C-344/15 National Roads Authority - Irish referral asking whether a public body, which operates a toll road, should be deemed to be in competition with private operators of different toll roads, such that treatment of the public body as a non-taxable person would lead to a significant distortion of competition.

Thursday 8 September 2016 – Opinion C-390/15 Rzecznik Praw Obywatelskich - Polish referral challenging the validity of EU law insofar as it excludes books published in digital format and other electronic publications from the reduced rate of VAT.

Thursday 8 September 2016 - Hearing C-471/15 Sjelle Autogenbrug I/S - Danish referral asking whether the sale of spare parts removed from redundant vehicles may be regarded as second-hand goods for the purposes of the VAT margin scheme.

Thursday 15 September 2016 - Judgment C-400/15 Landkreis Potsdam-Mittelmark - German referral concerning the scope of a (recently extended) derogation authorising Germany to exclude from the right of deduction the VAT borne on goods and services which are used by a taxable person less than 10% for business purposes (case proceeding to judgment without an Advocate General's opinion)

Thursday 15 September 2016 - Judgment C-518/14 Senatex GmbH - German referral concerning the circumstances in which an incomplete invoice can be corrected with retrospective effect, such that the right to input tax deduction is retained on the basis of the original invoice. Please contact Rosie Higgins for further information.

Thursday 15 September 2016 - Judgment C-516/14 Earlis 06 - Investimentos Imobiliários e Turísticos SA - Portuguese referral asking whether a specific description on an invoice as to the extent of legal services rendered complies with the EU law requirements of a valid VAT invoice. Please contact Rosie Higgins for further information.

Monday 19 September 2016 – Hearing C-573/15 Oxy cure Belgium SA - Belgian referral asking whether the application of a reduced rate of VAT for oxygen treatment is compatible with EU law and, more specifically, whether oxygen treatment provided by different means may be subject to different VAT rates.
Thursday 6 October 2016 – Opinion C-326/15 DNB Banka - Latvian referral asking various questions concerning the application of the EU VAT cost-sharing exemption. This exemption, which is provided for under Article 132(1)(f) of the VAT Directive, applies when two or more organisations (whether businesses or otherwise) with exempt and/or non-business activities join together on a co-operative basis to form a separate, independent entity - a cost sharing group (CSG) - to supply themselves with certain qualifying services at cost and exempt from VAT. The referral addresses various issues, including the consequences where the members of a CSG are established in separate EU Member States in which the exemption has been implemented differently, whether the fact that transactions may be subject to transfer pricing rules for direct tax purposes precludes the application of the exemption, and whether the exemption applies to services received from third countries. Please contact Simon Harris for further information.

Thursday 6 October 2016 – Opinion C-274/15 Commission v Luxembourg - infringement proceedings brought by the European Commission against Luxembourg over its domestic implementation of the EU VAT cost-sharing exemption. The Commission considers that various aspects of Luxembourg’s current rules are incompatible with EU law. Please contact Simon Harris for further information.

Middle East

VAT developments : The introduction of VAT in Egypt and GCC countries

Egypt's Parliament has approved the introduction of VAT, which will replace the current Egyptian Sales Tax system. The VAT bill awaits publication in the Official Journal to be enacted. As things currently stand, it is anticipated that Egyptian VAT will be effective from 1 October 2016, however, the draft law is currently going through State Counsel. The date of effect may change if any aspects of the draft law are challenged. For the fiscal year ending 30 June 2017, the general rate of VAT in Egypt will be 13%. From 1 July 2017, the general VAT rate will increase to 14%.

Businesses operating in Egypt may wish to consider the systems, processes, commercial and tax implications of the change, particularly given the uncertainty over the implementation date.

Our global tax alert provides further information.

Egypt is one of a growing number of countries which has implemented VAT in recent years. With effect from 1 January 2018, the Gulf Cooperation Council (GCC) countries are also due to introduce VAT. EY has recently launched a microsite which provides further information on the impact of the implementation of VAT in the GCC.

Please contact Andrew Bradford for further information.

EY Global Tax Alerts

Recent indirect tax developments around the world

Please see links to a selection of our global tax alerts in respect of the following recent indirect tax developments. Additional articles are available in our global tax alert library.

Canada: On 22 July 2016, in addition to legislative and regulatory proposals relating to the goods and services tax/harmonized sales tax (GST/HST), the Canadian Department of Finance released a consultation paper listing proposals that relate to the GST/HST treatment of certain limited partnerships and investment plans. Comments about these proposals by 30 November 2016

Uruguay: On 4 July 2016, Uruguay’s Ministry of Economy and Finance issued Decree No. 200/016, which clarified the regime that applies to the import or export of samples as of 1 July 2016.

Further information: EY has a global indirect tax practice which is experienced in providing support in relation to technical VAT issues. If you would like to discuss any case generally or in relation to your own circumstances, please speak with your usual EY indirect tax contact.
About EY
EY is a global leader in assurance, tax, transactions and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In doing so, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Ernst & Young LLP
© Ernst & Young LLP 2016. Published in the UK. All Rights Reserved.
The UK firm Ernst & Young LLP is a limited liability partnership registered in England and Wales with registered number OC300001 and is a member of Ernst & Young Global Limited.
Ernst & Young LLP, 1 More London Place, London, SE1 2AF.
Information in this publication is intended to provide only a general outline of the subjects covered. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. Ernst & Young LLP accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.

ey.com/uk

Important commercial email notice:

This email may constitute an advertisement or solicitation under US law, if its primary purpose is to advertise or promote Ernst & Young LLP’s products or services. Our principal postal address is 1 More London Place, London SE1 2AF.

Please click here to remove this email from the subscription for this communication.

Use the link below to opt-out if you would prefer not to receive any advertising or promotional email from Ernst & Young LLP (except for EY Online and the ey.com website, which track email preference through a separate process). Your email address will be immediately removed from our central mailing list for newsletters and alerts, and all e-mails from Ernst & Young LLP designated as advertising or promotional will be automatically blocked as soon as necessary.

Click here to remove yourself from all Ernst & Young LLP commercial emails.