

Answer-to-Question-_1_

Dear Finance Director,

Please find below the notes with regards to the VAT compliance required by Gamma. Note that the references are to the Principal VAT Directive.

1- Recording, editing and production facilities

The letting of facilities would be considered letting of immovable property that would be under the exemption. This would apply when the property is let and put at the use of the lease. This would involve an agreement which give the tenant the right of use. There where some cases that like **Sinclair Collis Ltd** that set the important principles for determining it fall under the expression:

- defined area
- a period of time
- transfer of rights to occupy the premises, these right would allow the tenant to admit people or exclude them

As you mentioned that professional staff is there to assist the customers, and assuming adequate insurances are taken up by Gamma SA to protect the investment in equipment, it would be difficult to argued that this is letting of immovable property. It would be consider a service that would include several elements as a single supply for VAT purposes.

This transaction would more likely be regarded as a supply of service at standard rate in Bordonia for both VAT and no VAT registered customers.

In relation to the customers from the neighbouring member state the place of supply differs.

VAT register customers B2B, as per article 44 the place of supply is where the customer belongs, the VAT is outside the scope with credit for input VAT. If Theta has implemented article 196 the customer would be able to account for the VAT as a reverse charge. Gamma SA would enter issue a zero VAT invoice with the appropriate reference to the article 226 and would enter in the tax return of Bordonia, as well as in the recapitulative statement

Non VAT customers B2C, the place of supply is where the supplier belongs as per article 45.

2- Live music performance

Admission charges are considered "Right to Admission" are considered that the place of supply is considered under article 54 as where the event takes place. As this is in Bordonia, the standard rate of VAT would apply in Bordonia.

3- Live Streaming Music Channel

The streaming of music would be considered a supply of electronic services. For B2C (non registered customers) are supplied where the customer belongs, that would give rise to local VAT in different Member states. The other option would be to enter the OSS (One Stop Shop) that is a simplification scheme that will be introduced 1/7/2021 in replacement of the MOSS. Gamma SA will be able to register in Bordonia and declare the output VAT in one return and file it online. There is a de minimis rule if supplies are under 10,000

I hope this clarified your doubts, in case of any further queries

do not hesitate to contact me.

Regards

Laura

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Answer-to-Question- 2

The following report regarding issues presented by Blunden Spa,
is based on the Principles of VAT Directive:

1 - Imports related to purchases of materials for installation

If imports are coming from outside the EU, these would require payment of import duties and VAT at the point of entry. These would be calculated with reference to the purchase price, including transportation, insurance or any other incidental costs of the transport. The rate applicable would be the one similar products in Theta. As the costs would be incurred to make taxable services in Theta the VAT would be deductible in the VAT return. Although it represents an outflow at the time of the importation. In some countries, there is the possibility of defer the payment of VAT by using a deferment licence and paying by direct debit in the following month of importation.

If the imports come from another Member state, article 36 would apply. This considers that the provision of goods and installation as a single supply. This considers that the provision of goods and installation as a single supply. The place of supply is where the goods are installed. This means that the supplier of the goods would need to register in Theta and issue a

local VAT invoice at standard rate. If Theta has implemented article 196, the supplier would be able to issue a zero VAT. Blunden Spa could account for VAT as a reverse charge.

There is no mention as to who performs the installation, and how the cost is charged so I assume that Blunden arranges the installation and invoices the client for both design and installation.

2- Interior design of large houses and yachts

This would be considered a supply of services that would be treated as following:

Supply of services to B2B customers are considered under article 44 as supplied where the customer belongs, the supply is outside the scope for VAT purposes but with credit. That means that the input VAT on this supply can be deducted by Blunden. The invoice issued by Blunden would be a zero VAT invoice with the appropriate reference to the article 226 and would be entered in the tax return in Theta, as well as in the recapitulative statement. The customers would apply reverse charge.

Supply of services to B2C customers are considered under article 45, the place of supply is where the supplier belongs. Therefore local VAT applicable in Theta would need to be applied to the invoices.

3- Bad debts from customers

There is a relief for suppliers who do not eventually receive all of the consideration under article 90, however each Member State can impose conditions. The taxable amount can be reduced if the supply is cancelled or if the price is reduced, but if the

service took place and there is no agreement of the amount that would be reduced there is no so straight forward. Each member state would set conditions to reclaim the VAT suffered by the supplier. If in case of bankruptcy or liquidation formal procedures would be applied, other Member states would allow to reclaim after a period of time, could be 6 months or 12 months of the debt being unpaid. Further consideration to the rule in Theta need to be applied.

As a conclusion, further review of the local rules with regards to I hope this report address all the issues and VAT aspects that where raised.

