

Answer-to-Question-_2 part A_

Finance Director
Omega Ltd
9th Dec 2021

ADIT Student

Ref: Advice on the VAT treatment and compliance obligations, in relation to the activities of the company

Dear Finance Director,

Please find below my inputs related to the VAT treatment and the compliance requirements related to your operations.

1.Sales of drones in Nordia

The sales of drones to VAT- registered customers in Nordia are domestic sales, with the place of supply in Nordia and are taxable at the Nordian VAT applicable VAT rate.

As per art 32 of EU VAT Directive, the place of supply of the goods with transport arranged by the supplier (as in this case) is where the transport of the goods to the customer begins. In respect with these supplies, Omega would be required to issue sales invoices to its customers, as per art 220 of EU VAT directive, in line with the invoicing requirements of Nordia (where the company is established)- art. 219a, EU VAT directive. As per art 226 of the same Directive, the invoice should contain, at least: the date of the issue, a sequential and unique invoice number, full name and address and VAT ID No in Nordia for Omega, full name and address of customer, date of supply, the VAT rate applicable, VAT amount and total amount of the invoice.

Omega will be required to file VAT returns, following the specific regulations in Nordia.

The sales to domestic business customers would need to be reported in the VAT return (tax base and VAT amount).

2. Sales of drones to customers VAT registered in other EU member states

These sales are EU sales of goods, exempt of VAT for Omega, following the article 138(1) of EU VAT Directive.

However, as per art 45a of the Implementing regulations 282/2011(IR), Omega, would need to be in possession of at least 2 items of non-contradictory evidence, in order to prove that the goods have been dispatched out to another EU member state and enjoy the exemption mentioned at article 138(1).

Omega will not charge any VAT on its invoices to the EU business-customers, while, on the other side, the customers will need to account, on their side for the tax on acquisition, under reverse charge.

Apart from the invoicing requirements mentioned above, Omega will need to make a reference to the exemption status of these sales, indicating the provision from the EU VAT Directive or the corresponding national provision (art 226 (11) of EU VAT Directive).

As well, Omega would need to obtain valid VAT ID numbers from its customers, which need to be mentioned on the invoice and as well in the recapitulative statement reporting (see below).

The validity of the VAT ID of the customers can be checked on the VIES website of EU.

Omega would need to submit recapitulative statement (EU Sales list) in regards to these sales, either monthly or quarterly (if the sales do not exceed 50000 Euro/quarter).

These transactions would need to be reported as well in the VAT returns.

3. Transport costs

The transport costs to move the goods in Nordia or within

Community, to the customers' premises, represent logistic services, provided by a local company. The place of supply to taxable persons, is where the customer is established (in this case Nordia), as per art. 44 of EU VAT Directive.

Omega will receive invoices with Nordan VAT from the logistic provider and will be entitled to recover this input VAT, as it relates to its taxable supplies.

4. In-person live training seminars

The delivery of live seminars to business/ taxable persons- customers, is a delivery of a service with place of supply where the activities take place (art 53 of EU VAT Directive).

Irrespective of the registration and location of the customer (in Nordia or in another member state), Omega will charge Nordan VAT for these services to its customers.

Invoicing requirements and reporting in the VAT retur, will be similar to these ones mentioned above under point 1.

5. Delivery of pre-recorded webinars to its customers and sales of downloadable software

Pre-recorded webinars which require Internet (IT technology) in order to be delivered would be an electronically supplied service as per art 58 (1) of the EU VAT Directive and art 7 (1) of IR.

Downloadable software for the drones is as well an electronically supplied service (Art 7 of IR, Annex 1-2a).

The place of supply for these services is where the customer is established, in case of B2B supplies (art 44 of EU VAT Directive).

As Omega's customers are all VAT registered, Omega will issue an invoice without VAT and the customers will account for tax on acquisition under reverse charge at their end (art 196 of EU VAT Directive).

Omega would need to mention the VAT ID no of the customers on its invoices, report these transactions in the EU sales list (

recapitulative statement) and most probably in its regular VAT return submission.

6. Import of drone components from India

Omega would incur import VAT and possible custom duties, at the importation.

The place of supply for these goods will be the place where they are imported and released into free circulation- in this case Nordia.

The import VAT would be calculated, by applying the VAT rate, to which the imported product are sold in Nordia, if they were supplied by local suppliers, applied to a tax base which is built of purchase price from the Indian supplier, plus any taxes (custom duties), excluding VAT, plus any incidental expenses like transport, insurance, custom charges.

The import VAT if paid at the importation, will be deductible for Omega, as it relates to its taxable supplies.

