



# LowendalMasai

TAX COST SOURCING CASH

NOVEMBER 2007  
**VAT News**

## VAT refund news

### Poland

*The Polish Administration has recently started refunding claims relating to the year 2004.*

## RATE NEWS

### Canada

*As of 1 January, 2008, the GST rate will be reduced from 6% to 5%.*

*In Nova Scotia, Newfoundland and New Brunswick the HST rate will also be reduced by 1% to 13%.*

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## Can public (sports) bodies reclaim VAT?

Recently LowendalMasai represented a national football association which had incurred costs in Germany during the national team's World Championship participation.

The German Bundesamt's initial reaction was that VAT was not recoverable because the tax certificate stipulated that the association was exempt from tax. The logic on which VAT is based is, however, different: in order to recover input VAT the association has to qualify as a taxable person, which means there is a requirement to carry out taxable activities which do not necessarily lead to an economic profit.

The difficulty where associations are concerned is that the activities of an association that are aimed at its members are very often deemed internal activities that do not take place in the public economic domain.

In this case we have been able to demonstrate that the costs incurred by the national soccer associations were necessary to attract sponsorship and marketing income.

The input VAT should, therefore, be refundable.

Welcome to this latest edition of the LowendalMasai newsletter. It has been an extremely busy two months during which the European Court of Justice has tried to clarify the risks faced by companies delivering ex-works to business customers in other Member States.

The disappearance of a physical customs control of the flow of goods between Member States has also meant the disappearance of the one document that gave a supplier an easy way to demonstrate the applicability of the zero rate.

For the last 15 years suppliers have struggled to come up with documentary evidence that proves goods have left one Member State and arrived in another. Through its judgements regarding several recent cases the ECJ has provided some guidance: the rules are to be interpreted strictly, it is up to the supplier to provide the evidence, but the 'in good faith' doctrine works even in a case of fraud. December is rapidly approaching and the VAT world is wondering whether the deadline for the Member States to agree on the proposed VAT package will actually be met. At the ECOFIN's November meeting agreement still could not be reached and the ECOFIN decided to 're-examine' these issues on December 4th with a view to reaching a compromise.

We value your suggestions and comments, so please do not hesitate to come back to us.

Marc Huis



VAT NEWS

LUXEMBOURG

## Fiscal Representation introduced

**The Luxembourg Government** has announced that on 1 January 2008 it will introduce a system of fiscal representation, whereby non-established EU and non-EU traders without a VAT registration will be able to appoint a fiscal representative to carry out their VAT obligations. According to the proposal, such fiscal representation is optional and only available for the import and subsequent supply of goods as well as for services directly related to these goods after importation, such as storage and handling.

The fiscal representative will be allocated a special VAT number that must be used, will be obliged to keep the required records and be in a position to provide the necessary track and trace information related to the goods and will have to provide the Administration with a bank guarantee.

VAT NEWS

ITALY

## Even more Input VAT recovery on car expenditure

The period in which a 40% flat rate deduction on cars and related expenses may be applied for has been extended to include expenses incurred in the period 14 September 2006 – 27 June 2007.

VAT REFUND DEVELOPMENTS

## The 8th and 13th Directive Claims

**Germany** – The Bundesamt has once again confirmed that the rules governing the submission of refund claims in Germany will be applied very strictly. A VAT refund application must be signed by the taxable person and, according to the Bundesamt, this must be the CEO of a company. Appointing a representative (such as a tax director) to sign the application form is not allowed. However it remains to be seen if this strict interpretation will stand up in the courts.



## EUROPEAN COURT OF JUSTICE (ECJ) UPDATE

### Proof of intra-Community supplies

During the past couple of weeks the ECJ has ruled in three cases all related to intra-Community supplies.

The Dutch company **Twoh International BV** supplied computer spare parts to Italian companies. The delivery terms were 'ex works'. Twoh delivered the goods to a third party warehouse in the Netherlands from where they were transported to their final destination. In the Netherlands a specific statement from the customer can constitute proof that the goods have left the country. Twoh does not have any such statements, or any other proof of the intra-Community supplies. As a result, the Dutch tax authorities have not accepted the zero rate (*exempt with credit according to Directive 2006/112/EU*). Twoh has argued that the Dutch authorities should investigate whether the customers have accounted for VAT on an intra-Community acquisition. If they have this would prove that the goods have left the Netherlands. The ECJ has ruled that a tax authority is not obliged to request information from the tax authorities in other countries.

