



LowendalMasai

TAX COST SOURCING CASH

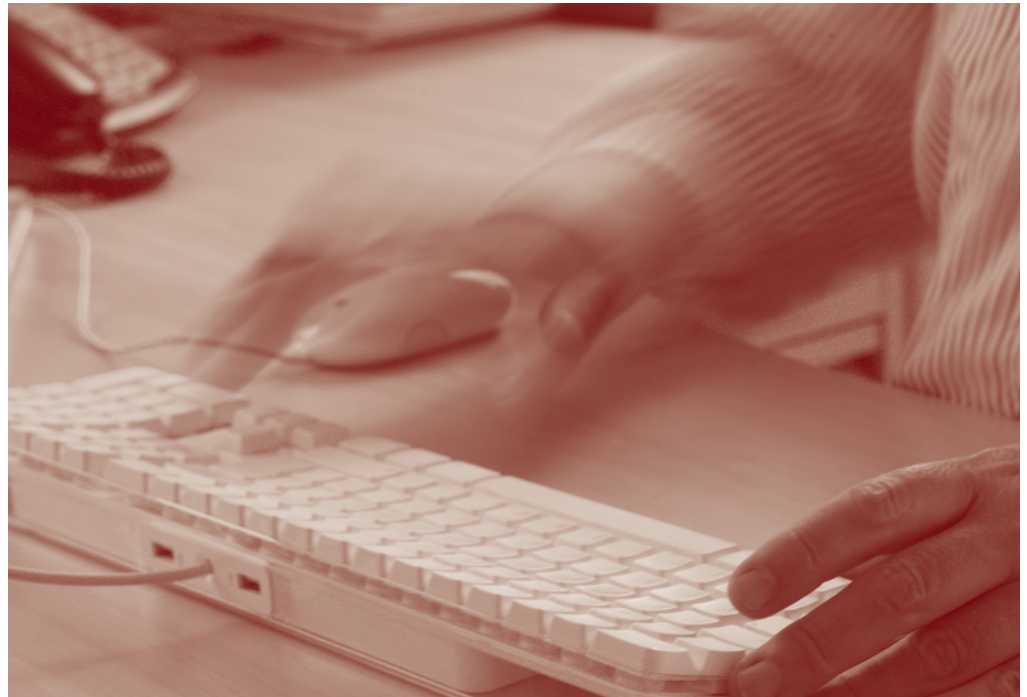
VAT News MARCH 2008
BI-MONTHLY MAGAZINE

French restaurant invoices

LowendalMasai obtained a ruling from the French tax authorities regarding the application of simplified invoicing regulations for restaurant invoices not exceeding 150. These restaurant invoices normally do not mention the client's details and correcting the invoice at a later stage is allowed.

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Getting input VAT actually refunded

One problem being faced by many companies that have set up operations in former Eastern European countries is how to capitalize VAT repayments. This is a familiar problem in Poland where, under Polish VAT law, if a business makes a claim for a VAT repayment (an excess of input VAT) within 12 months of registering for VAT, the tax authorities are allowed a period of 180 days in which to make the repayment. If, however, the business lodges a 'security deposit' of 250,000 PLN (approximately EUR 62,000), the 180-day rule does not apply and the repayment must then be made within the standard 60-day repayment period applicable to other tax payers (reduced to 25 days in certain circumstances). Although it is not forbidden for Member States to protect their revenue against fraud, Member States should not be able to protect themselves at the expense of VAT payers. The State bears the responsibility, and obviously the risk, of managing its own tax system and protecting itself from tax evasion. The Advocate General has now come to the tax payer's rescue and has ruled in favour of Alicja Sosnowska (Case C-25/07). It is our understanding that the Polish Government is in the process of withdrawing the disputed legislation.

Tax evasion remains a popular subject. In Case C-425/06 Part Services SRL, the ECJ has reiterated that there can be an abuse of rights if obtaining a tax advantage is the principle aim of a transaction.

In our vocabulary, using the word 'can' implies that obtaining a tax advantage does not automatically lead to an abuse. Since 'Halifax' many Member States have introduced measures or guidelines aimed at combating VAT fraud and looking at some of the measures it would seem that every tax payer is 'a usual suspect'.

In France, for instance, tax payers acting in good faith can be liable if they have not taken reasonable measures to avoid becoming involved in a tax evasion scheme. Fortunately the ECJ is coming to their rescue and putting these measurements into the right perspective: I am referring to the outcome of the Netto Supermarkt GmbH case (C271-06) and the AG's conclusion (C25-07) that the State should bear the risk of tax evasion as mentioned in our lead-article.

