Welcome to the latest edition of EY VAT News, which provides a roundup of indirect tax developments.

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

Previous editions of EY VAT News can be found here.

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Spring Budget 2017

Tax announcements and access to related materials

The Chancellor of the Exchequer presented his Spring Budget to the House of Commons on 8 March 2017.
Our Budget Alert analyses the employment, personal, corporate and indirect tax measures announced in the Budget and provides our expert commentary on the potential impact for taxpayers. Further details can be found in the complete Budget Report 2017, the supporting Overview of Tax legislation and Rates (which sets out the detail of each tax policy measure announced at Budget 2017) the Budget Policy Paper and HMRC’s collection of tax documents.

From an indirect tax perspective, the Budget announcements include:

- The Government will remove the VAT use and enjoyment provision for mobile phone services provided to consumers. The measure will bring those services used outside the EU within the scope of the tax. Secondary legislation to effect the change will be published before the Summer recess.

- The Government will publish a ‘call for evidence’ on 20 March 2017 on the case for a new VAT collection mechanism for online sales for overseas businesses selling goods in the UK. The ‘split payment’ model would utilise technology to extract the VAT from online transactions at the point of sale for payment direct to HMRC.

- The Government is to consult on a range of options to combat VAT fraud on the provision of labour in the construction sector. The likely result of this will be a mandatory reverse charge in respect of certain supplies. The consultation will be launched on 20 March 2017.

- From 1 April 2017, the VAT registration and deregistration thresholds will increase by £2,000 to £85,000 and £83,000 respectively.

- As previously announced, Finance Bill 2017 will introduce a penalty for participating in VAT fraud. The new penalty will take effect once the Finance Bill receives Royal Assent.

- A new Minimum Excise Tax on cigarettes will be introduced. Duty rates for all tobacco products increased by 2% above RPI inflation from 6:00 pm on 8 March 2017. This is in accordance with the Budget 2014 announcement that all Tobacco Duty rates will increase by this amount each year until the end of the current Parliament.

- Alcohol Duty rates on beer, cider, wine and made-wine and spirits to increase in line with inflation (based on RPI), in line with previous forecasts. These changes are effective from 13 March 2017.

- Vehicle Excise Duty (VED) rates for cars, motorcycles and vans registered before 1 April 2017 to be increased by the RPI with effect from 1 April 2017.

- New Insurance Premium Tax (IPT) anti-forestalling legislation and legislation in relation to the previously announced increase of IPT to 12% from 1 June 2017 will be introduced.

- The Government had already announced that it would legislate in Finance Bill 2017 to increase Air Passenger Duty rates in line with RPI from 1 April 2017. It will now also legislate in Finance Bill 2017 to increase Air Passenger Duty rates in line with RPI from 1 April 2018.

The next stage will be the publication of Finance Bill 2017 on 20 March 2017.

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**EY Events**

**EY Indirect Tax Perspectives – 7 April 2017**

The next EY Indirect Tax Perspectives event will be on the morning of Friday 7 April 2017 at 1 More London Place.

In addition to the usual update on current and future indirect tax developments, the timing of this event fits with the Governments proposed timeline for triggering Article 50 by the end of March 2017. This would officially start the two year
process for the UK to leave the EU and we therefore intend to provide an update on the latest position and implications of Brexit from an indirect tax perspective.

With this in mind our proposed agenda will include updates on:

- General indirect tax issues businesses should be aware of
- Brexit – where are we now? The latest positions for VAT and customs duty
- Indirect Tax Case law
- Global Indirect Tax round-up

If you would like to register for the event please use this link or for further information contact Alex Dixon.

**EY ReFIT Forum Special Event – 11 April 2017**

On Tuesday 11 April 2017, we will be hosting a special EY ReFIT Forum at 1 More London Place.

ReFIT is an indirect tax forum for people working in Finance/Tax/VAT in a retail environment. In addition to a “traditional” ReFIT Forum from 10:00am, details of which are below, we will also be running an afternoon workshop to discuss the role of technology and robotics in indirect tax.

The indirect tax function in retail is complex, and increasingly so – there are few other sectors which are required to deal with so many different aspects of the tax in order to remain compliant, while working with data from different sources and of variable quality, leading to a time consuming and often inefficient end to end reporting process.

