Answer-to-Question-_1_

To: The finance director of Montezuma Ltd
From: Tax adviser
Date: 13 June 2019

Dear sir,

Subject: VAT treatment of proposed activities and suggested actions

I have reviewed your company's proposed activities for the restaurant business. Please find below my comments on the VAT treatment.

Before I analyse the specific transactions you are planning to make, I should clarify how restaruant services are taxed: Restaurant services are a form of supply of services which is taxed differently than any regular service. Article 55 of the Principal VAT Directive (PVD) particularly states that careting and restaurant services have place of supply where the service is physucally carried out. Therefore, you should register for VAT in Bordonia eventually, in order to charge local VAT on your restaurant services there.

- Importation of tables etc from outside EU to Alsonia and further removal to Bordonia

The importation of goods from outside EU to Alsonia shall be taxable as per article 70 when they are imported i.e. when they enter EU, in Alsonia. The taxable amount shall be the purchase cost of the goods plus any customs duties and associated costs, subject to the article 72 which prescribes the "open market value" because the price paid should be at arm's length.
It is important to note that the input tax paid at the customs for the importation of the goods shall be deductible for Montezuma in the quarterly VAT return which will be submited because it relates to its taxable supplies (article 168).

Further to the importation, the company will transfer its own goods to another member state, Bordonia. This makes it a deemed supply of own goods as per article 17. As per this article, when a taxable person line Montezuma Ltd transfers goods forming part of his business to another Member State, this shall be treated as a supply of goods for consderation. This means that it will be a deemed supply for which you will need to account for acquisition VAT in Bordonia where you move the goods and apply reverse charge there. The exemption on the intracommunity supply of goods as per article 138 shall apply for Montezuma from Alsonia as that is being the supplier.

The movement of goods shall be reported depending on the thresholds set by the Member States to intrastat by both parties. Also Montezuma shall report the sale on its Recapitulative Statement.

- Leasing of coffee making machines and refrigerators from Caderlands company

Leasing of equipment is a form of services received from a taxable person from another MS. The supply of these services shall be subject to the article 44 which prescribes that B2B services supplied to taxable persons shall have their place of supply where the customer has established his business. However, in case that the services are supplied to a particular fixed stablishment of the taxable person located in a place other than the place of establishment then the place of supply shall be the place of that fixed establishment. In short, this means that if your business in Bordonia is considered as fixed establishment, receiving the service for its own needs (See Implementing Regulations Article 21) then the services is provided where that establishment is placed.

In order to decide whether you have established such a business, as per IR Article 11, you will need to consider whether your business in Bordonia has sufficient degree of permanence and a suitable structure i.e. human and technical resources, to enable it to receive and use the services for its own needs.

Since it is unavoidable to have your managers there and technical resources available in Boldonia for the operation of the restaurants, I assume that there will be a fixed

establishment. T
his would mean for you that you will need to account reverse charge in Bordonia and account for aquisition VAT there. Your supplier should not charge VAT as long as you have provided your VAT identification number in Bordonia to enable his for validation of this number. Again, as per Article 168, input VAT shall be deductible as it relates to your taxable transactions.

Sometimes, the leasing of equipment with option to tansfer the owner is considered as a disposal of goods, instead of a supply of services. This shall have similar treatment from your side, i.e. accounting for acquisiton VAT in Bordonia as per article 200 and claim this input VAT through the reverse charge mechanism.

- Fitting out building works on labour only terms by contractors established in Astoria who are not VAT registered in Bordonia

The fitting out of building works is considered to be services directly related to immovable property which as per article 47 of the PVD have place of supply where the immovable property is located.

IR article 31a particularly states that services which have a sufficiently direct connection with immovable property qualify for this treatment. Examples as per paragraph 2. d, k relate to the construction of permanent structures on land and maintenance, rennovation or repair of a building. Therefore, whether you receive these kind of services or any services as per article 31a of the IR, they shall be taxed in Bordonia where the restorants are located.

This would mean that your contractors shall register in Bordonia in order to charge domestic VAT on their invoice to your establishment there, irrespective of where they are established.

