
(PART A)

Answer-to-Question-_**1**__

Attn to: Ms. Finance Director
Green Supplies Ltd
Alesia (EU)

December 14th, 2023

Dear Ms. Finance Director,

VAT aspects of Green Supplies' activities within Alesia, as well as its sales in other Member States of the EU and the US.

Green Supplies is a taxable person established and VAT registered in Alesia, i.e. an EU member State.

Green Supplies uses materials it obtains free of charge from the community of Alesia for are interested in recycling, using them in the furtherance of its economic activity, consisting in processing and recycling of paper and plastic waste. Donations are generally outside the scope of VAT, but, when they are used for the pursuance of the economic activity of the taxable person, as in the case at hand, they might be considered as falling within the scope of VAT.

Green Supplies collects such materials, it trasports them to its premises, where it processes thems and proceeds with packaging.

Its outputs are generated from its subsequent sales.

For the collection and the transport of the used paper, it engages another company, also established in Alesia. The supply of such services are taxed in Alesia.

The sales to the major manufacturing business, located in another EU member state are intra-community supplies, which are zero - rated supplies, i.e. they are not taxed in Aleria, but give the right to deduction. However, in order to qualify for such treatment the recipint of the goods, shall provide Green Supplies with its EU VAT number, easily verifiable in the VIES system. Both parties must include this transaction in their Recapitulative Returns and also to Intrastat, for statistic purposes of intra - community trade of goods.

In such an intra - community supply of goods, i.e. in a supply with transport, the place of supply is the place where dispatch or transport ends, under Article 32 of the Principal VAT Directive (EU Directive 2006/112, hereinafter referred to as PVD. At this point, we need to make a distinction on whether at the case at hand we have composite supplies, i.e. if we have distinct supplies, i.e. the supply of services consisting in the processing and packaging of the materials and the supply of the goods sold to the other EU member State, or merely one supply, consisting in the supply of recycled materials. A landmark case in this respect was CPP, where the Court of Justice of the European Union (hereinafter referred to as CJEU) acknowledged that when we can recognise a principal supply and one or more that are ancillary to the principal, in the sense that they do not constitute an aim in itself but a means of better enjoyment

of the principal supply, then we have just one supply, as in the case at hand in my opinion. The processing and packaging of the recycled products are incorporated in the supply of the products to the recipient, who is interested in obtaining the recycled products.

Green Supplies also arranges for the transport of those materials to the other EU member State, and, for this, it engages another taxable person, also located in Aleria. Again, this is a supply of services from a taxable person to another taxable person, subjest to the general rules of the supply of services (B2B, i.e. Business to Business), being taxable in the place of establishment of the recipient, i.e. in Aleria, if the recipient is Green Supplies, which then includes such cost in the selling price it charges to its Customer, or in the other Member State if such services are supplied to it. In this case, the transport company will issue an invoice to the other entity in the other Member State, will not charge any VAT, and the recipient will account for such VAT in the country of its establishment via the reverse charge mechanism under Article 194 of the PVD.

The intracommunity acquisition is taxable and in this respect the recipient of the goods, will account for the VAT in accordance with the VAT rate applicable in its country, i.e. the country where the dispatch or transport ends.

As the supplies to the US are concerned, such exports are also zero - rated supplies, giving the right to Green Supplies to recover input tax incurred with respect to those exportations, as well as the intra - community supplies. The supply of the goods to the transport to the US shall be proportionate to the distance

covered within the EU, subject to the relevant VAT rates.

Finally, with respect to the recovery of the transportation of the goods, you are entitled to recover any input tax incurred, since it is directly linked to the outputs made by Green Supplies and such input VAT is recoverable both regarding the one that was incurred locally, by submitting the periodic return and deducting it from the relevant outputs, but also, the regarding the input tax incurred in other Member States of the EU. Such refund can be requested in accordance with the rules of the Eighth Directive for taxable persons established in Member States of the EU, and subject to the conditions provided therein.

I hope the above are clear and compehensive.

Should you need any clarification, please do not hesitate to contact me.

Yours Sincerely,
ADIT student

Answer-to-Question-_**2**__

Attn to: Board of Directors
Mondo Ltd
Lamda(EU)

December 14th, 2023

Dear Sirs/Madams,

VAT aspects of Green Supplies' activities within Alesia, as well as its sales in other Member States of the EU and the US.

Mondo is a taxable person established and registered for VAT in Lamda, an EU member State. Mondo's economic activity consists in operating a website, from which it conducts distance sales, of pre-recorded audiovisual media content on demand, including audio books and educational video courses.

The VAT Committee has recognised that electronic products are not supplies of goods.

Hence, Mondo is primarily providing electronic services to non-taxable persons, i.e. private consumers.

