IVA Newsletter – May 2016

Dear VAT professionals,

In this issue:

1. Welcome to our New IVA Members

Please welcome the latest members of the International VAT Association:

- ✓ Gencs Valters Law Firm (Latvia), represented by Valters Gencs
- ✓ Part Five Ltd. (UK), represented by Roderick Stone OBE

2. Important VAT/GST Information

2.1. Germany – Reform of VAT Taxation of Public Bodies

By means of sec 2b of the German VAT Act, the legislator has reformed the VAT taxation of public bodies. The amendment is accompanied by a transitional regulation in sec 27 para 22 of the German VAT Act. Sec 2b of the German VAT Act is applicable to supplies as of 01.01.2017. By making a declaration to the tax office, the application of the new regulation can be waived in favour of continuing with the existing legal situation. The Federal Ministry of Finance has now issued an opinion on sec 27 para 22 of the German VAT Act. Public bodies need to check, in due time, whether the new implementation arrangements application rule would be advantageous.

1. **Facts**

By means of sec 2b of the VAT Act, the legislator has restructured the VAT taxation of public bodies. In doing so, the German VAT Act has been moved very much closer to the VAT Directive and the case law of the Federal Fiscal Court. Legal entities under public law ("public bodies") are deemed to act as taxable persons in accordance with sec 2b of the VAT Act as soon as they render supplies on the basis of private law or compete with private third parties. Public bodies will now more often fall within the scope of VAT due to this provision. In particular, the hitherto fiscal authority exemptions in the fields of asset management and assistance operations will no longer exist in this way in the future. With sec 27 para 22 of the VAT Act, the legislator has created a generous transitional regulation to assist public bodies to adjust to these fundamental changes. Sec 2b of the VAT Act is to be applied to all supplies as of 01.01.2017. By filing a declaration, the still applicable sec 2 para 3 of the VAT Act can be claimed for all supplies until 31.12.2020. Public bodies must file their declarations at the competent tax office by 31.12.2016.

2. **Content of the Circular**

According to the Federal Ministry of Finance Circular, the declaration has to be filed by the public body itself through a legal representative or by an authorized person. The declaration cannot be filed by an individual organizational unit of the public body, such as an authority or a commercial business. Thus, "cherry-picking" of selected fields of activities is not possible. The Minister-President of a federal state or his authorized representative is required to uniformly declare the option for all regional authorities, commercial businesses and other corporate entities.

The declaration has to be filed with the tax office of the district in which the public body is entirely or mainly operating its business (sec 21 of the German Fiscal Code). Problems of competences may arise where a public body has been operating its respective commercial business in the districts of different tax offices. It is not mandatory to file the declaration in writing, as proposed by the tax office, but from the public body's view it is highly recommended for the purposes of evidence. The declaration has to be sufficiently specific. The Federal Ministry of Finance Circular does not mention any other formal requirements.

To date, public bodies have been referring to the Federal Fiscal Court's case law as regards the VAT taxation of public bodies. Sec 2b of the VAT Act is, to the greatest extent possible, in line with this case law. Where a public body invoked the case law, it had to apply this case law to all its activities. In the fiscal authority's opinion, the public body could not return to applying sec 2 para 3 of the VAT Act. According to the Federal Ministry of Finance Circular, this administrative opinion is now revoked by the new legal provision. Thus, a public body, which has already invoked the case law of the Federal Fiscal Court, may now return to applying sec 2 para 3 of the VAT Act for supplies as of 01.01.2017, by filing a declaration with the tax office.

If the public body declares its intention to continue applying sec 2 para 3 of the VAT Act, it will automatically remain in force until 31.12.2020. Public bodies may revoke this declaration. Any withdrawal must be filed by 31.12. of a particular calendar year, so as to enable the public body to apply sec 2b of the VAT Act as of the following year. A repeated return to applying sec 2 para 3 of the VAT Act is no longer possible. Sec 2 para 3 of the VAT Act cannot be applied to public bodies founded after 31.12.2016. Where individual public bodies have opted for a merger, the newly founded public body may choose to apply sec 2b or sec 2 para 3 of the VAT Act. A previously declared option is also binding for legal successors.

3. Tips for the practice

In the course of 2016, all public bodies need to check whether applying sec 2 para 3 of the VAT Act continues to be useful to them. As a golden rule, we can say: Where there is no high input tax volume, sec 2 para 3 of the VAT Act is the better alternative. This golden rule should, however, be respectively reviewed in the individual case, to economize budgetary resources. As public bodies already applying the new case law of the Federal Fiscal Court may opt to return to the old regulation, this option also should be taken into consideration.