- Provision and fitting of carpets by supplier established in Estaria

The article 36 of the PVD, provides that where goods are transported to a person to be installed or assembled at that place, then the place of supply shall be the place where these are installed or assembled. This would mean that if the article applies to the fitting of the carpets, the place of supply shall be Bordonia and hence the supplier shall need to register in Bordonia and charge local VAT to your establishment there.

However, carpets are not any kind of machinery which cannot be fitted by the customer himself or that cannot be used if not installed, so I don't think so this will apply.

The provision of carpets shall, therefore, be the principal supply to which the fitting is considered to be ancillary and required for better enjoyment for the customer. The supply of the carperts shall be subject to the provisions of article 32, for supply of goods with transport.

The place of supply shall be where the dispatch or transport to the customer begins.

However, exemption as per article 138 applies for the intra community supply of goods. This would mean that your supplier in Estaria, after validation of your VAT number of your esablishment in Bordonia (as per article 213 through Europa website), shall not charge VAT but simply report the sale of their recapitulative statemment(as per article 262) and note the application of reverse charge requirement on their invoice as per article 226.

You will therefore account for reverse charge and aqcuisition VAT as per article 200 in Bordonia.

Intrastat statement may need to be submitted if the annual reporting thresholds of wither of the two states is exceeded.

- Accommodation of manager at one of the restaurants converted area.

The accommodation is specifically covered by article 47 of the PVD. The fee charged to

the director shall form the consideration in return for the accommodation services which shall have place of supply where the restaurants are located i.e. in Bordonia. (IR. Article 31a, para.2i).
Also, the services received for the converting storage rooms by the contractor whoc is established in Estaria, shall be similarly taxable in Bordonia where the storage rooms are located as per article 47. (part of renovation work of IR article 31a, para 2 k)
The VAT charged shall be deductible from the VAT return submitted in Bordonia from your restaurant as per the provsions of artice 168.

- **Gift vouchers**

Gift vouchers issued from the Alsonia established company to be used in all of its restaurants form multi purpose vouchers because at the time they were issued the place where they will be remeemed i.e. the place of supply is unknown (article 30a). This means that the chargeable event shall rise at the time of redemption.
Also, the gift vouchers are issued at a specified price. This will be the consideration paid for the services received (as per article 73a of the PVD) and will be taxable when the vouchers are redeemed.
There have been various cases brought to the CJEU with relation to vouchers. **Astra Zeneca** for example is a case under which employees had sacrificed part of their salaries for vouchers issued by their employer company. CJEU ruled that the salary forgone was the consideration paid for supplies which where taxable only when the vouchers were remeemed.

Please review my comments above and in case you require any more clarifications please do not hesitate to contact me.

Sincerely yours,
Tax adviser.

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Answer-to-Question-2

To: Folgate Group

From: Tax advisor

Date: 13/6/2019

MEMO

Subject: VAT treatment of Group's current and future activities

- Use of membership for several services

The company receiveed subscription fees for monthly membership in order to supply it services to its customers.

The group does not seem to have a non-for-profit character and hence the memberships of the customers shall be subject to VAT as normal supply of services including the monthly newsletter.

Either your customers use their gift vouchers issued as a result of their club memberships for bars for business purposes or not, the supply of services in this kind of services is taxable where the service takes place. Since the customer has received the vouchers for free, the supply of these kind of service shall be considered as a deemed supply of services as per article 26 and will be taxable at cost.

Article 75, the taxable amount of services deemed to be supplied shall be the full cost to the taxable peron providing the services.

In case the vouchers are used for shops, i.e. to buy goods, there will be a deemed supply of goods as per article 16. The taxable amount shall be determined as per article 74 i.e. the purchase price of the goods or similar goods or the cost price of those goods. If these are provided at an agreed price i.e. a catalogue, that will be the taxable amount.

Since the use of the vouchers is not known at the time of the issuance they form multi-purpose vouchers as per article 30a and hence they are taxable at the time of redemption.

Kuweit petroleum is a case under which the supplier operated a promotion sccheme using vouchers: the petroleum company issued vouchers to be redeemed by its customers at a future time (fuel plus vouchers). Even though the customers had paid for the fuel

when they received the vouchers, the vouchers were not considered to have been paid as per the ECJ. Therefore, when they used them to exchange them into gifts from a gift catalogue, this was a deemed supply of goods taxable at the gost of those gifts.