TBE services, i.e. telecommunication, broadcasting and electonic services, provided by a taxable person to non-taxable persons, i. e. consumers (B2C transactions)are taxed in the place where the

customer is located. Hence, Mondo shall issue a receipt charging VAT pursuant to the local VAT rate of any respective country.

It is noted that TBEs are among the special rules - exceptions to the General Rule, which provided under Article 45 of the PVD, which states that the place of Supply in services provided by a taxable person to non-taxable persons, i.e. private consumers, is the place where the Supplier of the Services is established, unless such services are provided by a fixed establishment of such taxable person in a country other than the one which it is established.

It is further noted that, as of July, 2021, the one- stop shop regime has come into play, which provides that a taxable person which provides TBE services and conduct distance sales to Consumers located in the EU, may register in just one country of the EU, and remit the VAT due to their supplies to the tax authority of the country where they are registered, which will then allocate the relevant VAT to the relevant States and forward to them the VAT they are entitled based on the place of supply rules, i.e. where the Customers are located.

However, it is mentioned that there is a combined threshold for TBE services and distance sales, i.e. an annual EU turnover for a 12-month period, below which the taxable person may apply the general rule, i.e. charge the VAT applicable to the State where the Supplier (taxable person) is established. When such thershold is exceed, the above mentioned special rules apply, and, the place of supply becomes the place where the customer is located.

It is worth mentioning that for TBEs provided to Customers

located outside the EU, under the use and enjoyment rule, the place of supply can be deemed to be within the EU, if such services are used and enjoyed in the EU.

For the supplies of such services (TBE) to other taxable persons, the general rule applies, B2B supply of services (Article 44 of PVD), and the place of supply is the State where the recipient taxable person is established. However, if such services are provided to a fixed establishment of the taxable person located in another Member State of the one it is established, the place of supply is deemed to be the place where such fixed establishment is located. It is noted that both the notion of establishment, as well as the "fixed establishemt" are not defined in the Directive itself. Rather, definitions are provided in Articles 10 and 11 of the Implementing Regulation (EU Regulation 282/2011) respectively.

In this respect, those taxable persons, receiving such services, shall provide their VAT number to Mondo, and to the extent it can be verified through VIES that they are indeed EU registered taxable persons, the general rule will apply and will account for VAT in their country of establishment under the reverse charge mechanism (Art. 194 PVD). Mondo will issue an invoice without VAT, mentioning that the relevant Article of the Directive (Art. 44 PVD), rendering the place of supply elsewhere and that the reverse charge mechanism will be applicable. The recipient taxable person will account for such VAT, including it in both its outputs and inputs of the relevant period, in its periodic VAT return.

As for the educational video courses, it is noted that in

principle education services are exempt from VAT. Nonetheless, it depends on the domestic legislation of the relevant Member State, where such treatment has been accorded to electronic educational courses as well, or are perceived as part of general provision of services provided electronically.

Finally, for the online advertising and marketing services received from a taxable person outside the EU, we have a supply of services rendered between taxable persons. Again, the general rule under Article 44 of the PVD applies. However, in this case Mondo, as the recipient of such services cannot account for VAT, under the reverse charge mechanism (Article 194 of the PVD) based on the VAT rate applicable to Lamda, but, rather the Supplier of such services must be registered for VAT in Lamda and appoint a tax representative. Such tax representative will be jointly and severally liable with the non - EU service provider for the VAT compliance obligations, i.e. filing periodic VAT returns and the remittance of the tax due to the tax authorities of Lamda. Mondo, will be able to deduct such input tax indurred since it is directly and immediately linked to its outputs on a monthly basis. Hence, neutrality of the tax is ensured. However such cross - border services will not be included in Mondos' Recapitulative Statement, because they are not intra - community supply of services.

I hope the above are clear and compehensive.

Should you need any clarification, please do not hesitate to contact me.

Yours Sincerely,

ADIT student

(Part B)

Answer-to-Question-__**4**_

Both Directives and Regulation are instruments of EU law, constituting Secondary EU Law, in comparison with the Treaty of the Funtioning of the EU (hereinafter TFEU) which constitutes Primary EU Law.

Directives are binding as to their results. They need to be transposed in the domestic legislation of each Member State, in order to become binding for the Member States. Member States are obliged to incorporate such Directives in their domestic legislation within the timeframe alotted in the Directive itself and have to notify the Commission of the implementation measures they take.

On the other hand, Regulations are binding to all Member States in themselves, as they are, as a text, in the sense that they do need implementation, unlike the Directives as mentioned above.

The CJEU is the competent body of the EU which interperts EU law, ensuring a uniform application and intepretation to its Member States. The CJEU adjudicates cased that come before it either via preliminary ruling proceedings, when the national courts (optional for lower Courts, but, Courts of last instance have the obligation to refer to the CJEU to provide an interpretation of an EU matter when it is not clear to them) seek the CJEU to

interpret a matter of EU law they face at a case before them, or via infringement proceedings by the Commmission against Member States.