Therefore, a project plan has to be developed under which not only possible input tax volumes have to be reviewed but also all revenue titles should be examined to determine whether these revenues will be subject to future taxation. Apart from many other questions, such as establishing a tax department, consideration of pre-existing accounting departments' IT ability to meet the new requirements must ensue. Should this evaluation demonstrate that the application of sec 2 para 3 of the VAT Act is more favourable, the public body should, in due time, file a respective written declaration – after having obtained the appropriate board resolution. A confirmation of receipt should be retained.

Even if a public body intends to apply sec 2 para 3 of the VAT Act until 31.12.2020, it is recommended that consideration of future alternative arrangements take place now. This often requires negotiating with existing contracting partners, coordinating internal and external committees and even amending statues, regulations or the law. To allow for time to negotiate, making an early start is absolutely essential.

The above information was kindly provided by Küffner Maunz Langer Zugmaier, Germany. If you need any further information you can contact Prof. Dr. Thomas Küffner, email to: thomas.kueffner@kmlz.de.

2.2. Greece – World Bank's Report

Doing Business sheds light on how easy or difficult it is for a local entrepreneur to open and run a small to medium-size business when complying with relevant regulations. It measures and tracks changes in regulations affecting 11 areas in the life cycle of a business: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency and labor market regulation.

Link to the report: http://www.unityfour.eu/images/brochures/DOING_BUSINESS_2016.pdf

The above information was kindly provided by UNITYFOUR PRIVATE CONSULTING HOUSE (Greece), who are also contributors to this report. If you need any further information you can directly contact Panagiotis Thliveros, email to: panosth@unityfour.eu.

2.3. Hungary – Online Cash Registers for More Businesses

The online connection to the tax authorities of cash registers in the retail industry has been a great success for the Hungarian VAT incomes since the introduction of the system in 2014. According to the last update of the decree on cash registers, the scope of businesses being obliged for online connection is going to be extended.

Online cash registers must be used by the following businesses

- ✓ from 30 September 2016:
  - retail trade and repair of motor vehicles, motorcycles, related parts and accessories
  - plastic surgery
  - dance clubs, discos
  - washing and dry cleaning of clothes
  - physical well-being activities, fitness facilities
- ✓ from 1 January 2017:
  - taxi
  - currency exchange

The above information was kindly provided by Ákos Cseuz from ABT Hungária Tanácsadó Kft (Hungary). If you need any further information you can directly contact Ákos Cseuz, email to: akos.cseuz@abt.hu.

2.4. Luxembourg – New Tax Measures

Luxembourg Government presents 2017 tax reform

On 21 April 2016, less than one week before the traditional speech to the Nation, the Luxembourg Government presented some new tax measures for the 2017 tax reform as well as some amendments to the measures already presented on 29 February 2016 at a press conference. We have outlined the main tax changes to be introduced for both companies and individuals. This is only an announcement, meaning that no agreement has been reached yet by the Government on the text of the draft law introducing these measures. Therefore, changes may still occur before the final text is presented to Parliament and additional changes may also be made in the course of the legislative process.

Luxembourg begins implementing automatic exchange of information on tax rulings at EU level

On 22 March, a draft law was presented to Parliament implementing Directive EU 2015/2376 into Luxembourg law. This draft law extends the scope of automatic exchange of information to information on tax rulings.

Bill introduces investment restrictions for SIFs and UCIs and amends SICAR and AIFM laws

On 18 January 2016 the Luxembourg government filed bill n°6936 with the Parliament introducing changes to the investment rules of Luxembourg investment funds governed by the Law of 13 February 2007 on specialised investment funds (SIF Law) and of those governed by part II of the law of 17 December 2010 on undertakings for collective investments (UCI Law). The bill will also amend the law of 15 June 2004 relating to investment companies in risk capital (SICAR Law) in order to align it with the SIF regime and validate administrative practices, as well as "clean-up" the law of 12 July 2013 on alternative investment fund managers (AIFM Law).

ILPA releases fee reporting template for private equity

In January of this year, the Institutional Limited Partners Association (ILPA) released in a fee reporting template for GP and LP use in the private equity industry. The template was developed based on input received from a wide range of private equity professionals and is the result of a consensus-based approach to transparency and standardization of fee disclosures.

The Hellas Case and the treatment of CPECs in Luxembourg

On 23 December 2015, the District Court of Luxembourg, sitting in commercial matters, took a landmark decision regarding a Luxembourg company that had financed a shareholding with Convertible Preferred Equity Certificates (**CPECs**). This is the first time that a Luxembourg court decided on the qualification of CPECs as debt and on the conditions of their redemption.

