



LowendalMasai

TAX COST SOURCING CASH

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VAT News
BI-MONTHLY MAGAZINE

Did you know?

HM Customs & Revenue estimates that in the UK €7 billion of VAT is lost each year through general non-compliance or mistakes.

VAT RATE CHANGE

Portugal

The Portuguese Administration has announced that it will reduce the standard VAT rate from 21% to 20%. The envisaged date for the change is 1 July 2008.

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Raising VAT Awareness saves real money!

Although most US, Japanese and Chinese businesses know that the VAT they pay on travel and expenses is recoverable, the VAT paid on purchase ledger expenses is generally far easier to reclaim and, as long as the correct refund procedure is used, is more certain to be recovered. The most common reason for a claim made under the 13th Directive VAT Refund Procedure being rejected is that the company is not registered as a non-established trader and did not claim using a local VAT registration. Failing to register often means the VAT recovery opportunity is lost.

Another common error made by US, Japanese and Chinese entities is not identifying VAT they have incurred, for example on inter-company transactions. Very often little attention is paid to such group charges and VAT that should be charged by the local subsidiary is not charged. As a result, VAT is assessed during subsequent tax audits.

It is, however, more important that non-EU multi-nationals wanting to establish themselves in Europe take the differences in national VAT legislation throughout the EU into consideration because, although the principles of VAT legislation have been harmonized throughout the EU, at a national level there are still considerable differences with regard to rates, deductibility of expenses, exemptions and, last but not least, the VAT compliance burden.

As VAT represents, and will continue to represent, one of a business' greatest cash flows, companies are paying more and more attention to raising and maximizing VAT visibility. Control frameworks that will enable the negative impact of VAT to be identified and quantified, efficiency to be improved and planning opportunities to be realized are being designed and installed.

At the same time, Governments are becoming more and more aware that the existing VAT system can be abused by fraudulent traders and are introducing new legislation and regulations to stop tax leakage.

Both developments would seem to reinforce each other. We must, therefore, remain vigilant and keep in mind the fact that where VAT is concerned it always comes down to answering the same basic questions: what am I selling or buying, to or from whom, when, where and how.

This is why we welcomed the outcome of the Ecotrade case in which the ECJ stated very clearly that the output VAT on a reverse charge transaction cannot be collected unless the corresponding input VAT is refunded.

Although it took nearly 17 years it was comforting to have this cornerstone principle of our VAT system reconfirmed.

Marc Huis



VAT RATE NEWS

Reduce your costs in Japan

Although the Japanese consumption tax base rate is 'only' 5% (4% national consumption tax and 1% local consumption tax), Japan is one of the few non-EU countries that refunds money to non-established traders doing business in Japan.

In Japan consumption tax is generally payable on the importation of goods and the amounts received for the transfer of assets and the provision of services deemed to have taken place in Japan.

Under the Japanese consumption tax system, businesses must withhold the tax on the goods or services they sell. Periodically they pay the difference between the tax they incur on their purchases and the tax they have charged to their customers.

Although many exemptions and simplifications exist, registering and filing a local return can be worthwhile for non-Japanese enterprises that only incur expenses. While the language, formal requirements and necessity of appointing a local fiscal representative may, at first sight, seem to be an insurmountable hurdle, with the help of our Japanese LowendalMasai office in Tokyo, our clients should be able to achieve further cost savings.

REFUND NEWS

SPAIN

Deadline for submitting claims

A recent supreme court case confirmed that in Spain the six month filing deadline for 8th Directive claims is not discriminatory despite the fact that, in most cases, the filing period for local returns is four years.

A claim that is submitted by EU claimants in Spain must be submitted at the 30st of June at the latest. It has now been clarified that for claims submitted to the Spanish Administration submitted means posted. In the other Member States the current practice is that claims for invoices issued in 2007 must arrive on the 30st of June at the latest. Only The Netherlands and Belgium allow claims to be filed for retro-active periods.



COUNTRY NEWS

AUSTRIA

VAT included in hospitality tickets.

European football tournament 2008 ○ The organizers of the UEFA European Football Championships 2008 are offering 'hospitality tickets'.

These tickets include the following services:

- Entrance fee to the matches;
- Gourmet catering;
- A special program of entertainment before and after the match;
- Access to the hospitality area.

Most purchasers will add additional services, such as accommodation, transport etc. According to the Austrian Ministry of Finance, the VAT included in the hospitality tickets can be reclaimed by filing an 8th or 13th Directive claim provided that:

- 1 The tickets are provided to the purchaser's customers for sales promotion purposes and
- 2 The general invoicing requirements are fulfilled.

Companies registered for VAT purposes in Austria can reclaim the VAT in their regular monthly VAT returns.

COUNTRY NEWS

THE NETHERLANDS

The Supreme Court recently ruled that the tax administration should be allowed to determine the amount of an assessment by means of a random check provided that this produces a reliable calculation. The taxpayer had argued that the VAT payable amount must be determined by reference to each specific transaction. The Tax administration extrapolated the result and based its assessment on this extrapolation.

Barter deals.

COUNTRY NEWS

SPAIN

The European Commission has formally asked Spain to bring certain of its VAT rules for determining the taxable amount in cases of barter transactions (goods/services supplied by trader A are exchanged for goods/services supplied by trader B) in line with the provisions of the VAT Directives. According to the EU Commission, a different means of payment for acquiring a product cannot lead to a different VAT liability.

