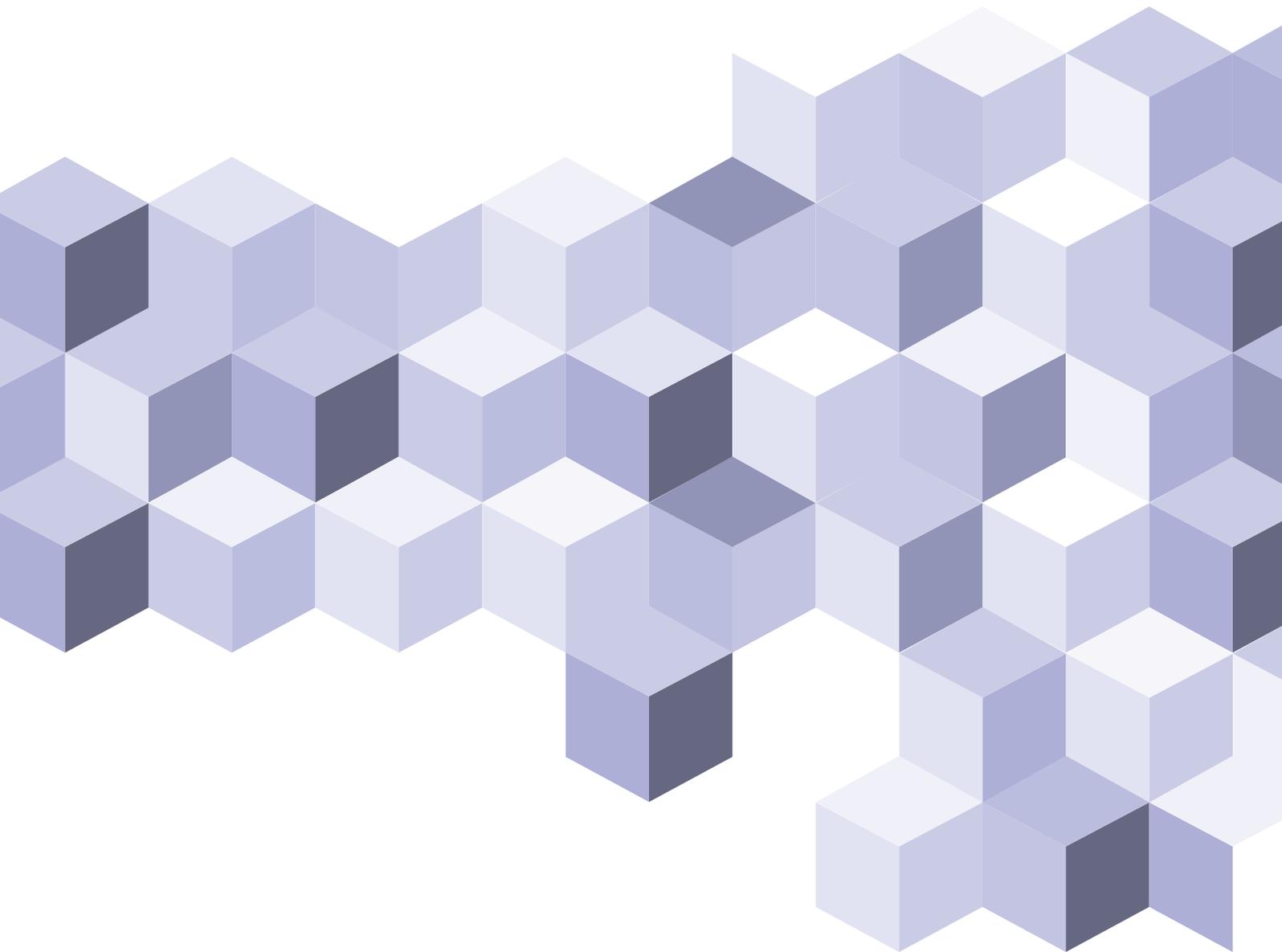


ALLEN & OVERY



Our European VAT practice

2014

Are you VAT aware?

VAT is everywhere

VAT, in the European Union, is a **general, broadly based consumption tax** assessed on the value added to goods and services. In principle, it applies to all businesses providing goods and/or services **throughout the European Union**.

Businesses established **outside the European Union** must also be aware of the VAT rules applicable in the European Union Member States in which they are doing business.

The European VAT system has evolved slowly compared with the technological and economic environment, which has seen rapidly changing business models, increasing use of new technologies, the growing importance of services and globalisation of the economy generally.

As a result, today's businesses have to deal with serious **VAT challenges**: extraordinarily complex and archaic VAT legislation, an ever-growing body of case-law from the Court of Justice of the European Union, some

increasingly onerous VAT compliance requirements, and the corresponding administrative burden.