BEPS: OECD addresses the situation of non-CIV funds towards tax treaty benefits

On 24 March 2016, the OECD released a public discussion draft on issues and suggestions on the tax treaty entitlement of non-CIV (Collective Investment Vehicle) funds. This document is part of the follow-up work on Action 6 of the BEPS project which deals specifically with the fight against treaty abuse.

First quarter updates for AIFMs

The first quarter of this year has turned the attention of Luxembourg AIFMs towards the EU and the national regulators once more. At EU level, the European Securities and Markets Authority (ESMA) has amended the remuneration guidelines and the Q&A on the application of the alternative investment fund managers' directive (AIFMD). More recently, it initiated work on the authorisation of loan-originating funds across Europe. At national level, Luxembourg AIFMs should pay close attention to the vote of the bill transposing the UCITS V directive, which would widen the scope of their EU passport.

For further information you can visit: http://www.atoz.lu/flipbook/atoz-insights-april-2016/index.html?c=7908

The above information was kindly provided by ATOZ Tax Advisers, Luxembourg. If you need any further information you can directly contact Keith O'Donnell, email to: keith.odonnell@atoz.lu and Samantha Merle, email to: samantha.merle@atoz.lu.

2.5. Poland – General Power of Attorney

Polish Ministry of Finance published a draft of the new layout of the general Power of Attorney. According to Polish Tax Ordinance the general Power of Attorney authorizes to act in all tax matters and other matters within the jurisdiction of the tax authorities.

The new layout of the general Power of Attorney is called PPO-1. The update about changes, withdrawal or termination of the Power of Attorney is called OPO-1. These forms will have to be submitted to the tax authorities in electronic form via the Tax Portal (www.portalpodatkowy.mf.gov.pl) or through the Central Registration and Information on Economic Activity (CEIDG).

The draft of the new law is not final yet.

The above information was kindly provided by Independent Tax Advisers, Poland. If you need any further information you can contact Dorota Baczewska-Golinska, email to: dbaczewska@itadp.pl.

2.6. Poland – Bad Debt Relief

On 1 June 2005 the Polish legislator introduced a possibility to decrease output VAT in case of overdue receivables. It is called "bad debt relief".

Since 2013, the regulation has remained almost unchanged. The Legislator lifted the prohibition to apply for such a relief if the debtor and creditor were related parties. Similarly, aiming to even out the tax position of both parties to the transaction, the wording of Article 89b of the Polish VAT Act was changed in a way that allows a debtor in insolvency or liquidation with an unsettled liability not to decrease its input VAT any more. By the date the amendment was enacted (1 July 2015) a creditor whose debtor declared liquidation or insolvency was not allowed to benefit from bad debt relief. Conversely, the debtor in liquidation or insolvency was obliged to decrease its input VAT when overdue.

The subsequent amendments to this regulation seem to justify the opinion that the Polish legislator forgot that the Polish VAT Act should first and foremost be harmonized with provisions set forth in Council Directive 2006/112/EC of 28 November 2006 "The EU's common system of value added tax (VAT)". The relation between both acts, in the context of bad debt relief was outlined by the Administrative Court in Wrocław in the verdict of 22 April 2015 (file I Sa/Wr 2484/14).

The Court stated that the 2 year time limit set forth in Article 89a of the Polish VAT Act is not in line with Article 90 sec. 1 of the Council Directive 2006/112/EC.

In the Court's opinion, Member States were free to decide whether to implement bad debt relief. If a Member State decides to take advantage of the benefit, it must follow the Directive's provisions. Basing on the verdicts issued by the Court of Justice of EU, among others C-588/10 Ministry of Finance of Poland v. Kraft Foods Polska S.A., the Polish Court stated that a Member State may introduce only the conditions which aim to secure the proper collection of VAT and prevent VAT frauds.

In the Court's opinion, the 2 years' period stipulated in the Polish VAT Act goes beyond the scope of formalities necessary to prove the lack of payment, as well as means necessary to prevent VAT frauds.

The verdict of the Administrative Court in Wrocław, as well as other verdicts of CJEU may justify the opinion that a vast majority of conditions allowing to benefit from bad debt relief set forth in the Polish VAT Act go far beyond the means necessary to prevent VAT frauds.

