Answer-to-Question-_1_

It is my understanding that Omega Ltd, an entity established and registered for VAT purposes in Bordonia, performs several transactions involving acquisitions and sales of goods during the course of performing recycling activities of waste electrical goods to valuable metals, as follows:

1) Input transactions

- Acquisitions of waste electrical goods from EU and non-EU suppliers
- Acquisitions of waste electrical goods via donations from charity groups and community collection points

2) Output transactions

- Sales of valuable metals to Bordonian and other EU-established entities
- Sale of patented rights for recycling method to an US-based entity

Considering the above, it was requested to mention the applicable VAT treatment of each of the transactions performed by Omega Ltd. Thus, please refer to my comments below highlighting the relevant VAT treatment of the transactions performed by Omega Ltd.

1) Input transactions

Acquisitions of waste electrical goods from EU and non EU suppliers

Regarding the acquisitions of waste electrical goods, it is my understanding that the title of ownership over the goods passes from the supplier to Omega Ltd in the country where the goods are collected (i.e. either in EU or in non-EU countries).

As a consequence, based on the general rule regarding the place of supply for supplies of goods without transport(art. 31 of the VAT Directive), the place of supply for each acquisition would be the country where Omega takes over the ownership over the goods.

Thus, for acquisitions of goods from other EU Member States, the supplier would perform a domestic sale to Omega Ltd, subject to local VAT. Consequently, Omega Ltd would move its own goods to Bordonia. This movement of own goods is regarded as deemed intra-Community supply in country of dispatch and corresponding intra-Community acquisition in Bordonia, performed by Omega Ltd (according to art. 20 of the EU VAT Directive).

Consequently, if follows that multiple VAT implications arise:
- obligation to register for VAT purposes for Omega Ltd in the country of dispatch
- obligation to account via the reverse charge mechanism for the deemed intra-Community acquisition performed by Omega Ltd in Bordonia.

With respect to acquisitions performed from non-EU countries, the arrival of goods within Bordonia will qualify as an import of goods, for which VAT is due in Bordonia. While it is unclear, most likely the supplier would not perform customs formalities in country of dispatch, as such the formalities would be performed by Omega Ltd (VAT/GST consequences for Omega in country of dispatch should be analyzed).

Acquisitions of waste electrical goods via donations from charity groups and community collection points

The acquisitions of waste electrical goods via donations do not qualify as taxable transactions from a VAT perspective, as they are neither performed by taxable entities (i.e. entities that independently carry out economic activity as per art. 9 of the

VAT Directive), nor the supply is not performed for consideration.

As such, such acquisitions should be treated as outside the scope of VAT by Omega Ltd.

Sales of valuable metals to Bordonian and other EU-established entities

Any sale of valuable metals from Omega Ltd to Bordonian clients would qualify as a domestic sale of goods in Bordonia, for which Omega Ltd qualifies as person liable to account for VAT. Based on art. 199a of the VAT Directive however, Member States may provide that the person liable for the payment of VAT is the taxable person to whom the supplies are made (i.e. the customers of Omega Ltd), for supplies of raw and semi-finished metals, including precious metals. The implications from a national Bordonian legislation perspective should be analyzed.

With respect to sales to other EU-established entities, the transactions qualify as intra-Community supplies performed by Omega Ltd to its customers, according to art. 32 of the EU VAT Directive, considering it is a movement of goods between two member states, while the transport is performed by the supplier of the customer, or another third party on their behalf (in our case, the supplier is in charge with transportation).

This transaction should be reported under the VAT return and Recapitulative return of Omega in Bordonia (the later being a condition to secure VAT exemption for the intra-Community supply). Also, Omega should pay attention for the conditions to zero rate the supply, more precisely to hold proof of transportation to another EU Member State, to receive a valid VAT registration number from the customer and to correctly report the transaction in the Recapitulative return.

Sale of patented rights for recycling method to an US-based entity

Sale of patented rights means a supply of intangible property related to intellectual property. The sale is thus a supply of services. As such, since the transaction is performed between two taxable persons acting as such, the place of supply would be determined based on the general rule stated by art. 44 of the EU VAT Directive. Omega Ltd would not be required to account for VAT on the invoice issued to the US-based entity.

