

## 03-2021

31/03/2021 - European Court of Justice, “Q-GmbH v. Z Tax Office (Assurance de risques spéciaux)”, Case C-907/19 - VAT Exemption Relating to Activities of Insurance Brokers Covers Provision of Mediated Insurance Products

The case concerns a business that concluded an agreement with an insurer under which, against the payment of a brokerage fee, it provides a (non-exclusive) license to use an insurance product against piracy and places and manages insurance contracts for that insurer. The ECJ has ruled that the article 135(1)(a) of the Council Directive 2006/112/EC must be interpreted as meaning that the VAT exemption is not applicable to these services, in the event that the principal service is the license to use an insurance product (which is supply subject to VAT) and the other services are ancillary to this license.

31/03/2021 **Greece** - Netherlands Tax Treaty Not Relevant for Determining Existence of Permanent Establishment

The Greek Tax Authorities have recently clarified that the provisions of the Greece - Netherlands Income and Capital Tax Treaty (1981) do not cover VAT issues insofar as VAT had not been enacted in Greece when the treaty was ratified by Greece and that such treaty is also not relevant for determining whether a permanent establishment exists in Greece.

31/03/2021 **United Kingdom** - VAT Due on Fuel Allocated to Private Use of Cars in Northern Ireland

Article 16 of the VAT Directive requires the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff to be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible. This system allows for the recovery of initially deducted VAT in relation to the private use. A special measure was implemented in the UK in order to determine on a flat-rate basis the proportion of the non-deductible VAT relating to expenditure on fuel in business cars not exclusively used for business purposes. This special measure, which is optional for taxable persons, is based on the level of carbon dioxide. The Council of the European Union has authorized the continued application until 31 December 2023 of this special measure derogation regarding VAT due on fuel allocated to the

private use of company cars with respect to Northern Ireland.

24/03/2021 - European Court of Justice, "Wellcome Trust", Case C-459/19 - Taxable person pursuing a non-economic activity

The ECJ has ruled that the article 44 of the Council Directive 2006/112/EC of 28 November 2006, should be interpreted as meaning that, in the case of a taxable person who pursues a non-economic activity on a professional basis, acquires services for the purposes of that non-economic activity, those services should be considered to be provided to that taxable person "acting in that capacity", within the meaning of this article. From a UK perspective, as a result of the Wellcome Trust ECJ decision and the 2021 changes to UK VAT law, it is expected that many businesses and funds ought to register and/or account for UK VAT in situations where this was not the case before. This is on the basis that UK entities should account for UK VAT on services received from outside the UK under the reverse charge which are attributable to their non-economic activities unless such services are used for a private purpose.

24/03/2021 **United Kingdom** - First-tier Tribunal Decides on the Right to Recover Input VAT for Supplies to Portfolio Companies

The First-tier Tribunal has recently announced its decision in the case involving "Imprimatur Capital Holdings Limited", who is the representative member of a VAT group that notably provides "management services" to portfolio companies and third party clients. As the fee charged to portfolio companies was sometimes for less than arm's length, HMRC considered that these services were not made for consideration and that only the services to third party clients were made for consideration and amounted to an economic activity. As supplies to third party clients were not made in all of the years at stake, any recovery calculation could not be based on turnover. Therefore, HMRC denied the recovery of input tax incurred by "Imprimatur Capital Holdings Limited" on the basis that the related purchases were not used for the purpose of performing taxable supplies.

In this context, the First-tier Tribunal held that only the input tax that concerned to the services supplied to third-party clients (to be determined) could be recovered.

18/03/2021 **Denmark** - COVID-19 Crisis: Danish Tax Deferral Scheme

The European Commission approved the Danish tax deferral scheme for small and medium size enterprises in the amount of 34.3 million EUR, which allows such companies to benefit from an interest-free credit in order to pay the VAT that is due in March 2021.

Since measures concerning Covid-19 are rapidly changing, this article is for information purposes only. Any companies intending to act upon this article should first contact us for specific advice concerning these elements.