As a result, in case of overdue payments, where:

1) The debtor was not, and is still not a VAT payer – e.g. in case of B2C transactions;
2) The debtor was or is currently in insolvency or liquidation;
3) 2 years have passed from the end of the year when the invoice was issued;
4) The creditor has assigned the receivables

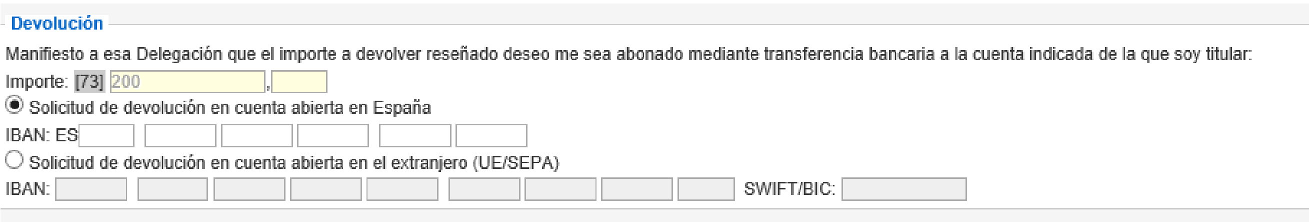
The creditor is entitled to apply for bad debt relief. However, a dispute in court is inevitable.

The above information was kindly provided by KR Group from Poland. If you need any further information you can contact Daniel Więckowski, email to: d.wieckowski@krgroup.pl.

2.7. Spain – Bank Account Details for the VAT Returns

The Spanish tax authorities have introduced the possibility to include an EU/SEPA bank account number for the refund applications filed through the VAT returns - Forms 303. Therefore, it will no longer be compulsory to indicate a Spanish bank account.

Both the IBAN and the SWIFT/BIC numbers need to be filled in.


Devolución
Manifiesto a esa Delegación que el importe a devolver reseñado deseo me sea abonado mediante transferencia bancaria a la cuenta indicada de la que soy titular:
Importe: [73] 200 ,
Solicitud de devolución en cuenta abierta en España
IBAN: ES
Solicitud de devolución en cuenta abierta en el extranjero (UE/SEPA)
IBAN: SWIFT/BIC:

The above information was kindly provided by Pablo Luján from IVA CONSULTA, Spain. If you need any further information you can contact Pablo Luján, email to: pablolujan@ivaconsulta.com.

3. Further European VAT News

Austria

From 1 May 2016 the VAT rate on accommodation services in Austria will increase from 10% to 13%.

Belgium

The latest change brings back the former rules where the issuance of an invoice related to a prepayment triggers the tax point and hence the obligation to report and pay VAT. If there are different dates between tax point and invoice date, these should be differentiated in the invoice.

Tax point rules determine the time when VAT becomes due. Transactions should be reported in the VAT return of the period when the tax point occurred. In Europe, some countries take the invoice date as main driven factor to create a tax point, some others take the completed service or transfer of title of the goods. There are also jurisdictions that combine both, invoice date and completed transaction.

VAT due should be distinguished from VAT payable. VAT becomes due when the tax point occurs, VAT is payable between the first day after the reporting period and the due date to make the VAT payment in each country.

Czech Republic

From 1 January 2016 selected VAT registered entities will be obliged to submit a monthly “VAT Control Statement” i.e. the Control Form. The Control Form is designed to prevent further VAT fraud in the Czech Republic and can be done electronically via an e-form.

The Czech government has passed a law which will decrease the VAT rate for services related to food from 21% to 15%. The date of effect will not be announced until the law is passed.

Estonia

Estonia is in talks to raise its VAT registration threshold for resident businesses from €16,000 to €25,000 per annum. The finance ministry had previously proposed a higher registration of €40,000. Reducing the tax burden of small enterprises and simplifying the taxation of micro enterprises is set out as a goal in the program of the government coalition.

France

The French parliament has approved an amendment to the law which sees currently only diesel eligible for the deduction of VAT. The new amendment would see an end to the inequality of fleets mostly investing in diesel powered cars.

French businesses that receive cash payments i.e. shops, restaurants, will have to use a certified cash accounting system (cash register) by 1 January 2018. This measure is to ensure security and storage of information so no fraud can take place. Tax authorities can request to see proof of certificates and failure to provide such certificate will result in a €7500 fine per input device.

French VAT Refunds for VAT Groups

Following a decision of the French *Conseil d’Etat*, where an EU VAT refund is requested (former 8th Directive refunds) by a member of a VAT group in a foreign country, the authorities will require the Head of the group to submit the application. This is the first time that the French tax authorities give legal value to a foreign VAT group.

The rules on EU VAT refunds are similar in every country. All requests must be filed electronically from the country of establishment of the claimant, by the same deadline and with the same delays in each country to get an answer from the relevant tax authorities. However, in practice, the authorities in the country of refund will request further information and raise questions about your business activities. This is where you will need a tax specialist to look at your refund claim.