- Reimbursement of the operator for the vouchers redeemed from Astorian parent

As per the fiscal neutrality principle, the VAT shall be exactly proportional to the amount paid by the customer. If the Astorian company compensates the operator for the vouchers redeemed then the VAT treatment should be similar with the Yorkshire case:

Yorkshire case, is a case per which customers cut off vouchers from newspapers which were promoted by the supplier and could use those at the retailers shops. The supplier was asked to pay the retailer for the vouchers used and hence was required to issue a credt note to the retailer in order to account for the VAT correctly because the VAT paid to the authorities would have been higher than the actual price paid by the final consumer.

- Temporary transfer of caravans between campsites operated by different subsidiaries in different EU MS.

Normally, the transfer of own goods from a Member State to another, is subject to the deemed supply rules of article 17.
There is an exemption from this deemed supply rule if the goods are to be transfered to be used temporarily in the other MS as per paragraph 2(g) of article 17.

The concern here is that the goods are transfered to the camp sites operated by the subsidiaries which are separately identified taxable persons. Since they do not form branches of the parent company any supplies cannot be disregarded from VAT.

Consequently, it looks like since there is no consideration, there will be a deemed supply of goods nevertheless.

The subsidiaries will be required to account for reverse charge in the MS where they are

registered and established.
The movement of goods should be also reported in Intrastat if the annual reporting thresholds of the MS involved are exceeded.

- Advertising contract with Swiss agency

The group receives advertising services which serve the promotion of the camping sites of all the subsidiaries. The parent company is providing therefore advertising services to its own subsidiaries through a 3rd party agency.

The input VAT to the group parent company shall be deductible as per article 168 because the parent company charges for the overheads, administration, use of computer systems, advertising and general management services the subsidiaries i.e. is making economic activity.
Te deductivility of VAT is a matter which was extensively discussed in the EU case law.

Cibo Participations is a key case, which relates to a company which was actively manageing its subsidiaries i.e. making taxable economic activity. It had incurred costs on the acquisition of those subsidiaries and was allowed to claim VAT on the costs because of it was indeed associated with taxable supplies as per article 168.

However, after one of the subsidiaries becomes just a branch of Folgate Sarl, it will no longer form a separate legal entity but it will be part of the parent company. Any transactions between the parent and the subsidiary company will be disregarded.
FCE Bank case, is a case which considers an Italian branch of a bank corporation to which costs were recharged by the parent HO company. The authorities tried to asses VAT on the costs recharged but as per the CJEU the transactions should be disregarded between parent company and its branches.
This is unless the branch is separately registered under VAT group registration with other companies. As per **Scandia case** if the parent company is excluded from this group, the transactions between the branch registered with another VAT group and its parent shall be taxable as normally.

Regards,
Tax advisor

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Answer-to-Question-3

To: Finance director
From: Tax adviser
Date: 13/6/2019

Dear Madame,

Subject: VAT treatment on incurred purchases of Bioflet and deductibility of VAT

Please find below my responses to your questions further to our meeting.

Before I start, I should clarify that not-for-profit organizations are exempt from VAT as per article 132.1.l of the PVD which states that Member states shall exempt the supply of services and goods closely linked to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organizations with aims of political, trade-union, religious, patriotic, philisophical, philanthropic or civic nature provided this does not distort the compatition.
As I can see, Bioflet is claiming to be making non for profit activities and that the funds come mainly from government grant and from medical industry contributions which are predeterimned and fixed.
At a first glance, It looks like you could qualify for the exemption.

If your services qualify for the exemption mentioned above, then any input VAT incurred on expenses related to your activities will not be deductible. As per article 168 of the PVD, the VAT incurred on the goods andd services used for taxable transactions shall only be deductible. Therefore, you will not be able to claim any VAT.

Sale of plant and forestry products:

It is noted that Bioflet makes a small amount of income and profit from the sale of plant and forestry products to the public from a shop at a forest estate since 1995. Irrespective of whether the profit is small or not, the creation of profit from the particular activity means that this activity cannot qualify for the exemption mentioned above. This is a taxable supply of goods and Bioflet should account for VAT on those sales. This shall apply unless the surplus is used to fund its activities as a non-for-profit organization and it is not distributed to its members as a return of investment.

