

# VAT CHAT

## VAT recoveries - Financial services

### Supply boundary

For VAT practitioners generally.

**Date:** Thursday 6th December 2007

**Location:** CMS Cameron McKenna, London

**Date:** Friday 7th December 2007

**Location:** Scotch Malt Whisky Society, Edinburgh

Further to the popular reception of our first VAT CHAT, we are delighted to invite you to our second which is taking place in London on the morning of Thursday 6th December, and on the afternoon of the 7th December in Edinburgh. We are delighted that Arthur Kerrigan of the TAX and Customs Directorate of the European Commission, will be speaking, and taking note of your comments, in both venues. Arthur is deeply involved in the current review of the application of VAT to Financial Services, and the new Council proposal will just have been issued by that date. Arthur is also a great fan of kaizen, (Japanese doctrine of "continuous self improvement") and is continuously reviewing other areas of the VAT directives, such as partial exemption and the scope and meaning of "supplies". He seeks it here, he seeks it there, he seeks it everywhere, that wonderful harmonised pan-European VAT system, often seemingly so close but paradoxically never reached, like the end of a rainbow! We are also delighted that representatives of HM Revenue and Customs will be attending, and also David Fairbrother of HM Treasury for the London meeting.

#### Speakers

- Peter Mason, Head of VAT, CMS Cameron McKenna LLP
- Arthur Kerrigan, Principal Administrator, Taxations and Customs Union, European Commission
- Jon Cannon/ Steve Pettingill/ Bruno Giordan HM Revenue and Customs: Partial exemption team
- David Fairbrother HM Treasury (London) on the UK team for the EC review of the application of VAT to Financial services.

These sessions are available for CPD points.

# Agenda

08.30 (LDN) /13.15 (EDN)      **Registration**

09.00 (LDN) /14.00 (EDN)      **Partial Exemption**

10.30 (LDN) /15.30 (EDN)

## **Review from the EU perspective:**

- Current legal construction? Is the law constructed logically and clearly? Should there be a power to define sectors and then use as a sub-set, instead of disjunctively i.e. sectors or use?
- Does "use" need to be defined. Link to economic turnover and "sufficient" link to the cost component issue, Midland vs Abbey National.
- Extent of rounding up, perspectives on the RBS case, capital non-capital goods
- Should business/non-business be covered by the same provisions? See new proposal on Taxud website for non business use of immovable property, at [http://ec.europa.eu/taxation\\_customs/taxation/index\\_en/htm](http://ec.europa.eu/taxation_customs/taxation/index_en/htm)
- Do these options need to be applied consistently across the EC from a neutrality perspective?

## **Review from UK perspective**

- Difficulties in agreeing methods?
- Ultra vires provisions in UK law?
- Practical issues e.g. small traders, charities

10.30 (LDN) /15.30 (EDN)      **Tea/Coffee break**

10.50 (LDN) /15.50 (EDN)

10.50 (LDN) /15.50 (EDN)      **Latest Council proposals for the application of VAT to financial services**

12.20 (LDN) /16.20 (EDN)

## **Discussion of latest proposals from the Commission including:**

- Is Arthur Andersen overturned? Will the wider common law concept of agency (including undisclosed agent) prevail over the narrow definition of declared agent in civil law?
- Will regulatory services still be excluded from specific and essential services?
- Will "credit" be properly defined?

12.20 (LDN) /16.20 (EDN)

### **Supply vs non-supply: VAT planning frontier?**

13.00 (LDN) /17.00 (EDN)

#### **Following Société thermale d'Eugénie-les-Bains and Kretztechnik**

- Is the exchange theory of contract now in the ascendancy? How should options, the jewel of US economic thinking, be treated? Supply if exercised, compensation if not?
- Should penalty fees always be removed from the pro rata (as non-supplies)?
- How far does Kretztechnik go? Causa doctrine? Does economic purpose trump economic effect, i.e. the accounting effect is increased capital and liability on balance sheet?
- Treatment of subscriptions and donations e.g. to timeshare. Right to join club, or consumption at end point?

13.00 (LDN)

**Lunch**

17.00 (EDN)

**Drinks**

To register for either the London or Edinburgh session, contact Marie Helene Harent at [marie-helene.harent@cms-cmck.com](mailto:marie-helene.harent@cms-cmck.com) or telephone 020 7367 2642.

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