

TAX FACULTY CONFERENCE 2014

1 JAN 2015 VAT CHANGES & INPUT TAX UPDATE

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Tax law made easy

2015 changes: overview

- 2015 changes to EU VAT place of supply rules for cross border supplies of “BTE” ie:
 - broadcasting
 - telecommunications and
 - electronically supplied services (“ESS”)
- Affects B2C (“business to consumer”) not B2B
- Lots of practical issues arising from changes
- EU VAT Mini-One Stop Shop (MOSS) registration

ESS

- VAT Directive 2006/112/EC only contains an indicative list of ESS
- Art 7, Council Implementing Regulation 282/2011 provides a more comprehensive list and is directly applicable in member states
 - Services delivered over the internet or electronic network and the nature of which renders their supply essentially automated and involving minimal intervention and impossible to ensure in the absence of information technology (Art 7.1)

Current place of supply: BTE

Services supplied by/to	EU consumer in Member State 1	EU consumer in Member State 2	Non-EU consumer
EU supplier Member State 1	Taxable in Member State 1	Taxable in Member State 1	No EU VAT
EU Supplier: Member State 2	Taxable in Member State 2	Taxable in Member State 2	No EU VAT
Non EU Supplier	Taxable in Member State 1	Taxable in Member State 2	No EU VAT

2015 place of supply: BTE

Services supplied by/to	EU consumer in Member State 1	EU consumer in Member State 2	Non-EU consumer
EU supplier Member State 1	Taxable in Member State 1	Taxable in <u>Member State 2</u>	No EU VAT
EU Supplier: Member State 2	Taxable in <u>Member State 1</u>	Taxable in Member State 2	No EU VAT
Non EU Supplier	Taxable in Member State 1	Taxable in Member State 2	No EU VAT

Impact of the changes

Consider the impact on:

- Business structure – supplier entity and location
- Pricing – VAT due at wide range of different reduced and standard rates
- Systems and IT – data needs and IT configuration
- Finance function – VAT registrations, invoicing and record keeping rules in each EU M/S
- Legal – contractual issues, status of agents

Classification of supplies

From 1 January 2015 all BTE supplies will be treated as taking place where the customer

- is established, has his permanent address or usually resides

Other services are taxed where

- the supplier is established – B2C
- the customer is established – B2B
- specific place of supply rules determine eg intermediaries supplying B2C, services related to land, educational and entertainment services etc

Place of consumption

Specific presumptions for supplies in these cases:

- At a telephone box, wi-fi hot spot, internet café or lobby, requiring physical presence of user; at that location;
- Through land line; where land line located;
- Through mobile networks; mobile country code of the SIM card,
- A viewing card or decoder needed (land line not used); where card or decoder located or address to which card sent if location not known

Place of consumption/contin

In other cases, presumed that the customer resides at a place based on two pieces of evidence from:

- Billing address,
- Internet protocol address of customer's device ,
- Customer bank location or customer billing address held by bank,
- Mobile Country Code on the customer's SIM card
- Location of customer's fixed line through which service supplied
- or other commercially relevant information

Evidence will be important

Of customer business status

If B2B need facility to obtain customer VAT ID number at the time of supply

- Customer takes on liability for VAT under reverse charge
- But if business customer not VAT registered supplier may treat him as a consumer

Of customer location (B2C)

Requires supplier to have 2 pieces of evidence

Liability for VAT on B2C supplies

- Business intermediaries which take part in the supply of ESS can be treated as receiving and making taxable supplies for VAT.
- Such intermediaries take on the liability for VAT due on B2C supplies of ESS unless they have clearly acted in the name of another provider.

Invoicing and accounting

- Invoicing B2C is subject to the rules in the member state where the service takes place
- Some member states require issue of a tax invoice
- Invoice content to be established – simplified?
- Electronic transmission possible
- Prepaid credits and vouchers – tax point and location of recipient

MOSS: key issues

- Two schemes: Union and non-Union
- System goes live 1 October
- Single VAT return and payment for BTE only
- Optional, can register in each member state instead
- VAT rate as per the member state of consumption
- Specific practical features of MOSS
 - Input tax
 - Credits, adjustment of errors and bad debt relief
 - Audits and record keeping

2015 changes: summary

1. Assess the impact on:
 - Your business, processes and systems
 - Customers
 - Your relationship with the tax authorities (could be 28 separate sources of enquiries!)
2. Identify the tasks
3. Involve all affected stakeholders
4. Implement the changes required on time
5. Plan ahead for post 1 January 2015 events and audits

Input tax

To be valid claims for input tax must be:

- for taxable supplies to the claimant
- used for the purposes of the business
- made within 4 years of the due date for the return in which the VAT was chargeable
- evidenced by a tax invoice or C79 (imports)

