

Answer-to-Question-_1_

EU VAT implications for Balbin's activities

Balbin, established and VAT registered company in Bordonina, provides a collection service for the delivery of parcels containing goods ordered online and via other remote means.

According to the general rule under Article 44 PVD the place of service for B2Bsupply is where the customer, e.g. Zuton, has established. However, the collection facilitates rented by Balbin located in supermarket car parks in three EU MSs would be considered as immovable properties. Hence, the place of supply for the service provided by Balbin to Zuton may be defined as the place where the immovable property is located under the Article 47 PVD.

Immovable property is defined in the Article 13b Implementation Regulation No 282/2011 and it includes any item that has been installed and makes up integral part of a building or constuction. Furthermore, Article 31A of the Regulation states that services connected with immovable properties shall include only those services that have a sufficient direct connection with that property such as where they are derived from an immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services supplied.

Consequently, the collection services provided by Balbin may be regarded as connected with immovable property as the customer is granted a specific and exclusive area at the supermarket car parks. So, Balbin must account for VAT of each EU MS where the collection facilitates are located for the collection services are supplied. If Balbin does not have an establishment in other EU MSs and Zuton is not EU VAT registered, there are options of 1) register for VAT in that MSs and accounting output and input VAT on domestic returns' or 2) register for OSS in that MSs as a non-Union estblaished business under Articles 358a-369 PVD.

EU VAT implications for Zuton's activities

Zuton provides services onward use of the collection boxes to business selling goods online and by other remote means, all over the world. Hence, it can be concluded that Zuton:

- operates and controls usage of collection boxes;
- supplies access to those boxes to online traders over the world by providing the access codes;
- the online traders pass those codes to their customers.

From EU VAT perspective, Zuton is generally supplying a logistics service to the online traders. According to Article 44 PVD the place of service supply for B2B is where the customer, e.g. online traders, have established. As Zuton is established in US, EU VAT implications are generally not applicable. If its customers are EU VAT payers, they must impose the EU VAT under reverse charge mechanism.

Whether Zuton is facilitating a supply for online sales

The term 'facilitates' for online trade is specifically defined Article 5 Implementation Regulation No 282/2011 as 'the use of an electronic interface to allow a customer and a supplier offering goods for sale through the electronic interface to enter into contact which results in a supply of goods through that electronic interface'.

Furthermore, all following provisions must to be met in order for a taxable person, e.g. Zuton, not be regarded as facilitating a supply of goods:

- does not set any term or condition for the supply;
- not involved in authorising the charge to be customer in respect of the payment made;
- not involved in the ordering or delivery of goods.

As Zuton is not fulfilling above provisions, it would not be considered as 'facilitator' or deemed supplier.

Yours faithfully,
ADIT Candidate

Answer-to-Question-____

To: Finance Director
Windrop SA
Ponolonia

Request for EU VAT advice for food and food service supply

Thank you for your request for EU VAT advice in connection to your company's activities.

Supply of sealed and packaged meals to airlines

The supply of the sealed and packaged meals are generally VATable services under Article 24 of the EU VAT PVD.

Under the general rules, the place of supply for B2B transaction would be where the customer is established under the Article 44 of EU VAT PVD. Consequently, Windrop should be impose domestic VAT of Ponolian for the meals supplied to airline established in Ponolonia. For airline established in other EU MS, the supply would be considered intra-community supply and is out of scope of Ponolian VAT. However, the customer must account for VAT of that EU country under the reverse charge mechanism. For airline established in US, the EU VAT is not applicable as supply is made to the customer outside EU.

However, under Article 148 of the EU VAT PVD, supplies of meals intended for consumption during the flights may be VAT exempt if the flights are international flights including flights between EU MSs if the airline qualifies as an international airline under the rules of the relevant MS and whether the meals constitutes aircraft provisions.

Consequently, Windrop's supply of meals to the airlines may qualify for VAT exemptions with credit.

Cool storage warehousing

For EU VAT purposes, a warehouse service provided to the third parties and located at the airport generally treated under the normal PoS rules for services. Per the general rule under the Article 44 of VAT PVD, the place of supply for B2B transaction would be where the customer is established. However, the specific rule for service is connected with immovable property under Article 47 PVD overrides this general rule. Consequently, Windrop's warehousing services provided to the third parties would be subject to VAT in Ponolonia.

Specialist food packaging services to domestic and EU food business

Place of supply for food packaging services provided to businesses is where the customer is established under the Article 44 of EU VAT PVD.

So, Windrop must impose and report Ponolonian VAT for the food packaging services provided to domestic business.

For the supplies to business customers in other EU countries, Ponolonian VAT is exempted for Windrop with credit. Windrop must include such supplies in its domestic VAT return. Furthermore, under Article 196 of EU VAT PVD, the customers must account and report their countries VAT using the reverse charge mechanism.

Food vending machine at airports

For EU VAT purposes, the operation of the vending machines at airports is generally treated as a supply of goods.

Under the Article 31 of EU VAT PVD, PoS is where the goods are located at the time of supply. Hence, Ponolonian and Thetan VATs must be applied respectively for the goods supplied through the vending machines at the respective airports. Consequently, Windrop needs to register for VAT in Theta and account the Thetan VAT on the sales. As the sales from the vending machines are not distance sales, so OSS scheme cannot be used.