Answer-to-Question-_2_

Dear Mr. Finance Director,

I am pleased in providing you with required information related to the VAT treatment of the transactions carried out by Boldon (entity established and registered for VAT purposes in Theta).

For ease of reference, please see below the relevant VAT implications for each of the aspects highlighted in your request:

- Boldon extracts gravel from a site in Cresia, owned by a company established in a different member state which granted the license to Boldon

Based on art. 31a of Regulation 282/2011 and art. 47 of the EU VAT Directive, the supply performed by the supplier to Boldon would qualify as a service related to immovable property, since there is a **direct** link between the supply performed and the site located in Cresia. As such, the place of supply would be in Cresia, where the immovable property is located. In order to recover input VAT, Boldon may be required to register for VAT

purposes in Cresia.

- Supply of gravel extraction rights, performed by Boldon to a customer established in Theta

The supply performed by Boldon to another customer would follow the same priciple, as it is linked to immovable property. As such, the place of supply is where the property is located.

- Rights to extract from seabed located within and outside of territorial waters of Theta

Indeed, with respect to the subject of territorial waters of member states of the EU, the legislation (art. 5 and 6 of the EU VAT Directive) specifically mentions that VAT Directive is applicable only within the territory of the EU member states.

Therefore, as within the principles set out by the Treaty of European Union and corresponding legislation, the territory of a member state includes its territorial waters.

It follows that any transaction performed within the territory of a particular member state could be subject to VAT according to principles laid out in EU VAT Directive.

As such, for the gravel / sand extracted from outside the territorial waters, the bringing into port in Theta qualifies as an import of goods (art. 30 of the EU VAT Directive). The place of supply would be in Theta, according to art. 61 of the EU VAT Directive.

I hope the above is responsive to your queries.

Kind regards,

ADIT Student

Answer-to-Question-_3_

It is my understanding that Falcon GmbH is established and registered for VAT purposes in the European Union.

During the course of its business, Falcon issues fuel cards to business customers (it is however unclear where those customers are established).
The price that Falcon charges is the fuel that those customers have obtained in several EU member states using the card issued by Falcon, plus 3% mark up.

Additionally, Falcon issues invoices for charges for late payment of monthly invoices.

Regarding input transactions, Falcon receives monthly invoices from fuel business for the fuel granted to Falcon's clients.

From a VAT perspective, regarding the input transactions, they clearly qualify as a supply of goods performed by fuel stations to Falcon.

As such, VAT would be charged by the supplier according to their local rules, as the place of supply is located where the goods are put at the disposal of the customer according to art. 31 of the VAT Directive(since no transport is performed in this case). Falcon would thus incur VAT in several member states of the EU.

With respect to output transactions, it is important to mention that the question at hand was settled by the European Court of Justice in the Vega case.

While normally, a supply of card fuel would be considered a

supply of services following the general B2B rule, the Court actually ruled in the Vega case that it is in fact a credit provided by the supplier (Vega) to its customers. The reason for this conclusion was that the customer of Vega (or, in our case, of Falcon), cannot really benefit from the fuel, as this is not what it is provided to them. In fact, they receive the credit with which they may acquire the fuel (regardless of whether the only possible scope of the card is to acquire fuel, this is not sufficient reason as to assess the supply not representing the granting of a mere credit).

It follows that very different VAT implications arise, since the granting of a credit is a VAT exempt without credit operation, being in the field of financial services, as per art. 135 letter b) of the EU VAT Directive.

Thus, since the business of Falcon refers to peforming VAT exempt without credit transactions, it follows that no input VAT deduction right should be granted at the level of Falcon. Provided that, in the course of its business, it also performs taxable supplies, then the VAT deduction right may be exercised by appropiately allocating the VAT input rights to the taxable supplies performed.

Answer-to-Question-_6_

A sale of goods which is transported from member state A to member state B, while the goods are transported by the supplier, the customer or a third party on their behalf qualifies as an intra-Community supply of goods.

Indeed, especially considering the nowadays global trade and international supply chain, it is often that multiple companies are involved in chain transactions, with a single transportation of goods from a member state to another.

Since, in order to zero rate a supply of goods to another member state it was highly important to determine to which supply the transport can be attributed (as only that one could benefit from VAT exemption for intra-Community supplies), it was often difficult in practice to correctly assign the VAT exemption. As such, there was extensive jurisprudence of the European Court of Justice in this matter (e.g. rulings in EuroTyre, Emag cases).