Exclusions from credit

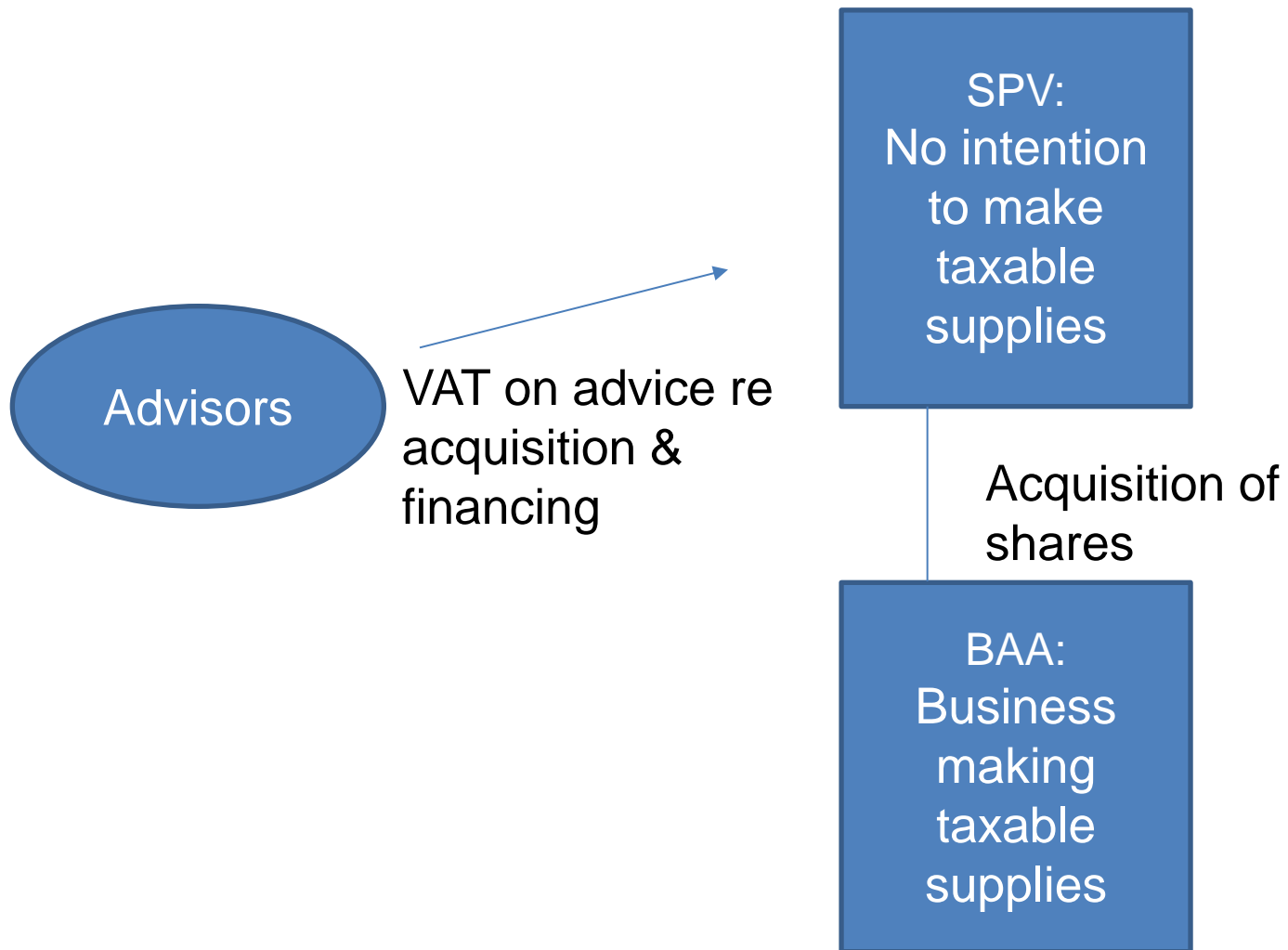
1. Goods and services used for non-business activities
2. Purchase (other than by a lessor) of motor cars for private use
3. Leasing of cars for private use – 50%
4. Goods and services for the purpose of business entertainment
5. Goods and services attributable to exempt supplies
6. Goods and services where consideration not paid within six months

Recent developments

Litigation over

- Meaning of economic activity/business
- Deductibility of VAT on overheads used for both business and non-business activities
- Deductibility of VAT used to make a share sale (exempt supply)
- Deductibility of VAT on costs of administration and management of defined benefit pension scheme

Acquisition costs



Economic activity/business

BAA

- When it incurred VAT on the services SPV had no economic activity
- No intention to make taxable supplies eg management services
- Link between ADIL's inputs and taxable outputs made by BAA would have existed had there been a VAT group at acquisition

