Welcome to the latest edition of *EY VAT News*. Headlines include the following:

- We announce the launch of EY Retail Forum for Indirect Tax (ReFIT) Online, which has been developed to provide retailers with proactive indirect tax guidance, news and opportunities. Please contact Simon Baxter for further information.
- HMRC has set out its long awaited view and revised policy on the VAT treatment of pension fund administration and investment management services, and invited affected businesses to submit Our tax alert provides further details. Please contact Andrew Bailey for further information.
- HM Treasury has provided an update on the latest discussions at EU level regarding proposed new rules on the VAT treatment of vouchers. Please contact Simon Baxter for further information.
- HMRC has announced the devolution of landfill tax to Scotland on 1 April 2015. Please contact Julian Bowden-Williams or Paul O'Neill for further information.
- Switzerland has announced that VAT reverse charge accounting for local supplies of goods made by foreign businesses will be withdrawn from 1 January 2015. Our international tax alert provides further details. Please contact Kal Siddique 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.

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EY Retail Forum for Indirect Tax (ReFIT) Online

Retail focused indirect tax news, guidance and opportunities

EY ReFIT Online has been developed to provide retailers with proactive indirect tax guidance, news and opportunities, and can be accessed by clicking here. Please do visit this site to gain access to our latest retail indirect tax updates, news, alerts and thought leadership. As well, you will have access to resources such as our Worldwide VAT, GST & Sales Tax Guide which is essential reading for any retailer expanding outside the UK, whether online or via new stores. Details of our ReFIT team can be found on the site, so please do contact any of them with any comments or suggestions you may have and, of course, if we can be of any help.

Please contact Simon Baxter for further information.

HMRC Material

Revised policy on VAT treatment of pension fund management costs

On 26 November 2014, HMRC issued Revenue & Customs Briefs 43/2014 and 44/2014 setting out its long awaited view and revised policy on the VAT treatment of pension fund administration and investment management services (specifically whether such supplies qualify for exemption from VAT and, if not, whether any VAT incurred is recoverable as input tax), following the CJEU’s judgments in the cases of PPG Holdings BV (C-26/12) and ATP PensionService A/S (C-464/12). These Briefs are actually dated 25 November 2014 as they did appear on that date (albeit very briefly) on HMRC’s website, but were withdrawn almost as quickly. However, the Briefs reappeared on HMRC’s website the following day.

The headlines of the Briefs are as follows:

Revenue & Customs Brief 43/2014: VAT input tax recovery on pension fund management costs - HMRC is changing its policy on input tax recovery in relation to the investment management costs of pension schemes following the CJEU’s judgment in the case of PPG Holdings BV. Broadly, HMRC now accepts that employers may deduct input tax in relation to pension fund investment management services (subject to the normal partial exemption rules), provided the employer is a party to the contract for those services and has paid for them. The Brief extends until 31 December 2015 the transitional period announced in earlier Briefs during which the pension fund and employer may continue to apply a 70/30 costs split in line with previous HMRC policy.

Revenue & Customs Brief 44/2014: VAT exemption for pension fund management services - following the CJEU’s judgment in the case of ATP PensionService A/S, HMRC now accepts that pension funds meeting certain specific criteria are Special Investment Funds for the purposes of the VAT fund management exemption. Management and administration services integral to the operation of such funds should, therefore, always have been exempt from VAT. This treatment will apply to funds containing the pooled assets of defined contribution occupational schemes as well as personal pension schemes. HMRC is still considering whether the judgment could have wider application, although taxpayers may rely directly on EU law to exempt services in accordance with this Brief pending amendments to UK VAT legislation.

Our tax alert provides further details on the Briefs and their implications.

The Briefs can be accessed by clicking here and here respectively.

Comment: HMRC has invited retrospective VAT refund claims from affected businesses. This significant development will be relevant to any businesses which operate a pension scheme, as well as providers of pension fund administration and/or investment management services.

Please contact Andrew Bailey for further information.

