



LowendalMasai

VAT News

SEPTEMBER 2007

VAT refund News

The Irish Revenue Commissioners have agreed that as of 1 July 2007 the VAT levied on the cost of accommodation for qualifying conferences may be reclaimed. The exemption is, however, only applicable for accommodation. VAT remains non-deductible on food and drink.

VAT RATES CHANGE

Czech Republic

The reduced VAT rate will be increased from 5% to 9% on 1 January 2008.

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European Commission supports LowendalMasai's position regarding the refund of VAT to financial institutions established outside the EU

In July of this year the Commission initiated infringement proceedings against HM Revenue and Customs because the UK had introduced a policy of rejecting claims for the refund of input VAT incurred by non-EU based financial institutions. LowendalMasai argued that the UK Refund Administration should revoke the rejections as its administrative practice contravened EU VAT legislation. LowendalMasai's position had already been upheld by the Dutch Supreme Court which, in 2006, confirmed that an Australian Bank was entitled to recover input VAT using the 13th Directive VAT Refund procedure. The UK Administration has now informed LowendalMasai that it will reconsider its decisions. Although the outcome has not yet been confirmed officially it is unlikely that this case will end up in the European Court of Justice. This shows, once again, that by keeping abreast of legislation and legal developments and being persistent we can reduce costs for our clients.

Welcome to the September issue of the bi-monthly LowendalMasai VAT Newsletter in which we summarise the main developments in the VAT arena.

As time is one of the things anyone dealing with VAT misses most, we have opted for a format whereby we summarise and highlight the developments important for you when dealing with your day-to-day VAT compliance.

In this issue we are already informing you of the details of the new 8th Directive VAT refund procedure scheduled to come into force on 1 January 2009. Although the European Commission confirmed last month that the process was still on track, very few announced deadlines are actually met.

While the new procedure will offer some relief, recovering VAT incurred abroad will remain a cumbersome process for companies.

Marc Huis



EUROPEAN COURT OF JUSTICE (ECJ) UPDATE

VAT treatment of deposits

C-277/05 Société thermale d'Eugenie-Les Bains ◦ The ECJ has ruled that if a hotel reservation is cancelled the deposit that has been received by the hotel is not subject to French VAT as it is deemed to be compensation for the damage suffered by the hotel as a result of the cancellation by the potential customer. There is no link between the payment and the provision of a service.

Impact of the GATS agreement on the reciprocity clause for 13th Directive claims

C-335/05 Rizeni Letoveho ◦ The ECJ has concluded that the 13th Directive allows Member States to implement a reciprocity principle as a condition for allowing a VAT refund request to be filed. Every Member State is, however, responsible for ensuring that the application of this reciprocity principle does not conflict with other international agreements (such as GATS) that have been entered into by the Member State.

The value of a tax certificate and the place of establishment

C-73/06 Planzer Luxembourg SARL ◦ The ECJ has decided that although a tax certificate provides a presumption that the person in question qualifies as a taxable person and is established in the Member State of issue, the refunding Member State may question the economic reality of the place of establishment. Should there be any doubt the claimant must provide additional evidence regarding its establishment and, according to the ECJ, the place of establishment is the place where essential decisions regarding general management are taken.

VAT NEWS

UNITED KINGDOM

Change of invoice requirements

The invoice regulations in the UK are being tightened as of 1 October 2007. The most important changes are that from this date onwards consecutive invoice numbering will be mandatory and if reverse charges or exemptions (including zero rate dispatches to other Member States) are applicable this must be stated clearly on the invoice.

Exercise of the right to deduct in cases of reverse charging

Notice no. AFZ 7/2007.

The Belgian tax authority has published Notice no. AFZ 7/2007, dated 7 May 2007 (following ECJ case C-90/02, Bockemühl) whereby they confirmed that taxable persons who are obliged to pay the VAT incurred as a result of the reverse charge mechanism do not need to be in possession of a regular invoice meeting local invoice requirements as long as it is clear based on the available documentation that the reverse charge mechanism has been applied correctly.

The Danish cross border arrangement

Successful cross border VAT saving arrangements in the 'post-halifax-era'.

The Danish High Court decided that a cross border arrangement whereby a Danish supplier gave Danish customers wishing to purchase a boat the opportunity to purchase directly from a German entity and physically pick up the boat in Germany, was subject to German VAT rather than Danish VAT (25%). The Court also decided that the transaction did not constitute an abuse of the VAT system.

The UK cross border arrangement

The UK VAT & Duties Tribunal (Edinburgh) in July 2007 dealt with a case whereby a non-established German trader purchased cars in the UK and leased them to UK customers so the cars physically stayed in the UK. A lack of harmonization meant no VAT was charged on the lease terms. According to UK legislation the supply was taxable in Germany. According to German legislation the supply was taxable in the UK. The UK Administration refused the input VAT, but the Court ruled that because the supply was not exempt the relevant input VAT should be recoverable.

The Court also ruled that there was no 'abuse of rights' as there was nothing artificial in the contract and the tax saving resulting from the difference in Member States' internal legislation did not constitute an abuse of rights as meant in the Halifax case.

On the 13th Directive reclaim

The German Federal Court of Finance recently confirmed that to prevent potential fraud original invoices must be presented before the deadline applicable for the refund claim (30th of June of the following year). The Court also stated that the claimant must qualify as a taxpayer at the time the supplies subject to German VAT are received. An extract from the Chamber of Commerce register does not qualify as sufficient proof.

