



# LowendalMasai

TAX COST SOURCING CASH

DECEMBER 2008  
**VAT News**  
BI-MONTHLY MAGAZINE

## LATEST VAT RATE NEWS

*From 1 December onwards the standard VAT rate in Ireland will be increased from 21% to 21.5%.*

*The UK Administration has reduced its standard VAT rate from 17.5% to 15%. The reduction will be in place until 1 January 2010.*

## CONTENTS

Country news **2**

News from the EU Commission **3**

European Court of Justice

Seizing all opportunities in current crisis **4**

Table of refunds **5**

The impact of a VAT rate change **6**

VAT chart + addresses

## EDITORIAL

### Finding the right balance

*While reading the news of the financial crisis that has brought the financial world almost to its knees, an item on VAT fraud involving yachts caught my attention. A joint effort between twelve Member States has uncovered a VAT scam involving expensive yachts and led to a VAT assessment of tens of millions of Euro.*

*As in most such schemes the yacht owners used cross-border leases to avoid VAT taxation. This scheme made use of the difference in interpretation*  
Continue on page 2



## Formal requirements for Germany too strict?

Most companies submitting 8th or 13th Directive claims in Germany will know that the practical application of the legislation differs considerably.

For quite some time the Bundesamt has been rejecting refund not signed by the company's legal representative. 'Legal representative' has been interpreted as the company's CEO or CFO. The fact that this legal representative might have appointed an employee, such as the Tax Director, or a 3rd party legal advisor as its legal representative has been ignored and claims not signed by the CEO or CFO have been considered invalid and therefore rejected. The German Supreme Court has now taken action and referred a case related to this problem to the European Court of Justice. LowendalMasai has obviously already lodged formal appeals to safeguard its clients' interests.

A new development is that the German Tax Court (BFH) has decided that 8th and 13th Directive refund claims must be treated as VAT returns, which means that if the Administration takes more than fifteen months to refund the money, the claimant is entitled to interest compensation. The German Ministry of Finance has stated that they are discussing the outcome and will publish instructions and procedures in the near future.

The rules regarding interest compensation can best be summarized by using the following example. A VAT refund claim for the year 2005 was lodged in June 2006. Without ever querying the claim the Bundesamt refunded the money in May 2008. Interest will be due from April 2007 (15 months after the end of the year to which the VAT return relates to) and an interest application must be submitted before the end of 2009.

Continued from page 1

between finance (= goods) leases and operational leases (= services) to escape taxation. Lack of harmonization between Member States makes such an escape possible, provided the documentation reflects the economic reality. In the case of the yacht-owners they took a short-cut, became greedy and were, therefore, rightly caught.

At the same time yacht owners applied charter-constructions whereby non EU based entities purchased the yachts and recovered the input VAT using the commercial argument that the yachts were to be used for charter. Again in many cases it turned out that the yachts were, in fact, only used by the owner for private purposes. As there was no commercial usage the VAT was assessed and the fraudulent owners caught.

Many of us dealing with VAT will have been faced with the dilemma of where to draw the line. In the situation mentioned above that line was clearly crossed. At the same time it is good that the practical hurdles introduced by VAT administrations to tackle potential, but very often purely theoretical VAT leakage, are also tackled by the Courts.

The Polish Court's decision regarding the taxation of intracommunity supplies is heart warming. Although I have been advocating the importance of VAT, I am sure the ECJ will agree with me that the CEOs of the world's major companies have more important things to do than sign VAT refund claims personally. Especially as a respected group of economic experts has now suggested a one percent reduction of the standard VAT rate in every Member State to stimulate the economy and prevent the EU sliding into a major recession. The suggestion has already been followed by the UK who overnight reduced their standard VAT rate with 2.5%

Marc Huis



## COUNTRY NEWS

## AUSTRIA

From 1 January 2009 the Austrian VAT return form will change.

## COUNTRY NEWS

## CZECH REPUBLIC

**The Czech Administration** will allow VAT group-registrations as of 1 January 2009. It will also become possible for VAT charged in a previous period but not included in previous VAT returns to be included as input VAT in the regular return instead of having to complete supplementary or additional VAT returns.

As of 1 January 2009 the administrative obligation will increase as there will no longer be a registration threshold for non-established taxable persons carrying out taxable activities in the Czech Republic.

The VAT return form will also change for the period starting 1 January 2009.

## COUNTRY NEWS

## DENMARK

As of 1 January 2009, it will be mandatory for Danish companies to file their VAT returns electronically.

