

Financial Services VAT Alert*

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Feed back request

Help us to help you - we would like to know how we can improve our FS VAT Alert, ensuring that you get the most out of it. The link below will take you to some simple multiple choice questions that give you the chance to tell us how we can make it better.

We appreciate you taking a few minutes to provide some anonymous feedback. It would be great if you could provide your feedback before 8 April.

<https://www.questback.com/pwc/fmj7eiofpi/>

GERMANY

1. Potential new VAT exemption for independent groups of persons

Businesses intending to outsource or to set up shared service centres for financial or insurance services, should consider the intention of the German legislator to supplement the German VAT Act with a new VAT exemption for independent groups of persons.

In the past the German tax authorities have denied the VAT exemption for services rendered by independent groups of persons to their members for the purpose of VAT exempt financial and insurance services¹. According to our information the German legislator intends to implement Article 132 1.(f) of the VAT Directive (which allows the exemption for independent groups of persons carrying on VAT exempt activities) into the German VAT Act concerning financial and insurance services. Such a new VAT exemption could offer the possibility for financial institutions to outsource certain services, e.g. credit management services, without attracting irrecoverable VAT.

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FRANCE

2. French Court confirms that, when determining payroll tax amount, allocation of staff to sectors (which can reduce the amount of tax due) is possible

Businesses should look at their payroll tax calculation in light of the Court decision, as there may be an opportunity to reduce the amount of tax due.

This decision shows a trend in respect of the potential optimisation of payroll tax liability by VAT-exempt and non-taxable entities.

An entity is liable to additional payroll tax if it is an employer established in France to the extent that its turnover (including dividend income) does not allow VAT recovery. The taxable basis is the gross salaries paid by the employer to its employees, restricted by applying an apportionment calculation based on turnover that does not allow the VAT recovery compared to the total turnover. For example, a holding company which holds securities on the one hand and supplies taxable services to its subsidiaries on the other hand, is in principle, subject to payroll tax.

In the case at hand, the Court of Appeal confirmed that a holding company could justify the allocation of management personnel between sectors and that the allocation of only one person to one sector is possible, thus reducing the taxable basis for payroll tax purposes (payroll tax was subsequently due only in respect of the salary paid to that one person).

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¹ Art 132.1(f) VAT Directive

POLAND

3. Polish Minister of Finance confirms that credit risk assessment services are VAT exempt financial intermediary services

Businesses receiving or providing credit risk assessment services should consider the VAT treatment in light of the confirmation from the Polish Minister of Finance.

PwC Poland has obtained a binding interpretation of tax law from the Minister of Finance. The interpretation the Minister of Finance confirmed that credit risk assessment services are VAT exempt.

PwC Poland's argument for the exemption was based on the EU Commission's proposal for a Council Regulation in relation to financial and insurance services², which seems to be considered by the Polish administrative courts in determining the scope of the VAT exemption with respect to financial services, even though it has no legal authority.

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SWITZERLAND

4. The Federal Administrative Court (FAC) decides that outsourced services in the financial services industry are solely defined by the nature of the service and not by supplier and/or recipient

Businesses which have outsourced services in relation to financial transactions should review the effect of this leading decision and utilize the potential opportunities.

Background

A company issuing credit cards had outsourced the whole processing and payment services to its parent company. These outsourced services included electronic data processing transactions (e.g. acquisition of data and editing) card handling (e.g. hot-line, card issuing and card-service) and payment handling services.

The Swiss Federal Tax administration had argued that the services supplied were taxable since, in their view, only a transaction with the end consumer could benefit from the VAT exemption and they also argued the services supplied contained a number of taxable elements and would therefore, in any case, be subject to VAT.

FAC Decision

The FAC has decided that while a number of exemptions are indeed limited to the final supply to the end consumer (e.g. for health services), the exemption for financial services can be applied to each supply, irrespective of whether the recipient is the end consumer. The FAC also concluded that the supplies constituted a uniform supply with a predominantly VAT exempt character. The FAC therefore decided that all the services provided to the credit card issuer were VAT exempt without credit.

This decision is quite remarkable as it basically means that Switzerland will apply a similar method to determine whether a supply is VAT exempt or not as the European Court of Justice in SDC (C-2/95).

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² Taxud/2146/07 dated 13 July 2007

United Kingdom

5. UK tax authorities issue guidance in respect of the withdrawal of the staff hire concession

Affected businesses should take advice on the implications of this change as a matter of urgency, as it could result in significant additional VAT costs.

From 1 April 2009, employment businesses supplying staff as principal must charge VAT on the full amount received from their customers - including the element representing the wages payable to the worker. In addition to the compliance implications for employment businesses, users of temporary workers who cannot recover input VAT in full may face significant additional VAT costs.

The staff hire concession enabled businesses making supplies of their own staff to exclude from the value of their supply the remuneration element and any PAYE (Pay As You Earn), National Insurance Contributions, pension contributions and similar payments relating to the worker. This was provided that such payments were made directly to the worker by the hirer, or a payroll company separate from the employment business supplying the staff. Such employment businesses had thus charged VAT solely on their profit margin and not on the full value of their supply.

In Revenue & Customs Brief 08/09 and VAT Information Sheet 03/09, the UK tax authorities set out its views on the implications of the withdrawal of the staff hire concession.

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