Commencement of the Scottish Landfill Tax regime from 1 April 2015

On 28 November 2014, HMRC issued Revenue & Customs Brief 45/2014 announcing the devolution of Landfill Tax to Scotland on 1 April 2015 and transitional arrangements for the closure of the Landfill Communities Fund (LCF) scheme in Scotland.
Scottish Landfill Tax will replace UK Landfill Tax in Scotland from 1 April 2015. Landfill operators with sites in Scotland will no longer be liable to pay UK Landfill Tax for waste disposed at their Scottish sites. Landfill operators with sites only in Scotland will be deregistered from UK Landfill Tax. Landfill site operators with sites in both Scotland and elsewhere in the UK will continue to pay UK Landfill Tax on their non-Scottish sites. Landfill operators with sites in Scotland will be required to register with Revenue Scotland and account for Scottish Landfill Tax on disposals in Scotland from 1 April 2015.

From 1 April 2015, UK landfill operators will only be entitled to claim credit for qualifying contributions to the UK LCF if they are spent on projects in England, Wales or Northern Ireland. Scotland is introducing its own scheme, and operators in Scotland will be able to claim tax credit against their Scottish Landfill Tax liability for contributions they make to the Scottish scheme. However, given that some environmental bodies authorised under the LCF may hold unspent funds from contributions from landfill site operators throughout the UK when the tax is devolved, there will be a two-year transitional period during which these unspent funds can continue to be spent on projects throughout the UK, including in Scotland. The Brief provides further details on how the transitional period will operate, including the circumstances in which HMRC will seek to claw back the tax credit claimed by landfill operators relating to unspent funds at the end of the transitional period.

The Brief, which includes links to the draft legislation and a Tax Information and Impact Note, can be accessed by clicking here. Comments on the draft legislation are invited by 23 January 2015.

Comment: Landfill operators will need to expedite their administration to ensure that they are prepared for 1 April 2015 in respect of their sites in Scotland. This will include deregistration and registration planning, ensuring compliance is ready and all rulings and notifications previously provided by HMRC are communicated to, and obtained from, Revenue Scotland.

It should be noted that Scottish Landfill Tax is a new tax administered by a different tax authority, and a different legal jurisdiction, therefore there are arguably no precedents in terms of case law to be drawn upon. Any uncertainties post 1 April 2015 will need to be pursued with respect to the legal system in Scotland, following the primary legislation and secondary legislation in place.

EY has an experienced team of Environmental Tax specialists with a significant number of years working in, and with, the waste industry. Our team is able to offer assistance with any Landfill Tax matter.

Please contact Julian Bowden-Williams or Paul O'Neill for further information.

Consultation : Future of the tariff classification helpline

On 26 November 2014, HMRC launched a consultation seeking views on how it supports taxpayers who need help when classifying goods for import or export purposes.

HMRC is reviewing the need for its tariff classification helpline service. The telephone service no longer fits with HMRC’s digital strategy so it needs to explore options for providing future support for taxpayers that are sustainable for HMRC and provide extra help for those taxpayers who need it. The Government would like to gather feedback from people and organisations who use the helpline and are interested in the changes to the provision of tariff classification advice by HMRC. Comments are invited by 18 February 2015.

The consultation document can be accessed by clicking here.

New company car advisory fuel rates : Effective from 1 December 2014

HMRC has published new advisory fuel rates for company cars, effective from 1 December 2014. HMRC has confirmed that it will also accept these fuel rates for VAT purposes, although businesses will need to retain receipts as evidence for reclaiming input tax.

The new company car fuel rates can be accessed by clicking here.

HM Treasury

EU discussions on the VAT treatment of vouchers : Latest update for UK stakeholders

HM Treasury has provided an update for UK stakeholders on the latest discussions at EU level regarding the European Commission’s proposal for a Council Directive seeking to clarify and harmonise EU rules on the VAT treatment of vouchers.
In September 2014, the Italian Presidency of the Council of the European Union (also informally known as the EU Council) put forward proposals setting out the options for dealing with the future VAT treatment of vouchers, specifically to address perceived difficulties that could arise once the new EU VAT place of supply rules for business-to-consumer supplies of digital services enter into force on 1 January 2015. Following a meeting of the Council Working Group on 21 November 2014, the latest update is that due to remaining difficulties concerning the way in which multi-purpose face value vouchers (MPVs) are to be accounted for, the next meeting of the EU Council of Economic and Finance (ECOFIN) Ministers in December 2014 will not, as planned, consider vouchers. However, under the steerage of the Latvian Presidency of the EU Council from January 2015, the possibility remains that the new rules on the VAT treatment of vouchers could still take effect from 1 January 2016, despite needing to deal with various issues that remain outstanding, such as input VAT deduction, specific exclusion for discount vouchers, postage and how the tax on MPVs should be collected.