## COUNTRY NEWS

## POLAND

In the case of an intra-community supply, if the company supplying the goods does not have the underlying documentation proving that the goods have left Poland in its possession at the time the VAT return is filed, the Polish VAT Act requires the company to treat the supply as domestic and pay Polish VAT on this supply. Once the documentary evidence has been received the 0% VAT rate can be applied and the previous return can be corrected.

The **Polish Supreme Administrative Court** has now confirmed that even if the necessary documents are not available at the time the VAT return is filed, this supply should be treated as a zero-rated intra-community supply. This ruling referred to the Collee Case (C-146/05) in which the ECJ confirmed that the requirement to produce supporting documentation should not undermine VAT neutrality. Obviously the supply must qualify as an intra-community supply. It is also expected that as of 1 December there will be a number of changes in the VAT act aimed at decreasing the administrative burden. Some of the most practical changes are the introduction of a kind of reverse charge rule that allows the VAT due on the import of goods to be settled on the VAT return, – a VAT simplification for call-off stock, the introduction of a 60-days period for a tax-refund and the possibility of applying for a refund even if no taxable activities took place in the same period.



#### NEWS FROM THE EU COMMISSION

*European Sales list to be provided monthly.*

During the last ECOFIN meeting at the beginning of November, the Member States agreed a coordinated approach towards combating VAT Fraud. The measure discussed should speed up the exchange of information regarding cross-border transactions so that fraud can be detected at an earlier stage. This is not expected to lead to an increased administrative burden.

During the same ECOFIN meeting the proposal to change the rules so as to be able to apply the reduced VAT rate to more goods and services did not lead to an agreement between the Member States. The lobby and research will, however, be continued.

#### EUROPEAN COURT OF JUSTICE

**Case C-291/07 (Kollektivavtalsstiftelsen TRR Trygghetsrådet)** ◦ concerned a Swedish foundation that carried out both taxable activities and activities that fell outside the scope of VAT. This foundation received consultancy services from a Danish supplier. The ECJ confirmed that the foundation was to be regarded as a taxable person, which meant that under the reverse charge rule the services received were deemed to be taxable in Sweden despite the fact that they were, or could be, used for the activities outside the scope of VAT.

**Case C-253/07 (Canterbury Hockey Club)** ◦ concerned a sports body that provided supplies to one of its clubs. The ECJ decided that the sports and physical education exemption should not be limited to individuals or human beings but that corporate bodies could also enjoy the exemption as one should look at the ultimate or true beneficiary. In this case a sports body was providing supplies to one of its members – a local sports club.

**Case C-288/07 (Commissioners of Her Majesty's Revenue & Customs v Isle of Wight Council and others)** ◦ dealt with the question of whether parking facilities provided by a public authority can be exempt from VAT. The issue under discussion was the interpretation of the distortion of competition. If a parking facility is operated by an entrepreneur VAT is obviously due. If, however, a similar service is provided by a non taxable person or public authority it is treated as being outside the scope of VAT.

The ECJ ruled that the activities carried out throughout a Member State should be looked at to ascertain whether or not there is potential competition that can be distorted.

Carlos Bofill, International Director of LowendalMasai opening the debate during CFO Round Table 'Cost optimisation in the period of crisis', 5 November, Madrid.



#### SEIZING ALL OPPORTUNITIES IN CURRENT CRISIS

Apart from VAT compliance and optimization solutions LowendalMasai specialists offer business a unique portfolio of services that boost corporations' performances by optimizing their cost.

The global economic crisis, while putting economies at risk of slowdown, offers opportunities which the companies can seize, provided that they take the right steps. This opinion was shared by key European players participating in CFO-CEO Round Tables organised by LowendalMasai in Madrid and Milan.

#### **CFO Round Table 'Cost optimisation in the period of crisis', 5 November, Madrid**

LowendalMasai España took the opportunity to celebrate its tenth anniversary by inviting Spanish industry leaders to the CFO Round Table organised jointly with the 'Expansión' journal. During this event, attended by forty companies from various industry sectors, the CFO of Schindler España, Daikin, and Ayesa took the lead in providing concrete solutions to enhance business performance in the period of the economic downturn.