The EU has published its 'road map' for new proposals to combat fraud. Although, in theory, the measures will reduce the potential for fraud they will, undoubtedly, lead to a further increase of a company's administrative tax burden work-load for the Administration.

Marc Huis



COUNTRY NEWS

AUSTRIA

VAT on invoices sent by fax was deductible as a result of a special concession. This concession will be withdrawn at the end of 2008 and VAT on fixed invoices will no longer be deductible.

COUNTRY NEWS

GERMANY

Invoicing In the 2008 German VAT Directives it has been clarified (A185 Abs 16 UStR) that if the invoice date and the delivery date are the same, they do not have to be entered separately as indicating that the dates are identical is sufficient.

COUNTRY NEWS

ITALY

The Italian Government has clarified that the VAT on motor vehicles and related expenses is 100% deductible if the vehicle is only used for business purposes and 40% deductible if the vehicle is used for both private and business purposes. These rules apply from 28 June 2007 onwards. If a motor vehicle on which VAT recovery has been restricted is subsequently sold, the taxable base is limited to 40% of the price. This rule is applicable from 1 March 2008 onwards.

COUNTRY NEWS

POLAND

One of the envisaged changes to the Polish VAT Act as of 1 July 2008 is that all tax payers will be allowed to file quarterly VAT returns. Tax payers who currently file monthly will have to inform the Administration if they don't want to change their reporting period. A call-off stock simplification which will mean that VAT registration will not be necessary for suppliers transferring their goods to call-off-stock has also been proposed.

COUNTRY NEWS

PORTUGAL

As of 1 January 2008 tax payers may file monthly returns if the turnover in the preceding year exceeded a certain threshold (650,000).

Adoption of new rules regarding the place of supply of services (2008/8/EC) and a new procedure for VAT refunds (2008/9/EC)

Business-to-business supplies of services will be taxed where the customer is located.

The Directives were adopted officially on 12 February 2008. From 1 January 2010, the new rules regarding the place of supply of services will mean that business-to-business supplies of services will be taxed where the customer is located rather than where the supplier is located. The place of taxation for business-to-consumer supply of services will continue to be where the supplier is established.

Unfortunately for businesses there will be further minor changes to the rules relating to 'events', the hiring of means of transport and electronic and telecommunication services in 2011, 2013 and 2015. The new rules for business-to-business services as of 1 January 2010 are shown in the flow chart below. One major administrative change will be the requirement to file periodical recapitulative statements for the supply of services taxed in a different Member State.

	Type of service	Place of supply
	Main rule: art. 44	Place where the customer is established
art. 46	Services by intermediaries	Place of the underlying supply
art. 47	Services relating to immovable property including: services of real estate agents, holiday accommodation, camping sites, rights to use immovable property preparation and co-ordination of construction work	Place where the immovable property is located
art. 48	Passenger transport	Place where the transport takes place proportionate to the distance
art. 49*	Other transport services	Covered
art. 50*	Intra-community transport of goods	Place of departure
art. 53	Services and ancillary services relating to cultural, educational, artistic, sporting, entertainment, scientific events	Place where the services are physically carried out
art. 54*	Ancillary transport services, work on goods	Place where these services are physically carried out
art. 55	Restaurant and catering services	Place where those services are physically carried out
art. 56	Short-term hiring of vehicles < 30 days or < 90 days for vessels	Place where the vehicle is put at the disposal of the customer
art. 57	Restaurant and catering services on board of means of transport during transport within the community	Place of departure of the transport
art. 58	Electronic services	Place where the customer is established
art. 59	Intangible services to non EU customers (These are the 'former art 9-2-e-services')	Place where the customer is established

* to non-taxable persons



NEW EU DEVELOPMENTS

Commission suggests possible anti-fraud measures

In February 2008 the European Commission adopted a Communication on possible far-reaching measures to combat VAT fraud. Although such a Communication will not lead to changes in the very near future, it has opened the way for future developments. The Commission announced that it is exploring the possibility of introducing taxation for intra-community supplies rated at a standard VAT rate across the EU and considering the implementation of a general reverse charge.

Possibility of introducing taxation for intra-community supplies.

Sales lists to move to monthly filing?

As a result of the new B2B rules a sales list requirement to report on cross border services will be introduced as of January 1, 2010. Last month the European Commission published the results of two studies of possible changes in the requirements for the EC Sales lists. One study considered an increase in submission frequency to once a month, and the second an increase in the level of detail required, for example at invoice level. It is expected that the Commission will come up with proposals before the summer of 2008.

Possible changes in the requirements for the EC Sales lists.

REFUND NEWS

SPAIN

Repayment period

Spain is the latest Member State to be targeted by the European Commission because they are not refunding within the prescribed six months refund period. The European Commission recently asked Spain to change its administrative practice concerning the refunding of VAT under the 8th EU VAT Directive and make sure refunds are paid within the specified period.