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Answer-to-Question-3

One of the important concepts of the VAT is fiscal neutrality and proportionality which means that the tax would impact in the same way to anyone carrying on a similar business. The right to deduct VAT is an important part of maintaining the fiscal neutrality. Also proportionality is important as to ensure that the correct portion of the VAT is paid through the chain from production to the final customer. For this system to work efficiently, the rules of deduction of input VAT need to be harmonised in the Member States and through the transaction between them so to avoid fiscal distortion.

The Member States should not make it excessively difficult for business to claim the input tax and there should be a legitimate expectation that means that the person should understand the law

and should not be deprived of the rightfully claim. There are instances in which changes in the law can create a distortion, like what occur in the case of Marks and Spencer PLC, that the CJEU found that the national legislation retrospectively cut the period which the repayment of VAT may be claimed and it was in breach of the principles of effectiveness and of the protection of legitimate expectation. In other cases the unjust enrichment of the claimant was a valid reason for the government to refuse the payment.

The other reasons why the tax authorities where permitted to deny the recovery could be in cases of suspected fraud. In the case of Mahageben confirmed the denial due to suspected fraud in the chain of transactions. However, the case of Idex Laboratories the CJEU confirmed d that the tax authorities cannot deny a claim on the basis formal requirements, if there is form of documentation available,

In other occasion the courts have allowed to deny the right if the taxpayer has generated some artificial transactions to take advantage for tax purposes. The courts can sustain that there was abuse of rights or abuse of law.

In the case of Halifax PLC sets the guidance as to what represents abuse of rights. One there must be objective evidence that the transactions were set up to obtain a tax advantage and second these would need to be clearly in contrary to the intention of the law. For example, the case of Weald Leasing the company set up a subsidiary for the purpose of improving cash flows in the leasing and claiming of input VAT. This in itself does not represent abuse of rights unless the subsidiary that is able to claim the input VAT is making recharges at lower than Market Value to get a VAT advantage.

There need to be evidence of fraud for the tax authorities to

deny recovery. Otherwise, if proper controls and evidence is keep there would be fiscal neutrality.

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Answer-to-Question-4

Dear Financial Director

I am please to written to you to advise on the claim of input VAT in Bordonia.

There are two ways of claiming the input VAT, one would be as part of the VAT return submission from the time that your company was registered in Bordonia, that would be for input VAT suffered after May 2020. For this you have four years to claim the input VAT.

Prior to the registration in Bordonia it is possible to make a claim via the 13th Directive provided there was a reciprocal arrangement with the country in which you were operating your business. Here are the conditions:

- VAT must have been incurred in the usual course of business, as these were incurred on the training course this condition would be met.
- Tax invoices are available as supporting evidence
- At the time of the training courses your business did not have a permanent establishment in Bordonia nor a Fixed Establishment for VAT purposes
- During that period you did not supply distance sales goods that required you to registered in Bordonia

- You must provide evidence that you were registered outside the EU

You must note that some Member States can refuse the claim on the basis of reciprocal treaty and also the claims should be done within 6 months of the end of the calendar year.

I would recommend that you deal with the 13th Directive as soon as possible to get the maximum refund possible and check with Bordonnia Authorities the deadline for this claim.

I hope this was of help

Regards

Laura

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Answer-to-Question-7

There is a special scheme for tour operators, that is travel agents that avoids having to register in different locations. If Athena is registered as travel agent it may be able to apply this scheme to avoid having to register in Theta. This is focus on tour operators that buy and sell packages. VAT is only applicable on the margin between the purchase and the sales. As this is not the case of Athena that is only buying on the customer account and sales obtaining a commission it would not fall under this scheme.

Also the metro cards could be considered as vouchers that are purchased in advance and consumed in the future. Since 1 January

2019, the supplier of the voucher must consider if the voucher is a Single Purpose Voucher (SPV) or a Multiple Purpose Voucher (MPV). If there is sufficient evidence regarding the place of supply of the voucher and the tax treatment of the supply to tax the underlying goods when the voucher is received it would be a SPV. The MPV would be when the supplier does not have certainty of the place of supply where the customer will use the voucher and therefore the VAT treatment is not known. Therefore, the MPV would be taxed when the voucher is redeemed.

In the case of Athena, there are different cards for use in Mediterranean's public transport and for the use in Theta. The place of supply is known at the time the voucher is sold, and also the value.

It could be argued whether Athena is acting as an agent or as a principle. If Athena is acting as an agent in this transaction, not acting as principle, only needs to account for VAT on the commission.

If it was acting as a principle, we would need to take into consideration the place of supply of services under the final customer B2C. Under the general rule is where the customer belongs, that would be Mediterranean. However, the services relate to public transport that under article 48 the place of supply is where the transport takes place that for some of the cards would be Theta. This can create the need for Athena to register in Theta and account for local VAT.

In summary, there needs to be further review of the local legislation in Theta to understand if the service could fall under the Operators Margin Scheme, otherwise Athena may need to register in Theta and account for local VAT.