

Answer-to-Question-_1_

Dear All,

Based on the fact pattern of the current arrangement and the future planned arrangement, we have provided the following critical VAT related aspect of Sodex's operation:

Current Arrangement

Please note that we understand that currently the bed linen are being imported from outside the EU and into EU through the Bordonina territory.

Normally, import VAT should be paid upon entry into the EU member state. However, there are potential exemptions with respect to importation where it is subsequently sold to another member state. Considering this, we provide below the potential VAT treatment:

1. Imported and subsequent sale inside Bordonina (75% of the sales)

Please note under this arrangement, Sodex (assuming it is the importer of records), would be required to pay the related import VAT on the importation of the bed linen into Bordonina upon clearance of the goods in the customers. Generally, import VAT would be applied on all the costs incurred up to importing it. As such, the taxable amount for the importation would include the customs duty rate and the 25% VAT would be applied.

Furthermore, upon the subsequent sale to Bordonina, it would be treated as a domestic supply of goods under Article 31 if the PVD, as the goods are situated in Bordonina when it was sold.

2. Imported and subsequent sale outside Bordonina but within other member state (25% of the sales)

Article 141 of the PVD has provided a potential exemption with respect to importation for subsequent Intra Community Supply. In this case, we understand that the imported goods would be subsequently sold to other

EU member state. In this regard, the importation by Bordonia would be exempt from the VAT on importation as per Article 141 of the PVD.

Furthermore, the subsequent sale to other EU Member state, must be declared by Sodex as Intra Community Supply which is zero-rated. As such no VAT is charged on the invoice as the customer would be the party liable to self-account for the VAT under the reverse charge mechanism of Article 194 of the PVD.

Please note that it is important the Sodex provided the proper declaration in the customs to avail of such exemption. Furthermore, some documents may be required such as evidence or proof of subsequent ICS to other member state other than the member state of importation.

Also, Sodex should ensure it maintains the documentary requirement as per Article 45a of the Implementing Regulations which includes two non-contradictor evidence of dispatch of goods from two different parties. Furthermore, the intra community supply must be declared in the EC Sales List.

Planned Arrangement

Under the planned arrangement, we understand that Sodex is planning to provide linen laundry cleaning services to existing customers across the three member states in which it currently operates. We understand that it is still not decided whether a new company would be established in each member state or it will be brought in Bordonia for cleaning.

Please note Article 53 of the PVD has provided that in case of work on movable property, the place of supply would be where the event has been established.

However, Article 44 provides that if a supply of services is provided to a business, the place of supply would shift to the place of establishment of the customer.

Option 1: to establish new companies

Please note that if Sodex would be establishing new companies which will provide the services in the member states. It would be relevant to

assess whether the envisaged operation would be considered as as Fixed Establishment for EU VAT purposes. Fixed Establishment would be created if there is sufficient permanent presence of human and technical resources which would enable the person to conduct the economic activity independently. Please note we understand taht there are two delivery vans continually operating across member states. In this regard, it must be assessed whether these vans would be treated as FE for EU VAT purposes.

Following the above, if Sodex went through on establishing the new companies in each member state or a Fixed Establishment has been found, such provision of services for B2B would be considered as a domestic supply of services for each jurisdiction and Sodex would be required to charge and register for VAT on each jurisdiction.

Please note that Reverse Charge under Article 196 would not be available as it will only be available if the supplier is not established in the place of supply of the member state.

Option 2: Obtain the linens

However, if Sodex decides to just obtain the items for cleaning and bring it to Bordonia before cleaning or there is no Fixed Establishment found, while it involves transporting goods from a member state to another, this should not be treated as an Intra Community Acquisition as per Article 17 (f) of the PVD as it is only temporary transfer to provide certain services on the goods. Nevertheless, there must be appopriate declaration in the EC Sale list on such movement.

Furthermore, with respect to the cleaning services, it would fall under Article 44 of the PVD and in this case, the place of supply shifts to the customers and they would have to account for the VAT under the Reverse Charge as per Article 196 of the PVD. In this case, no VAT would be charged by Sodex but it must indicate in the invoice that the VAT would be self-accounted by the customer.

Future expansion to B2C

With respect to the extension to B2C, this would fall now on the rules

under Article 53 of the PVD. In this case, if the cleaning services were done in Bordonia, Bordonia domestic VAT rate would apply. However, if the services were done in other member state, the respective VAT rate of those member state would apply. Please note that Sodex would be required to register for VAT on such tax authority, as One Stop Shop Scheme is not applicable on general supply of services.

Notwithstanding the above, with the improvement being proposed on the VAT on Digital Age Initiative (ViDA), there would be a planned expansion of the One Stop Shop Scheme and a Singular VAT registration mechanism. As such, the above services may be covered depending on the implementation of the extension of OSS. We recommend checking this development which may provide simplification of compliance.

