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

- The Chancellor of the Exchequer presented his Budget on 16 March 2016. Our *Budget Alert* analyses the tax measures announced in the Budget and provides commentary on the potential impact for taxpayers. Please contact Andrew Bradford for further information.
- In the case of Aspiro SA, the Court of Justice of the European Union (CJEU) held that the taxpayer's claims handling services failed to qualify for VAT exemption as an insurance related service. Our *tax alert* provides further details. Please contact David Bearman for further information.
- The March 2016 issue of *TradeWatch*, our global customs and international trade quarterly newsletter, is now available. Please contact Arjen Odems for further information.
- We provide links to a selection of our global tax alerts in respect of recent indirect tax developments.

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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Budget 2016

Commentary on the tax announcements : Access to related materials

The Chancellor of the Exchequer presented his Budget to the House of Commons on 16 March 2016.

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. It also features the EY ITEM Club's economic report, analysing the implications of the Chancellor's proposals.

Further details can be found in the complete Budget 2016 document, the supporting Overview of Tax Legislation and Rates document (which sets out the detail of each tax policy measure announced at Budget 2016) and HMRC's collection of tax documents from the Budget.

From an indirect tax perspective, the main Budget announcements include:

- Measures aimed at tackling VAT evasion involving overseas businesses and online marketplaces (HMRC has also published a guidance note).
- A consultation on a new due diligence scheme for UK fulfilment houses handling goods imported from outside the EU.
- The introduction in 2018 (following consultation with the industry) of a new soft drinks industry levy to be paid by producers and importers of soft drinks that contain added sugar.
- The standard rate of insurance premium tax will increase from 9.5% to 10% with effect from 1 October 2016.
- The current horserace betting levy will be replaced by April 2017 (the Government's response to an earlier consultation on this issue has been published).
- The Carbon Reduction Commitment energy efficiency scheme will be abolished with effect from 1 April 2019.

We have also filmed a short YouTube update on the key indirect tax measures announced in the Budget.

As with previous years, the Value Added Tax (Increase of Registration Limits) Order 2016 was laid on the day of the Budget. This applies the revised (increased) VAT registration (£83,000) and deregistration (£81,000) thresholds with effect from 1 April 2016.

The next stage will be the publication of Finance Bill 2016 on 24 March 2016, just before the Easter holidays.

Please contact Andrew Bradford for further information.

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HMRC Material

Opportunity for businesses to propose changes to the Union Customs Code regulations

The core EU customs legislation is facing its biggest change in over 20 years with the introduction of the Union Customs Code (UCC) from 1 May 2016. The UCC will serve as an entirely new framework of the rules and procedures for customs activities throughout the EU and will entail radical changes to some customs regimes and controls. This will have a significant impact on both the finances and the operations of many companies which import and export goods into and out of the EU.

HMRC has issued Customs Information Paper 15 (2016) which notes that the European Commission has recognised that there are some areas in the Delegated and Implementing Regulations supporting the UCC where Member States consider that opportunities for further modernisation have been missed. To address this, the Commission has indicated that where there is a common view, it is willing to consider some amendments to the legislation if there are clear benefits to do so. This review is expected to start in autumn 2016. HMRC is, therefore, inviting businesses to identify aspects of the Delegated and Implementing Regulations where it is considered that further amendment would be beneficial to the UK.

Businesses wishing to contribute to this exercise should submit their proposals to HMRC by 29 April 2016.

Please contact Arjen Odems for further information.
VAT road fuel scale charges from 1 May 2016

The VAT road fuel scale charges are amended with effect from 1 May 2016. Businesses must use the new scale charges from the start of the next prescribed accounting period beginning on or after 1 May 2016.

Scotland

Consultation on a Scottish replacement for air passenger duty

It is proposed that the power to charge tax on air passengers leaving Scottish airports will be devolved to the Scottish Parliament with effect from 1 April 2018. Against this background, the Scottish Government has published a consultation document seeking views on how a Scottish replacement for UK air passenger duty should be structured and operated in order to help generate sustainable growth by boosting Scotland's international air connectivity. The closing date for responses to this consultation is 3 June 2016.

Please contact Kal Siddique for further information.

First Tier Tribunal

Decision : VAT repayment claim : Whether taxpayer entitled to VAT repayment supplement

TC04966 Shaun David Corrigan

The Tribunal held that the relevant period for authorising payment of the taxpayer's VAT repayment claim exceeded 30 days and, consequently, HMRC was liable to pay a VAT repayment supplement.