**Teleos** in the UK sold mobile phones to its Spanish customer. The destination of the goods was either France or Spain. In accordance with the 'ex works' delivery terms, Teleos delivered the mobile phones to a third party warehouse in the UK from where the goods were transported to the countries concerned. Teleos was given an original stamped and signed CMR-freight letter containing a description of the goods, the delivery address, the name of the driver and the vehicle registration number for each transaction as proof that the goods had left the UK. Intensive investigation has, however, revealed that the letters are false, which has led to the conclusion that Teleos has incorrectly applied the exemption on the supplies. Fortunately for Teleos the ECJ has ruled in its favour. A supplier that acts in good faith cannot be required to pay VAT if the proof of supply turns out to be false if it is not clear that the supplier is involved in the fraud. The ECJ has also stated that the fact that the customer has accounted for VAT on acquisition is additional proof, but not decisive proof. It would appear that Twoh (see above) could not have won anyway. →

*The ECJ has ruled that a tax authority is not obliged to request information from the tax authorities in other countries.*

*The fact that the customer has accounted for VAT on acquisition is additional proof, but not decisive proof.*

#### Did you know?

The average VAT rate in the EU is 19.5 %, in Latin America the average rate is 14.2% and in the ASPAC region 10.8%.

*Initially withholding an intra-Community supply, need only be taken into account when there could be a loss of tax income.*

➔ The third case concerns the German company **Collée** – a shareholder of a GmbH selling cars in Germany. Collée receives a special bonus for every sale within Germany. When the opportunity arose to sell 20 cars to a Belgian customer (but without collecting any bonus), GmbH ‘sold’ the cars to a German dealer, which meant the bonus would apply. The car dealer then ‘sold’ the cars to Belgium. When the German tax authorities refused to grant the German dealer the right to recover the VAT charged by GmbH, because the sale between GmbH and the dealer was fictitious, the GmbH decided to do an about face and account for an exempt intra-Community supply to Belgium after all. The exemption was denied because at the time of supply the GmbH’s records did not contain any proof of the intra-Community supply. This proof was only available at a later date. The ECJ came to the GmbH’s rescue by saying that the exemption was applicable because the intra-Community supply had actually taken place. The fact that the proof was provided at a later date was irrelevant. Initially withholding an intra-Community supply, need only be taken into account when there could be a loss of tax income.

## Regarding VAT status single employee company

The ECJ has ruled that an individual remains an employee for VAT purposes even if he/she is the sole employee, director and shareholder of his/her employer. Such an individual is not, therefore, a taxable person in respect of the activities performed for the company. (J. A. van der Steen: C-355/06.)

*The new Article 168a creates a new system whereby input deduction will only be possible insofar as the actual use is for business purposes.*

### Did you know?

*The average contribution of indirect taxes to the governments revenue across the OECD nations is now more than 32%.*

## NEWS FROM THE EUROPEAN COMMISSION

### Recast of the Recast of the 6th Directive

On 7 November 2007, the European Commission presented a proposal (COM(2007) 677) for a directive amending the Recast VAT Directive (2006/112/EC). According to the European Commission the amendments are of a purely technical nature. This would appear to be true for the changes relating to the VAT scheme for the supply of natural gas etc, the tax treatment of joint undertakings and the consequences of the recent accession by Romania and Bulgaria. The suggested change regarding the deduction rules conditions for goods and services relating to certain immovable property seems to be more than a technical adjustments.

According to the ECJ, a taxable person is entitled to treat capital goods as business goods for VAT purposes even if there is also private usage of the asset. In this case the input VAT is fully deductible and a correction must be made for the private usage of the asset that will obviously create a cash flow advantage.

The new Article 168a creates a new system whereby input deduction will only be possible insofar as the actual use is for business purposes.

An important suggested amendment is that the VAT on services leading to substantial changes in immovable property could also be adjusted if the actual business use changed.

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## OTHER LOWENDALMASAI NEWS

*Revenue leakage and long DSOs (Days of Procurement Service) affect company performance. Managing customer receivables efficiently is the key to remaining competitive, as it helps towards ensuring revenue is maximised, potential missing profits are recovered or capital requirements are reduced.*



## How can LowendalMasai help?

A team of thirty-five consultants with operational financial and accounting expertise, led by Fred Doumenc and Fred Dupont, assists companies to:

- 1 Identify and recover amounts not invoiced to clients or excess sums paid to suppliers;
- 2 Ensure that revenue is accurate (no revenue leakage);
- 3 Rapidly generate cash flow;
- 4 Instil a 'cash culture' throughout the organisation;
- 5 Coach clients in order to reduce invoice-issuing delays and implement invoicing quality standards;
- 6 Coordinate projects designed to improve the reliability of IT and production chains.

*Fred Doumenc, Director of the business unit Cash*

## VAT CHART