In response to these challenges and in an environment of increasing overseas compliance obligations, tax strategy planning, SAO and the looming introduction in the UK of a new Criminal Corporate Offence, we have developed a suite of technology tools designed to significantly improve on current processes and controls, leading to a lower risk indirect tax environment and facilitating resource release to deal with the above challenges.

Our demonstration of these tools, all designed to automate existing manual processes, will, from experience, resonate with you – from automated product file review analysis, AP and AR data analytics, end to end reporting tools and dashboard metrics, to robotics designed to sweep away time consuming analysis and reporting, all are bespoke to the retail sector.

**ReFIT session – 10:00 am registration for a 10:30 am start**

- Case law Update
- Budget Update
- New Criminal Corporate Offence
- Brexit Update
- Hot Topics
- Open Forum

**Buffet lunch from 1:00 pm – 2:00 pm**

**Indirect Tax Technology Workshop – 2:00 pm to 4:00 pm**

- Setting the scene
- Fitting in with finance and IT
- An introduction to indirect tax technology and robotics
- Demonstration workshop
- Q&A
- Close – 4:00 pm.

If you would like to attend either or both of these session please contact Simon Baxter.
Court of Justice of the European Union

Judgment: The exclusion of digital books, newspapers and periodicals from the application of a reduced rate of VAT where they are supplied electronically is not contrary to the principle of equal treatment

C-390/15 Rzecznik Praw Obywatelskich

On 7 March 2017, the Court of Justice of the European Union (CJEU) released its decision in this Polish referral challenging the validity of EU law insofar as it excludes books published in digital format and other publications when supplied electronically from the reduced rate of VAT.

The EU VAT Directive (Directive) provides that Member States may apply a reduced VAT rate to the supply of books on ‘all physical means of support’, however, electronically-supplied services are explicitly excluded from falling within this provision. This means that books on any physical means (eg paper, audiobooks on CD or USB sticks) are subject to the reduced rate of VAT, whereas e-books which are downloaded are standard rated. The previous version of the Directive referred to the ‘supply of books’ only.

In agreement with the Advocate General, the CJEU has held that the effect of the Directive is to preclude the application of a reduced rate to digital books supplied electronically. The provisions of the Directive establish a difference in treatment between electronically supplied digital books and those supplied on a physical means even though the supplies are comparable re their objective, the promotion of reading.

In considering whether the difference in treatment is justified, the CJEU held that it is, where the difference relates to a legally permitted objective and it is proportionate to that objective. The exclusion of the application of a reduced rate of VAT to the supply of digital books supplied electronically is a consequence of the specific VAT regime for e-commerce. In light of the constant developments to which electronic services are subject, it was considered necessary to make electronic services subject to clear, simple and uniform rules in order that the VAT rate applicable to them may be established with certainty. Consequently, such a measure must be regarded as being appropriate for achieving the objective pursued by the specific VAT regime for e-commerce. To accept that Member States are able to apply a reduced rate of VAT to electronically supplied digital books would effectively compromise the overall coherence of the measure intended by the EU legislature, ie the exclusion of all electronic services from the possibility of a reduced rate of VAT being applied.

The CJEU also considered that the consultation with the European Parliament relating to the addition of the term on ‘all physical means of support’ was adequate, despite a change in the wording of the final provision not being re-presented to the European Parliament for further consultation.

Comment: the EU consultation on the VAT liability of e-books and e-publications, closed on 19 September 2016 and The European Commission (Commission) has unveiled a series of measures aimed at improving the VAT environment for e-commerce businesses in the EU. The Commission has suggested that its proposals will allow an easier process for consumers and companies, in particular start-ups and SMEs, to buy and sell goods and services online. The proposals follow up on the commitments made by the Commission in the Digital Single Market (DSM) strategy for Europe and the Action Plan towards a single EU VAT area. The proposals include enabling Member States to reduce VAT rates for e-publications such as e-books and online newspapers”.

Judgment: Oxygen treatment provided by different means may be subject to different VAT rates

C-573/15 Oxycure Belgium

On 9 March 2017, the Court of Justice of the European Union (CJEU) released its decision in this Belgian referral asking whether oxygen treatment provided by different means may be subject to different VAT rates. The case considers whether VAT can be applied to the sale and/or hire of oxygen concentrators at the standard rate when the reduced rate is applied to the sale of medical oxygen cylinders.