Greece

Greece is proposing an increase to their standard VAT rate from 23% to 24% on 1 July 2016. This is due to discussions that the country had with their lenders and is being made in an effort to improve their economic performance.

Hungary

As of 1 January 2017 Hungary is proposing to reduce VAT charged on restaurant and café services from the standard rate of 27% to the reduced rate of 18%. The VAT rate on basic foodstuffs, including milk, poultry and eggs will also be reduced from 27% to 5%.

Ireland

Following the VAT Consolidation Act 2010 (VATCA) – allowing the Irish Revenue to cancel VAT registration numbers where there are suspicions of fraudulent schemes – section 108D of eBrief 42/16 published on 22/04/2016 accounts for special provisions related to this faculty, widening the control of VAT collection with the application of the following anti- fraud measures (if deemed necessary):

- ✓ Disclosure to the suppliers of the ongoing VAT number cancellations; and
- ✓ Publication of such cancelations in the Official Gazette and, if possible, in other media supports

Italy

The Italian tax authorities have postponed the deadline for the submission of the 'Black List' communication for the fiscal year 2015 to 20 September 2016.
The blacklist communication is a report that is submitted to disclose the supply of goods and services which are sold to and purchased from 'black-listed' countries.

Latvia

From 1 April 2016 a new domestic reverse charge will be applied to certain domestic B2B supplies of mobile telephones, laptop computers and computer chips. This is an effort to prevent VAT fraud.

Netherlands

The URL for the Dutch refund portal will be changed on the 18th of May!

The New URL which is already working includes a redirection from the old website, is: https://eubtw.belastingdienst.nl/netp.

Norway

The Norwegian tax authorities have taken over a number of tasks from the customs authorities. In 2016, all issues related to import and duty deferral payments, deferral payments of duties on vehicles and import duties are now dealt by the Tax authorities instead of the Customs authorities. These changes do not affect the current VAT or Customs rules, but they are important in practice when communicating with the relevant authorities.

It is important to understand the way the tax authorities are organized in each country, particularly for non-established and VAT registered businesses. Some jurisdictions have a specific unit for non-established taxable persons, like France or UK. Germany allocates the responsible tax office depending on the country of establishment of the company. Spain would usually allocate the tax office depending on the office where the registration form is submitted. Regarding established companies, in most jurisdictions, the responsible office is the regional tax office of the region where the company is established.

Spain

Effective 1 January 2016 new rules on exemptions applied to services directly related to exportations of goods are applicable.

VAT exemption is now applicable to services provided to consignees or freight forwarders, working for the exporters, the recipients of the goods or their corresponding customs agents. Furthermore, goods imported intended to be sold in tax-free shops in ports and airports, which are under customs control, are now exempt from VAT.

Spanish late 13th Directive accepted

The Spanish Administrative Court of Justice recently allowed the refund of a non-EU business that submitted a late 13th Directive claim. The Court argued that applying the neutrality principle prevents the tax authorities from denying the €4.8 million refund on the grounds of late filing.
In the case at hand, the taxpayer had initially submitted the claim in time, however, this claim was extended with a corrective 13th Directive claim after the deadline, to include additional invoices. Following the taxpayer´s appeal, the refund was accepted.

The process to get your VAT back for non-EU companies varies from country to country in Europe. Some jurisdictions require a fiscal representative, some also require mutual agreements with the country of establishment of the applicant and most countries ask for copies of the invoices that make up the claim.

UK

As of 1 August 2016, requests for application of the so-called misdirection class concession will no longer be accepted on an ordinary basis.
Under the misdirection class concession, companies who register for VAT purposes due to a change in interpretation of the law leading to application of VAT on previously VAT exempt supplies can request not to pay the relevant output VAT. These requests are still subject to routine consideration until 31/07/2016 and the HMRC will not pursue tax due on such supplies provided that:

1. VAT has not been passed on to the final consumer;
2. The relevant requests to benefit from this scheme are submitted by the affected companies by that date (31/07/2016);
3. The “complete and accurate calculations of both output tax not charged on and the associated input tax” is provided along with the request; and
4. The VAT return has been submitted.