Another indication of whether your organization may claim that it operates as not for profit is whether it is operated by persons working voluntarily. As per **London Zoo case**, the CJEU ruled that in order for the Zoo to qualify as not for profit, the higher level of management making long term decisions should work voluntarily further to the other employees and should not receive salary for their services. Otherwise the Zoo could not qualify for exemption.

If the above are true for your organization and there is no actual profit generated, then your supplies would still be exempt for the sale of plants and the VAT incurred on the construction of the covered walkway shall not be deductible.

In case you are truly making profit though, the VAT related to the particular activity i.e the costs of the walkway shall be deductible and you will also be charging VAT on your sales at the shops.

Economic activity

Economic activity is a wide term used in the PVD to determine whether a person is subject to the provisions for VAT or if he falls outside the scope of VAT.

As per article 9, taxable persons are detrmined to be thse who independently carry out in any place any economic activity whatever the purpose or results of that activity is.

That would mean that economic activity could exist for a charity or a non for profit

organization which falls within the scope of VAT but exemptions might apply from the application of VAT i.e. articles 132 and 135 of the PVD.

Input tax, is only deductible to the extend that the taxable person carrying out economic activity, makes taxable supplies, as per article 168. In case that person is making mixed supplies of taxable and exempt supplies, then the proportion which relates to the taxable supplies shall only be deductible as per article 168a.

Therefore, the various expenses made and purchases to support the organization's various activities, provided through these activities the organization is making exempt supplies, no VAT shall be deductible.

In case the costs are not specifically attributed to either the taxable or the exempt supplies but it relates to the general organization level, then the deductible VAT shall be calculated as per the provisions of 174 which is a fraction of the taxable supplies over the total amount of turnover including both taxable and exempt supplies.

I hope I have adequately responded to your questions but I am always available for discussion if required.

Yours sincerely,
Tax advisor.

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Answer-to-Question-4

Article 19 is an article which is not mandatory to be adopted by the Member States i.e. this is a may provision.

Member States may consider the transfer (either with consideration or not) of the totality of assets or part thereof, that no supply of goods tas taken place and that the person to whom these are transferred is the successor to the transferor.

Member States though may take further measures to ensure that there is no distortion of competition or tax avoidance/evasion.

The application of the above provision has indeed been a matter of concern in various cases refered to the Court of Justice of the European Union regarding its practical application.

This is because Member States could not conclude as to whether the transfer of part of the assets of a business to a successor who could not operate the same business could qualify. Another discussion point was whether the going concern of the business should be a decisive factor for the transaction to fall outside the scope of VAT. The legality of the business operator i.e. the successor formed another point of discussion based on which MS tried to deny the application of Article 19. Also, matter of discussion has been the deductibility of input tax on costs incurred to transfer the business.

Key cases referred to the CJEU are the following:

- Zita Modes:
Under this case, a business transfered its business assets as a shop to another trader to carry on similar activity. The latter did not have the required administrative license to carry on the business.
Luxember authorities, tried to claim that since the successor was not legally operating the business, there was no economic activity and hence the article 19 could not apply. They tried to assess output VAT on the sale of the assets.
CJEU, though, explained that the legality should not affect the VAT treatment or the decision that economic activity exisits (as per previous cases i.e. Card Protection plan)
Hence, the transaction was indeed considered to be transfer of assets and could be

disregarded for VAT as if there was no supply.

- Abbey National

The case related to an organization which had transfered rented property to another person. The organization had opted for tax the rental income of the property before the transfer.

The matter was whether the input tax on the expenses incurred to sell the property could be claimed as long as the transfer of the property to the successor fell under the scope of Article 19 and no VAT was charged on the transfer.

The conclusion was that the expenses made could be considered as cost components of the assets transferred and hence the transferor could claim input tax on these because there was taxable economic activity (the option to tax rental income was exercised)

- Other cases

Where the transfer of a function of operations is made, MS had doubt as to whether it considered transfer of assets. The decision should always be as to whether the function can immediately start operating (i.e. the machinery and equipmennt was transferred, the employees were transfered) by the successor without material effort to make it work i.e. the need to obtain support services.