Oxygen concentrators are appliances for medical use which operate on the principle of concentrating oxygen in the ambient air in order to extract nitrogen from it, thereby offering a higher oxygen concentration. Between 1 October 2007 and 31 March 2010 Oxycure applied to the hire and sale of oxygen concentrators and their accessories a reduced rate of VAT of 6%, however the tax authority disagreed with this treatment considering that the supplies should have been subject to the standard rate of VAT of 21%. The Court of First Instance upheld Oxycure's appeal against this decision and on appeal to the Belgian Court of Appeal a reference was made to the CJEU.
In agreement with the Advocate General (AG), the CJEU has held that the reduced rates can only apply to supplies of goods and services in the categories set out in Annex III to the VAT Directive. Point 3 of that annex refers to ‘pharmaceutical products of a kind normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes’. Point 4 mentions ‘medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods’.

The Court has previously held that ‘pharmaceutical products’ does not cover medical devices or appliances. Consequently, unlike medical oxygen supplied in containers, oxygen concentrators fall outside of Point 3.

Point 4 of Annex III concerns medical devices and appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled and not devices and appliances for general use in hospitals and by healthcare professionals. The CJEU considered that it had not been proven that the Oxygen concentrators are for the ‘exclusive personal use of the disabled’, which is for the referring court to determine, and are consequently outside the scope of Point 4.

In light of the above, the CJEU held that the principle of fiscal neutrality cannot require a Member State which uses the option available to it to apply a reduced VAT rate to specific products in Annex III to extend that reduced rate to oxygen concentrators, even if such devices are perceived by the consumer as being similar to products to which that reduced rate applies. Therefore the VAT Directive does not preclude national legislation which provides that different VAT rates apply to oxygen treatment provided by different means.

Referrals

The CJEU website shows the following new referrals:

- A UK referral – C-5/17 DPAS Limited - from the Upper Tribunal asking whether, in light of Article 135(1)(d) of Directive 2006/112/EC and the interpretations of that provision given by the Court of Justice in AXA, Bookit II and NEC, (i) a service consisting of directing, pursuant to a direct debit mandate, that money is taken by direct debit from a patient’s bank account and passed by the taxpayer, after deduction of the taxpayer’s remuneration, to the patient’s dentist and insurance provider, is an exempt supply of transfer or payment services.

  In particular, do the decisions in Bookit II and NEC lead to the conclusion that the exemption from VAT in Article 135(1)(d) is not applicable to a service which does not involve the taxpayer itself debiting or crediting any accounts over which it has control but which, where a transfer of funds results, is essential to that transfer? Or does the decision in AXA lead to the contrary conclusion?

  ii) What are the relevant principles to be applied for determining whether or not a service falls within the scope of ‘debt collection’ within Article 135(1)(d)? In particular, if (as the Court decided in AXA in relation to the same or a very similar service) such a service would constitute debt collection if provided to the person to whom the payment is due (i.e. the dentists in the present case and in AXA), does that service also constitute debt collection if such a service is provided to the person from whom the payment is due (i.e. the patients in the present case)?

  Please contact Simon Harris for further information

- A German referral – C-580/16 Firma Hans Bühler KG - asking whether Article 141(c) of Directive 2006/112/EC is to be interpreted as meaning that the requirement laid down in that provision is not met where the taxable person is resident and identified for VAT purposes in the Member State from which the goods are dispatched or transported, even if that taxable person uses the VAT identification number of another Member State for that specific intra-Community acquisition?

Calendar Update

Thursday 16 March 2017

Judgment – C-493/15 Identi - Italian referral asking whether national legislation which provides for the cancellation of a taxable person’s VAT debts upon admission to the bankruptcy discharge procedure is compatible with EU law.

Judgment – C-211/16 Bimotor - An Italian referral asking whether national legislation providing for the offsetting of VAT claims against other tax debts is compatible with EU law.
Tuesday 21 March 2017

Hearing – C-574/15 Mauro Scialdone - Italian referral, made in criminal proceedings, concerning the compatibility with EU law of national provisions relating to penalties for non-payment of VAT and the interaction with national provisions relating to penalties for non-payment of income tax.