If the Member States do not implement a Directive within the time frame provided in the Directive, or if a Member State does not apply EU law correctly, the Commission may initiate infringement proceedings against such member states.

The Commission first sends a letter to the relevant Member State, providing the issue at hand and requesting either compliance or explanations. If the explantations provided are insufficient or if in the meantime the Member State has not complied, the Commision sends another letter requesting compliance at once and if the Member State still fails to comply, the Commision refers to the CJEU under the infringement proceedings procedure. In this case, the Court may impose penalties to the Member State either for not a timely implementation of the Directive or for the incorrent application of EU Law. Besides, the non-timely transposition of the Directive is a direct violation of EU law and the TFEU. Again, if after such adjudication of the CJEU, the relevant Member Stated does not comply, the Commision may initiate second infringement proceedings, in which case additional financial sanctions are imposed for non-compliance.

The Principal VAT Directive can have a direct effect, meaning that it can be binding for a Member State even if it has not beed transposed in its domestic legislation when the relevant provision is clear and unconditional, i.e. Members States do not need to exercise an option in that particular provision. Hence, taxpayers can rely on such provisions of the Directive which have

such direct effect and applying it is binding both for the tax authorities and the national courts of the relevant Member State. Such was the issue in the Becker case, where the CJEU recognized the direct effect of the Directive, and the taxpayer was entitled a tax treatment (exempt supply of service), even before the relevant Member State proceeded with the amendement of its VAT Code, and the implementation of the Directive in that particular provision.

However, the direct effect of the Directive in such cases can be invoked only verically, i.e. between a taxpayer and a tax administraion of the relevant member State and not horizontally, i.e. between individuals.

Further, the role of the CJEU in VAT matters is very signigicant since it provides an interpretation of the issues related to VAT and the relevant provisions of the PVD, ensuring a uniform application of the Directive in all members states of the EU. That can be achieved by either of the procedures mentioned above and it has been found that the Member States are not allowed to take that power from the CJEU, which is the only competent and appropriate body to interpret EU law, as was the case in several cases concerning bilateral investment arbitation agreeents, where, it was found that the arbitral tribunals cannot interpret matters of EU law, as well as with the European Court of Human Rights, due to the EU's accession to the Convention of the Human Rights.

The CJEU's caselaw in all matters of VAT is extensive and it is a great tool for interpretation for both tax administrations and taxpayers and its advisors.

(Part C)

Answer-to-Question-__**6**_

When a taxable person transfers its business as a total in another taxable person, such transfer is a transfer of a going concern and constitutes a non - supply under both Articles 19 and 29 of the PVD, i.e. it is not subject to VAT.

In this case the transferee becomes the successor of the business. It has been recognised by several cases of the CJEU that in order for such transfer to be deemed as a non - supply and not be subject to VAT, the transferee must have the intention to continue the business and not liquidate and sell the stock after its acquisition.

In this respect, it is very important to differentiate between the transfer of individual business assets, either tangible or intangible, which can be subject to VAT as a supply of good or service, from the actual transfer of the business as a whole, in order for the transferee to continue the business he acquires.

It has also been recognised by the CJEU, that also the tranfer of 30% of a company's case held by a shareholder to a taxable person, did not qualify as a tranfer of business as a going concern, even when the other shareholders at a later stage, did trasnfer the remaining percentage of the shares to the same

taxable person.

The intent at the time of the transfer is crucial for both parties and especially the intent of the transferee to acquire the business as a whole to continue operating it and pursuing its economic activity. SKF, X, Hoge Raad are leading cases in this aspect.

(Part C)

Answer-to-Question-__**8**_

When a taxable person acquires capital goods, it intends to use in its taxable activities, it is entitled to deduct input tax incurred on its purchase.

Member states provide that an adjustment should be made to such deduction, starting from the time the taxable person began using such capital asset in the course of its business. Such adjustment shall be made anually for the next 5 years (one-fifth)for tangible assets following its use in the taxable activity, while for immovable property such adjustment shall be made for a period of 10 years, from the year it was used for a taxable activity of the taxable person.

If the taxable person does not use such capital asset for a taxable activity whithin the time period permitted for the deduction, it must return the input tax deducted or refunded upon acquisition of the capital asset back to the tax authority.

It is noted that if the taxable person ceases its taxable activity and has capital assets, such cessation is considered a deemed supply, subject to VAT. Likewise, if during the adjustment period it transfers it or disposes it, it is considered a supply of goods subject to VAT.

The Capital goods scheme is provided under articles 187 - 191 of the PVD.

It is directly mentioned in Article 190 of the PVD, that even services that have the same characteristics similar to those normally attributed to capital goods may be treated as capital goods.