Omega may explore the usage of deferment account in Nordia, if the imports are regular and with considerable value, in order to benefit of a postponement of the payment for VAT and duties. I would recommend, as well, for Omega to explore with the Nordan tax authorities, if the option of postponed import VAT accounting is being made available and what are the conditions for it.

With this option, the import VAT is not being paid at all at importation or later, but instead, it is being reported in the VAT return of the importer as reverse charge.

This option is benefic for cash flow purposes.

Omega would need to make sure to have proper import documentation in place (like import SAD document stating it as importer of record and showing the import VAT incurred) in order to support the deductibility of the import VAT incurred.

I hope my above asnwrs covers all our questions and open points. In case further details are needed, please do not hesitate to

come back to me.

Yours sincerely,
ADIT Student

Answer-to-Question-_1 part A__

Finance Director
Builders Group

ADIT Student

9th Dec 2021

Ref: Advice on the VAT treatment and other aspects, VAT related, to be considered, in relation to your company's operations

Dear Finance Director,

I am detailing below the VAT treatment and other relevant aspects to be considered, in relation to the following activities:

1. Architectural design and construction work related to a known location

Architectural design and construction works related to an existing hospital (known location) is a service related to an immovable property as per art 47 of EU VAT Directive and art.31a of IR. The place of supply for these services is where the immovable property is located, in this case Estora.

For Builders this will be a domestic supply of services, for which Builders will charge domestic Estora VAT.

I assume Builder is already VAT registered in Estora, due to the nature of its business.

Builders will need to issue sales invoice to the hospital, for its services, with Estora VAT and will need to report these sales in its regular VAT return.

On the other side, in case of the hospital, it can recover the

input VAT incurred, if this VAT related to its taxable supplies or exempt supplier, but with right of deducting VAT.

If it does, then if the hospital is registered for VAT in Estora, it can recover this input VAT through the process if its VAT return submission, by offsetting it against the payable VAT.

2. Claiming input tax on subcontractors involved in tax fraud

As long as Builders acted in good faith, in regard to the business activity with the subcontractors, triggering the respective input VAT and on the basis, that, this input VAT is linked to the taxable activities of Builders, the company should be entitled to recover the input VAT incurred.

One of the important principles of the EU VAT law and case-law is the fiscal neutrality.

According to this, VAT is a tax on consumption, which should be borne ultimately by the end-consumer and not be the taxpayer. For the taxpayer should be in and out, provided that the taxpayer makes taxable supplies and is entitled to deduct the VAT incurred. Builder should not be considered accountable for the lack of compliance with tax regulation of its suppliers or being part of this fraud, if Builder can show that it didn't have any knowledge and couldn't reasonably obtain any valid information about the fraud or intention to fraud on its suppliers's side. As well, it is well possible, that the respective tax fraud allegations are not directly linked to the business transactions between Builders and the subcontractors.

3. Letting offices in Boldonia

The letting of offices located in Boldonia is a service related to an immovable property and the place of supply will be in Boldonia.

As per art 135(1) of the EU VAT Directive, the letting of immovable property is a supply exempt of VAT.

On the other side, if any VAT would have been due to be charged,

Builders opted to exercise the option of shifting the tax to the Boldonian customers, as per art 194 of EU VAT Directive.

This means that it is the customer which will account for the VAT on its side, under reverse charge, while Builders will issue the invoice for the letting service without VAT.

And as per art 214(a) of the same directive, a taxable person who supplies services for which the customer accounts for VAT (art 194) may not be required to register for VAT in the member state where the respective services are delivered.

In relation to the oral statement of the Boldonian tax authorities, that owning rental property constitute fixed establishment in Boldonia, I would like to make the following observations.

As per art 11 of the IR, a fixed establishment is being defined, as a place, other than the place where a business is established, with a sufficient degree of permanence (regular and continuous activities should be performed) and suitable structure in terms of technical and human resources, in order to receive and supply services, as per its own needs.

There is extensive CJEU case law around fixed establishment concept and structures, over the time, with some different interpretation and application of the fixed establishment concept across Member States.

In a very recent case, concerning a Jersey established company, owning a rental property in Austria, CJEU ruled clearly, that if the company doesn't have any staff employed in Austria to manage the rental property and to make decisions relevant to it, there is no fixed establishment in Austria being created.

This case can be relevant for Builders and I recommend to assess what is the involvement of the real estate agent from Boldonia in managing the letting.

If the involvement is merely of an administrative and operational nature, while the decisions and main aspects related to the letting business is being managed by the Builders's employees in Estora (contract content, setting prices, setting letting conditions, etc), then the estate agent is only

delivering a service to Builders.

