

Answer-to-Question-_1_

Dear HCSL Finance Director,

We include our report hereafter which identifies the EU VAT implications of your activities in Merkia and the neighbouring EU Member State.

Import of haircare products

The import of haircare products is a taxable supply per Article 2 of the PVD as an import of goods into the EU territory. VAT at the applicable rate in Merkia should be applied to the import and will be calculated by reference to the value of the products for customs purposes. This value shall include all taxes, levies and expenses (e.g. freight).

Subsequent sale of products to customers in Merkia

The sale of the hair products to customers in Merkia constitutes a taxable supply of goods per Article 14 of the PVD. Per Articles 31 and 32 of the PVD, the place of supply of the hair products will be Merkia despite whether HCSL provides for transportation of the hair products. HCSL should accordingly account for output VAT at the applicable rate for such supplies and remit it to the Merkia tax authority.

Subsequent sale of products to customers in other EU member states

The sale of hair products to customers in other EU member states constitutes a taxable supply of goods and should be classified as an Intra-Community Supply (ICS). Per Article 138 of the PVD, an ICS shall be exempt from VAT where the following conditions are met:

1. The goods are supplied to another taxable person, or a non-taxable person acting as such in a Member State other than that in which the transport or dispatch began.
2. The taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the transport of goods begins and has indicated this VAT

number to the supplier.

The ICS will only be exempt where the supplier has sufficient evidence that the goods are dispatched from the Member State in question. The purposes of applying Article 138, the Implementing Regulations provides that the goods will be presumed to have been dispatched from a Member State to Another where any of the following is satisfied:

- The vendor indicates that the goods have been dispatched by him or a third party and is in possession of 2 non-contradictory pieces of evidence substantiating the dispatch
- The vendor is in possession of a written statement from the acquirer and at least 2 non-contradictory pieces of evidence.

In this case, HCSL may be able to treat the sale of products to customers in other Member States as exempt provided the above conditions are met. HCSL will be entitled to deduct input VAT associated with the supply. Per article 20 of the PVD, the acquirer is required to treat the supply as an intra-community acquisition and account for VAT in accordance with the reverse charge mechanism.

Services from logistics company

The services provided by the logistics company to HCSL are taxable services per Article 2 of the PVD.

It is understood that a logistics provider situated in Merkia is used to deliver the goods to clients in Merkia and other neighboring Member States.

The place of supply of the services is likely to fall under the general rule under Article 44, and will have a place of supply in Merkia as it is the place HCSL is located. The logistics provider will be required to charge VAT at the applicable rate in Merkia.

The services of transporting goods may also fall within the special place of supply rules in Articles 49 and 50. In all cases, Merkia will be charged VAT on this supply.

Training services

The training services to be provided by HCSL are taxable services per Article 2 of the PVD. Training services are subject to a special place of supply rule stipulated in Article 53 of the PVD. The training services will hence have a place of supply where the training occurs. Where HCSL provides training to customers in Merkia it will be charging Merkian VAT on the supply. Where HCSL provides training to customers in other EU member states, the taxable person customer will be accounting for VAT under the RCM. Where the customer is not a taxable person, HCSL may trigger a registration obligation in the other Member state.

Overpaid VAT

Generally the EU VAT rules will not govern the commercial relations between the parties. Based on CJEU case law, HCSL's only resort is requiring the supplier to issue a credit note and adjust the incorrect invoice.

Answer-to-Question-2

Part 1

The EU VAT rules do not provide for thresholds for VAT registration and the matter is left to the Member States to decide. Based on the current projections, Joan does not expect to exceed the mandatory registration threshold in Valdemar. As such, Joan may not be required to register for VAT in her first year but should keep monitoring her sales to see she exceeds the threshold and if she triggered a VAT registration obligation in another member state. If the threshold is voluntary, Joan may register for VAT in order to claim input VAT incurred.

Part 2

The supply of marketing services for consideration will be a taxable supply subject to EU VAT per Article 2 of the PVD.

Online marketing services to taxable persons will be subject to the general place of supply rule per article 44 of the PVD. As such, the place of supply in this case will be Valdemar. Joan in this case will be required to charge output VAT and report such VAT to the Valdemar tax authority.

Part 3

As above, the supply of marketing services will be taxable at the place where the taxable customer is established. Where Joan provides services to EU based taxable persons, such persons will be required to account for VAT in accordance with the reverse charge mechanism.

Part 4

The supply of marketing services to persons out of the European Union will have a place of supply per article 45 of the PVD; the place where Joan is established. As such, Joan will be required to charge EU VAT on the supply. However, Joan may be able to zero-rate the supply as an export of services to a non-EU resident.

