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## Tax Insights

# Monthly VAT news – February 2017

## VAT and holding company services

The Court of Justice of the European Union (CJEU) has confirmed that a holding company which provides management services to its subsidiaries without making any charge cannot recover related input VAT on the costs of those services. MVM Magyar Művek v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság (CJEU, 12 January 2017). Whilst there were differences in the facts, this is in line with the conclusion reached by the Upper Tribunal in the UK case of Norseman Gold.

MVM is a Hungarian state owned company in the energy sector. MVM carried on a taxable business of leasing assets. It also held shares in subsidiaries which made taxable supplies of electricity. These companies were separately VAT registered.

During the relevant period, MVM provided strategic management to the group companies and purchased legal, business management and public relations services for itself and its subsidiaries. MVM sought to deduct the VAT on these costs as input VAT. The tax authorities rejected its claim arguing that MVM did not make any charge to the group for its strategic management function. Accordingly to the extent that the services were for the benefit of its subsidiaries, there was no direct and immediate link with MVM's taxable leasing activities.

The CJEU ruled that the mere involvement of a holding company in the management of its subsidiaries without carrying out taxable transactions cannot be regarded as an economic activity (or business in UK VAT law). MVM did not charge any fees to its subsidiaries for the management of the activities of the group. Therefore, to the extent that the costs incurred by it were connected with such non-economic activities, they did not give rise to any right to deduct VAT.

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Whilst MVM did carry on a taxable business activity of leasing its assets, the costs in this case could not be regarded as part of MVM's general business overheads. Nor did the fact that the services, which served the wider interests of the group, mean that there was a link to the economic activities of the group.

The decision of the CJEU reinforces the conclusion of the Upper Tribunal in the UK case, Norseman Gold and is of interest in that it considers a case in which the taxpayer had other economic activities. It shows that it is important to agree the terms upon which management services are to be supplied, the consideration payable for the services and the terms of payment at the time at which the costs of such activities are incurred. The fact that a holding company carries on a taxable business activity may not of itself mean that VAT paid in respect of costs of managing subsidiaries is to be regarded as part of the deductible overhead costs.

## VAT treatment of temporary workers – update from Upper Tribunal

The highly anticipated decision from the Upper Tribunal in the Adecco case concerning the VAT treatment of temporary workers is expected by March 2017, and it will be of major importance for businesses that use temporary workers.

During the appeal, Adecco argued that it only supplied introductory and payroll services to its clients, and received commission for this. Thus, Adecco argued that it was only liable to account for VAT on its commission charge. The temporary workers provided their services to the clients, and Adecco paid the temporary workers on behalf of the clients. Adecco was required to contract with the temporary workers in this manner, as a result of various changes to the Employment Conduct Regulations.

HMRC, however, contested that it was significant that there was no contractual relationship between the temporary workers and the clients, and argued that Adecco's contracts were incongruous with the economic reality. Consequently, HMRC stated that Adecco was making a taxable supply of staff to the clients, and Adecco was liable to account for VAT on the full consideration, which included the payments made to the temporary workers.

With the ultimate decision in this case pending, businesses with any concerns over the VAT treatment of temporary workers or tripartite arrangements in place, should contact our Indirect Tax Team for guidance.

## Wheels permitted to amend grounds of appeal in pension fund management case

The long-running saga involving the VAT liability of the management of pension fund services has turned a surprising corner, and could have implications for businesses with similar claims relating to the exemption of the management of such funds.

Back in 2013, CJEU ruled that Wheels Common Investment Fund Trustees Ltd's (Wheels) defined benefit pension scheme was not a "special investment fund", and the management of it was therefore subject to VAT. The case was then referred back to the First Tier Tribunal (FTT), but Wheels then became aware of another technical argument being pursued by United Biscuits in a similar case. Essentially, this states that fund management services supplied by an insurer are exempt from VAT, and that the differing VAT treatment for supplies by non-insurers is a breach of fiscal neutrality.

