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

- **Taylor Wimpey plc** has appealed to the Upper Tribunal in this case concerning the recovery of input tax on white goods and carpets installed in newly built homes. Please contact **Ali Anderson** for further information.
- Latvia has referred a case to the Court of Justice of the European Union (CJEU) asking whether the fact that transactions may be subject to transfer pricing rules for direct tax purposes precludes the application of the VAT cost-sharing exemption. Please contact **Simon Harris** for further information.
- We report on VAT (or local equivalent) developments in a number of countries around the globe, including Australia, New Zealand, the Gulf Cooperation Council countries and Puerto Rico.

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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**Upper Tribunal**

**Indirect tax decisions recently appealed to the Upper Tribunal: Taylor Wimpey**

The Upper Tribunal has updated its listing of forthcoming hearings and pending cases. Brief details of those indirect tax cases appealed to the Upper Tribunal in recent months which may be of wider interest are provided below.

- **Taylor Wimpey plc** has appealed against First Tier Tribunal decisions TC03700 and TC04281 in favour of HMRC. This case concerns the application of the “builders’ (input tax) block” and whether the taxpayer was entitled to make a Fleming claim seeking recovery of VAT incurred on white goods and carpets installed in newly built homes. The First Tier Tribunal concluded that the taxpayer was not so entitled. Please contact **Ali Anderson** for further information.
HMRC has appealed against First Tier Tribunal decision TC04246 in favour of the Imperial College of Science, Technology & Medicine. The First Tier Tribunal held that a new non-CVCP partial exemption special method was retrospectively implemented by the taxpayer university, and approved by HMRC, for the period since 1973. Accordingly, HMRC was bound to repay the taxpayer's Fleming claim for residual input tax on the overheads of its academic departments relating to the supply of commercial research, subject to evidential issues. Please contact Damian Shirley for further information.

The updated listing can be accessed by clicking here.

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**Court of Appeal**

**Ocean Finance : Structure to avoid irrecoverable VAT on advertising costs : Whether abusive**

HMRC has appealed the Upper Tribunal's decision in favour of Paul Newey t/a Ocean Finance to the Court of Appeal. This case concerns whether a structure to avoid irrecoverable VAT on supplies of advertising services to a loan broking business constituted an abusive practice liable to redefinition under the Halifax doctrine (which addresses the scope of the EU principle of abuse of rights in the context of VAT). The Upper Tribunal held that it did not. The Upper Tribunal's decision (released on 2 June 2015) can be accessed by clicking here.

Please contact Mitchell Moss for further information.

**Cambridge University : Investment activity : Deductibility of input tax on fund management fees**

HMRC has applied for permission to appeal the Upper Tribunal's decision in favour of the Chancellor, Masters and Scholars of the University of Cambridge to the Court of Appeal. This case concerns whether the taxpayer university was entitled to treat the VAT incurred on fund management fees as overhead expenditure and, therefore, recoverable as residual input tax in accordance with its partial exemption special method on the grounds that the investment activity, which was not an economic activity in its own right, generated income that facilitated and supported the overall operation of the university. The Upper Tribunal answered this in the affirmative. The Upper Tribunal's decision (released on 9 June 2015) can be accessed by clicking here.

Please contact Damian Shirley for further information.

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**Court of Justice of the European Union (CJEU)**

**New referral : VAT cost-sharing exemption : Interaction with transfer pricing rules**

Whilst the text of the questions referred is not yet available on the CJEU website, we are aware that Latvia has referred a case to the CJEU - DNB Banka (C-326/15) - which essentially asks whether the fact that transactions may be subject to transfer pricing rules for direct tax purposes precludes the application of the VAT cost-sharing exemption.

The VAT cost-sharing 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. For the exemption to apply, the consideration for supplies made by the CSG to its members has to be an 'exact reimbursement' of the members' share of the joint expenses (i.e. no margin or mark-up can be factored into the cost of providing the services). Accordingly, where the consideration for supplies made by the CSG to its members includes a profit element, the exemption will not apply and those supplies will be subject to the normal VAT rules. However, an issue arises where a CSG and its members are connected parties, as they will often be potentially subject to transfer pricing rules for direct tax purposes. Thus, the disputed issue in the present referral is essentially whether the pricing or repricing of transactions under direct tax transfer pricing rules precludes the use of the VAT cost-sharing exemption.

**Comment:** In the UK, HMRC accepts that the pricing or repricing of transactions under direct tax transfer pricing rules does not preclude the use of the VAT cost-sharing exemption. However, if the actual pricing of the charge by the CSG to its members exceeds an arm's length figure, such transactions would not qualify for the exemption (see HMRC's Cost Sharing Exemption Manual).
Please contact Simon Harris for further information.

**Calendar update**

**Period to Friday, 28 August 2015 - Court Summer Vacation**

**Thursday 3 September 2015** - **Judgment C-463/14 Asparuhovo Lake Investment Company OOD** - Bulgarian referral asking whether a retainer (or on-call) agreement for the provision of consulting services constitutes a supply of services for VAT purposes, what the tax point is for that supply (e.g. at the end of the period covered by the retainer) and whether such issues depend on the customer having made use of the consultant's services (case proceeding to judgment without a written Advocate General's opinion).