#### 18/03/2021 **Isle of Man** - COVID-19 Crisis: Reduced VAT Rate on Hospitality Services and Admissions to Attractions

It has been recently announced that the 5% temporary reduced rate applicable to hospitality services and admissions to certain attractions will remain in place until 30 September 2021. After this date the VAT rate on those services will increase to 12.5%.

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#### 18/03/2021 **United Kingdom** - VAT measures announced

United Kingdom has recently announced several VAT measures, namely:

- The application of the 5% reduced VAT rate for hospitality industry has been extended until 30 September 2021. Upon this date the VAT rate will increase to 12.5%, until 31 March 22 and after this date to 20%.
- A new VAT penalties regime will come into effect for VAT return periods starting after 31 March 2022 onwards. In this regard, HMRC published three policy papers with the details of such new regime;
- Until 31 March 2024 the VAT registration threshold and the VAT deregistration threshold of 85 000 GBP and 83 000 GBP, respectively, shall apply;
- HMRC published a guidance regarding the VAT payments that were initially due between 20 March 2020 and 30 June 2020 and were deferred until March 2021. In this context, HMRC clarified that a 5% penalty will apply in certain cases, such as the taxable person has failed to pay the deferred VAT.
- HMRC also published a policy paper regarding Making Tax Digital, in which it is foreseen that as from 31 March 2022, all VAT registered businesses will have to

maintain electronically their VAT records and submit their VAT return information through a compatible software.

#### 10/03/2021 **Czechia** - COVID-19 Crisis: Czech Republic Waives VAT Penalties

Due to the Covid-19 pandemic, the Czech Minister of Finance has recently announced that taxpayers are waived from certain VAT penalties and late payment interests, such as the penalty for the late filling of the February 2021 VAT return and the penalty for failure to submit the February 2021 VAT control statement, provided that they are submitted until 15 April 2021.

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#### 10/03/2021 **Italy** - Deadline to Adhere to Online Service for Electronic Invoices Postponed

The Italian Tax Authorities postponed until 30 June 2021 the deadline for qualifying taxable persons to adhere to the online services that allow to examine and download issued and received electronic invoices.

#### 10/03/2021 **Ireland** - Definition of “Qualifying Vehicle” Under VAT Partial Recovery Relief for Passenger Motor Vehicles Updated

Revenue updated the definition of “qualifying vehicle” under the partial recovery relief for VAT on qualifying passenger motor vehicles.

In this context, the previous definition will only apply to motor vehicles that were registered until 1 January 2021. As from this date, only the motor vehicles that have a CO2 emission of less than 140g/km (currently 156g/km) are allowed to deduct until 20% of the VAT incurred on the purchase, hiring, intra-Community acquisition or importation of such vehicles.

#### 10/03/2021 **Portugal** - COVID-19 Crisis: Government grants flexibility on VAT Payments

The Portuguese Government eased the payment of VAT related to the last month or quarter of 2020 due to the challenges that arised due to the COVID-19 pandemic. In

this context, the VAT taxpayers under the monthly and quarterly periodicity, may under certain circumstances, pay the VAT in three or six installments each of an amount equal to or over EUR 25, without the application of interest.

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#### 10/03/2021 **Estonia** - Higher Registration Threshold for Small Businesses

The Council of the European Union extended until 31 December 2024 the authorization period for Estonia to apply a higher threshold, for small businesses, of 40 000 EUR.

#### 10/03/2021 **Italy** - Extension of Reporting Obligations for E-Commerce Platforms

The application of the reporting obligations for e-commerce platforms has been extended until 30 June 2021. In this context, taxable persons which facilitate, through the use of an electronic interface such as an online marketplace, platform, portal or similar means, distance sales of imported goods or distance sales of goods within the European Union, will have until 30 June 2021 to communicate to the Italian tax authorities the respective relevant data for the qualifying suppliers.

#### 10/03/2021 **Italy** - Italian Tax Authorities Confirm Possible Direct VAT Registration for UK Taxable Persons

The Italian tax authorities confirmed that taxable persons established in the United Kingdom and liable for VAT in Italy may continue to directly register for VAT purposes in Italy, instead of appointing an Italian VAT representative. In case of UK operators, which were already directly registered for VAT purposes in Italy before 1 January 2021, the existing Italian VAT number may also continue to be used.