Spain asked to change its administrative practice concerning the refunding of VAT.

REFUND NEWS

ITALY

Supplies by non-established taxable persons

In January 2008 the Italian Tax Administration clarified that taxable persons who are not established in Italy can file 8th and 13th Directive refund claims in cases where the recipient of the service is liable for Italian VAT. Although both Directives clearly stipulated that there is no need to register locally, the Italian Administration has been rejecting refund claims from non-established taxable persons if their taxable supplies were subject to the reverse charge rules in Italy.

Rounding-down the VAT amount

When the price includes VAT, rounding-down the VAT amount of each article sold, is not in accordance with EC law (AG).

Zero-rate accepted despite fraudulent export documentation.

Sale value of investment goods previously leased out may be included in the pro rata method of calculation recoverable input VAT.

VAT is only deductible for expenses that relate to an economic activity.

Abuse of right if the principle aim of the transaction is to obtain a tax advantage.

Case C-484/06 (Koninklijke Ahold NV) ◦ In a supermarket the sales prices displayed include VAT. This case deals with the question of whether or not the VAT amount must be calculated (and rounded-down) on every single item bought or calculated and rounded-down only once at the till. The Advocate General concluded that when the price includes VAT, rounding-down the VAT amount of each article sold, is not in accordance with EC law and rounding down the VAT on each article violates all the applicable conditions and principles that can be derived from Community VAT Directives.

Whether the case and the final judgment is as straightforward as indicated by the Advocate General remains to be seen.

Case C-271/06 (Netto Supermarkt GmbH & Co.) ◦ This case dealt with a situation in which a supplier applied a zero-rate for the export of goods but later it was discovered that the conditions for applying the zero-rate had not actually been met because the goods had never been exported. The ECJ confirmed that the zero-rate could be applied because the taxable person was not aware that the conditions had not been met (the proof of export had been falsified), and had, therefore, acted in good faith and exercised due commercial care.

Case C-98/07 (Nordania Finans A/S, BG Factoring A/S) ◦ The European Court of Justice (ECJ) confirmed that the sale value of vehicles sold at the termination of leasing agreements may be included in the pro rata method of calculating recoverable input VAT.

The Court's main consideration was that this type of asset does not constitute 'capital goods' (which have been explicitly excluded from the pro-rata calculation) for a financial company as the sale of these goods is an integral part of the normal business activities of such a company.

Case C-437/06 (Securenta) ◦ This case dealt with the input VAT on the costs related to issues of shares. The ECJ held that input VAT is only deductible for expenses that relate to an economic activity and the issue of shares in this case is not considered as an economic activity. Member States can decide the method of apportionment (transaction or investment formula) as long as the principle of fiscal neutrality is respected.

Case C-425/06 (Part Service SRL) ◦ In this case (dating back to 1987) the supplier unbundled its leasing service, which led to a reduction of the taxable amount. In its judgment the ECJ referred to the Halifax case and repeated that there can be an abuse of right if the principle aim of the transaction is to obtain a tax advantage. The case is referred back to the local court to decide whether or not this is the case. It is interesting to note that the ECJ is clear in their guidance to the local court.

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VAT GROUPS

Among the 27 European countries, 17 implemented a VAT group scheme.

As a rule, when two or more companies established in the same Member State are closely bound by financial, economic and/or organizational links, they can create a VAT group. The VAT can under certain requirements be calculated, declared and paid by the representative of such group and the members of the group will be treated, in most countries, as one person liable to VAT. However, all members of the VAT group remain jointly and severally liable for the VAT returns and payments. Each year, new countries are introducing such scheme under their local VAT law. At the same time, EU's VAT committee has released its latest working paper setting its views on the correct interpretation and application of the VAT group scheme according to the VAT Directive.

The interest of such scheme is to ensure administrative simplifications and to combine VAT credits and payments of members of a VAT group, as to pay the net result, instead of expecting the repayment of VAT by a local administration after months. Below we have listed the Member States that have introduced VAT grouping into their legislation. We have visualised the countries that operate VAT grouping in the VAT chart below. If you would like to know more about the specifics of each country do not hesitate to contact your local Lowendal Masai contact person.

COUNTRIES	VAT GROUP	COUNTRIES	VAT GROUP	COUNTRIES	VAT GROUP
AT	Y	EE	Y	LV	Y
BE	Y	ES	Y	NL	Y
CZ	Y	FI	Y ¹	RO	Y
CY	Y	HU	Y	SE	Y ¹
DE	Y	IE	Y	UK	Y
DK	Y	IT	Y		

¹ Limited to financial or insurance activities.

VAT CHART

