## Agenda

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>MOSS Mini-One-Stop-Shop</th>
<th>2</th>
<th>Financial Technology</th>
<th>3</th>
<th>Bitcoins and VAT</th>
<th>4</th>
<th>Crowdfunding</th>
<th>5</th>
<th>InsurTech</th>
<th>6</th>
<th>Supply chain</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td>3</td>
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<td>13</td>
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Introduction

What are digital services?

- Service, not a physical delivery
- Provided via the internet or an electronic network
- Essentially based on information technology
- Service automated or involving only minimal human intervention
What is MOSS?

- MOSS - Mini One Stop Shop
  - Optional facilitation tool

- Two types of schemes available:
  - Union MOSS: Based in an EU-Member State or Non-EU business with EU permanent establishment
  - Non-Union MOSS: Based outside of the EU without EU permanent establishment

- Special scheme for B2C:

- Not applicable for B2B
Aims of MOSS

Neutrality of location and level playing field

Fairer distribution of tax revenues amongst EU member states

Counter tax fraud

Ease admin
Without MOSS

- Without MOSS

→ Service provider needs to register according to the **destination principle** in each **EU Member State** where services are supplied to

```
Without MOSS System

Domestic

Destination Country

Register with Tax Office

Business

Consumer
```
With MOSS

- **With MOSS**

- One-stop registration and filing of VAT return through web portal in the relevant member state = No obligation to register in various Member States
Customer status & location

Digital services

Register for VAT

OR

www.dlapiper.com

VAT and Digital Services

Wednesday, March 8th 2017
Economic relevance of MOSS

- July 2015
  - Only 12,000 registrations EU-wide
- End 2015 Germany
  - 2,500 registrations
- End 2015 UK:
  - 2,400 registrations

Approx. €65m p.a. from non-EU-entities

Approx. €259m from EU-entities

From outside the EU, only 59 taxable persons chose Germany as hub for MOSS

Approx. €1m to other EU member states relating to non-EU-entities

Approx. €53m relating EU-entities

Approx. €65m p.a. from non-EU-entities

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Approx. €65m p.a. from non-EU-entities

From outside the EU, only 59 taxable persons chose Germany as hub for MOSS

Approx. €53m relating EU-entities
Issues with MOSS

- Identifying the location of a customer
- Technical Issues
- MOSS doesn’t cover everything
- Involvement of Intermediaries
Involvement of Intermediaries

Who is the supplier (who accounts for VAT)?

For each transaction in the supply chain between the electronic service provider and the end consumer, each intermediary is treated as receiving the service and supplying it on. Article 9a VAT Implementing Regulation
(Potential) future developments of MOSS

- **Relief** for smaller businesses: ✗ (= proposed changes)
- ✓ = current status

<table>
<thead>
<tr>
<th></th>
<th>Business rev. below 10,000€</th>
<th>SMEs rev. Less than 100,000€</th>
<th>All businesses over 100,000€</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT rate of consumer state</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>2 pieces of evidence</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Keep MOSS data for 10 y.</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
</tr>
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- Extension of the MOSS to B2C **supplies of goods** and to **all cross-border services** to end consumers
Financial Technology
What is financial technology? How does it impact the traditional industry?

- Providing financial services using innovative technology
- Offers are internet based and application oriented
- Gaining momentum, causing disruption in traditional value chain
- Challenge traditional financial industries
Overview of FinTech Segments

Financial Technology

- Financing
  - Crowdfunding
  - Crowd-investment
  - Crowdlending
  - Credits and Factoring
- Asset Management
  - Social Trading
  - Robo Advise
- Payment Transactions
  - Blockchain and Cryptocurrencies
  - Alternative Forms of Payment
  - E-Wallets
  - Bitcoin
- Insurance
  - Insurtech
- Other Financial Services
  - IT, Infrastructure
  - Search Engines
3

Bitcoins and VAT
Introduction: What is Bitcoin?

Bitcoin is a **crypto currency** based on **Blockchain** technology.

- No obligation to accept Bitcoin for the lack of a "governmental order"
- Banks as intermediaries for payment transactions are not required
VAT Classification of Bitcoin-Mining

- Remunerated exchange of services:
- Entrepreneur grants an individual recipient an economic advantage,
- Enables a consumption at beneficiary level
- ECJ: Direct link is necessary and sufficient
VAT Classification of Bitcoin-Mining

Production of Bitcoin → No remunerated exchange of services

No taxable event

Mining is not a taxable event from a VAT perspective
VAT Classification of Bitcoin Sale/Exchange

- **ECJ Hedquist decision** (C-264/14 Hedqvist)
- **Facts**
  - Swedish entrepreneur wants to provide "exchanges" of conventional currency to Bitcoin and vice versa.
- **Problem:** VAT-able transaction?

<table>
<thead>
<tr>
<th>No</th>
<th>Swedish Tax Law Commission: Comparable to other currencies</th>
</tr>
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<tbody>
<tr>
<td>Yes</td>
<td>Tax Authority: Dissenting opinion</td>
</tr>
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- 1. Can the transaction be qualified as services?
- 2. Is such service exempt from VAT?