Starting with 2020, the EU legislator implemented the so-called VAT quick fixes which, among others, also deals with the substantive conditions to zero rate an intra-Community supply as well as the proof of transport for intra-Community supplies.

As we have already identified what an intra-Community supply is (movement of goods between two member states, with transport organized by seller or buyer or a third party on their behalf), it is important to mention the conditions to zero rate an intra-Community supply:

- the supplier must receive a valid VAT number of its customer, which will be mentioned on the invoice
- the supplier must apropiately report the transaction in the recapitulative return lodged to the tax authorities in its member state of establishment
- the supplier must hold proof of the intra-Community transportation, in line with the requirements of the corresponding EU Regulation

Firstly, as opposed to legislation prior to VAT quick fixes implementation, the appropiate reporting in the recapitulative statement became a substantive condition in order to zero rate the supply.

Secondly, with respect to proof of transportation, the EU Regulation now mention specific sets of rules in order to proof

the movement of goods to another member state.

More specifically, there is a presumption that the goods have been transported to another member state, provided the supplier hold two non-contradictory pieces of evidence, issued by independent and different parties (for exemple, a CMR and an invoice for the transport services).

It is also important to mention that the requirement for a combination of documents required to prove the transport is allowing the companies to chose the most appropiate and easy method for their own operational activity. However, it has been perceived as bringing additional administrative burden for the companies.

Thirdly, the rules differ in case the transport is organized by the seller or the buyer of the goods. In case the transport is organized by the buyer of the goods (for exemple, in cases of supplies with E or F Incoterms delivery terms), the seller should receive (in addition to holding the combination of two documents) an affidavit attesting that the goods have arrived in the member state of destination. Such affidavit must be provided by the buyer to the seller within a specific timeframe and should include specific information as provided for in the legislation (such as information on the nature and quantity of goods, date of receipt, person who received them, etc.).

Finally, it is important to mention that, should the seller not hold the relevant documentation exactly as prescribed by the legislation, the presumption of transport is not automatically disregarded. It is up to the tax authorities to prove that the transport of goods indeed did not take place in order to challenge the VAT exemption applied by the seller for this specific supply.

On a separate note, regarding chain supplies of goods, within

direct transport from initial supplier to country of final beneficiary, the VAT quick fixes clearly stated that the VAT exemption shall apply to the supply performed to the intermediary operator, except for when that intermediary operator provided its VAT registration number issued in the country from which the goods are dispatched. This rule in the field of chain supplies is intended to bring more clarity and to include in the legislation the principles stated by the European Court of Justice in its extensive rulings on the matter.

Answer-to-Question-_7_

Based on the described activity of the business (i.e. sale of goods to non-business customers), it appears that the supplier performs distance sales of goods, defined as per art 14 (1) of the EU VAT Directive.

As such, it is important to mention that, under the new e-commerce rules, the place of supply for distance sales of goods stated under art. 14 of the EU VAT Directive is the place where the transport to the customer ends (according to art. 33 of the EU VAT Directive), provided the EU wide threshold of EUR 10,000 representing distance sales of goods has been exceeded.

I also mention that, prior to the implementation of the e-commerce rules in the field of VAT, the VAT was due according to the applicable rate in country of the supplier, provided that the threshold for the distance sales of goods per each country has not been exceeded (i.e. 35000 or 100000 EUR/country).

According to legislation applicable at present, the distance sales of goods are taxable at the location of the customer which entails the obligation to account for VAT according to the local rules / rates of the country of destination. As this signifies that supplier should most likely register in each country of its

customers, the EU legislator stated the posibility to register in the OSS - One Stop Shop - system.

The OSS system allows for the supplier of goods to non-business EU customers to register only in its state of establishment (thus avoiding the need to register in all other member states).

The VAT is still being charged at the applicable rate of each country of destination, however significant administrative burdens are avoided via the OSS).

Suppliers registered in the OSS system are required to submit a quarterly return in their state of establishment mentioning the relevant sales for each quarter, **in euros**. In case Sveka would not have not adopted the euro, it could have required the business to make the VAT return in national currency, as per provisions of the legislation.

The member state of establishment then forwards the amounts corresponding to each state of consumption according to the data mentioned by the business in its return.