EUROPE

European Union

CJEU decision on VAT recovery on transaction costs in case of share disposal

On 8 November 2018, the Court of Justice of the European Union (CJEU) published its decision on the C & D Foods Acquisition ApS case (C-502/17). The case concerned the deduction of input VAT on consultancy costs a holding company had incurred in connection with a sale of a sub-subsidiary’s shares.

The CJEU ruled that a sale of shares alone is not an economic activity, ie no deduction of input VAT on related costs can be granted. However, if the direct and sole reason for the share sale relates to the parent company’s taxable activity, or is a direct, permanent and necessary extension of the parent company’s taxable activity, a VAT deduction right may be recognised. This would be the case where a sale of shares occurs with the intention of allocating the proceeds directly to the taxable activity of the parent company or to the economic activity of the group of which it is the parent company.

This departs from previous CJEU case law as VAT deduction on share disposal costs is now possible in certain circumstances. To evaluate the VAT recovery right on share disposal costs, the underlying purpose of the transaction should be considered. To what extent a company should pay attention to the underlying purpose of a share disposal remains unclear, however this decision allows the possibility for holding companies to claim VAT recovery rights on share disposal costs.

Luxembourg

Implementation process of registers of beneficial owners accelerated

The final implementation of EU directive 2015/849 (the 4th AML Directive) in Luxembourg has been accelerated by the enactment on 30 May 2018 of EU Directive 2018/843 (the 5th AML Directive).

As the 5th AML Directive amends the requirements relating to central registers of beneficial owners (BOs), the Luxembourg government will amend bill of law 7217 (7217) – which, along with bill of law 7216 (7216), was intended to implement the creation of a central register of BOs (RBE) to reflect the new requirements.

These amended bills are expected to be passed rapidly by the Luxembourg Parliament.

Noticeable changes in respect of 7217

- Extended scope: previously excluded mutual funds (FCPs) and branches of foreign companies are now caught and therefore obliged to file data on their BOs with the RBE. Listed companies (previously exempt, subject to certain conditions) remain exempt, so long as they file with the RBE the exact name of the regulated market(s) on which their securities are admitted to trading.
- Further requirements for legal entities clarified: the one month period in which a Luxembourg legal entity must file BO-related information with the RBE only begins once the entity has become or should have become cognisant of an event or circumstance that triggers a filing with the RBE.
- All persons qualifying as BOs will become liable to criminal sanctions if they do not provide the relevant Luxembourg legal entity with the necessary information to comply with its obligations under 7217.
- Public access to the RBE: in addition to national competent authorities (eg the FCA), self-regulated entities and obliged entities, members of the public may now access to the RBE.

Amendments to 7216

At the end of June 2018, 7216 was split into two bills of law: bill of law 7216A (7216A), regarding the information on BOs to be held by Luxembourg fiduciary arrangements; and bill of law 7216B (7216B), on the requirement for a central register of BOs of Luxembourg fiduciary arrangements.

On 10 August 2018, 7216A was passed in Parliament. 7216B is now expected to be amended to include any Luxembourg fiduciary arrangement, as per the 5th AML Directive. Under the 5th AML Directive, the competent register for filing purposes for a trust/fiduciary arrangement should be the register of the Member State where the relevant trustee/fiduciary agent is established and the relevant BOs under such a trust/fiduciary arrangement should extend to and comprise in effect all the persons that qualify as BOs under the applicable legal definition of anti-money
laundering and counter terrorist financing.

**Sweden**

**New legislation for funds marketed within public pension system**

From 1 November 2018, new conditions for pension providers operating in Sweden’s Premium Pension System’s (PPM) fund marketplace came into effect.

Fund managers will need to re-apply to enter into a new fund agreement with the Swedish Pension Agency. Funds that participate in the pension system that do not comply with the new regulations before 28 December 2018 will be deregistered during 2019.

**AMERICAS**

**Chile**

**Criminalisation of corruption among private individuals and businesses**

On 20 November 2018, Law 21.121 was enacted, establishing two new crimes:

- corruption between private individuals and businesses, and
- unfair administration affecting private individuals and companies.

This amends the Chilean Criminal Code (CCC), and increases penalties as well as criminalising corruption and unfair administration. Now a public official does not need to be involved to make corruption or unfair administration a crime. Dishonest conduct relating to a private bidding process for the provision of goods or services may be a criminal offense, punishable by jail time.

Anyone who, being responsible for the management of third party assets, commits abusive acts or omissions that damage the owner of those assets may be guilty of the crime of unfair administration. Examples of conduct that could be caught by the new provision could be the exercise of powers by agents beyond their authority, or the provision of false or altered information that misleads the market.

Following the enactment of Law 21.121, issuers and asset managers should review and update their risk management, compliance policies and procedures to a new higher standard, in order to limit this additional exposure to criminal liability for directors, officers and companies.

Please note that this update on recent legal developments is not designed to provide legal advice and it is advisable to consult with local legal counsel before any actual undertakings.

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