Part 5

The supply of online tuition services to private individuals may be classified either as a general service or an electronically supplied service. This classification is required for the purposes of determining the place of supply of the services.

An electronically supplied service per the implementing regulations include services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in absence of information technology. Supply of distance teaching is explicitly referred to in Annex II to the PVD. The

Implementing Regulations specify that distance teaching includes the automated distance teaching dependent on the internet or similar electronic network to function and the supply of which requires no human intervention including virtual teaching, except where the internet or similar electronic network is used simply as a tool for communication. I

In this case, Joan's online private tuition is likely to not fall within the definition of an electronically supplied service given that it has substantial human intervention (i.e. the classes are not pre-recorded) and the online platform is merely used as a tool.

Accordingly, given that the general place of supply will apply. The services as provided to private individuals will be taxable in Valdemar. Joan will be required to charge VAT on the supply and remit it to the Valdemar tax authority.

Part 6

Input VAT which is attributable to taxable supplies will be fully recoverable by Joan per Article 168. Accordingly, input VAT on services attributable to online marketing services will fully be recoverable.

Part 7

Similar to the above, given that the tuition services are classified as services subject to the general place of supply rules (i.e. not electronic services), Joan will have a full right to deduct input VAT incurred in connection with such services. This may be different where the tax authority deems the supplies as ESS. Where this is the case, and services are supplied to non-EU based customers, input VAT in connection with such services will not be recoverable and Joan will have to proportionate costs on the basis of where her customers are located.

Part 8

The computer is unlikely to be classified as a capital asset. The computer is also not a mixed-used asset given that it will exclusively be used for the purposes of Joan's business. As such, no special rules should apply and Joan should enjoy a full right of deduction.

Answer-to-Question-3

Introduction

The VAT treatment of composite and mixed supplies has been heavily debated in both the academic and judicial environments. The CJEU has been confronted with multiple cases which tackle the matter and provide for multiple principles which govern how taxable persons classify their supplies. The distinction is imperative since it dictates the nature of the supplies in question and consequentially the place of supply and chargibility of EU VAT. Several jurisdictions, like the United Arab Emirates and Saudi Arabia have attempted to codify these rules, while the EU primarily relies on the CJEU rulings and principles included therein. Accordingly, no explicit rules are included in the PVD or implementing regulations. Given the wide debate and multiple CJEU decisions, there may be a case pushing for the codification of such rules. However, as will be provided below, this may yield unintended outcomes.

What are composite and mixed supplies

In short, a single composite supply is a bundle of distinct supplies which are either (1) so interlinked that it would be artificial to split or (2) consist of a principal and ancillary element and that element is very closely connected to the principal element and which does not constitute an aim within itself but rather a means of better enjoying the principal element. On the other hand, a mixed supply is merely a bundle of distinct supplies which cannot be classified as a composite supply. A series of factors are used to carry out this assessment, which need to be done on a case by case basis. For instance, having

identifiable prices for the supplies may indicate having a mixed supply but this is not always the case as held by multiple CJEU cases.

The definition of composite supplies has been widely discussed in the landmark case; C-349/96 (card protection plan) where the CJEU has held that a service must be regarded as ancillary to the principal service if it does not constitute for customers an aim in itself but a means of better enjoying the principal service supplied. In this case, the CJEU has held that it is for the national court to determine whether the transactions in question are to be regarded as two independent supplies, namely an exempt insurance supply and a taxable card registration service, or whether one of those supplies is the principal element to which the other supply is ancillary.

In C-41/04 (Levob), the CJEU supplemented the definition of composite supplies and provided that where two or more elements or acts supplied by a taxable person are so closely connected that the form, objectively from an economic view point, a whole transaction which would be artificial to split, all of those elements shall constitute a single supply. This case related to the supply of software which is later customised and separate prices were paid by the customer. The CJEU found this supply to be a single composite supply.

What are the VAT implications arising from the classification

As mentioned above, this distinction is imperative as it dictates the VAT treatment of the bundle of supplies. Where there is a single composite supply, the VAT treatment of all the distinct supplies will follow the VAT treatment of the principal element. On the other hand, the distinct supplies forming part of a mixed supply will need to be assessed independently. This distinction is of great consequence, as the exemption status may differ, the VAT rate may differ and the place of supply may shift.

This has been reiterated recently in the C-436/16 (Stadion Amsterdam), where the CJEU held that a single supply comprising of two distinct elements, one principal and one ancillary, must be taxed solely at the rate of VAT applicable to the principal element, even if the price of

each element forming the full price paid by the consumer can be identified. This case reflects the fact dependency and the complexity of this assessment as having separately identifiable prices on the invoice usually indicates having a mixed supply. However, this may not always be the case and a determination of whether there is a principal element is always required. As evidenced in this case, the classification had a direct impact on whether the supply would be exempt or taxable.