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The FTT has now allowed Wheels to amend its grounds of appeal to incorporate this new argument, determining that the amendment did not constitute a new claim, and that on the balance of "fairness and justice" the amendment should be permitted.

Wheels's claim has now become active, and is awaiting the decision in the United Biscuits case which is not expected until the latter part of the year. In the meantime, businesses with similar exemption claims who believe that the new argument could also affect them, may wish to contact our Indirect Tax Team for advice.

## Charities will be exempt from Making Tax Digital plans

Following the consultation into the Government's Making Tax Digital plans, which paves the way for substantial changes to the manner in which businesses account for tax, HMRC has announced that charities and community amateur sports clubs will be exempt from the new digital record keeping requirements. This exemption, however, does not extend to trading subsidiaries of charities; they will be required to comply with the changes, which includes providing quarterly updates to HMRC.

Whilst the exemption is welcome news for charities and community amateur sports clubs, there are likely to be further announcements affecting charity trading subsidiaries before the new system goes "live".

## AG opinion - restaurant and theatre services provided by educational establishment not exempt

The Advocate General (AG) has released her opinion in the Brockenhurst College case, and the decision could have implications for educational establishments that provide other services alongside exempt education.

The college ran educational courses in catering/hospitality and performing arts. Students on these courses, as part of their training, were able to run the college restaurant, and put on theatre shows for third parties in return for payment. The issue at stake was whether the supplies of restaurant and theatre services to paying third parties through the educational establishment could qualify as "closely related" to supplies of education, and therefore be exempt from VAT.

The AG determined that closely related transactions are independent supplies, which do not include the supply of restaurant and entertainment services by an educational establishment to paying members of the public and who are not recipients of the exempt educational services. The AG referred to a number of relevant factors she considered when reaching this outcome, one of which was the fact that the third parties paid for their own consumption, not for the provision of education to the students.

## European Commission launches three consultations on reforming VAT system

The European Commission has launched three consultations following the "Action Plan on VAT" adopted by the Commission in April 2016. The aim of the consultations is to simplify VAT rules and reduce the administrative burden placed on small businesses that prevents them engaging in cross-border trade, and to modernise EU policy on VAT rates. The three key areas the consultations will focus on are the creation of a definitive VAT system for business to business intra-EU transactions on goods, the reform of VAT rates, and the simplification of VAT rules for small enterprises. Businesses and organisations are invited to

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comment on the proposed changes, including the move to a destination-based VAT system. Feedback is required by 20 March 2017 and further information on the consultations can be accessed here.

## VAT changes for e-commerce businesses

The European Commission has published a number of proposals aimed at simplifying the VAT rules for e-commerce businesses. One of the proposed changes for online traders is the introduction of a quarterly VAT return for the VAT due across the whole of the EU, using the online VAT One Stop Shop. There is currently a similar system in place for sales of e-services. There are also plans to align the VAT rates on e-publications to those on printed publications; the former are taxed at the standard rate, whilst the latter are often taxed at reduced rates, super-reduced rates, or even zero rates.

The VAT rules could be simplified for micro-businesses and start-ups, such as the introduction of a new yearly threshold of €10,000 for online sales. Businesses selling cross-border will be able to continue applying the VAT rules they are used to in their home country if they do not exceed this threshold. Similarly, another new threshold of €100,000 will be introduced to assist SMEs with their VAT obligations. The thresholds could come into force as early as 2018 for e-services, and by 2021 for online goods.

The VAT exemption for small consignments imported into the EU (where the consignments are worth less than €22) is to be removed. Since the number of parcels being delivered via this method is increasing, the system is open to fraud and abuse, creating market distortions and disadvantaging EU business. It is hoped this change will counter VAT fraud from outside the EU.

## Insurance Premium Tax (IPT) and Air Passenger Duty (APD) returns move to online filing

HMRC is now offering businesses the option to submit their IPT and APD returns electronically. Agents and representatives can also use this service. If a business wishes to submit its own return, it will need its IPT/APD registration number, and it will need to create a Government Gateway account if it does not already possess one. Paper returns have not been abolished, so businesses can still submit them via this medium should it so wish.

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