COUNTRY NEWS

ROMANIA

The Romanian Minister of Economy and Finance has issued a statement confirming that taxpayers may file certain VAT returns electronically.

Immunity not guaranteed.

A new penalty system applicable to all returns relating to a period commencing on or after 1 April 2008 for which returns are due to be filed after 1 April 2009 has been introduced. Penalties will be determined on the basis of the tax amount understated and the tax payer's behavior and extent of disclosure.

The key factor will be whether the inaccuracy is deliberate or due to carelessness. The liability to pay a penalty is now determined by HMCR in two stages. In stage one it is determined whether an inaccurate document or return has resulted in an understatement of the tax payable, a false/inflated statement of loss or an inflated repayment claim. In stage two it is determined whether the inaccuracy is deliberate or due to carelessness.

HMCR has stated that no penalty will be payable if:

- there are reasoned arguments for the occurrence of the accuracy, even if the arguments are not upheld;
- the understatement of tax payable is due to a mathematical error, provided such error is not 'too large', or
- if, in accordance with HMCR advice, an incorrect position has been taken, provided that HMCR was in full possession of the facts on which to base its advice.

The UK Administration has announced it would still like taxpayers to submit voluntary disclosures but that the new penalty regime does not guarantee immunity from a 'failure to take reasonable care' behavior-based penalty, which could be as high as 30% of the tax due.

Did you know?

Based on the experience of one of the big-4, the VAT error rate within Multi-nationals varies between 0.1% and 2.5% of the VAT amounts booked.

Anti-fraud legislation clarified.

NEW EU DEVELOPMENTS

Fight against VAT fraud

During the last Ecofin meeting in May the Commission provided some clarification regarding the anti-fraud legislation it plans to present later this year.

The anti-fraud solutions being considered are the introduction of a joint and several liability for tax losses in a different Member State from the non-established traders who facilitated the fraud and the, harmonization of the rules regarding the exemption of VAT in cases of importation followed by intra-community supply.

A solution is also being sought through the improvement of administrative cooperation, which will make it easier for the Administration to exchange information automatically, recover money and harmonize the (de)registration-procedures.

Upgrading of the VIES-system.

From 2009 on, the data of registration for VAT purposes on the European website will also enable the name and address of trading partners established in other Member States to be confirmed. Personal consultation certificates will also be issued, which should lead to increased legal certainty that suppliers are acting in good faith.

Case C-442/05 (Zweckverband zur Trinkwasserversorgung) ◦ ‘In Germany, the supply of water is subject to the reduced VAT rate. In addition to the charges for the supply of water Zweckverband also charged a householder a single, separate amount for connection to the water supply network. The question asked was whether the fee for the connection is also deemed to be the supply of water. The European Court of Justice ruled that connection to the water supply network for a remuneration does form part of the supply of water/water supplies.

Sub-agents insurance services are exempt.

Case 124/07 (J.C.M. Beheer BV) ◦ In this Dutch case, JCM acts as a subagent for insurance broker and insurance agent VDL. JCM’s activities involve the completion of insurance contracts, the processing of insurance policy transfers, the issue of such policies, the payment of commissions and the provision of information to the insurance company and policyholders. JCM also offers and concludes new insurance policies independently and on its own initiative. JCM does not have a formal relationship with the insurers on whose behalf VDL acts, but it does have an indirect relationship with those insurers. The European Court of Justice ruled, therefore, that JCM’s activities are VAT exempt.

Unjust enrichment clarified.

Case C-309/06 (Marks & Spencer plc) ◦ For 21 years, Marks & Spencer applied the standard VAT rate on the teacakes it sold. As it turned out, the local VAT legislation had been incorrectly explained in the UK and the 0% VAT rate should have been applied. Marks & Spencer claimed the over-paid VAT back. The European Court of Justice ruled that, in principle, a trader like Marks & Spencer is entitled to a refund of over-paid VAT. Community law, however, entitles national legal systems to disallow the repayment of over-paid VAT if the repayment would lead to an unjust enrichment of the recipient. Based on the principle of fiscal neutrality, the prohibition of unjust enrichment must be applied regardless of whether the taxable person is in a payment or repayment position. Whether or not the trader suffered any financial loss or disadvantage is irrelevant.

Cases C95/07 and C96-07 (Ecotrade Spa) ◦ This Italian case dealt with a situation in which a local entity had to account for VAT because it received a service for which it, as the recipient, had to account for VAT under the reverse charge mechanism. The reverse charge mechanism had not been applied and the Italian Administration assessed the taxpayer but did not allow the refund for the VAT payable under the reverse charge because it applied a 4 four year period for the output VAT but only a two year period for the deduction of this self-assessed VAT. The ECJ ruled that the input VAT should have been fully recoverable.

VAT Group and fiscal neutrality.

Case C-162/07 Amplisientifica Srl ◦ In this Italian case the ECJ confirmed that if a VAT group exists the companies in the VAT group are considered a single taxable entity and can only file one VAT return. It also confirmed that a simplified registration scheme is acceptable as long as it can be applied by everybody in a similar position.