Any wrong decision may have a direct impact on an organisation in terms of VAT risks, cash flows, tax efficiency, and return on investment.

This is particularly true in sectors where VAT typically constitutes a final cost, such as insurance and financial services.



The future direction of VAT

Following a broad-based consultation process, the European Commission in December 2011 published a communication (**The White Paper** on the future of VAT – Towards a simpler, more robust and efficient VAT system) which may lead to a far-reaching reform of the functioning of the current VAT system in Europe.

The Council of the European Union has also been considering European Commission proposals for a directive and regulation aimed at changing a number of VAT rules applicable to **financial, insurance and fund management services**.

Finally, VAT has become a major source of revenue for national budgets and in many European Union Member States it is the main source of revenue. Several Member States have recently **increased VAT rates** or are considering doing so, either as a reaction to the financial and economic crisis or in the context of a shift towards indirect rather than direct taxation.

Taking into account the growing need for VAT advice against this background, Allen & Overy has developed a strong and highly experienced VAT practice to help our clients to take the **best VAT decisions** for their businesses and to manage their VAT risks.

“The group comes highly recommended for tax structuring and structured finance-related mandates, and is increasingly active in transfer pricing and VAT, contentious cases and tax compliance.”

Chambers Europe 2013

What can Allen & Overy offer you?

Our VAT experts have **extensive experience** of advising on VAT issues, with a particular emphasis on cross-border work. They have good relations with the VAT authorities and are actively involved in VAT working groups and professional associations.

A **seamless integration** with our Corporate, Banking, Funds, Tax and other practices enables us to provide the practical VAT solutions our clients need to solve their VAT problems.

As qualified lawyers, we are able to assist our clients on **both advisory and contentious VAT matters**. This sets us apart from our competitors. We provide proactive

and practical VAT advice to improve our clients' VAT position and to ensure compliance with VAT obligations, but we also stand by our clients in the event of VAT litigation.



We work with clients across many sectors and transactions including:



Our VAT experience includes

The evidence of experience

Belgium

- Litigating a case relating to the input VAT deduction of shopping centres all the way to the Supreme Court; assisting the Belgium-Luxembourg Association of Shopping Centres in the negotiation with the tax authorities of an administrative circular letter relating to the input VAT deduction of shopping centre operators.
- Providing advice to the European Parliament on issues relating to the application of its VAT exemption under the Protocol on the Privileges and Immunities of the European Union, in the context of a real estate transaction.

France

- Advising various foreign banks on the VAT issues associated with setting up a local branch.
- Providing VAT advice to a leading bank in relation to the implementation of a commodities trading structure

Germany

- Advising a German subsidiary of a multinational banking group on the VAT treatment of distribution services.
- Regularly advising global leasing companies and banks on the VAT treatment of cross-border ‘sale-and-lease-back’ transactions, in particular in relation to aircraft, aircraft engines and locomotives.
- Supporting a leading bank during ongoing tax field audit in relation to VAT treatment of intra-group charges.

Italy

- Assisting Banca Monte dei Paschi di Siena in structuring a VAT consortium to enable intercompany leasing of real estate and the provision of ancillary services with the benefit of a VAT exemption.
- Playing a significant role in the VAT due diligence for the acquisition of Naples airport, analysing the VAT treatment applicable to the various types of airport services.

Luxembourg

- Advising the European Investment Bank in relation to the VAT treatment of the monetisation of 300 million EU allowances (rights to emit carbon dioxide) under the European Commission NER 300 initiative – the world’s largest funding programme for carbon capture and storage demonstration projects and innovative renewable energy technologies.

The Netherlands

- Advising a major reinsurer in relation to the transfer of a portfolio of reinsurance contracts.
- Advising various consortia on the VAT aspects of their tenders for Public-Private Partnership projects, such as the projects concerning the Ministry of Finance headquarters, the Kromhout Barracks and the A15 Motorway.

Poland

- Advising Eventim (the largest ticket distributor in the local market) on the VAT consequences linked to distributing tickets under an agency system and a quasi-commissionaire system.
- Providing VAT advice to First Property Group plc in relation to the acquisition of multiple real estate assets (office buildings, shopping malls) under both straight sale and leasing structures.

Spain

- Assisting a group of international funds in structuring the acquisition of a desalination plant under the transfer of a going concern VAT regime.

UK

- Advising a major energy company on the VAT implications of close-out provisions in industry standard energy trading documentation.
- Advising various UK financial institutions on the UK VAT treatment of cash handling services and outsourcing of back office services.

Multiple jurisdictions

- On a regular basis, providing advice on the VAT aspects of domestic and pan-European factoring arrangements, securitisations, repackaging transactions and similar financing structures.