The UK Upper Tribunal has ruled that in order for VAT claims to be considered valid they must fully comply with the established requirements, notably:

1. By clearly identifying the amount of each VAT claim; and
2. By allocating each claim to the relevant VAT period.

The above information was kindly provided by:

- ✓ Fiscal Solutions (UK), www.fiscalsolutions.co.uk; contact: contact@fiscalsolutions.co.uk
- ✓ Marosa (UK), Pedro Pestana, email to: pps@marosavat.com
- ✓ Meridian Global Services (Ireland), http://www.meridianglobalservices.com
- ✓ VAT Systems (France), www.vatsystems.eu; contact: news@vatsystems.eu

4. Latest World News

China

Tourists can claim an 11% VAT refund on items over USD77 in the provinces of Tianjin, Liaoning, Anhui, Fujian, Xiamen, and Sichuan. The scheme has been extended as it hopes to boost inbound tourism and consumption.

China has extended its VAT programme on e-commerce to Ningbo, Chongqing, Hefei, Zhengzhou, Dalian Suzhou Guangzhou, Shenzhen, Tianjin, Shanghai, Chengdu and Qingdao. The programme allows online shoppers to buy online without paying customs duties, VAT & consumption tax.

From 1 May 2016 China will replace business tax with VAT in all sectors, including the financial sector, in a bid to streamline tax structures and reduce the tax burden. The change will unify the goods and services VAT system in China for the very first time and will be among the first countries in the world to apply VAT broadly to the financial services sector. That means that interest on loans made to businesses and consumers will be subject to VAT.

Israel

The Israeli Government has drafted a bill which imposes a charge of VAT at 17% on the supplies of e-services to consumers by non-resident businesses.

At present, non-resident businesses providing digital services in Israel do not have to charge VAT on their sales. However, in an effort to remove the unfair advantage given to non-resident companies, the Israeli Government has proposed that VAT at 17% will be applied on these types of transactions.

Israel has yet to confirm the date that this will be implemented however it has been confirmed that if accepted, the new tax will apply to a range of electronic services including streaming games, music, apps, films, e-books, e-journals and internet services.

Oman

The introduction of VAT is to be set for the first of six Arab Gulf states for mid-2017. The introduction of VAT is estimated, for Oman, to generate between OMR200 million and OMR300 million extra every year with the predicted VAT rate of 5%.

Russia

The Russian Government has passed a bill which imposes the charge of VAT at 18% on the sales of e-services to consumers in Russia.

At present, non-resident businesses providing digital services in Russia (B^2C) do not have to charge VAT on their sales. However, in an effort to remove the unfair advantage given to non-resident companies over Russian resident providers, the Russian Government has now confirmed that VAT at 18% will be applied on these types of transactions from 1 January 2017.

This new tax will be applied to a range of electronic services including streaming games, music, apps, films, e-books, e-journals and internet services.

USA

Amazon will be required to collect sales tax in Colorado from 1 February 2016. Colorado residents will begin paying the tax on their Amazon purchases which will help the state collect the previously, sometimes, unpaid 'voluntary paid' taxes.

The above information was kindly provided by:

- ✓ Fiscal Solutions (UK), www.fiscalsolutions.co.uk; contact: contact@fiscalsolutions.co.uk
- ✓ Meridian Global Services (Ireland), http://www.meridianglobalservices.com

5. Upcoming Returns

- ✓ 13th Directive refund claims must be filed by 30 June in most EU countries
- ✓ Lithuanian annual VAT returns are due by 1 October.

The above information was kindly provided by Marosa, UK. If you need any further information you can contact Pedro Pestana, email to: pps@marosavat.com.

6. News from the EC and the European Parliament

Tax and tackling obesity – 15 April 2016

The European Commission has replied to a question asked by the MEP Claude Rolin (EPP/BEL) with regard to obesity taxes. In his question, Mr. Rolin asks the Commission whether it will use taxation as a tool to tackle obesity and improve nutrition in the EU, and in particular a special VAT rate for healthy foods, including a zero rate for fruit, vegetables and water. In his reply, Commissioner Moscovici refers to an earlier reply to a similar question provided by Commissioner Andriukaitis (health and food safety), in which he lists a number of EU programmes and initiatives aiming to promote healthier lifestyles in the EU. He however emphasises that taxation is one tool out of many possible ones to address consumption habits, and that Member States already have the option of applying a lower tax rate on fresh fruit and vegetables. He moreover confirms that the Commission's VAT Action Plan will give Member States greater flexibility in the application of VAT rates.