A successful appeal against HMRC's refusal to pay a VAT repayment supplement in respect of a VAT credit claimed by the taxpayer on one of its VAT returns. A repayment supplement is a form of compensation paid in certain circumstances when HMRC does not authorise payment of a legitimate claim within 30 days of the receipt of a VAT return. The 30 day repayment supplement clock generally starts on the date when HMRC receives the return and ends when HMRC issues a written instruction directing the making of the repayment. In computing the period of 30 days, periods may be left out of account to allow for the raising and answering of reasonable inquiries relating to the requisite return or claim. The issue in this appeal was the extent to which the time taken for HMRC's enquiries could be left out of account in determining whether the period for making the payment exceeded 30 days and, in particular, when the inquiry window started, which depended on facts disputed between the parties. The Tribunal held that the relevant period exceeded 30 days and, consequently, HMRC was liable to pay the VAT repayment supplement. Appeal allowed.

Upper Tribunal

Decision : Exclusion of taxpayer from the agricultural flat rate scheme

Shields & Sons Partnership

The Upper Tribunal decided to make a reference to the CJEU in this VAT case concerned with the operation of the agricultural flat rate scheme.

The Upper Tribunal has released its decision in this appeal by the taxpayer concerning the operation of the agricultural flat rate scheme, an alternative for certain agricultural enterprises to the normal VAT system. In particular, this was an appeal against HMRC's decision to cancel the taxpayer's registration to use the scheme on grounds relating to the protection of the revenue. The effect of the cancellation was to require the taxpayer to account for VAT in the same way as other taxable businesses. The First Tier Tribunal dismissed the taxpayer's appeal.
The taxpayer's appeal before the Upper Tribunal raised issues of EU law, in particular whether the VAT Directive permitted a Member State, if it operated such a flat rate scheme, to provide for the exclusion of an individual business from the scheme on the basis that it was making a very substantial profit from it. In essence, the taxpayer contended that such an exclusion was not consistent with the provisions of the VAT Directive, whereas HMRC contended, and the First Tier Tribunal held, that there was nothing in the VAT Directive preventing a Member State from including provisions designed to guard against the possibility of over-recovery of flat rate tax when compared to the input tax that would otherwise have been recoverable under normal VAT accounting. The Upper Tribunal decided to seek clarification from the CJEU by way of a preliminary ruling on two questions.

Court of Appeal

Judgment: Entitlement to deduct input tax: Alleged MTIC fraud

Davis & Dann Ltd and Precis (1080) Ltd

HMRC's appeal in this missing trader intra-Community (MTIC) fraud case was successful.

On 15 March 2016, the Court of Appeal delivered its judgment in HMRC's appeal from the Upper Tribunal in the case of Davis & Dann Ltd and Precis (1080) Ltd. 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. The Court of Appeal therefore allowed HMRC's appeal.

Court of Justice of the European Union (CJEU)

Judgment: Insurance transactions: VAT treatment of claims handling services

C-40/15 Aspiro SA

The CJEU held that the taxpayer's claims handling services failed to qualify for VAT exemption as an insurance related service.

On 17 March 2016, the CJEU delivered its judgment in this Polish referral concerning the scope of the exemption for 'insurance transactions' and 'related services performed by insurance brokers and insurance agents' within the meaning of Article 135(1)(a) of the VAT Directive. Specifically, the referral asked whether that exemption covered the claims handling services provided by the taxpayer in the name and on behalf of an insurer. In her opinion of 23 December 2015, Advocate General Kokott answered this in the negative (i.e. the taxpayer's claims handling services failed to qualify for VAT exemption). The CJEU has now agreed with the Advocate General.

Our tax alert provides further details on the judgment and its implications.

Comment: The judgment is likely to result in a renewed focus on the UK VAT treatment of insurance related services, which may lead to a change in UK legislation.

Please contact David Bearman for further information.

Opinion: Public broadcasting activity: Radio licence fee: Whether outside scope of VAT

C-11/15 Český rozhlas

The Advocate General held that the taxpayer's public broadcasting activity, in so far as it was financed by the radio licence fee, neither fell within the scope of VAT nor conferred any right to deduct input VAT on related costs.

On 17 March 2016, Advocate General Szpunar delivered his opinion in this Czech referral concerning the VAT treatment of public broadcasting services financed by statutory licence fees.
The taxpayer is the Czech public broadcasting body created by law and financed, in particular, by the radio licence fee. The fee is a compulsory statutory charge payable by anyone who possesses or uses a radio receiver. Under Czech law, the activity of broadcasting, in so far as it is financed by the radio licence fee, is considered to be a VAT exempt activity. The taxpayer sought to increase its level of input VAT recovery by arguing that those fees were properly outside the scope of VAT (rather than exempt), as they did not constitute consideration for the public broadcasting service provided. The taxpayer's claim was rejected by the Czech tax authorities. In these circumstances, the referring court asked whether the taxpayer's public broadcasting activity, in so far as it was financed by the radio licence fee, constituted an exempt supply made in the course of business (pursuant to Article 13A(1)(q) of the Sixth Directive), or a non-business activity falling outside the scope of VAT.