Answer-to-Question-_2_

Dear CFO,

Thank you for providing the information and we provide our comments from EU VAT purposes as follows:

Nature of supply

It would be relevant to assess the nature of the supply to be provided by Snake. We understand that the supply provided by Snake composed of the following:

1. Supply of the electronic tag - this would most likely be considered as a tangible property and would be considered as a supply of goods for EU VAT purposes
2. Access of use of application to track the travellers luggage - This would more likely be considered as a supply electronically supplied services (ESS) under Article 7 paragraph 2 (c) - which relates to services generated via the internet

Considering the above, it is critical to understand whether these

services would be considered as two separate supply (i.e., multiple supplies) or a single supply for EU VAT purposes as this will determine the proper VAT Treatment.

The CJEU has held in *Levob* C-41/04 and *Card Protection Plan* (C-349/96) that a supply would only be ancillary to a primary supply if from the perspective of the customer it is not an aim to itself and it is only used to enjoy further the benefit of the primary supply.

In this case, based on the background, the main benefit of the services is the monitoring of the location of their luggage. In this regard, we can say that the actual services being provided is the application that the company is providing to the customers which allows for the monitoring of the luggage. Furthermore, it is worth noting that the electronic tag itself would not be usable if there is no application running it. Hence, the above should be considered as a single supply of services which is the access of the application (i.e., electronically supplied services) and the physical tag is merely ancillary to the actual benefit which is monitoring of location of the luggages.

Taxable status of place of supply

Considering the above, the place of supply rule and the applicable VAT treatment would be as follows for ESS is as follows:

Sale to members of the Public (B2C)

Please note that Article 58 of the PVD provides that the place of supply for ESS would be where the non-taxable person is established, has his permanent address or usually reside. In this case, the place of supply for sale to the members of the public would be the customer's address. Article 24f of the Implementing Regulations 282/2011 has provided the indicating address in order to know the customer address such as billing address, IP, bank details. etc.,

We understand that the products have only been sold in Vergonia. As such, we assume that the customers' address for all B2C transaction should be in Vergonia.

In this regard, there would be a requirement for Snake to account for

the domestic VAT rate Vergonia. In this case, Snake, being a business established in Hong Kong, would be required to register and charge domestic VAT in Vergonia. Nevertheless, Snake has the option to register through a financial representative and the financial representative would handle required community with the tax authority in Vergonia.

Sale to business (B2B)

We understand that the business customer of Snake are all located in Vergonia.

Please note that with respect to ESS provided to business, it will generally fall under the rule of Article 44 of the PVD. In this case, the place of supply would be the customer place of establishment.

Generally, if the place of establishment of Snake is not in the same member state, the Business customer would have to self-account for the VAT under the Reverse Charge Mechanism as per Article 196 of the PVD.

However, if Vergonia would be VAT registered in Vergonia, either through a representative or setting up an establishment, the B2B supply would be considered as a domestic supply of VAT. As such, Snake would be required to charge domestic VAT rate of Vergonia to the business customers.

Answer-to-Question-_4_

The new VAT requirement of 2021 for the online platform is commonly called as the Import One Stop Shop (IOSS) Scheme as provided in Article 368 1 of the PVD. Before implementation of IOSS, the supplier (i.e., online platform) would have to pay the related import VAT for each transaction it imports and registered accordingly for VAT on each jurisdiction where the sale has been provided (i.e., customer address).

Please note that this practice is:

1. Costly considering the compliance costs of paying the import VAT each time an import of goods has been done despite if it is low valued
2. Results to increase compliance cost as there is would be a requirement for the supplier to register on each tax territory or assign a financial representative
3. Discourage importation and sale by non-resident in EU due to the complexity and therefore will make EU less competitive globally

Considering the above, the IOSS has been implemented. For purposes of IOSS, online platform refers to company which provide marketplace for other sellers to sell their product through their website.

Furthermore, the services being provided by this online platform is merely facilitating the sale, in this regard, allowing sellers to post their products on the online market place, and processing the order and payment of the customer and may even include shipping.

Please note under the IOSS scheme, the supplier of the online platform, would no longer be required pay the import VAT upon clearing in the customs provided that the goods imported are under 150 EURO or less. VAT would then be collected upon the subsequent sale to the customer and then declared in one singular return.

The IOSS would be available for the following:

1. Any taxable person established in the EU carrying out B2C sales imported from outside EU
2. Any taxable person whether or not established in EU (i.e., represented by an intermediary) carrying out B2C sales imported from outside EU
3. Any taxable person established in a third country who is carrying out distance sale of goods from that third country.

Please note that user of the scheme may choose one member state to whom to register for the IOSS. Furthermore, there must be a proper registration and application with the customs authority and tax authority to apply the IOSS.

Please note that in case IOSS would not be applied, import on VAT would

have to be paid by the supplier of the online platform as it relates to importation from third countries. Furthermore, there would be a requirement to register and charge domestic VAT on each jurisdiction the intra distance sale of goods happened. This provides further compliance and significant costs. Nevertheless, under this scenario, the One Stop Shop Scheme for Non-Union may be availed. In this case, all the related domestic VAT from all other tax jurisdiction would be compiled in one VAT return under the OSS return and registration would be through one member state only. In this case, there is no requirement to register for VAT on each member state where there is B2C sale of goods.