ECJ Asked for preliminary ruling
VAT Classification of Bitcoin Sale/ Exchange

- "Exchange" for admitted tender (Cont'd)
  - VAT exemption according to the ECJ
    -> Art. 135 VAT-Directive
  - No limitations to banks or other financial institutions.
VAT Implications: Bitcoin - Exchange

- **ECJ**
- **Answer to question 1**
  
  - *Exchange is a taxable service* for a consideration

![Diagram showing exchange with margin of €150, and transactions between seller, buyer/seller, and buyer with amounts of €800 and €950.]
VAT Implications: Bitcoin - Exchange

- **Answer to question 2**
- Exchange is exempt from VAT (Art. 135 para. 1 lit. e VAT System Directive)

- **Motive:** ECJ interpretation of the regulation

Art. 135: exchange of any legal tender is exempt

Why should this be treated differently?
Can this ruling be applied to other Crypto Currencies?

- Various language versions of the Directive are not consistently focusing on "conventional" currencies.

- Arguments should also be applicable to other crypto-currencies.
VAT Classification of Bitcoin Sale/Exchange

- ECJ in Hedqvist decision
  - made no statement regarding VAT-treatment of Bitcoin when used as a consideration (cf. no 14 of the decision)
    - Other decisions by the ECJ on the subject do not exist yet
Crowdfunding
Introduction

- What is crowdfunding?
  - Open call for the provision of financial resources
  - There is, inter alia, a donation based and a reward based system

What is crowdfunding?

- Open call for the provision of financial resources
- There is, inter alia, a donation based and a reward based system
VAT Implications: Crowdfunding

- **Reward-based Crowdfunding**

  - generally qualifies as financial service or a sale of goods via several stages and thus, is generally subject to VAT
  - To the extend it qualifies as financial service, it usually should be exempt from VAT
  - Otherwise rules on delivery of goods apply.
VAT Implications: Particular scenario "forward purchase"

- Crowdfunding of goods and "payment on account"
  - E.g. 100 Contributors pay a certain amount to produce 100 bicycles of which each contributor gets one.
InsurTech
InsureTech business models

Support:
Provide their own services to incumbents, eg. IT platforms

Intermediary:
Use existing services or information for aggregation purposes or to route business to core providers

Challenge:
Influencing the full value chain of a service and have a “challenging” impact on the existing players

Innovate:
Inventing services or products outside of the existing value chain, challenging incumbent business models
Supply chain
Current supply chain

- Retail
- Tracking
- Transit
- Consumer
- Production
- Tracking
Future supply chain
EU Chain transactions – Divergent interpretations

FR subsidiary sells goods to the GER subsidiary.
→ Application of French VAT

GER subsidiary sells the goods to the car manufacturer
→ Intra-EU acquisition/delivery
→ Car manufacturer must reverse-charge VAT in Germany

Transport of goods from France to Germany organized by the car manufacturer (GER)
EU Chain transactions – Divergent interpretations

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Transfer to other models on the basis of a Blockchain, for example "smart contracts"

- **Example "letter of credit"**
- **Value added tax**

The VAT handling of exporter/importer deliveries are dependent upon the delivery conditions and if it is an import or an intra-community supply of goods.

**Opening bank – Importer:** VATable, but exempt from VAT due to sec. 4 no. 8 UStG (or rather equivalent provisions in the jurisdiction of the bank).

**Advising bank – issuing bank:** services in the relation B2B taxable where the issuing bank operates its business but VAT exempt according to sec. 4 no. 8 UStG (or rather equivalent provisions in the jurisdiction of the bank).
Speakers

- **Martin Heinsius**
  - Rechtsanwalt | Steuerberater
  - VAT for Regulated Industries

- **Dr. Bjoern Enders**
  - Rechtsanwalt | Steuerberater
  - VAT
  - Tax Compliance

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2017 VAT EVENTS PROGRAMME DLA Piper

- **Thursday 6th April**
  - **Webinar: Supply chains – Interaction of VAT, Customs Duties and Transfer Pricing**
  - **Venue:** online
  - **Time:** 11:00 – 12:00 GMT
  - **Speakers:**
    - Daan Arends, Partner, Netherlands
    - Joel Cooper, Co-Head International Transfer Pricing, UK
    - Richard Woolich, Partner, UK

- **Thursday 18th May**
  - **Seminar: Input VAT Recovery Requirements on Deal Costs**
  - **Venue:** DLA Piper UK LLP, 3 Noble Street, London, EC2V 7EE
  - **Time:** tbc
  - **Speakers:**
    - Daan Arends, Partner, Netherlands
    - Richard Woolich, Partner, UK
    - Bjoern Enders, Counsel, Germany

- **Wednesday 18th October**
  - **Webinar: VAT and Tax Compliance Systems**
  - **Venue:** online
  - **Time:** 11:00 – 12:00 GMT
  - **Speakers:**
    - Bjoern Enders, Counsel, Germany
    - Sebastian Wijsman, Tax Adviser, Netherlands

- **Wednesday 22nd November**
  - **Webinar: Technology and VAT: Tips and Traps**
  - **Venue:** online
  - **Time:** 11:00 – 12:00 GMT
  - **Speakers:**
    - Daan Arends, Partner, Netherlands
    - Richard Woolich, Partner, UK