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NEWSLETTER

Our Fourth Edition:

- EUF works for the Industry interest on FATCA
- EUF 2012 Half year Update published
- EUF Glossary for the Industry created

Inside this issue:

Dear Members and Beneficial Owners,

Summer has flown by and the nights are getting shorter! Already it's time for our latest edition of the EUF Newsletter which I am delighted to introduce to you.

The publishing of this edition also coincides with our Press Release on the state of play on the European Factoring and Commercial Finance Industry. The Economics and Statistics Committee, under the Chairmanship of Diego Tavecchia has collated turnover data for the first six months of the year, which demonstrates that despite the difficulties that are evident across many of the European national economies, as a whole our Industry continued to grow. It's true that the rate of growth experienced was lower than that seen in the first half of 2011 but the fact that we have recorded growth demonstrates our ongoing and increasing role in supporting business right across the EU. The Industry supported €560Bn of client business turnover in the first six months of 2012, which means that volumes overall grew by just under 4%, with GDP penetration rising to 9.67%.

In this edition, Legal Committee Chairman Magdalena Wessel talks about one of the big issues that has been facing the industry; ensuring that that as non-deposit taking institutions we do not get absorbed into the upcoming United States FATCA regulations. Whilst we fully understand the motives of the USA in establishing this anti tax avoidance regulation, being subject to these strictures would increase workloads and costs in an arena that we do not consider relevant to our industry. Whilst the involvement of our Legal Committee in the consultation process has produced positive signs, the need for further monitor and possible action remains.

Don't forget that you can keep up to date on our watch of Industry developments by looking at the Monthly Monitoring Reports in the members' only section of the Website.

Since the last issue, the groundbreaking Legal Study on European and peer country environments has been updated with enhanced entries for AT, IT and UK and the EUF has published its glossary on Factoring terms to create a common lexicon and approach (in English and which is now being translated into a range of languages)

A big thank you again to CODIX who have been the EUF Sponsor for 2012; our gratitude goes to them for their continued support.

Again I am reminded that the EUF has over two hundred Members' Members; we are pleased and honoured to represent the interests of all these Industry providers; as I mentioned in our last edition, our Members represent over 97% of the total EU turnover, so we truly can claim to be the real face of the Industry. The Executive Committee and I recognise that we have your strength and support behind us. Thank you!

John Gielen, EUF Independent Chairman

EUF: The Legal Committee

Magdalena Wessel discusses the USA's FATCA proposals and the EUF's response

Magdalena Wessel: Chairman of Legal Committee

The "Foreign Account Tax Compliance Act" (or in short: FATCA) is a US-American law which forms part of the USA's efforts to improve tax compliance involving foreign financial assets and offshore accounts of US taxpayers. FATCA establishes a new tax information reporting and withholding regime for certain payments which is far reaching and may impact any person, US or foreign, to the extent that such person is involved in making or receiving payments that fall within the scope of FATCA.

In a joint statement from February 2012, France, Germany, Italy, Spain and the United Kingdom voiced their concurrence with the USA's aim to fight tax evasion and declared that they would intensify their co-operation in combating international tax evasion, particularly by adopting an intergovernmental approach to the implementation of FATCA by foreign financial institutions in the aforementioned European countries.

Under FATCA, U.S. taxpayers with specified foreign financial assets that exceed certain thresholds must report those assets to the US Internal Revenue Service (IRS) by using a special form which they are to attach to their federal income tax return. More importantly, at least from the point of view of factoring and commercial finance companies, FATCA will require foreign financial institutions to enter into disclosure compliance agreements with the U.S. tax authorities and to report directly to the IRS information about financial accounts held by U.S. taxpayers or held by foreign entities in which U.S. taxpayers hold a substantial ownership interest. If a foreign financial institution does not comply with these rules and if there are no exemptions according to US law or intergovernmental agreements, withholdable payments (e.g. gross proceeds from the sale of U.S. property of a type that can produce interest) to such a non-compliant foreign financial institution will be subjected to 30% withholding.

With all this in mind, the definition of what is to be considered a foreign financial institution is of course crucial when it comes to ascertain the scope of application of FATCA. According to the current draft regulation Reg-121647-10 (http://www.irs.gov/pub/newsroom/reg-121647-10.pdf), a foreign financial institution is any foreign entity that accepts deposits in the ordinary course of a banking or similar business, "banking or similar business" including purchasing, selling, discounting or negotiating accounts receivable.

Factoring and receivables financing companies do not accept deposits, which is a strong argument against the classification of factoring companies as foreign financial institutions according to the FATCA provisions. Notwithstanding, the definition of "foreign financial institutions" has apparently been expanded significantly during the process of drafting the regulation, and as factoring and commercial finance is based on the sale or purchase of accounts receivables, the EUF Legal Committee discussed the possibility of this draft definition of foreign financial institutions encompassing factoring and other commercial or receivables financing companies and voiced concerns in this respect. Expert advisors confirmed the concerns of the EUF Legal Committee. Therefore, the EUF Legal Committee and the Executive Committee agreed in late April 2012 on sending a statement from the EUF to the relevant US tax authorities, clearly stating that factoring and commercial finance companies do not accept deposits or provide investment opportunities to their clients and that the inclusion of factoring and commercial finance companies in the category of foreign financial institutions would not encompass any obvious substantive benefit to the US tax authorities with regard to the objectives of the FATCA legislation, thus introducing a major, but completely unnecessary administrative burden for these companies. This view was supported by separate statements from different national factoring associations to their relevant national authorities in charge of working on the intergovernmental agreements (IGAs) as foreseen in the joint statement from February 2012.

