

PwC VAT Broadcast

Austria

Issue 1, December 2005



In this issue

The VAT year 2005 – retrospective and outlook

- 1 Changes to invoicing
- 2 Reporting obligations and due dates
- 2 Supply of services
- 3 Bad debt
- 3 Community law

The year 2005 once again was accompanied by major changes in Austrian VAT law. In the following, we provide you with an overview of the most significant amendments.

Changes to invoicing

New invoice data: VAT identification number of recipient

As of July 2006, VAT invoices for supplies of goods or services exceeding the total invoice amount of EUR 10,000 must – in addition to the VAT identification number of the supplier – show the VAT identification number of the recipient if the supply is effected by a taxable person established in Austria to another taxable person.

If the VAT identification number is not shown on the invoice or is invalid the recipient is not entitled to deduct VAT shown on the invoice. According to the Austrian VAT guidelines, if the recipient of an invalid VAT invoice can provide a valid VAT invoice within the respite of one month upon request of the tax auditor input VAT deduction will not be denied.

Electronic invoicing

Invoices transmitted by electronic means only qualify as valid VAT invoices if the authenticity of origin and the integrity of content of the invoice are guaranteed. This is deemed to be guaranteed if

- the invoice is provided with an advanced electronic signature and based on a certificate issued by a certification-service-provider; or
- the invoice is transmitted by means of electronic data interchange (EDI) and in addition a summary invoice is transmitted on paper or is provided with an advanced electronic signature.

The Austrian Ministry of Finance issued administrative guidelines, specifying the requirements for electronic invoicing. The most important provisions are the following:

- There is no specific form required how the recipient of the invoice must accept and affirm that he agrees to electronic invoicing. Tacit or even retroactive acceptance is considered as sufficient.
- The process of the creation and electronic transmission of invoices must be traceable by the tax authorities within a reasonable period of time.
- Electronic invoices can either be signed on behalf of the company by an employee or a third party. If invoices are signed by an employee of the company on its behalf a power of attorney should be granted.
- The transfer of multiple invoices to one specific recipient with only one signature and the use of automated mass-signing procedures are explicitly permitted.
- Invoices transmitted via fax (regardless of whether stan-

hard fax or computer fax) or e-mail do not entitle to input tax deduction, unless a proper advanced signature is attached to it or the invoice transmitted by means of EDI. For fax invoices a transition period until December 31, 2006 applies.

In connection with 8th VAT Directive refund claims it is accepted that for the time being hard copies of the electronic invoices are filed with the tax authorities, provided that it is apparent that the respective invoices are electronic ones.

Date of supply

The date of supply does not have to be shown on the invoice separately if the date of issue corresponds to the date of the supply of goods or services and the invoice contains the remark "date of issue is date of supply".

VAT liability based on the invoice

Basically, the VAT amount due is based on the consideration received for the taxable transaction in connection with the tax rate applicable. If the VAT amount shown on an invoice exceeds the VAT amount due for a supply of goods or services, the taxpayer owes the VAT amount shown on the invoice. This also applies in case of self-billing, as far as the recipient of the self-bill does not oppose the VAT amount shown.

The above also applies to invoices not exceeding the total amount of EUR 150 (small value invoices), for which it is sufficient that only the total amount including VAT and the indication of the applied tax rate is shown. If an incorrect (i.e. excessive) VAT rate is indicated on such an invoice VAT based on the higher VAT rate becomes due.

VAT identification number and address of non-resident suppliers

Foreign taxable persons maintaining a fixed establishment in Austria have to show their Austrian VAT identification number on invoices for supplies of goods or services taxable in Austria, even if the supply of goods or services is not effected through the Austrian fixed establishment but e.g. by the foreign headquarter. Otherwise, the recipient of the services is not entitled to deduct VAT shown on the invoice.

If a taxable person has more than one business address (e.g. legal seat abroad, fixed establishment in Austria) both addresses can be shown alternatively on the invoice.

Reporting obligations and due dates

Monthly EC Sales Listings

Beginning with January 2006, taxable persons have to file their EC Sales Listings on a monthly basis, whereas currently, EC Sales Listings have to be filed on a quarterly

basis. If the EC Sales Listings are submitted electronically, the filing deadline is the 15th of the second month following the reporting month and therefore coincides with the filing date for the electronic filing of monthly VAT returns. Small-size businesses, which file VAT returns on a quarterly basis, can continue to file their EC Sales Listings on a quarterly basis, as well.