Examples of publications and articles by our VAT experts

“Tax Law for Entrepreneurs”

(general guide on taxes co-authored by W. Pietrasiewicz from A&O Warsaw)¹

2013

“The VAT treatment of derivative instruments”

Recht der Finanzinstrumente

(article written by K. Hahne from A&O Frankfurt)³

2011

“No turnover of foreign branch in local VAT pro rata deduction! Outcome of Crédit Lyonnais case”

Allen & Overy Bulletin

(article written by C. van Eysinga from A&O Luxembourg)

September 2013

“No supply of a taxable service in the event of a transfer of receivables at market value?”

Internationale Fiscale Actualiteit

(article on the ECJ’s decision in GFKL, written by D. Murre and C. Thompson from A&O Brussels)⁴

December 2011

“The Court of Justice of the European Union confirms VAT exemption of investment advisory services provided by a third party to investment fund managers”

Allen & Overy Bulletin

(article written by our A&O Brussels team)

March 2013

“Does a transferee of defaulted loan receivables supply a debt collection service?”

Allen & Overy Bulletin

(commentary on the ECJ’s decision in GFKL, written by our EU-wide team)

October 2011

VAT Directive 2006/112/EC – Commentary 2012

(general commentary on the VAT Directive co-authored

by W. Pietrasiewicz from A&O Warsaw)²

2012

1. Original Polish title: Podatkowe Przedsiębiorców.

2. Original Polish title: Dyrektywa VAT 2006/112/WE. Komentarz 2012.

3. Original German title: Umsatzsteuerliche Behandlung von derivativen Finanzinstrumenten

4. Original Dutch title: Geen belastbare dienst bij overdracht schuldvoorderingen aan marktwaarde?

5. Original Czech title: Ručím nebo neručím - to je oš tu běží.

6. Original Polish title: Czy przejmujący może odliczyć VAT z faktur wystawionych po fuzji na spółki przejmowane?

“Am I liable or not – that is the question”

Allen & Overy Bulletin

(commentary on the implementation of Article 205 of the VAT Directive in the Czech Republic, written by M. Dušek from A&O Prague)⁵

April 2011

“Will the transferee recover VAT from invoices issued after the merger of the companies being acquired?”

Tax Jurisprudence

(article written by W. Pietrasiewicz from A&O Warsaw)⁶

April 2011

“VAT risks from the utilisation of security collateral”

ForderungsPraktiker

(article written by K. Hahne from A&O Frankfurt)⁷

February 2010

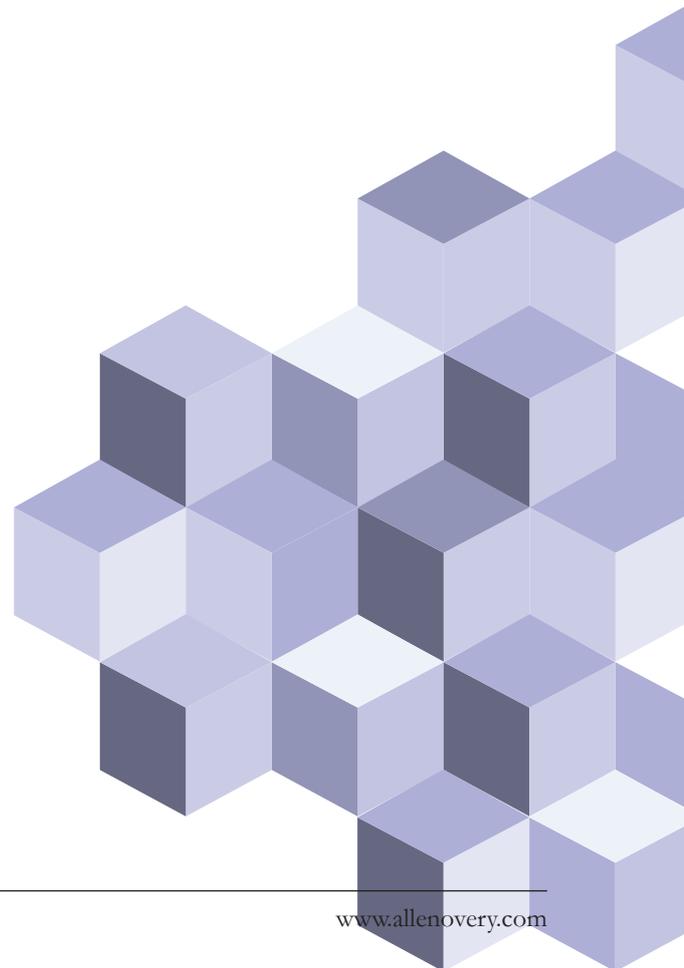
“European Commission Misfired in Dutch VAT Case, ECJ says”

Tax Notes International

(article on the ECJ’s decision in case C-79/09, written by S. Hemels from A&O Amsterdam)

April 2010

7. Original German title: Umsatzsteuerliche Risiken bei der Verwertung von Sicherungsgut



Our global VAT taskforce

Working across borders

Allen & Overy is an international legal practice with approximately 5,000 staff, including some 525 partners working in 42 offices worldwide.