In late July 2012, a model IGA to improve tax compliance and to implement FATCA was published, accompanied by a joint statement of the governments of France, Germany, Italy, Spain and the United States. More specifically, the model IGA sets out a framework within which, inter alia, the legal issues connected to compliance with the FATCA provisions (e.g. data protection issues) are addressed. Furthermore, the model IGA stipulates that withholding tax will not be imposed on income received by or on payments made by foreign financial institutions from the respective European legislations. In its Annex II, the model IGA also allows for an explicit enumeration of exempt products and deemed-compliant financial institutions, its final contents depending on the outcome of the ongoing intergovernmental negotiations.

After concluding the individual IGAs, which is expected to occur in the near future, the process of putting the IGAs into national legislation will start. As, according to FATCA, foreign financial institutions would have to enter into the aforementioned agreements with US tax authorities by the end of June 2013, the implementation of the IGAs on a national level is to be finalised in 2012.

Factoring and commercial finance are not explicitly mentioned in the model IGA, and the definitions of “financial institution” and the thereby comprised “custodial institutions”, “depository institutions”, “investment entities” and “specified insurance companies” currently do not give apparent reason for concerns as to whether factoring and commercial finance is encompassed. However, a guarded amount of enthusiasm is called for as it yet remains to be seen if these tentative positive developments with regard to factoring and commercial finance will continue, ideally leading to a clarifying exemption as called for by the EUF and several national factoring associations in their aforementioned statements.

More information on the EUF Legal Committee and its work can be found on the website www.euf.eu.com, with exclusive information on e.g. individual meetings of the Legal Committee in the “members only”-section. The monthly monitoring reports, which form the basis of the EUF Legal Committee’s discussions and work, can also be downloaded from the “members only” section.

EUF : The Economics and Statistics Committee

Diego Tavecchia talks on creating common language and rapid delivery of data

The Economics and Statistics Committee (ESC) during the first half of the 2012 has focused on two strategic goals: i) the improvement of the quality and timeliness of the EUF statistics on factoring market in EU, and ii) the drafting of a EU-wide glossary on factoring, aiming to contribute to the establishment of a standard terminology concerning commonly used terms, with the final purpose of improving communication and knowledge about the Industry across Europe.

Diego Tavecchia: Chairman of The Economics And Statistics Committee

In particular, a very detailed policy about collection, elaboration and communication of statistics by the EUF was drafted and distributed to each Member, in order to improve the transparency of the whole process and help Members acknowledge every step and deadline. This brought its first results right in the half year data collection, allowing the ESC to collect and elaborate figures about the trend of the total turnover in the first six months far more quickly than the previous year.

Such figures show that despite the difficult economic environment that is widely prevalent across European economies, the Factoring and Commercial Finance Industry continued to grow in the first half of 2012. Although the scale of the economic challenge remains an obstacle to general growth and development, the EUF statistics demonstrate that volumes overall grew by just under 4%, with GDP penetration rising to 9.67%. Although this rate of growth is lower than that in first half of 2011, the fact that the Industry has grown at all in the current climate demonstrates its increasing importance in the funding particularly of SME businesses. The Industry supported €560Bn of client business turnover in the first six months and is looking to continue to build this support through the second half of 2012 and beyond.

Besides the work on the statistics, after long and interesting rounds of discussions between its members, the EUF published on its website the first version of the EUF Glossary on Factoring and Commercial Finance, drafted by the ESC with the aim to provide the reader with a general taxonomy of the most common products and services offered, but also of the terms associated, in the EU factoring markets.

Such a glossary does not claim to be complete and exhaustive, but it will definitely be useful for a number of subject involved with the factoring and commercial finance industry: the EU bodies that are responsible of issuing the regulation concerning the industry will be happy to have an explanation of some specific terms that they may encounter while discussing the issues; the businesses will find in it a helpful tool to orient themselves through products and services that still remain unfamiliar for many of them (although EU firms are increasing their use of factoring at a fast pace) and, at the end of the day, the factors themselves will benefit from it in different ways, i.e. by disposing of a common tool to refer their own languages and by simplifying communication with their actual and prospect clients, also from an international point of view.

EUF: the face of the European Factoring and Commercial Finance Industry…

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See Our Website at
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The EUF is the Representative Body for the Factoring and Commercial Finance Industry in the EU. It is composed of national and international industry associations that are active in the EU.

The EUF seeks to engage with Government and legislators to enhance the availability of finance to business, with a particular emphasis on the SME community. The EUF, acts as a platform between the factoring and commercial finance industry and key legislative decision makers across Europe bringing together national experts to speak with one voice.

The EUF is delighted that Codix has chosen to sponsor our Newsletter again in 2012 and we gratefully and positively acknowledge their kind support of this, the European Representative Organisation for the Factoring and Commercial Finance Industry