Question: http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2016-001531&format=XML&language=EN
Answer: http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-001531&language=EN

European Parliament ECON Committee publishes report on achieving a definitive VAT system and combating VAT fraud – 27 April 2016

The MEP Werner Langen (EPP/GER) has submitted a draft own-initiative report on the definitive VAT regime and combatting VAT fraud for the consideration of the ECON Committee. The report is legally non-binding and commits neither the Commission nor the Council to action. The main elements of interest from the report include the following:

- ✓ Welcomes in broad terms the Commission VAT Action Plan, published in early-April, but calls for more "fundamental reform" and a more coordinated tax policy between Member States;
- ✓ Endorses the destination-principle proposed by the European Commission;

- ✓ Argues that differences in VAT rates pose uncertainties for companies involved in cross-border activities, and maintains that reduced rates are ineffective in achieving the intended social goals:
    - Calls consequently for a single list of reduced goods and services, allowing for fewer exemptions than currently – these should be decided at the EU-level;
- ✓ Calls for products to be subject to the destination principle regardless of in what form or through which platforms they have been purchased, and regardless of the means of delivery;
- ✓ Calls on the Member States to apply the same VAT on public and private companies;
- ✓ Expresses enthusiasm towards the general reverse charge mechanism – extend reverse charging to all B2B transactions:
    - Calls on the Commission to conduct pilot projects to assess its effects;
    - Less distortion to competition;
    - Reverse charge mechanism would reduce fraud, simplify accounting.

In terms of next steps, the deadline for amendments is 31 May. The vote in the ECON Committee is scheduled for 13 July, whilst a plenary vote is expected for 5 September.

Source: http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-582.077&format=PDF&language=EN&secondRef=01

Commission refers Germany to Court for failing to amend VAT rules for travel agents – 28 April 2016

The European Commission will refer Germany to the Court of Justice of the EU (CJEU) due to its failure to "properly apply" the special VAT scheme for travel agents in accordance with the relevant provisions of the VAT Directive. CJEU jurisprudence stipulates that the scheme should apply to travel agents dealing with all types of clients, including businesses. The German provision currently limits the scheme to travel services provided to private users.

Source: http://europa.eu/rapid/press-release_IP-16-1461_en.htm

EU VAT system – 29 April 2016

The European Commission has replied to a question asked by the MEP Brian Hayes (EPP/IRL) with regard to the EU VAT system. In his question, Mr. Hayes refers to different VAT thresholds and the problems that these cause for smaller businesses. He therefore asks the Commission whether the Mini One-Stop Shop (MOSS) has been successful in simplifying the VAT system for SMEs. In his reply, Commissioner Moscovici lists a number of initiatives for 2016, in particular modernising VAT for cross-border e-commerce, including the extension of MOSS to cross-border supplies of tangible goods, the removal of the exemption for the importation of small consignments, the application of home country rules including invoice requirements and audits, and the introduction of a VAT exemption threshold for start-up companies for their EU sales. In 2017 moreover, the Commission will submit a proposal to amend the VAT Directive's provisions on the SME scheme.

Question: http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2016-001733&format=XML&language=EN
Answer: http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-001733&language=EN

7. Commission's (TAXUD) Strategic Plan 2016

DG TAXUD publishes its Management Plan 2016 and Strategic Plan 2016-2020 – 14 March 2016

The European Commission's DG TAXUD has published its Management Plan 2016 as well as its Strategic Plan 2016-2020. Both documents provide indications and timelines for upcoming DG TAXUD action, and as such enable to anticipate what can be expected. The highlights from the Management Plan include:

- ✓ Q2 2016: Commission will publish a resolution on arbitration for tax dispute resolution;
- ✓ September 2016: Commission will organise a conference on direct taxation and investments, possibly together with the IMF;
- ✓ October 2016: the Commission will publish its simplification package for SMEs, including a proposal on the SME scheme;
- ✓ Q4 (November) 2016: the Commission will publish its proposal for CCCTB;
- ✓ December 2016: the Commission will publish studies on the functioning of the MOSS and the extension of the VAT web portal;
- ✓ December 2016: the Commission will publish its proposal for VAT on e-commerce;
- ✓ Q4 2016: the Commission will publish a feasibility study on an EU Tax Identification Number (TIN);
- ✓ End-2016: the Commission will publish a strategy to enhance tax administrations' capacity and ability to fight against fraud;
- ✓ End-2016: the Commission will publish its 2016 VAT gap report;
- ✓ End-2016: the Commission will publish a feasibility study on a mandatory "split payment system" in combination with a generalised reverse charge mechanism on VAT.

The Strategic Plan in turn indicates the following:

- ✓ The Commission will ensure that companies currently abusing loopholes in the system will need to readapt their tax policy strategies to the new context where aggressive planning is no longer tolerated. Tax advisors will play a crucial enabling role in supporting all businesses during the transition;
- ✓ The Commission will use the European Semester to promote "growth friendly and fairer tax systems", with particular focus on concrete steps Member States can take to reduce tax fraud, evasion and avoidance;
- ✓ The Commission will ask Member States to do the "necessary reforms" in their tax systems to simplify them and make them more growth-friendly;
- ✓ 2017: the Commission will Issue its assessment on state of play on cooperation between Member States in tax audits;
- ✓ 2017: the Commission will publish a study how national tax incentives for venture capital and business angels can foster investment into SMEs and start-ups and promote best practice across Member States.