COMPLIANCE UPDATE

E-listing of sales and purchases introduced in Italy

Italy has introduced legislation whereby companies registered in Italy must file Electronic lists of invoices issued to and received from Italian VAT registered suppliers. The new system is expected to be fully operational for all 2007 transactions and the filing deadline is 29 April 2008.



EU VAT DEVELOPMENTS

Changing the place of taxation for both B2B and B2C services.

Political Agreement on EU VAT package

In June, political agreement was reached regarding the place to which the services and one-stop-shop proposals are supplied. The Council did not, however, reach agreement regarding the place to which the e-commerce and telecommunication services are supplied. The Commission is expected to reach full agreement before the end of 2007.

On 5/6 June 2007 the Council of Finance Ministers reached political agreement on a package of VAT measures aimed at changing the place of taxation for both B2B and B2C services and administrative simplification.

The main changes will affect the place of supply rules for services. The general rule for B2B will change whereby the place where services are deemed to be supplied shall be the place where the customer is established. For B2C the services are deemed to be supplied where the supplier is based.

There will also be a number of exceptions to this new main rule:

- 1 The place of supply for the following services will be the location where the activities are physically carried out:
 - o Restaurant and catering services;
 - o Cultural, artistic, scientific, educational, entertainment and similar services;
 - o Ancillary transport services;
 - o Valuations of and work on movable property.
- 2 Transport services to non-taxable persons will be taxed where the transport actually takes place. Intra-community transport services to non-taxable persons will be taxed at the place of departure.
- 3 The place of intermediary services to a non-taxable person will be taxed where the underlying transaction is being taxed.
- 4 Services connected with immovable property will be taxed at the location where the property is located.
- 5 The hiring of means of transport will be taxable where this means of transport is put at the disposal of the customer.
- 6 The supply of telecommunication and electronic services to non-taxable persons shall be taxable at the customer's location.
- 7 The place of supply of the so-called intangible services to non-taxable persons established outside the EU will remain outside of scope for VAT purposes.

Member States News

Malta and Cyprus will be joining the Eurozone on 1 January 2008.



PROPOSED EU VAT LEGISLATION

File a claim electronically to a central electronic portal in own Member State.

Submit the refund before the end of September of the following calendar year.

Did you know?

An estimated 45% of VAT that could be reclaimed annually under the 8th or 13th directive is not recovered.

Proposed change in 8th VAT Refund Directive

In the new envisaged directive that, according to the current draft should go live on 1 January 2009, an applicant will file a claim electronically to a central electronic portal in his own Member State.

The refund application will contain:

- 1 The applicant's name and full address;
- 2 An electronic contact address;
- 3 A description of the business activity;
- 4 The refund period;
- 5 A declaration that no taxable activities have been supplied in the refunding Member State;
- 6 The applicant's VAT identification number;
- 7 Bank account details including IBAN and BIC codes.

In addition, a specified list detailing per invoice the name and full address of the supplier, the VAT identification number including supplier prefix, the date and number of the invoice, the taxable amount and VAT amount expressed in the currency of the refunding Member State; the amount of deductible VAT and the nature of the supply according to pre-defined codes (code 1 being fuel, code 2 hiring means of transport etc) must be supplied.

The refund should be submitted before the end of September of the following year and the refunding Member State must send a receipt immediately.

The refunding Member State must also approve or refuse the application within four months. If the refunding Member State is late, interest will be due automatically.

The thresholds will be changed to EUR 50 for annual claims and EUR 400 for quarterly claims.

It will no longer be necessary to submit all invoices automatically but a threshold per category of expenditure will exist. But there will be a threshold of expenditure per category. The refunding Member State, however, be entitled to request any original invoice.

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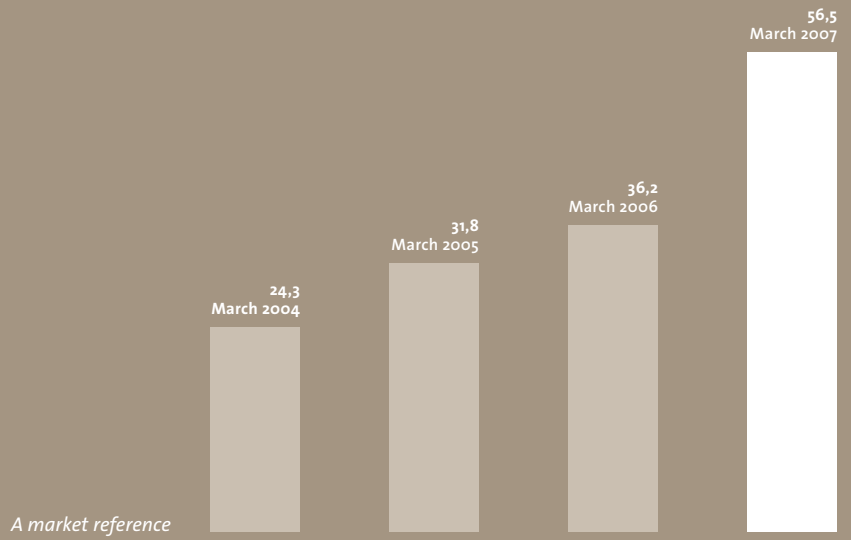
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OPERATIONAL COST OPTIMIZATION CONSULTANCY

LowendalMasai has accelerated its growth.
The Group's 2006-2007 turnover was up by 56%.

At the end of a year marked by the introduction of the new LowendalMasai brand, the leading operational cost optimization consulting group posted a consolidated pro forma turnover of € 56.5 million for the year ending 31 March 2007, an increase of 56% compared with the previous financial year. This was due to solid organic growth and a dynamic external growth policy.



Colophon

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VAT CHART