#### 10/03/2021 **Portugal** - Highlights of the e-commerce VAT package

The below e-commerce rules will become effective as from 1 July 2021:

- Businesses operating electronic interfaces (e.g. marketplaces or platforms) will, in certain circumstances, be deemed for VAT purposes to have acquired and supplied personally the goods, being responsible for collecting and paying the VAT due, namely in the following two cases:

- When facilitating through an electronic interface the distance sale of imported

goods (with intrinsic value of not higher than 150EUR); and

- When facilitating through an electronic interface the supply of goods within the EU by a taxable person not established in the EU to a non taxable person.
- For intra-EU distance sales of goods, the national thresholds of 35 000 EUR to 100 000 EUR will be abolished. Consequently, VAT will be due in the EU Member State of arrival of the goods (subject to a general turnover threshold of 10 000 EUR).
- The abolition of the current VAT exemption for import of goods in a small shipping with up to 22 EUR.

The operators intending to apply these special rules may perform the relevant registration online between 1 April 2021 and 30 June 2021.

#### 10/03/2021 **France** - List of Non-EU Jurisdictions Exempted from VAT Representation

France has recently updated the list of Non-EU jurisdictions regarding which taxable persons established there, and performing taxable transactions in France, are not obliged to appoint a VAT representative in this country. The list of jurisdictions added are: Antigua and Barbuda, Armenia, Bosnia and Herzegovina, Cabo Verde, Cook Islands, Dominica, Ecuador, Grenada, Jamaica, Kenya, Kuwait, Nauru, Niue, North Macedonia, Pakistan, Turkey, United Kingdom and Vanuatu.

This list became effective on 27 February 2021.

#### 10/03/2021 **Poland** - Introduction of Structured Invoices and Digital Database of Invoices

The Minister of Finance has recently announced amendments to the VAT Law, such as the introduction of structured invoices, which are electronic invoices, and a digital database of invoices. This new type of invoices will be optional for the taxpayers and the paper and e-invoices will continue to exist.

The Polish tax authorities clarified when using structured invoices, the taxpayers will receive the refund of excess of input VAT within 40 days (instead of 60 days which is applicable in the case of other taxpayers).

The above new rules are foreseen to become effective as from 1 October 2021.

#### 03/03/2021 **Poland** - VAT Rate Applicable to Accommodation Services

The National Tax Information has recently stated that a company that provides

accommodation services can benefit from the application of the reduced VAT rate to the supplies of such services, however the same does not apply to natural persons that rent their property to that company on a long-term basis.

03/03/2021 - European Court of Justice, "Ownership Rights by Municipality: Gmina Wrocław (Conversion du droit d'usufruit)", Case C-604/19 - Transformation of Perpetual Usufructs in Ownership Rights by Municipality

The ECJ has ruled that the article 14(2)(a) of Council Directive 2006/112/EC, must be interpreted as meaning that the transformation of the right of perpetual usufruct into full immovable property ownership rights shall be considered as a supply of goods.

Additionally, the ECJ clarified that where such a transformation fee is paid to a municipality which owns the property and therefore permits it to continuously obtain income, that municipality is acting as a taxable person within the meaning of Article 9(1) of the directive, and not as a public authority for the purposes of Article 13(1) of the directive.

03/03/2021 **Slovakia** - COVID-19 Crisis: VAT waived on Respirator Supplies

The Slovakian parliament has recently announced that a 0% VAT rate is applicable on the supplies of FFP2 and FFP3 respirator supplies.

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03/03/2021 **Italy** - Clarifications regarding issuance of Credit Notes

In line with the Supreme Court interpretation on case No. 12468 of 10 May 2019, the Italian tax authorities clarified that in case of termination of an ongoing contract due to the customers' failure to pay, the supplier has the right to issue credit notes for all outstanding payments.

The Italian tax authorities clarified that the usual deadline of 1 year to issue the credit notes from the time of the supply does not apply in this situation, instead the credit note shall be issued between the day of termination of the contract and the deadline to submit the annual VAT return for the fiscal year in which the termination occurs in order to recover the VAT incurred on such supplies.