Allen & Overy operates a “**one firm**” ethos, which means that we work as a collective of people and not just as a network.

We are a globally integrated team in terms of IT, communications and, most importantly, **values** in order to provide to our clients a **first-class service** in all of our offices.

Global businesses need global VAT practices that can respond not only at national but also at international level.

A strategic, value added service for our clients

VAT matters frequently involve more than one country and Allen & Overy is ideally placed to assist clients in this respect. On the one hand, our global presence allows us to deliver multi-jurisdictional advice at short notice. On the other hand, the tightly-knit character of our VAT team means we can work seamlessly across borders.

We are committed to continually strengthening our global VAT practice, as demonstrated by the establishment of a programme of regular internal calls and meetings to share knowledge and best practices across 12 jurisdictions in Europe.

The results of this approach are perfectly illustrated, for example, by the numerous pan-European securitisation transactions in which we are regularly involved.

Another area where our offices have collaborated to great effect is the defence of fixed establishment audits.

Key VAT contacts in Europe

For more information or to arrange a discussion, please contact:

Belgium



Stéphanie Houx
Counsel – Brussels
Tel +32 2 780 2487
stephanie.houx@allenoverly.com

Czech Republic



Michal Dušek
Senior Tax Advisor – Prague
Tel +420 222 107 159
michal.dusek@allenoverly.com



Radek Novotný
Senior Tax Advisor – Prague
Tel +420 222 107 155
radek.novotny@allenoverly.com

France



Mathieu Vignon
Partner – Paris
Tel +33 1 40 06 53 63
mathieu.vignon@allenoverly.com

France



Vivane Carpentier
Associate – Paris
Tel +33 1 40 06 50 49
vivane.carpentier@allenoverly.com

Germany



Eugen Bogenschütz
Head Of German Tax –
Frankfurt am Main
Tel +49 69 2648 5804
eugen.bogenschuetz@allenoverly.com



Klaus Hahne
Counsel – Frankfurt am Main
Tel +49 69 2648 5474
klaus.hahne@allenoverly.com



Katrin Gänsler
Senior Associate – Frankfurt am Main
Tel +49 69 2648 5534
katrin.gaensler@allenoverly.com

Hungary



Balázs Sahin-Tóth
Counsel – Budapest
Tel +36 1 429 6003
balazs.sahin-toth@allenoverly.com

Italy



Francesco Bonichi
Partner – Rome
Tel +39 06 684 27566
francesco.bonichi@allenoverly.com



Michele Milanese
Associate – Rome
Tel +39 06 684 27573
michele.milanese@allenoverly.com

Luxembourg



Jean Schaffner

Partner – Luxembourg
Tel: +352 44 44 55 613
jean.schaffner@allenoverly.com



Charlène-adline van Eysinga

Senior VAT Adviser – Luxembourg
Tel +352 44 44 55 151
charlene-adline.vaneysinga
@allenoverly.com



Julie Carbiener

Associate – Luxembourg
Tel +352 44 44 55 118
julie.carbiener@allenoverly.com



Godfried Kinnegim

Partner – Amsterdam
Tel +31 20 674 1120
godfried.kinnegim@allenoverly.com

Poland



Sophie Hoogenberg

Associate – Amsterdam
Tel +31 20 674 1434
sophie.hoogenberg@allenoverly.com



Wojciech Pietrasiewicz

Senior Associate – Warsaw
Tel +48 22 820 6225
wojciech.pietrasiewicz@allenoverly.com



Maciej Kulawik

Senior Associate – Warsaw
Tel +48 22 820 6135
maciej.kulawik@allenoverly.com



Martin Magál

Partner – Bratislava
Tel +421 2 5920 2412
martin.magál@allenoverly.com

The Netherlands

Slovakia

Key VAT contacts in Europe

Spain



Carlos Albiñana
Partner – Madrid
Tel +34 91 782 99 62
carlos.albinana@allenoverly.com



Ishtar Sancho
Senior Associate – Madrid
Tel +34 91 782 98 00
ishtar.sancho@allenoverly.com



Juan Gutiérrez
Associate – Madrid
Tel +34 91 782 98 00
juan.gutierrez@allenoverly.com

United Kingdom



Christopher Harrison
Partner – London
Tel +44 20 3088 3638
christopher.harrison@allenoverly.com



Peter Mendham
Vat Adviser – London
Tel +44 20 3088 3986
peter.mendham@allenoverly.com



Ben Brown
Senior Associate – London
Tel +44 20 3088 4045
ben.brown@allenoverly.com