Wednesday 5 April 2017

Opinion - C-616/15 Commission v Germany - Action brought by the European Commission against the Federal republic of Germany. The applicant claims that the Court should declare that, by restricting, to groups whose members exercise a limited number of professions, the exemption from VAT for the supply by independent groups of persons carrying on an activity which is exempt from VAT, or in relation to which they are not taxable persons, of services to their members for the direct purposes of the exercise of that activity where those groups merely claim from their members exact reimbursement of their share of the joint expenses, the Federal Republic of Germany has failed to fulfil its obligations under Article 132(1)(f) of the VAT Directive. For further information please contact Simon Harris or Damian Shirley.

Thursday 6 April 2017

Opinion - C-132/16 Iberdrola Inmobiliaria Real Estate Investments - Bulgarian referral concerning the right of a taxable person (the tenant) to deduct input tax in respect of services relating to the construction or improvement of a property owned by a third party (the landlord). The referral appears to raise the question of whether the building works should properly be treated as supplied either to the tenant, who uses the property for the purpose of its taxable business, or the landlord, who will benefit from the improved property at the end of the lease term.

Legislation

The Value Added Tax (Increase of Registration Limits) Order – SI 2017/290- increases, with effect from 1 April, the VAT registration threshold from £83,000 to £85,000, the de-registration threshold for taxable supplies from £81,000 to £83,000, and the registration/de-registration threshold for acquisitions from other member States from £83,000 to £85,000.

The Value Added Tax (Amendment) Regulations 2017 – SI 2017/295 - introduces a new flat rate of 16.5% to the VAT Flat Rate Scheme for certain businesses with limited costs.

HMRC Material

Holding Company Guidance

We understand that HMRC intends to update its much anticipated holding company guidance by the end of April. The updated guidance is likely to be in the form of an amendment to HMRC's internal guidance and if it follows the draft guidance which was issued to interested parties in February 2017 is likely to be a significant step forward from Revenue and Customs Brief 32 (2014): VAT - policy on holding companies which was issued in September 2014 and remains extant.

In summary, the latest draft guidance confirms that in order to recover VAT on costs, a holding company must:

- undertake a business activity for VAT purposes;
- be the recipient of the supply;
- be VAT registered/registerable at the time the cost is incurred; and
- the costs must have a direct and immediate link with the holding company’s taxable supplies. However, a right to deduct VAT on costs may exist even where there is no direct and immediate link between a particular input transaction and an output transaction, where those costs have a direct and immediate link with the business activity of the holding company as a whole.

As best practice, taxable management services should be charged on to, and paid for by, at least the directly held subsidiaries. In practice, this is not always commercially possible so businesses concerned with the potential changes may wish to be ready to review the final guidance as soon as it is issued.
EY Global Tax Alerts

Saudi Arabia - In June 2016, the Gulf Cooperation Council (GCC) Ministers of Finance approved in principle a unified agreement for the development of national regimes for Excise Tax. This agreement paved the way for Saudi Arabia to implement a selective Excise Tax on specific goods. It is expected that the Saudi Government will implement the tax during the second quarter of 2017, most likely in April.

The GCC Member States have agreed to impose Excise Tax rates of 50% on soft drinks, and 100% on energy drinks, tobacco and tobacco products. The tax is different and separate from the VAT of 5% that is to be implemented across the GCC countries by 2018. The introduction of the tax will meet two fundamental Government policy objectives, to raise Government revenues and also to discourage the consumption of goods considered harmful to health or the environment. This is an important policy reform in Saudi Arabia aimed at promoting economic growth and fiscal stability by 2020.


Belgium - As of 7 January 2017, the use of Economic Operators Registration and Identification (EORI) numbers in Belgian customs declarations has been extended to import declarations. Belgian Customs officials have made the necessary modifications to the electronic clearance system, PLDA. Until recently, the use of EORI numbers in Belgium was limited to exporters, declarants and transit principals. Since the above date, importers are also required to mention their EORI number on an import declaration (in box 8), whereas they were previously required to mention their Belgian VAT number (or Belgian global fiscal representative's number) in that same box.

The proper identification for VAT purposes remains in box 44, this concerns the identification of the addressee for VAT purposes (VAT taxable event of importation) and, where applicable, the identification of the subsequent addressee of the goods in another EU Member State (VAT exemption for the subsequent intracommunity supply of the imported goods).
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