The latest Presidency compromise text of the proposed Directive on the VAT treatment of vouchers, which was prepared for discussion at the Council Working Group’s meeting on 21 November 2014, can be accessed by clicking here. Unfortunately, this document is only ‘partially accessible to the public’.

Please contact Simon Baxter for further information.

First Tier Tribunal

Summaries of a selection of the latest First Tier Tribunal decisions to be released.

Decision : Zero-rating : Whether new building used for a relevant residential purpose

TC04132 TGH (Construction) Ltd

The construction of a new building providing accommodation for the elderly qualified for zero-rating as the property was used for a relevant residential purpose.

A preliminary issue concerned with whether a new building was intended for use for a ‘relevant residential purpose’ within the meaning of Item 2(a) of Group 5 of Schedule 8 to the VAT Act 1994. The Appellant was a wholly-owned subsidiary of a charity, although it was not a itself a charity. The charity provided accommodation for the elderly who were poor and needy. The Appellant entered into a design and build contract with the charity in respect of the construction of new buildings on land belonging to the charity. The building in question in this appeal comprised a number of self-contained flats for occupation by elderly persons, who were offered accommodation by the charity within the terms of its charitable objects. The Appellant contended that the building was used for a relevant residential purpose under Item 2(a) because it was a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age or disablement (under Note 4(b) to Group 5), or because it was an institution which was the sole or main residence of at least 90% of its residents (under Note 4(g)). HMRC contended that the building was designed as a number of dwellings under Item 2(a). Although this meant that the construction of the building qualified for VAT zero-rating, HMRC's decision had implications for the VAT treatment of the site as a whole.

The dispute between the parties was narrowly focussed upon the correct interpretation of ‘personal care’ in Note 4(b), and of the word ‘institution’ in Notes 4(b) and 4(g). The Tribunal was satisfied that the building was an ‘institution’ for the purposes of both Notes, and that the building provided its residents with ‘personal care’ for the purposes of Note 4(b). The building was therefore used for a relevant residential purpose. Appeal allowed.

The full decision can be accessed by clicking here.

Please contact Ali Anderson for further information.

Decision : Sale of rights to access ancestry websites : Tax point : Whether face value vouchers

TC04133 Brightsolid Online Technology Ltd

The vouchers issued by the Appellant, which granted the right to access and download information from genealogical websites, did not constitute face-value vouchers for VAT purposes, and consequently VAT was due up front when the vouchers were sold.

The Appellant offered access to genealogical websites which it owned or in respect of which it held licences. Access was by way of a subscription, which lasted for a certain period, but which was not otherwise limited as to use. Alternatively, the
websites could be accessed by a Pay As You Go system (PAYG) where a lump sum would be paid for the issue of a number of units or vouchers giving opportunities to download information, which had to be used up within a certain time. This appeal related to PAYG receipts only, where the units had not been used up before the date of their expiry. The Appellant sought a repayment of VAT which it contended was accounted for incorrectly on unredeemed vouchers for the period prior to 10 May 2012. On 10 May 2012, UK VAT law was changed to provide that VAT was due on the issue of face-value vouchers on the date of their issue, rather than on their redemption, and hence the Appellant's claim could not be maintained beyond this date. In essence, the Appellant submitted that where units had not been used, there had been no taxable supply and no consequent VAT liability. HMRC refused repayment.

The Tribunal determined that the nature of the supply in the present case was that the customer acquired a package including the means of access to the records on the websites, the facility to search these, and then to access and, if desired, download particular items. On that analysis, the supply for VAT purposes was made at the outset (i.e. on purchase of the package), and not later when units were used up. The Tribunal considered that the document (the PAYG voucher) issued by the Appellant on purchase of the package was no more than a simple receipt, and did not constitute a face-value voucher for the purposes of Schedule 10A to the VAT Act 1994. The tax point for VAT purposes was therefore at the outset, on the purchase of the PAYG voucher. Appeal dismissed.

The full decision can be accessed by clicking here.

Please contact Simon Baxter for further information.

Decision : Hire of electronic devices used to play bingo: Whether subject to bingo duty

TC04138 Carlton Clubs Ltd

The Appellant was liable to account for bingo duty on charges made to customers for the hire of electronic hand held devices used to play bingo.