Analysis

As provided in the statement, the VAT treatment of bundled supplies is one of the most debated VAT issues. As evidenced in the multiple CJEU decisions above-referenced, the analysis is often complex, fact dependent and requires a deep objective assessment of each case individually.

Multiple developing economies have attempted condensing these rules and having clear cut conditions, definitions and requirements. However, given the fact dependency of each case, this approach may yield unintended outcomes and open the floor for abuse. Each of the cases above-referenced is distinct and requires the CJEU to take into account different factors. For instance, the consideration of whether identifiable prices are presented may not always indicate having multiple supplies.

Answer-to-Question- 6

Introduction

Considering that VAT is a consumption tax applied up to and until the retail trade stage, the determination of where a natural non-taxable person belongs for EU VAT is imperative. In some instances, this determination dictates the place of supply and consequentially the VAT

treatment of the supply.

Where the customer belongs per the EU VAT legislation

The determination of where each customer belongs for EU VAT purposes is dictated by the relevant article of the PVD to be applied. Generally, the non-taxable person's place of establishment is used to identify the place of supply of certain services. Other factors such as the place where the customer has his permanent address or usually resides is used to determine the place of the customer's establishment. These factors are defined as follows in the implementing regulations:

- permanent address: the address entered in the population or similar register or the address indicated by that person to the relevant authorities
- usually resides: the place where that natural person usually lives as a result of personal and occupational ties.

For the supply of goods, the customer's place of establishment is less determinative as goods generally will have a place of supply either where the transport by the supplier begins or where the goods are put at the disposal of the customer, which may or may not be the place of establishment.

The supplier is required to establish the place on the basis of the information provided by the customer and verify that information by normal commercial security measures as those relating to identity or payment checks.

Below are some examples of how this the place where the customer belongs is relevant for certain articles in the PVD.

Electronic Services

The supply of electronic services (ESS) to a non-taxable person has a place of supply of where the customer is established, has his permanent address or usually resides.

For these services, there are several presumptions of the place where the customer is established. For instance, for services supplied by fixed land line, the person is presumed to be established in the place the land line is fixed. For other instances, the regulations provides a list of factors to be considered to be indicative of the place of establishment: billing address, IP, bank details, MCC, location of fixed line. Where the supplier has two non-contractory peices of evidence collected from the factors above, he may use them for the purposes of Article 58 of the PVD.

Hiring of means of transport

The place of supply for hurring of means of transport (other than short term hurring) is the place where the customer is established, has his permanent address or usually resides.

Answer-to-Question-8

Part 1

This is a supply of goods subject to VAT per Article 2 of the PVD. The taxable amount in this case is Euro 340,000. There should be no issue in having a taxable amount lower than the market price so long as the customer has a full right to deduct input VAT.

Part2

A supply of goods free of charge will be considered to be a taxable supply of goods where Business A has deducted input VAT associated with the supply. If such deduction is made, Business A is required to charge output VAT on the open market value of the goods in question (i.e. Euro 380,000)

Part 3

The supply of goods in this case is subject to VAT per Article 2 of the PVD although the consideration received here is not monetary. This constitutes a barter transaction and both the supply of goods and services in this case are subject to VAT. The chargeable amount for Business A's supply of goods should be Euro 340,000.

Part 4

The supply of goods in this case is subject to VAT per Article 2 of the PVD. Article 79 of the PVD provides that the taxable amount shall not include discounts and rebates granted to the customer and obtained at the time of supply. The chargeable amount for Business A's supply of goods should be Euro 250,000. The terms of the subsidy will need to be further considered but are unlikely to constitute consideration for this supply, unless the rules for third party consideration are met.

Part 5

The supply of goods in this case is subject to VAT per Article 2 of the PVD. Article 79 of the PVD provides that the taxable amount shall not include price reductions by way of discount for early payment. In this case, the chargeable amount should be the discounted amount (i.e. Euro 340,000 * 90%).

Part 6

The supply of goods in this case is subject to VAT per Article 2 of the PVD. The supply of goods in this case is subject to VAT per Article 2 of the PVD. Article 79 of the PVD provides that the taxable amount shall not include discounts and rebates granted to the customer and obtained at the time of supply. The chargeable amount in this case should be Euro 330,000.

The VAT implications of giving out the coupon itself should be further explored as no additional VAT should apply at redemption of this single-purpose voucher.