



Weekly VAT News

Week to 21 September 2020

Welcome to the latest edition of *EY VAT News*, which provides a roundup of indirect tax developments.

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If you would like to discuss any of the articles in more detail, please speak with your usual EY indirect tax contact, or one of the people below. If you have any feedback or comments on EY VAT News, please contact [Ian Pountney](#).

EY Events

Brexit webcasts

COVID-19

EY Tax COVID-19 Stimulus Tracker - Stay up to date with COVID-19 stimulus responses

Court of Justice of the European Union

Judgment: Supplies by a 'partner' are independently pursued

C-312/19 State Tax Inspectorate (Contrat d'activité commune)

On 16 September the Court of Justice of the European Union (CJEU) released its decision in this Lithuanian referral asking whether, following termination of a partnership agreement for a construction project which included the acquisition of land/property, must Article 9(1) of the VAT Directive be interpreted as meaning subsequent supplies by one of the 'partners' cannot be regarded as having been independently pursued. In other words, is the 'taxable person' liable to VAT the partnership?

On 19 February 2010 the applicant and a third party (business partner) concluded an agreement for the construction of residential property. A parcel of land was purchased for which the business partner contributed 70% and the applicant 30% of the purchase price. The land was registered in the name of the applicant who dealt with the documentation for the construction of five buildings and appointed Konsela UAB (Konsela) to manage the construction. The applicant was a director of Konsela.

The applicant received a building permit issued in his name and he signed this as buyer. The contractor subsequently issued VAT invoices for the construction of the buildings to the applicant. On 2 December 2010 the applicant and his business partner concluded an agreement to terminate the partnership and to apportion the assets and liabilities. It was decided to grant the business partner the right to the assets (buildings 4 and 5), and the applicant undertook to inform his business partner before 2017 of the difference between his contributions and the share in liabilities. On the basis of this agreement the applicant retained ownership of buildings 1-3.

Four of the five buildings were subsequently sold. These disposals were not treated as an economic activity subject to VAT. Following a tax inspection, the tax authority classified the disputed supplies as a single activity subject to VAT and the applicant was regarded as a taxable person who was obliged to meet the VAT obligations for all those supplies.

The Court noted that the referring Court essentially seeks to understand who is the taxable person in the present case pursuant to Article 9(1) of the VAT Directive? In this regard a taxable person means 'any person who independently carries out in any place any economic activity whatever the purpose or results of that activity'. Article 193 provides that VAT is payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194, 199b and 202. The Court considered it clear from the reference that these provisions are not applicable in the immediate case.

To determine the independence of carrying out an economic activity, it must be established whether the person concerned carries out his activities in his own name, for his own account and within his own responsibility, and whether he bears the economic risk associated with the performance of these activities.

The Court noted that the referral suggests that the applicant bought the land in his own name, was registered as the sole owner in the land register, applied for and received the building permit alone, sold the buildings in his own name and issued corresponding invoices.

The Court considered that the applicant should be considered as the taxable person who is specifically liable for the VAT. He acted in his own name and on his own account and thus assumed all risks associated with the transactions. The existence of a contract, such as that forming the partnership, does not in itself exclude the independence of the applicant with regard to the economic activity in question.

Comments: This case demonstrates the importance of appropriate agreements and supportive arrangements when entering into transactions with other parties. Property businesses can be complicated in this area and those in this sector should consider the implications of this judgment.

For further information please contact **James Buckland**.

Judgment: Construction work carried out 'free of charge' is linked to the taxpayers 'economic activity', in principle attributable VAT is recoverable

Judgment: Following a change in intention VAT should be adjusted in the first period and not in accordance with the Capital Goods Scheme longer period

Opinion: Hiring of a means of transport to a 'non-taxable person' can include the authorisation of an employee to use a company car (including for private use) if the employee remunerates the employer for such authorisation

Calendar update

First-tier Tribunal

Structuring a business to create tax efficiencies is acceptable provided the arrangements reflect commercial reality

Hire of children's ice skates is a separate zero-rated supply

The supply and installation of conservatory roof insulation in the form of insulated roof panels is a standard-rated supply

HMRC Material

Update: Internal manual - VAT Registration, Transfers of going concerns (TOGCs): reallocation of VAT registration number (VAT 68 action): conditions of reallocation

Digital Services Tax - Taxes (Interest Rate) (Amendment No. 2) Regulations 2020

EY Global Tax Alerts

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EU State of the Union address - energy taxation and digital taxation

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