



TISA / Deloitte UK Indirect Tax Roundtable & Budget 2011 VAT Update

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Topics to be covered

- Offshore fund management exemption
- New EU FS VAT legislation
- EU Green Paper
- *Wheels*
- RDR
- Budget 2011

VAT exemption for the management of offshore funds

- Previously, IM services supplied to offshore funds were treated as outside the scope of UK VAT (i.e. not subject to UK VAT) and related input VAT incurred by the UK manager on costs was fully recoverable. This position has now changed
 - From 1 October 2008, fund management services provided to an offshore fund **may** be exempt from VAT (i.e. not subject to VAT but the manager cannot recover VAT on costs) if:
 - the fund is approved by the UK Financial Services Authority (FSA) (under Sections 264, 270 or 272 of FSMA 2000) for marketing to UK retail investors; and
 - the fund is currently “actively marketed” (by anyone) to UK retail investors OR has previously been so marketed and is at least 5% owned by UK retail investors
 - HMRC issued detailed guidance on the definition of “active marketing” following lobbying by the fund management industry/IMA
 - HMRC are now starting to audit the application of the UK exemption

General VAT exemption for the management of offshore funds – active marketing

- **Based on HMRC guidance regarding the exemption for the management of “SIFs”, “active marketing” includes the following:**
 - Advertisements in UK national, consumer and/or trade press publications, or via various ‘outdoor’ media (e.g. posters), specifically mentioning one or more individual funds/sub-fund;
 - As above, but where the publication is via a UK website or other online or digital media, e.g. banner advertisements;
 - Direct mail packs, specifically mentioning and promoting one or more funds/sub-funds, sent to UK retail investors and/or their advisers, for example, authorised IFAs; and
 - Events for UK retail investors and/or their advisers featuring content relating to one or more individual funds/sub-funds, for example, IFA road show events
- **Based on the same guidance, “active marketing” does not include the following:**
 - Advertising and marketing activity where the materials do not make specific reference to an offshore fund/sub-fund (i.e. brand advertising and promotion);
 - Distribution of annual reports and other regulatory reporting requirements to existing UK retail investors;
 - Communications to UK retail investors with ongoing holdings or monthly savings plans; and
 - General references to funds/sub-funds and prices on a promoter’s/distributor’s website, irrespective of whether that site carries transactional links, or on other industry information services, such as the FT fund price pages

Proposed EU VAT legislation - general implications

- The Commission's proposals were initially published in October 2007
- Maintaining the status quo is not an option as the existing VAT legislation has been in existence since 1977! However, political nature of dossier may mean some changes will not be legislated
- Key elements of the proposal:
 - Re-writing of definitions and VAT exemptions (modernising their wording, scope and clarifying their application)
 - Introduction of a mandatory cross border OTT regime for suppliers of FS and insurance
 - Cost sharing – create a vehicle for VAT exempt cost sharing between group companies
- When was it due to come in ...When is it now due... will it be further delayed? These are unknowns at this stage principally due to the 6 months rotating EU Presidency!
 - However, the review has attracted new impetus with the advent of the Hungarian & Polish Presidencies that have been keen to progress the dossier
 - Increased focus on harmonisation of IM exemptions
 - Commission working paper of 24 February suggests exemption for pension fund management and management of Luxembourg retail funds looks increasingly likely
- Other key questions
 - services (e.g. distribution) to non-EU entities to maintain their VAT recovery
 - an option to tax on FS would ultimately lead to increased costs to the retail investor.
 - given the current economic climate, this may make some elements of the proposals MORE attractive to Member States

EU Green Paper on the future of VAT

- This is a discussion paper launched recently by the EU, which seeks to achieve a simpler, more robust and efficient VAT system
- The Green Paper has raised 33 questions so far and has acknowledged that changes to the VAT system are required in order to
 - address the complexity of the current system
 - make the Single Market work better
 - maximise revenue collection and tackle the systems susceptibility to fraud
 - address changes in technology and the economic environment
 - reduce red tape
 - harmonise the treatment of cross-border supplies
 - ensure the neutrality of the VAT system
 - enable efficient and modern administration of the VAT system
- The EU Green Paper consultation is being held side-by-side the EU VAT FS review, but we would expect some correlation/merger between both consultations at a later stage in the process
- Industry/business needs to consider responding to provide input into the proposals. Speak now or never!
- Next steps:
 - Consultation closes on 31 May 2011
 - Strategy to be finalised by 31 December 2011

Wheels/NAPF litigation

- *Wheels* challenged HMRC on the current taxable VAT treatment of IM services to occupational pension schemes. The taxpayers position is that the services should be VAT exempt, including retrospectively!
- At the recent UK tribunal hearing, the parties have been asked to agree the questions to be referred to the ECJ and submit these to the tribunal by 5 April. The ECJ may opine on *Wheels* anytime between 2011 & 2013
- Affected taxpayers should submit VAT refund claims to HMRC on behalf of the PFs that may be affected by the judgement on a rolling basis until *Wheels* is decided.
- HMRC has rejected claims submitted to date and it is standard procedure to lodge an appeal to be stood behind *Wheels*.
- Some claims previously stood behind *Wheels* may be reopened by HMRC and individually progressed as *Wheels* does not appear to consider all pension fund issues (e.g. DC schemes)
- Should *Wheels* be successful at the ECJ taxpayers should not be impacted retrospectively because the claim to HMRC will be on a net basis (i.e. output tax charged to PFs minus input tax previously recovered but now deemed irrecoverable) and affected taxpayers should simply refund what was received from HMRC to the PF's

RDR : VAT impact

The new RDR rules are designed to improve clarity, raise professional standards and reduce conflicts of interest

- Applicable from 1 January 2013
- Will apply cross the retail investment market – product providers

Impact on VAT treatment of advisor charging

- Current accepted practice is that commission/trail is VAT exempt as intermediation/negotiation
- However investment advice provided to individual investors could be subject to VAT
- Post RDR advisors/IFAs will probably provide a mix of VATable and exempt services

Payment facilitation

- Providers may facilitate the payment of advisors charges through the product
- Platforms may also facilitate payment of advisors
- Systems will need to deal with a mix of VATable and exempt services

Platform services

- Charging fund providers
 - Platform services are currently VAT exempt as intermediary/negotiation services
 - However FSA consultation CP10/29 redefines platforms services and concludes that “*most of the platforms' activities are around "administration"*”
 - Professional bodies are making representations to FSA/HMRC to maintain VAT exemption for “bundled fees”
- Unbundled fees
 - Unbundled fees are where product structure does not allow platform to take charges from a product provider
 - In this scenario charges are made to customer directly
 - VAT treatment to be determined
- Platform fees
 - Annual membership fees - probably VATable?
 - Platform account fee is an alternative to the payment of load/switch fees by customers

No major budget announcements affecting the UK fund management industry

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