*For event summary and full contact details, please visit our website on <http://www.lowendalmasai.com/es>*

#### **III CEO – CFO Round Table, 'Strategies to beat the crisis: a dialogue between CEO and CFO', 19 November, Milan**

This intensive and highly interactive one-day event, organised within the framework of *The Economist Conferences* brought together the best-in-class Italian business leaders: *Shell, Stanley Europe, Volvo, Honeywell*, to quote a few. The speakers took the opportunity to discuss current challenges of CEO and CFO function in times of economic slowdown. During this event, the Vice-President of *Paglieri Sell Systems* and CFO of *Conbipel* provided attendees with insights into cost optimization projects successfully run with LowendalMasai.

*For event summary and full contact details, please visit our website on <http://www.lowendalmasai.com/it>*



## TABLE OF REFUNDS

The table below has been compiled by our French Technical Department and lists deductible and non-deductible expenditure based on both the existing rules and the practices in the various countries. Please note that this is just an indication as rules and practices change frequently.

MEMBER STATE EU	COUNTRY CODE	VAT										CONFERENCES, FAIRS, TRAINING	OTHER EXPENSES
			ACCOMODATION	RESTAURANT	RECEPTIONS & ENTERTAINMENT	CAR RENTAL	TRAIN/BUS/TAXI	PARKING	TOLLS	DIESEL	PETROL		
Austria	AT	UWst	10 <sup>2</sup>	10/20	10 <sup>2</sup>	—	10/20 <sup>2</sup>	—	20	20*	20*	20	20
Belgium	BE	BTW/TVA	6*	21*	—	21 <sup>3</sup>	6	—	—	21 <sup>3</sup>	21 <sup>3</sup>	21	21
Bulgaria	BG	VAT	20	20*	—	—	—	—	—	—	—	20	20
Cyprus	CY	VAT/FPA	8 <sup>5</sup>	8 <sup>3</sup>	8 <sup>3</sup>	15	8	15	—	15	15	15/8	15
Czech Republic	CZ	DPH	5*	—	—	19*	19*	—	—	19*	19*	19	19
Denmark	DK	MOMS	25 <sup>2 3</sup>	25 <sup>2 3</sup>	25 <sup>2 3</sup>	—	—	25	—	25*	25*	25	25
Estonia	EE	TKT	5	5	18	18	18	18	18	18	18	18	18
Finland	FI	ALV	8	—	—	22*	8	22	—	22*	22*	8/22	22
France	FR	TVA	—	19.6	19.6	—	—	19.6*	19.6 <sup>2</sup>	19.6 <sup>3</sup>	—	19.6	19.6
Germany	DE	MWst	19 <sup>1</sup>	19 <sup>1 4</sup>	19 <sup>3</sup>	19 <sup>1</sup>	7/19	19	—	19	19	19	19
Greece	EL	FPA	—	—	—	—	—	—	—	—	—	19	19
Hungary	HU	AFA	20	—	20	20	—	—	—	20*	20*	20	20
Ireland	IE	VAT	13.5*	—	—	—	—	—	—	21*	—	21	21
Italy	IT	IVA	10 <sup>5</sup>	20 <sup>5</sup>	—	20*	—	—	—	20*	20*	20	20
Latvia	LV	PVN	5*	—	18 <sup>3</sup>	18	18	18	18	18	18	18	18
Lithuania	LT	PVM	5	18	—	—	5*	18	18	18	18	18	18
Luxembourg	LU	TVA	3	3	—	15	3	15	—	15	15	15	15
Malta	ML	VAT	5*	5/18*	—	18*	18	18	18	18*	18*	18	18
Monaco	MC	TVA	—	19.6	19.6	—	—	19.6*	19.6 <sup>2</sup>	19.6 <sup>3</sup>	—	19.6	19.6
Netherlands	NL	BTW	6	—	—	19	6	—	19	19	19	19	19
Poland	PL	VAT	—	—	—	22*	7*	—	—	—	—	22	22
Portugal <sup>6</sup>	PT	IVA	5*	12*	20	5/20*	5/20*	—	—	20 <sup>3</sup>	20*	21	21
Romania	RO	IVA	19	19	19	19	19	—	—	—	—	19	19
Slovakia	SK	DPH	19*	—	—	19*	19	19	19	19*	19*	19	19
Slovenia	SI	DDV	—	—	—	20	8.5	—	—	20*	20*	20	20
Spain	ES	IVA	7/16	7/16	—	16 <sup>3</sup>	7	7	7	16	16	7/16	16
Sweden	SE	MOMS	12	25 <sup>4</sup>	25 <sup>4</sup>	25 <sup>3</sup>	6	25	—	25	25	25	25
United Kingdom	UK	VAT	17.5	17.5	—	17.5 <sup>3</sup>	—	17.5	—	17.5	17.5	17.5	17.5