Costs of non-business activity

University of Cambridge

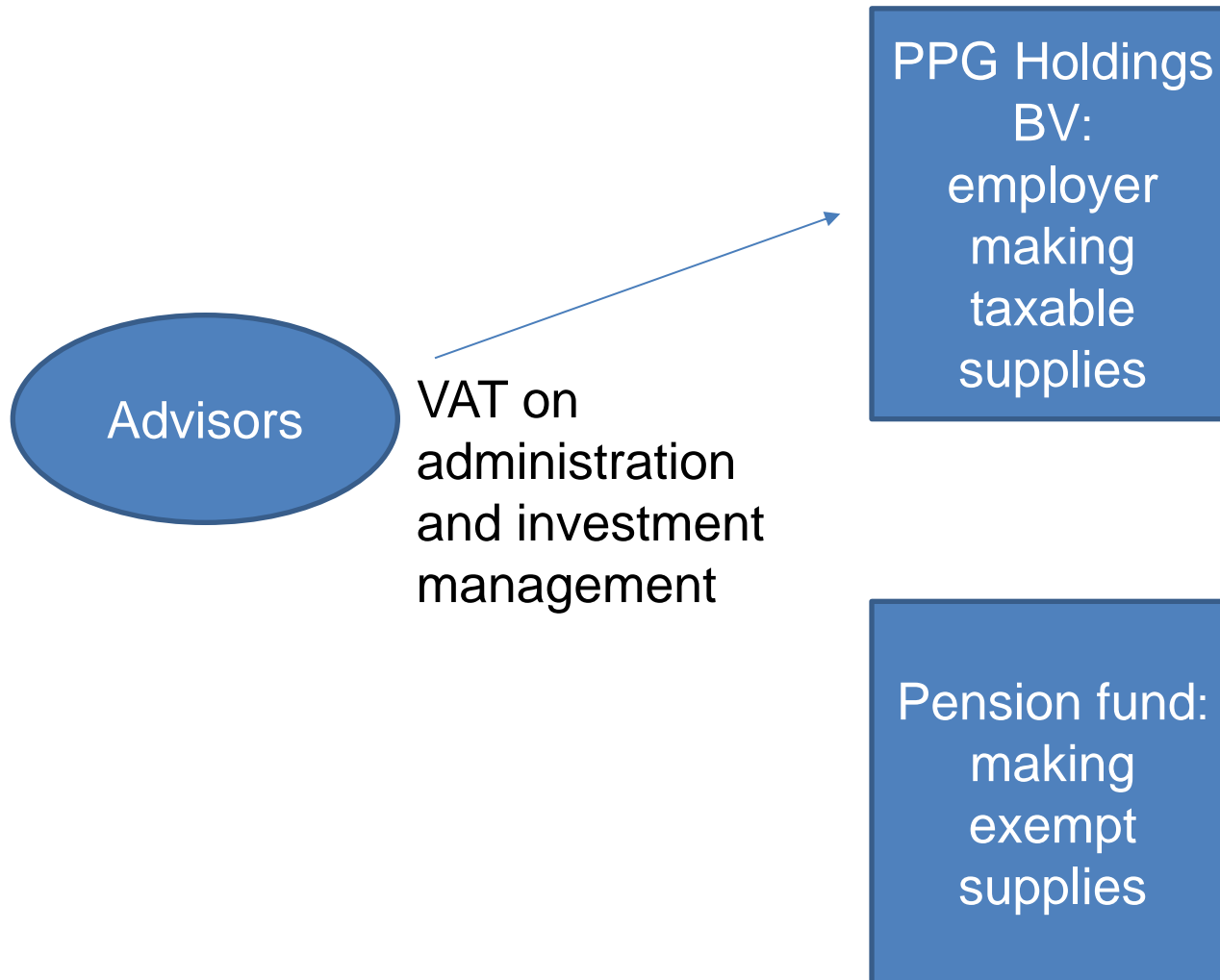
- UoC incurred VAT on fees of managing its investment portfolio, a non-business activity
- Investment portfolio used in part to fund educational activities – business activity
- HMRC argued the VAT was a cost of the non-business activity
- Tribunal held that the VAT could be treated as an overhead as it was linked to the business as a whole
- Whilst the costs were partly for non-business, partial recovery allowed
- HMRC have appealed

VAT deduction for share sales

TLLC

- TLLC incurred costs of a sale of companies holding properties as part of a sale and lease back
- Was the sale of shares a non-business supply?
 - Not where the seller had been involved in management.
- Can the sale of shares be treated as a TOGC so that VAT on the sale is recoverable as an overhead?
 - Not where no transfer of the capacity to carry on a business.
- Taxpayer's appeal dismissed

Pension costs



VAT deduction for pension costs

- PPG Holdings BV before the CJ of the EU
- HMRC Brief 06/14
 - HMRC did allow 30% VAT deduction by employer on combined costs as proxy for administration – policy withdrawn
 - VAT on administration and investment management costs deductible by employer if supplied to and linked to business of, employer
 - But reimbursement by the fund will be taxable
 - Specific costs of investment management linked to investments administered by trustees

VAT deduction for pension costs

Where to from here?

- Consider grounds for historic reclaim for combined supplies (but only if supplies made to employer, and not recharged to fund)
- Consider how to have the services invoiced in future

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These slides provide a general summary only and are not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.