**Thursday 3 September 2015** - **Judgment C-526/13 Fast Bunkering Klaipėda UAB** - Lithuanian referral concerning the scope of the exemption with credit, under Article 148(a) of the VAT Directive, for the fuelling of vessels used for navigation on the high seas. Specifically, the referral asks whether the exemption (or zero rate) is limited to supplies of fuel made directly to the operator of the vessel, or whether it also applies to supplies made via a third party in circumstances where the ultimate qualifying use of the fuel is established in advance and it is delivered directly to the vessel in question.

**Tuesday 8 September 2015** - **Judgment C-105/14 Ivo Taricco and others** - Italian referral concerning VAT related criminal proceedings against a number of individuals and the application of related time limits under national law.

**Wednesday 16 September 2015** - **Opinion C-419/14 WebMindLicences Kft.** - Hungarian referral asking some seventeen detailed questions aimed at establishing whether the transfer, by means of a licensing agreement, of intellectual property between two taxable persons in different EU Member States constitutes an abusive practice for VAT purposes.

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**Australia**

**Levying of GST on electronic services purchased from abroad and low-value imported goods**

The Australian tax authorities have announced that the *de minimis* threshold below which GST does not have to be paid on goods imported into Australia will be reduced from the current level of AU$1,000 to zero with effect from 1 July 2017 (i.e. the threshold will be eliminated). As such, all goods imported into Australia after this time will be subject to GST. The mechanism for levying and collecting the GST remains unclear at present, but this may involve overseas businesses registering for Australian GST.

As previously reported in EY VAT News for the week to 18 May 2015, it is also proposed that the supply of electronic services by an overseas business to Australian consumers (i.e. B2C supplies) will be subject to GST from 1 July 2017.

*Comment: These developments will be relevant to any overseas businesses that make supplies of goods or electronic services into the Australia market. Australia adds to a growing list of countries that have or are in the process of introducing new rules to impose VAT (or their local equivalent) on inbound digital services.*

Please contact Martyne Pearson for further information.

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**New Zealand**

**Levying of GST on electronic services purchased from abroad and low-value imported goods**

The New Zealand Inland Revenue has published a discussion document seeking views on proposed new rules that would require overseas suppliers to register and account for GST when they supply electronic services to New Zealand-resident consumers. The discussion document also foreshadows future changes to the *de minimis* threshold below which GST does not have to be paid on imported goods. Submissions are sought on both the electronic services proposals, and on the collection of GST on low-value imported goods. The consultation runs until 25 September 2015. Our global tax alert provides further details.
Gulf Cooperation Council (GCC) Countries

Potential delay in the implementation of VAT

The United Arab Emirates’ (UAE) Ministry of Finance has announced that it is still studying a proposal to introduce VAT in the country. The proposed implementation of VAT in the GCC countries (namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE) has been delayed due to disagreements amongst the countries over the rates and exemptions. A technical committee will meet this month to discuss these disagreements and will prepare a report for the GCC representatives setting out its recommendations. Notwithstanding these disagreements, there remains a commitment for the GCC countries to implement VAT simultaneously. Once a decision to implement VAT has been made, businesses will be given a notice period of around 18 months. The proposed introduction of corporate taxation in the UAE remains on the agenda, but its impact is still being studied. Once a decision as to any corporate tax reforms has been made, businesses will be given a notice period of around 12 months.

In terms of how these latest developments impact the proposed release of the GCC VAT framework in 2015 and implementation in 2017, this will really depend on when an agreement is reached over the rates and exemptions. If, for example, agreement is reached in October 2015, we could still see the GCC VAT framework being released later this year, followed by an 18 month notice period prior to implementation in 2017.

Please contact Nicola Butt for further information.

Puerto Rico

Update on implementation of VAT : Webcast 25 August 2015

The Puerto Rico Commission, which was created to evaluate alternatives to the implementation of VAT in Puerto Rico, has issued a report recommending the implementation of a VAT system, instead of an excise tax system. The issue of this report was the final step in the implementation of VAT in Puerto Rico. Our global tax alert provides further details.

Puerto Rico currently operates a sales and use tax (SUT) system. Prior to 1 July 2015, the SUT was set at 7% and composed of two portions, 6% at the state level and 1% at the municipal level. On 1 July 2015, the state SUT was increased from 6% to 10.5%, resulting in a total combined state and municipal SUT of 11.5%. In addition, a 4% SUT will be imposed on certain business-to-business services and designated professional services rendered between 1 October 2015 and 31 March 2016. These services will not be subject to the municipal SUT during this period. It is envisaged that VAT will be introduced at the rate of 10.5% with effect from 1 April 2016 (in place of the state SUT), which will apply alongside the 1% municipal SUT.

We will be holding a webcast at 6pm (UK time) today (Tuesday 25 August) focusing on the implications for businesses of the upcoming SUT changes and the introduction of VAT in Puerto Rico. Further details on the webcast, including instructions on how to register, can be accessed by clicking here.

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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