  

MEMBER STATE WORLDWIDE	COUNTRY CODE	VAT										CONFERENCES, FAIRS, TRAINING	OTHER EXPENSES
			ACCOMODATION	RESTAURANT	RECEPTIONS & ENTERTAINMENT	CAR RENTAL	TRAIN/BUS/TAXI	PARKING	TOLLS	DIESEL	PETROL		
Australia	AU	GST	10	10	10	10	10	10	10	10	10	10	10
Canada	CA	GST/TPS	5*	—	—	—	—	—	—	—	—	—	—
Switzerland	CH	TVA	3.6	7.6 <sup>3</sup>	—	7.6	7.6	7.6	—	7.6	7.6	7.6	7.6
South Korea	KR	VAT	10*	10*	—	10*	10*	10*	10*	10*	10*	10	10
Faroe Islands	DK	MOMS/MVA	—	—	—	—	—	—	—	—	—	25	25
Iceland	IS	VSK	7*	—	—	24.5	24.5	24.5	24.5	24.5	24.5	24.5	24.5
Norway	NO	MOMS/MVA	8*	—	—	—	8*	—	—	25*	25*	25	25

(\*) Restrictions apply. Please contact us for further information.

(1) Incomplete invoices can be restyled.

(2) Exception: invoices relating to an employee's expenses can be in the name of the employee.

(3) Partial right of deduction of VAT (DK & PT = 25% deductible; LV = 60%; others = 50%).

(4) Maximum ceiling on the right of deduction.

(5) Only as of September 2008 and on condition that the formal requirements won't be too strict.

(6) VAT rate: 21% until 30 June 2008; 20% as from 1 July 2008.

## ADDRESSES

### LowendalMasai America

20 N. Wacker Drive, Suite 2420  
Chicago, IL 60606, USA  
T 00 1 312 268 60 84

### LowendalMasai UK

7 The Square, Stockley Park,  
Uxbridge UB11 1FW, UK  
T 00 44 203 178 54 41

### LowendalMasai Portugal

Rua da Misericórdia 76  
1200-273 Lisboa, Portugal  
T 00 351 213 210 219

### LowendalMasai España

Avenida Bruselas 7  
28108, Madrid, Spain  
T 00 34 913 19 28 75

Avenida Diagonal, 523, 5a  
planta - 08029 Barcelona  
T 00 34 932 01 07 00

### LowendalMasai Italy

Via Fabio Filzi 2  
20124 Milan, Italy  
T 00 39 2 805 832 23

### LowendalMasai Germany

Louise-Dumont-Str. 5  
D-40211 Düsseldorf, Germany  
T 0049 211 71 06 75-14

### LowendalMasai France

16, Rue Washington  
F 75399 Paris Cedex 08, France  
T 0033 1 44 65 18 02

### LowendalMasai Benelux

Mauritsstraat 11  
2011 vn Haarlem, The Netherlands  
T 0031 23 511 29 80

### LowendalMasai K.K.

Kitasando DT Bldg. 5F  
4-16-7 Sendagaya  
Shibuya-ku, Tokyo 151-0051, Japan  
T 0081 3 6661 4501

## Colophon

Editorial: mhuis@lowendalmasai.com  
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## THE IMPACT OF A VAT RATE CHANGE

The announcement of a VAT rate change has major implications for a company's ERP system as a new VAT rate changes the way you charge and account for VAT. In the UK it means that any sales of standard rated goods or services that take place on or after 1 December 2008 are subject to 15% VAT. For BtB trade the new rate will apply on all VAT invoices issued on or after 1 December.

However you should note that an invoice must be issued within 14 days from the date of supply, so it is not possible to wait with the issuance of the invoice. This means that all supplies made from 18 November onwards can already be subject to the new VAT rate provided no invoice has been issued. In case payment took place before 1 December the old 17.5% rate is applicable.

A special point of attention goes to the so called continuous supplies of services (such as lease) where VAT is due whenever the VAT invoice is issued or payment is received. In cases invoices or payments are received on or after 1 December, the 15% rate will apply.

If an invoice has already been issued before 1 December and the supply will take place on or after 1 December the supplier can change the previous invoice and issue a new one with the reduced VAT rate provided he issues a credit note for the initial invoice and refunds the difference.

## VAT CHART