Food donations to local charities

As food donations are made with no consideration, hence it can be

considered that outside the scope of VAT. However, for EU VAT purposes, the absence of consideration does not automatically mean that no economic activities and no VAT consequences. For instance, Article 16 of EU VAT PVD provides that the application by a taxable person of goods forming a part of disposal free of charge may be treated as a deemed supply of goods, if the input VAT on those goods was wholly or partly deductible. Hence, if Windrop does not claim input VAT for the donated foods, no output VAT can be accounted for the donations.

I hope this advice is helpful and please do not hesitate to contact me if you have any further questions.

Yours faithfully,
ADIT Candidate

Answer-to-Question-_3__

Under the EU VAT PAVD, there are several simplification measures are available for SMEs and intra-community supplies to reduce compliance burdens.

1. SME VAT simplification scheme

Since 1 January 2025, the EU has introduced an enhanced SME VAT scheme allowing eligible small businesses to benefit from VAT exemptions in their MS and, under certain conditions in other MSs as well.

For instance, annual turnover thresholds set by each MS up to EUR 85,000 under the Article 284 of EU VAT PVD.

If Theta's VAT registration threshold above EUR 60,000, it can be expected that Balpa is eligible for qualifying SME for VAT and its sales within Theta is VAT exempted. Consequently, Balpa is not obliged to register for the VAT registration but may register as a VAT exempt SME. Furthermore, at the same time in terms of Article 289 PVD, Balpa is not eligible to recover input.

Balpa still can voluntarily register for VAT under Article 290 PVD to take advantage of the input VAT deductions.

2. Intra-Community supply exemption

Cross-border SME exemption subject to an EU-wide annual turnover ceiling is set at EUR 100,000 under Article 284 (2). So, Balpa's sales of EUR 14,000 to customers in Bordonio can be exempted. In order to get such exemptions: 1) the taxable person must be established within EU MS; 2) Balpa must satisfy the VAT registration threshold limit in Theta; 3) Under Article 284a, Balpa must notify Theta of establishment of its intention to use the VAT exemptions in one or more other MSs; 4) Under Article 284c, Theta assigns an individual ID number with the suffix 'EX' for use in the scheme; 5) Under Article 284b, Balpa must periodically report its turnover to the tax authority which exchanges information with other MSs; and 6) no input VAT deductions under Article 289.

Answer-to-Question-8

The ViDA initiative is a package of fundamental changes to the EU VAT rules with three pillars with gradual implementation dates. It aims to ensure VAT compliance, prevent tax fraud and elevate the VAT regulations to the next level, fitting the needs of the digital age.

On 5 November 2024, the ECOFIN met to discuss changes to the EU VAT rules as part of the ViDA initiative. As a result, the EU MSs' Finance Ministers have reached a political agreement, further legislative steps can be taken to implement the ViDA initiative.

3 ViDA pillars may be summarized as:

1. Digital reporting requirements (DRRs): Introducing standardized DRRs and e-invoicing for intra-community transactions. Issues addressed: VAT fraud, especially missing trader (carousel) fraud; fragmented invoicing and reporting requirements.

2. Platform economy: Addressing challenges of the platform economy for short-term rental of accommodation and passenger transport services by enhancing the role of digital platforms in collecting VAT;
3. Single VAT registration: Reducing VAT registration requirements in the EU by expanding the scope of OSS for imports and the reverse charge mechanism for B2B transactions. issues addressed: multiple VAT registrations required across MSs; and high compliance cost.

Implementation dates are set as: July 2028 for single VAT registration; January 2030 for platform economy; and period 2030-2035 for DRRS and the new e-invoicing rule.

Answer-to-Question-_5_

1. Input VAT offset against output VAT

Under Articles 167-168 PVD, only a taxable person has the right to deduct input VAT against output VAT charged. Specifically, under Article 167, the right to deduct arises when deductible VAT becomes chargeable.

Article 168 PVD defines the scope of right of the deductions as following:

- taxable supplies;
- intra-community supplies;
- export;
- exempt supplies with the right to deductions.

Under Article 178 PVD, the taxable person must possess the following documents to exercise the deduction:

- an invoice complying with Articles 220-236 PVD; or
- customs documents for imports.

If the input VAT incurred relevant to the partially VAT exempted transactions, deduction is allowed only on the VATable proportion under the Articles 173-175.

2. VAT refund

Where input VAT deductible exceeds over output VAT charged for a tax period, MSs must either refund the excess input VAT; or carry it forward to the next tax period under the Article 183 PVD. MSs may refuse to refund or carry forward if the amount of the excess is insignificant.

The VAT refund mechanism for foreign VAT are governed primarily by separate directives (Directive 2008/9/EC and Directive 86/560/EEC) rather than PVD itself.

Specifically, Article 171 (2) of the Directive 86/560/EEC provides the VAT refunds to taxable persons not established in EU if the following conditions are met:

- no establishment within EU;
- no supplies in refunding MS;
- goods and services used for activities would confer a right to deduct;
- reciprocity requirements may apply, depending on MS's requirements.

Article 170 of the Directive 2008/9/EC provides that all taxable persons who are not established in the MS in which they incur VAT, but who are established in another MS, are entitled to obtain a refund of that VAT insofar as the goods and services are used for transactions give rise to deductions. Key for conditions for the refund:

- no establishment in refunding MS;
- no supplies requiring VAT registration;
- goods and services used for activities give rise to deduction under Articles 168-169.