Every Commission DG prepares and publishes a multiannual Strategic Plan and a Management Plan for the upcoming year. Their purpose is to translate the political priorities and the strategic objectives of the Commission into concrete operations, and to provide an instrument enabling the DG's management to plan, follow up and report on the activities and resources of the DG, and to ensure that resources are aligned with objectives.

Sources:
Management Plan 2016: http://ec.europa.eu/atwork/synthesis/amp/doc/taxud_mp_2016_en.pdf
Strategic Plan 2016-2020: http://ec.europa.eu/atwork/synthesis/amp/doc/taxud_sp_2016-2020_en.pdf

8. Decisions of the CJEU

<u>CJEU decisions published April 2016</u>

Order in Case C-555/15 (*Gabarel*) – Physiotherapy – Exemption

On 14 April 2016, the Court of Justice made an order in the abovementioned case in which the questions referred for a preliminary ruling were as follows:

A. For the purposes of the interpretation of Article 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 (Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax), should non-conventional therapies, in particular osteopathy, be regarded as paramedical activities?
B. Must a taxable person who is authorised under national law to practise a paramedical activity, namely physiotherapy, but who in the context of his professional health activity uses either indistinctly or complementarily both therapies characteristic of physiotherapy and therapies characteristic of osteopathy be regarded, for the purposes of Article 132(1)(c) of Council Directive 2006/112/EC and, consequently, for the purposes of Article 9 of the CIVA [(Code on VAT)], as a professional who, overall, carries out a paramedical activity which is, accordingly, exempt from VAT?

The Court made the following order which is only available in French and Portuguese:
Article 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a physiotherapist, who in the context of his professional health activity, uses, either indistinctly or complementarily, both therapies characteristic of physiotherapy and therapies characteristic of osteopathy, must be exempt from VAT, not only with regard to the first therapies but also with regard to the second ones if the exclusion of the latter in the exercise of paramedical professions for the purposes of the exemption from value added tax exceeds the limits of the discretion granted to Member States by that provision.

Judgment in Case C-128/14 (*Oudeland Beheer*) – Right in rem – Immovable property – Taxable amount

On 28 April 2016, the Court of Justice gave its judgment in the abovementioned case in which the questions referred for a preliminary ruling were as follows:
Must Article 11(A)(1)(b) of the Sixth Directive (Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value-added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)) be interpreted as meaning that the cost price of land or other substances or materials in respect of which the taxable person has paid VAT in respect of their acquisition, in this case through the grant of a right in rem to use immovable property, is not part of the taxable amount in respect of a supply within the meaning of Article 5(7)(a) of the Sixth Directive? Is the position different if the taxable person has deducted this VAT on the basis of national law – whether or not in conflict with the Sixth Directive in that respect – upon that acquisition?
In a case such as the present one, in which land with a building under construction is acquired with the grant of a right in rem referred to in Article 5(3)(b) of the Sixth Directive, must Article 11(A)(1)(b) of the Sixth Directive be interpreted as meaning that the value of the ground rent, that is to say the value of the annual amounts to be paid for the duration or remainder of the duration of the right in rem, is part of the taxable amount of a supply within the meaning of Article 5(7)(a) of the Sixth Directive?

The Court ruled:

1. Article 11A(1)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995 must be interpreted as meaning that the value of a right in rem granting its holder a right of use over immovable property and the cost of completing the office building built on the land in question may be included in the taxable amount of a supply, within the meaning of Article 5(7)(a) of that directive, as amended, where the taxable person has already paid value added tax on that value and that cost, but also deducted the value added tax immediately and in full.
2. In a situation such as that at issue in the main proceedings, where land and a building under construction on that land have been acquired with the grant of a right in rem granting its holder a right of use over such immovable property, Article 11A(1)(b) of Sixth Directive 77/388, as amended, must be interpreted as meaning that the value of that right in rem to be taken in account in calculating the taxable amount of a supply, within the meaning of Article 5(7)(a) of that directive, corresponds to the value of the amount to be paid in consideration each year for the remainder of the long lease granting the right in rem, as corrected or capitalised according to the same method used to determine the value of the grant of the long leasehold.

It was great seeing you in Vienna!
Thank you to all the speakers and participants, for your great contribution!

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