4. Financial consulting service

The input VAT incurred on the fees from the financial consultant, should be recovered by Builders as the consulting fees can be regarded as an overhead cost related to the business as a whole and therefore it is an indirect link to the taxable activities of the business.

On the other hand, it can be argued that the financial advice has been taken with the view to ensure continuity of the business taxable activities (ensure business continuity), which gives right to deduction.

5. Plans related to an unknown location

Delivering plans related to an unknown location is a delivery of service following under the standard rules of place of supply:

- art 44 of the EU VAT Directive, if the customer is a taxable person, in which case the place of supply would be where the customer is established.

In our case, it would be Estora and it would be a domestic supply of service.

- art 45 of the EU VAT Directive, if the customer is a non taxable person, in which case the place of supply would be where the supplier is established - which is Estora.

Again Builders will charge Estora VAT on its delivery.

I hope my above answers covers all our questions and open points. In case further details are needed, please do not hesitate to come back to me.

Yours sincerely,

ADIT Student

Answer-to-Question-_3 part B__

To: Mark

From: ADIT Student
9th Dec 2021

Ref: VAT treatment for online B2C sales

Dear Mark,

Please find below my inputs in relation to the VAT treatment for online sales to private consumers, considering the specifics for the deliveries before and after 1st July 2021.

As per the art 32 of the EU VAT Directive, the place of the supply of goods with transport should be where the transport begins.

However in case of Intra-Community distance sales of goods, the place of supply should be where the transport ends.

1. Supply of goods to customers in Astrioca

This is a domestic supply of goods, for which you should charge local Astrioca VAT of 19% (most probably).

You should issue an invoice for the sales and report these sales in our VAT return.

2. Supply of goods to consumers in Bestria and Chiora

These supplies are intra-community distance sales of goods, as per art 14(4) of the EU VAT Directive and the place of supply for

them is where the transport ends (art 33 of the same Directive).

The rules to be considered before 1st July 2021 were:

- in case your total volume of sales in both countries is below a specific threshold (between 35000 Euro and max of 100000 Euro), the place of supply would be where you are established, as supplier, which is Astrioca.

As per your turnover figures provided for 2020 (13000 Euro, total sales in both countries), you are way below the threshold, therefore you should charge Astrioca VAT on the sales to consumers in Bestria and Chiora for the sales carried out until 1st July 2021.

The rules to be considered starting with 1st July 2021 are:

- if the total sales value of online distance sales of goods performed in the 2 member states is above 10000 Euro in the previous calendar year or the current year, you would need to, either register for VAT in each of the member state and charge local VAT to your sales to the respective local private consumers, or, to opt for the Union Scheme and register for One Stop Shop (OSS), in your member state of establishment.

This will offer you the option not to register for VAT in each of the 2 other member states (Bestria and Chiora) and file VAT returns there for the local VAT charged, but instead to submit one VAT return through OSS in Astrioca, mentioning the sales at each VAT rate, charged in each other member state.

You will remit the payable VAT, at the Bestria and Chiora VAT rates to Astrioca tax authorities which will transfer further to each state.

You will need as well to report these sales in our regular VAT return, submitted for other transactions, outside OSS system, to Astrioca tax authorities.

I hope, the above provide the level of details and information, you need, but please feel free to revert back to me, in case further clarification is needed.

Best regards,

ADIT Student

Answer-to-Question-_5 part C__

The transfer of a business as on going concern (TOGC) is being mentioned in the art. 19 of EU VAT Directive.

As per this, TOGC is being considered out of VAT scope, however some aspects should be considered:

- the transfer is of a business as a whole or of an independent part of the business, which can be further operated independently (and this can include as well customers list, goodwill, etc).

- the transfer is being doen with the main purpose/ intention to continue the business or similar business to be further performed by the acquirer, rather than liquidating the business.

The same article provides for necessary measures to be considered by the each Member State, in order to prevent tax evasion or avoidance, by a misuse of this article.

On the other side, the tranfer of individual business asetss (either tanbible or intangible) are to be considered supply of goods under art. 14 and art 17 of the EU VAT Directive.

These transfers will be subject to VAT, as per the place of supply rules for goods.

Answer-to-Question-__6 part C_

The reverse charge mechanism applies where the supplier doesn't charge VAT, but instead shifts the VAT to the customer and it is the customer who is liable for acquisition tax and is accounting for it under reverse charge, in its VAT return.

The reverse charge cases are covered in the EU VAT Directive in the articles 194 to 197 and 3 examples are:

- EU supply of services - art 44
- supply of service where the place of supply is where the service is carried out and the customer accounts for VAT- service related to immovable properties.