The Appellant appealed against HMRC's decision that it was liable for bingo duty on charges made to customers for the hire of certain electronic hand held devices (EHDs) used to play bingo. The parties were agreed that it was a very limited point that was in issue. The Appellant's stance was that the issue in the appeal was whether the charges constituted "payments in respect of entitlement to participate in bingo" within the meaning of the Betting and Gaming Duties Act 1981. The Appellant contended that they did not, rather they were simply a payment to use the EHDs. Accordingly, the charge was a taxable (standard-rated) supply for VAT purposes and not subject to bingo duty. HMRC agreed that was an issue, but also argued that there was a second issue as to whether or not, having regard to the substance or the reality of the transaction in question, it was appropriate to regard the charge for EHDs as anything other than a payment in respect of an entitlement or opportunity to participate in bingo and specifically as akin to an admission fee.

The Tribunal held that the EHD rental payments enabled the customers to play bingo in a format that they preferred. The reality was that when playing electronically, the EHD was physically the bingo ticket. Payment for the bingo ticket undoubtedly fell within the ambit of bingo duty. The Tribunal therefore found that, without the EHD, a customer who chose to play electronically would have neither the entitlement nor the opportunity to participate in playing bingo. Accordingly, the taxpayer's appeal was dismissed and HMRC's assessment for bingo duty was upheld.

The full decision can be accessed by clicking here.

Please contact Gavin West for further information.

Court of Justice of the European Union (CJEU)

Calendar update

Thursday 4 December 2014 - Hearing C-526/13 Fast Bunkering Klaipėda UAB - Lithuanian referral concerning the scope of the exemption with credit (or zero-rating in the UK), for the supply of goods, for the fuelling and provisioning of vessels used for navigation on the high seas. Specifically, the referral asks whether the exemption is limited to supplies made to the operator of the vessel or whether it also applies to supplies made to other parties (such as undisclosed intermediaries) where the ultimate qualifying use of the goods is known in advance.

Thursday 11 December 2014 - Judgment C-590/13 Idexx Laboratori(s) Italia srl - Italian referral asking, in the case of a total failure to comply with the requirements laid down by national law, a taxable person may be held liable for VAT due under
the reverse charge procedure while at the same time being denied the right to deduct input tax (case proceeding to judgment without a written Advocate General's opinion).

Thursday 18 December 2014 - Judgment Joined Cases
C-131/13 Schoenimport 'I talmoda' Mariano Previti
C-163/13 Turbo.com BV
C-164/13 Turbo.com Mobile Phone's BV
- Dutch referrals asking, in circumstances where a taxable person purchases goods for onward dispatch to another Member State, whether EU law requires that the right to deduct input tax or zero-rating for the intra-Community supply should be refused where it is established, on the basis of objective evidence, that the taxable person knew or should have known that he was participating in VAT fraud, even if national legislation does not make such provision.

European Commission

Lithuania : Adoption of euro : Implications for EU cross-border VAT refund claims

Lithuania is scheduled to join the Eurozone by adopting the euro on 1 January 2015. Under the terms of the Council Directive which provides for EU cross-border VAT refund claims, such claims must be expressed in the valid currency of the Member State of refund at the time of the relevant invoice(s). Thus, claims that relate to invoices issued before 1 January 2015 must be expressed in Lithuanian litas (the current currency of Lithuania), and not euros, regardless of when the claim is submitted.

An update issued by the Commission can be accessed by clicking here.

Switzerland

Withdrawal of VAT reverse charge for local supplies of goods made by foreign businesses

As reported in last week's edition of EY VAT News, the Swiss government has recently announced that VAT reverse charge accounting for local supplies of goods made by foreign businesses will be withdrawn from 1 January 2015. From this date, affected business may be required to register for VAT in Switzerland. The VAT reverse charge mechanism had been extended to cover such supplies on 1 January 2010.

Our international tax alert provides further details on this new measure (please note that the definition of what constitutes a supply of goods for Swiss VAT purposes is far wider than what we are perhaps accustomed to in the UK/EU). We are currently discussing with the Federal Tax Authorities in Switzerland whether there will be an ‘opt-out’ from the new rules for wholesale energy traders.

Please contact Kal Siddique for further information.

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.
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