Answer-to-Question-_6_

Please note that generally Article 196 of the PVD referring to Reverse Charge would only be applicable if the supplier is not established in the member state or having no fixed establishment where the place of supply is deemed to take place.

In this case, the concept of Fixed Establishment is relevant in the concept of applying reverse charge mechanism. Fixed Establishment is generally defined as a permanent presence of human and technical resources necessary for the provision of these services.

This definition has been clarified in Case 168/84 Gunther where it provides that fixed establishment may happen if it entails the permanent presence of both the human and technical resources necessary for the provision of those services.

Furthermore, in Case C-190/95 ARO Lease BV, the CJEU has provided that a fixed establishment may not be existing if there is no office or any premises on which the services may be provided to.

Please note in C-318/11 and C-319/11 Daimler AG and Wipac AS, it has been highlighted that a fixed establishment must be capable of undertaking taxable supply on its own and the absence of such taxable supply would invalidate it as a fixed establishment

This interpretation is highlighted as well in Case C-605/12 Welmory, the CJEU has provided that there is FE if that establishment is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to enable it to receive the services supplied to it and use them for its business.

Considering the above is critical in determining of a definition of Fixed Establishment which mainly is about: permanent presence of human and technical resource (i.e., establishment where human and technical resource would be able to do its work), it must be able to use those resources to create its own taxable supply independently.

Based on the fact pattern, it should be analyzed whether there are permanent presence of employees in Azuria which may be considered as a Fixed Establishment based on the above criterion. Furthermore, it may also be worth assessing whether there is a permanent office or establishment in Azuria and whether such establishment is capable of making taxable supply independently.

With respect to your query, please note that in case if Thor is determined to have a Fixed Establishment, there would be changes in the VAT treatment as follows:

The Intra-Distance sales supplies - this would be treated as a domestic supply under the FE and it would be required to register and charge domestic VAT on such supply.

The purchase of advertising and promotional services - please note that Article 44 has provided that if a service is provided to fixed establishment other than the place of establishment - that would be the place of supply. In this case, if there is FE, the services would be deemed to be provided in the FE in Azuria. As such, this service would no longer be available for reverse charge as the place of supply as both the supplier and buyer is established in the same member state.

Also, please note that even though invoicing is Thor, it would be determined that the actual benefit goes to the FE which provides the services locally in Azuria. As such, the supplier would need to charge domestic VAT rate of Azuria to the FE.

Answer-to-Question-__7__

Article 73 of the PVD has provided the general rule on whether subsidies would be included in calculation of taxable amount for EU VAT purposes.

Under the same Article, if the subsidy is directly linked to the price of supply it must be included as part of the taxable amount.

Please note that under the EU VAT context, there are two types of subsidy received from the government:

1. Subsidy not related to a specific supply but is for funding of an industry - this subsidy includes general government grant where there is no related supplies and the grant is provided without any corresponding exchange from the recipient. Example are grant provided to Energy Solutions company in order to promote energy saving products.

2. Subsidy related to specific deduction to a specific supply - this refers to subsidy which is considered as payment for a specific supply. Under this case, the subsidy is in exchange for a specific supply or as a price reduction. For example, a government has provided a grant to a transport company in order to reduced their transport fee by 10 EUR per trip. In this regard, since there is an actual supply related to the subsidy, it would be considered as included in the taxable amount.

As a summary, any payment would only be considered as taxable or added in the taxable amount if it relates to a specific supply. The above interpretation has been provided by CJEU in its various case decisions.

Office des produits wallons ASBL C-184/00- The CJEU has held that subsidies directly linked to the price must be interpreted as covering only subsidies which constitute the whole or part of the consideration for a supply of goods or services and which are paid by a third party to

the seller of supplier. In this case, the CJEU has clarified that if the subsidy is part of the price paid by a third party to a seller, it must be considered as directly linked to the price. In this case, if a subsidy forms part of a payment for a specific supply, it should be included as taxable amount for EU VAT purposes.

Tolsma - C-16/93 - in this case decision, the voluntary donation provided to musician was not taxable as there was no obligatory contract to compensate the public performance and therefore there is no direct legal relationship between the donation and the public performance. This case has provided the importance of legal relationship when assessing whether a consideration is taxable

BUPA C-419/02 , Societe C-277/05 - The CJEU has held that non-refundable deposits which does not relate to any supply should be outside the scope of EU VAT. Under this case, it was highlighted the importance that in order for a payment to be taxable, there must exist a corresponding direct supply.

Considering the fact pattern provided, the shortfall in receipts would more likely be considered as type 2 of subsidy which relates to a specific supply, as the subsidy is it relates to a specific supply which is running a public transport contract.