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Answer-to-Question- 6

The consideration paid for the supply of goods or services, indeed forms the taxable amount for the purposes of VAT.

However, there are instances where supplies are made free of charge, either of services or of goods which are subject to VAT but no consideration exists.

1) The de**emed supply of goods is covered in article 16** as the use of goods forming part of the business for private purposes of for the staff of free of charge i.e. to the customers.

2) It is also covered by **article 17 for the transfer of own goods from one MS to another MS.**

In order to determine the taxable amount of the supply of goods as per the deemed supply of goods mentioned above in 1) and 2), article 74 prescribes that the taxable amount shall be the purchase price of the goods or similar goods or in the absence of this, the cost price at the time of the supply.

3) Another application is the **deemed supply of services as per article 26.** This article prescribes that the use of goods forming part of the business for private use of a taxable person or its staff for other than business purposes where input vat was claimed, and the supply of services free of charge for private use or for the staff or any other purpose not for business, shall be considered as a deemed supply of services. In order to determine on which amount the VAT is calculated, article 75 states that this shall be the full cost to the taxable person providing the services.

4) Deemed supply could also arise in barter transactions. For example free goods can be given in exchange of a service from a client which gives rise to deemed supply of goods as per article 16.

In order to understand how these articles were applied in real life and where the supply of goods or services without consideration was or was not considered as a supply subject to VAT we should look into some cases referred to the CJEU.

EMI - the company was providing free disks (CD rom etc) to djs in order to help them perform their records for the benefit of the business. This was not considered to be a

supply of goods free of charge because it was considered to be providing samples which were used for business purposes and specifically exempted from the deemed supply of goods as per article 16 (article 16 exempts also gifts of small value)

Kuwait petroleum - the supplier operated a promotion sccheme using vouchers: after the customers purchased fuel, they were given vouchers to be used to get gifts listed on a gift catalogue when they manage to collect a number of vouchers(fuel plus vouchers). Even though the customers had paid for the fuel when they received the vouchers, the vouchers were not necessarily paid, as per the ECJ. Therefore, when the customers redeemed the vouchers and exchanged them into gifts from a gift catalogue, this was a considered to be a deemed supply of goods taxable at the cost of those gifts as prescibed in article 74. The supply was chageable at redemption.

Astra Zeneca: A company provided vouchers to its employees who had sacrificed part of their salaries for the vouchers they were provided with. CJEU ruled that the salary forgone formed the consideration in exchange for the supplies and not the face value of the vouchers issued. Also, the trasaction was taxable only when the vouchers were remeemed as this formed a multi-purpose voucher.

Danfoss: A Danish company provided free catering to employees and business contacts during meetings. The transaction cas considered not to be a deemed supply because the meals were necessary for the efficient runnng of the business and the business meetings and no output tax was assessed.

Hotel Scandic: The hotel allowed the employees to purchase food from the canteen of the hotel at a price which was lower than the cost for the hotel. The authorities tried to assess VAT as a deemed supply for the remaining element from the price paid up to the cost of the food and services to the hotel. The CJEU ruled that since there was consideration paid, even if this was below cost, deemed supply rules could not apply.

Fillibeck case: As per the particular case, a company was providing free transport to its employees to a plae where they had to work, a site which was located at a remote area

without easy access and restricted infrastructure. CJEU ruled that since this was required for the business purposes and there was no other alternative way for the employees to access their work place, no VAT on deemed supply should arise.

Many other cases exist which relate
- to tax authorities trying to assess VAT as per the deemed supply rules for free transfer of property to owners of businesses and they have failed because no vat was claimed upon purchaase or construction or the particular sites (Kuhne, P De Jong etc).
- a corporation providing free goods to its customers who bought online, for refering other customers to the company. The goods were provided in exchange of a referal service from the client and formed consideration for his services. Therefore, VAT should apply on the catalogue price of the goods which was publicly available as per the article 16.
- a corporation operted a party which was organised by its agents and allowed the agents to purchase goods at a discount in exchange of the party organized. The discount provided was considered to be the consideration paid to the agents for their services and hence it would not be deducted from the taxable amount on which VAT was calculated for the sale of the goods to these agents. The corporation had to account VAT on the total price of the goods before deducting the discount.