The Advocate General held that the taxpayer's public broadcasting activity, in so far as it was financed by the radio licence fee, did not fall within the scope of VAT. There was no direct link between the broadcasting service supplied and the radio licence fee. This was because the event triggering the obligation to pay that fee lay not in the use of the taxpayer's broadcasting services but in the possession of a radio receiver and, secondly, access to those services was not conditional on payment of that fee since public broadcasting was freely accessible. Accordingly, the taxpayer's public broadcasting activity did not fall within the scope of VAT because it was not an activity carried on for consideration. Distinguishing the case of Kretztechnik (C-465/03), the Advocate General further held that this conclusion did not confer any right to deduct input VAT on related costs, and the methods and criteria for apportioning input VAT between activities falling within and outside the scope of VAT were down to individual Member States, having regard to the broad aims of EU law.

We await to see if the CJEU follows the Advocate General's opinion.

Comment: The UK's public service broadcaster, the British Broadcasting Corporation, is funded principally by an annual television licence fee. The licence fee is a statutory charge set by the Government and is considered to be outside the scope of VAT. Consequently, the Advocate General's opinion appears to be in line with the UK's treatment of statutory broadcasting licence fees.

Please contact Audrey Fearing for further information.

Calendar update

Wednesday 6 April 2016 - Opinion C-24/15 Josef Plöckl - German referral concerning the requirement to obtain the customer's VAT registration number in order to zero-rate an intra-Community supply of goods. This referral appears to raise similar issues to those raised in the case of VSTR (C-587/10).

Thursday 7 April 2016 - Judgment C-546/14 Degano Trasporti S.a.s. di Ferruccio Degano & C., in liquidation - Italian referral asking whether EU law precludes a Member State from accepting only partial payment of a VAT debt by a taxable person in financial difficulties, in the course of an arrangement with creditors involving the liquidation of its assets.

Wednesday 13 April 2016 - Hearing C-340/15 Christine Nigl and Others - Austrian referral asking whether three associated persons with independent operations but trading through a limited company, of which they are all shareholders, should be treated as a single taxable person and whether, the flat rate scheme for farmers is available to them.

Thursday 14 April 2016 - Hearing C-378/15 Mercedes Benz Italia SpA - Italian referral concerning the compatibility with EU law of national provisions and the practice of the national tax authorities relating to the partial exemption pro-rata calculation.

EY Global Customs and International Trade Newsletter

March 2016 issue of TradeWatch

The March 2016 issue of TradeWatch, our global customs and international trade quarterly newsletter, is now available. It contains the latest news on customs duties and trade agreements from around the world. In this issue, we focus on the Union Customs Code (UCC) which comes into effect in the EU on 1 May 2016. We report on the main changes introduced by the UCC and the challenges that businesses may face.

Please contact Arjen Odems 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.

**Gulf Cooperation Council:** VAT will be implemented in the Gulf Cooperation Council (GCC) region in 2018. The GCC countries (which include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) have agreed on a common VAT rate of 5%.

**India:** As part of the Union Budget proposals, India is planning to introduce an ‘equalisation levy’ on services relating to online advertising.

**Puerto Rico:** The Puerto Rico Treasury Department has issued transitional rules and proposed regulations in preparation for the planned introduction of VAT on 1 April 2016.

**Puerto Rico:** The Puerto Rico Treasury Department has postponed the introduction of VAT until 1 June 2016. As a result, the sales and use tax will remain in effect until 31 May 2016.

**Australia:** The Australian GST landscape for cross-border transactions is due for a radical change with the introduction of the Tax and Superannuation Laws Amendment Bill 2016 into Parliament. The Bill contains measures which seek to extend GST to business-to-consumer supplies of digital products, services and other intangibles into Australia from 1 July 2017.

**Canada:** Canada is one step closer to ratifying its free trade agreement with the EU. Once implemented, the Canada-EU Comprehensive Economic and Trade Agreement is expected to remove almost 98% of EU tariffs on a wide range of Canadian products (over 98% of Canadian tariffs) immediately, with elimination of 99% of tariffs ultimately on two-way trade.

**Russia:** The Russian State Duma has approved draft VAT legislation which provides that the place of supply of electronic services would be determined based on the location of the customer. This means that electronic services provided to Russian customers would be subject to VAT in Russia. According to the draft legislation, foreign suppliers of electronic services would be required to register and file VAT returns (electronically) in Russia. It is proposed that the new rules will come into effect on 1 January 2017.

**South Africa:** South African taxpayers and non-residents with a South African permanent establishment may have an obligation to report details of certain inbound services to the South African Revenue Service (SARS) by mid-April this year. Failure to report, where this is required, could be subject to substantial penalties. It is expected that the SARS will use this information to detect possible permanent establishments, transfer pricing transgressions and VAT non-compliance.

**Kenya:** An update is provided on Kenya’s withholding VAT system.

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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