Book evidence

The Austrian fiscal authorities insist on denying VAT exemption for intra-Community supplies of goods and export supplies of goods if proper book evidence on the sales cannot be provided, even if all other conditions for the zero-rating of the respective supply of goods are met. This point of view is not in line with recent decisions by the Austrian Independent Fiscal Tribunal. Proper book evidence basically has to be provided at the beginning of a tax audit. According to the Austrian VAT guidelines, taxable persons can complete missing parts of the book evidence within the respite of one month in case of a tax audit without losing VAT exemption.

Supply of services

Cross-border lease of passenger cars

If the leasing of passenger cars is subject to VAT in a country, which grants VAT refund to Austrian lessees, the Austrian lessee must self-account for Austrian VAT on the cross-border leasing of the vehicle. The Austrian VAT is not recoverable and represents a cost element for the Austrian lessee. Although this provision was considered to be not in line with the 6th EC VAT Directive by the European Court of Justice in 2003, Austria has until now maintained the rule on self-accounting for VAT for cyclical economic reasons by authority of the EC VAT Commission. As this highly criticised temporary measure was now prolonged until December 31, 2007, an anew decision of the European Court of Justice is eagerly waited for.

Bring your family and friends-schemes

The granting of allowances/premiums in kind or vouchers by taxable persons to customers for the acquisition of new customers qualifies as taxable barter transaction. The granting of allowances/premiums in kind constitutes a taxable supply of goods for consideration. The tax base is the cost price of the goods supplied. The granting of a voucher does not constitute a taxable transaction at the time of the granting but at the time the voucher is released. The tax base is the cost price of the goods supplied, given the fact the taxable person can provide evidence that the released voucher was granted in connection with the acquisition of new customers.

Conventions

The organisation of a convention by an Austrian organiser for foreign businesses in Austria, whereby the organisation services consist of a service-package (e.g. provision of stands and advertising space, announcement of the convention, naming as sponsor) invoiced as a whole qualifies as one single supply of services. The provision of stands in connection with fairs, exhibitions and conventions is considered as a supply of services in connection with immovable property. Although special provisions apply for advertising and public relation services, these are not applicable on the supply of services in connection with immovable property. Therefore, the place of supply of the service-package rendered in course of the organisation of the convention is deemed to be where the convention takes place.

CO₂ emission certificates

Following an information letter published by the Austrian Ministry of Finance, the taxable transfer of CO₂ emission certificates according to EC Directive 2003/87 is considered a supply of services according to Art 9 (2) (e) of the 6th EC VAT Directive and is not tax exempt according to § 6 (8) of the Austrian VAT Act.

Bad debt

According to the Austrian Supreme Administrative Court, the mere doubt that receivables will become uncollectible is not sufficient for qualifying them as bad debt. In fact, the receivables have to be worthless from an objective point of view, i.e. uncollectability is not only presumed but also inevitable. Substantiate denial of the receivable by the recipient of the supply of goods or services is not sufficient.

Community law

Council Regulation (EC) No 1777/2005 of October 17, 2005

The European Council has laid down implementing measures for the 6th EC VAT Directive to ensure a more uniform application of the current VAT system throughout all Member States, in particular in respect of taxable persons, the supply of goods and services and the place of their supply (OJ L288/1 of October 29, 2005). The Council Regulation will be come effective as of July 1, 2006.

Discounted employee meals

Transactions in respect of which an actual consideration is paid are not regarded as an application of goods or services for private use - even where that consideration is less than the cost price of the goods or services supplied. In case an actual consideration is paid, this consideration constitutes the tax base. ECJ 20.1.2005, C-412/03 Hotel Scandic Gåsabäck AB.

Input VAT deduction in connection with the admission of a company to a stock exchange

A new share issue does not constitute a transaction falling within Art 2 (1) of the 6th EC VAT Directive, i.e. it does not constitute a supply for consideration. Companies have the right to deduct all input VAT incurred by the various supplies acquired in connection with a share issue as far as all the transactions undertaken by the company in the context of its economic activity constitute taxable transactions. ECJ 26.5.2005, C-465/03 Kretztechnik.

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Visit our website for archived issues:
www.pwc.com/at/vat_broadcast

Copyright & Publisher: PwC PricewaterhouseCoopers GmbH, Erdbergstrasse 200, 1030 Vienna, Austria

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