

Answer-to-Question-_1_

Report on Vat related aspects of NatMet's activities:

From the information available we can infer that NatMet is established in the EU state of Bordonia and it is the national meteorological service provider in that country.

Under a statutory obligation, it provides weather services to the government of Bordonia as well as commercial activities to business customers.

Below I have given the possible VAT treatment on the various activities of NetMet-

1. Weather related services to Government of Bordonia-

Although NetMet is providing weather services to the government of Bordonia (national meteorological service provider) under a statutory obligation, we cannot consider it as a public body or government entity and apply any exemption on the supplies made by it.

NetMet is also involved in commercial activities where it is supplying other services to Businesses in Bordonia and other EU states.

However the services are being provided to the Government of Bordonia which is not a taxable person as per Article 9 and Article 13 of the Principal VAT directive. Hence this supply of services to the government will be outside the scope of VAT.

2. NetMet's services to business customers-

a) B2B Customers in Bordonia- NetMet is providing weather information to radio stations and professional flying clubs through electronic means like apps. This can be treated as "electronically delivered services" (supply of information via electronic means)covered in Annexe II of VAT directive. Applying B2B services rule, the supplier being in Bordonia, NetMet has to charge VAT applicable in Bordonia on the invoices sent to the customers and include these in its domestic VAT return.

NetMet is providing in-person training events and lectures for which admission charges apply- As per Article 53, place of supply for services related to education supplied to a taxable person is the place where these services take place. As the services take place in Bordonia, place of supply will be Bordonia and Bordonia VAT will be applied on the invoices by NetMet.

On the provision of education to students in public sector schools in Bordonia, an exemption exists in the VAT directive for education services under Article 132(1)(i). However the CJEU in its many judgements have stated that the exemption covered for education services pertains to a general education and for exemption to apply for education services, the provider of education should be a public body or an entity having a similar purpose (CJEU cases of A&G Fahrskul Akademie and MDDP case). In this case even the education provided by NetMet cannot be considered within the ambit of "general education" and thus the VAT exemption will not apply.

b) B2B Customers in other EU member states-

For the weather information services provided to customers in other EU member states, applying the place of supply rules for B2B services, tax is applicable where customers are established. If NetMet is VAT registered in these states, it will have to charge applicable VAT on the invoices sent to customers. If not, the customer will be liable to account for and pay VAT under reverse charge mechanism Article 196. If the latter option is opted then NetMet has to include the details of the supplies in the recapitulative statement it submits in Bordonia.

On the in-person training events and lectures provided, the place of supply would be where the event takes place. If NetMet is VAT registered in the other EU states, it will have to charge applicable VAT on the invoices sent to customers for the training events and lectures. If not, the customers will be liable to account for and pay VAT under reverse charge mechanism as per Article 196.

c) Services provided to staff of foreign military organisations-

Answer-to-Question-_2_

To

The CFO

Thebair, Thebia

13-June-2024

Dear Sir,

Subject: VAT implications on Thebair's activities

Thank you for contacting me with your VAT related questions for the different activities of Thebair. I am providing my answers here for each of the activities that you have mentioned in your email.

1. Documentation requirements for removal of goods from Thebia to other EU member states- This will be considered as an Intra-Community transaction within EU. Provided the transaction meets all the requirements under Article 138, the intra-community supply of goods from Thebia will be VAT exempt and the freight customers in the other EU member state will be performing the intra-community acquisition and pay VAT under reverse charge mechanism as per Article 196.

The conditions for an exempt Intra-community supply in Thebia are-

- a. The goods are supplied to a taxable person or non-taxable legal person in the other state and he is VAT registered in that state
- b. The taxable person or non-taxable legal person has communicated his VAT ID to the supplier in Thebia.

As per Article 45a of the implementing regulation, the following documentation is needed for Thebair-

- a. Thebair is in possession of 2 non-contradictory piece of evidence issued by 2 different parties that confirm the goods have been transported out of Thebia.
- b. If the customers in the other member state are arranging for the transport, then a written statement from the customer stating the goods have been transported by the customer and identifying the state of destination of the goods.

2. Documentation requirements for removal of goods from Thebia to US- This will be an export transaction from the EU.

As per article 220, an invoice is mandatory for an export transaction from the EU. Also Thebair has to submit a proof of exproation signed by customs authorities that confirms that the goods have left Thebia.

3. Documentation for transport of own consumable goods to an Thebair office within EU- This will be considered as movement of own goods.

As per Article 17, a transfer of own goods forming part of the business assets to another member state shall be considered as

supply of goods for consideration. Going by Article 21, we can consider this as a deemed Intra- community acquisition of goods by the Freight customers in the other EU states. The documentation requirements as per 45a of the Implementing regulation 282/2011 would be applicable here.

4. Lease payment for commercial passenger aircraft leased from bank in Thebia- This amounts to supply of B2B services by the Bank and no exemption applies to this service under Article 135 of the VAT directive. Going by the normal B2B service rules, the bank will charge VAT based on where the customer is established, in this case Thebia. Thebair will be able to deduct this input VAT in their domestic VAT returns.

5. Remuneration to non-executive director serving on the board of Thebair- As per Article 9 a person who is independently carrying out an economic activity regularly is a "taxable person". And economic activity includes activities of profession. We can consider the services of the non-executive director established in Thebia as performing an economic activity for which VAT is deductible. The VAT paid on payments to the director is deductible for Thebair.

I hope you have been sufficiently informed about the VAT questions. Please let me know if you need any other information.

Thank you,
ADIT Student

Answer-to-Question-_4_

1. As per Article 2(2) (a), motorised land vehicles are considered as second hand transport when they are intended for transport of person or goods. We can consider the supply of used cars as within the scope of EU VAT.

2. For the supply of used cars to the other EU member states, applying the place of supply rules under Article 33 (intra community distance sale), the place of supply would be where the goods are located when the transport of goods to customer ends. In this case, the new business owner has to compulsorily register for VAT in the two EU states where he is doing distance sales, report and pay VAT in those states.

3. For the supply of used cars within the same state where he is established, it would be a domestic supply of goods. Going by Article 32 (supply with transport), the place of supply would be where the goods are located when the transport of goods to customer begins.

In this case, new business owner has to register for VAT in the state where he is established and charge applicable output VAT on the invoices that he sends to customers.

4. As per Article 326 of the Principal VAT directive, member states, which as on 31-Dec-1992 were applying special tax arrangements for the supply of second -hand means of transport may

continue to apply the same, subject to conditions.

Assuming the new business owner's state had applied this special scheme for taxable dealers who dealt with supply of second-hand means of transport, he can make use of this scheme.

If this scheme is applied by the new business owner, then the VAT would be applicable on the margin made by the business owner. Here margin is the difference VAT due on the supply if it was subject to normal VAT arrangements **and** VAT in the purchase price of the means of transport.

If this scheme is applied, then the new business owner shall not enter any VAT amount on the invoices issued for his supplies to customers.

Answer-to-Question-_8_

VAT recovery of expenses incurred by Alpin:

1. Hotel accomodation services of employees incurred in Holsta-

As per Article 47 of the Principal VAT directive, hotel accomodation services can be considered as related to immovable property as they are directly related and in connection with the property. In this case, the place of supply would be where the property is located, which is Holsta. The hotel in Holsta will be charging applicable VAT on the invoice it issues to Alpin.

Total expenses- 10,000 Euros

VAT rate- 20%

VAT charged- 2000 Euros

VAT recoverable - 2000 Euros

2. Restaurant meals for employees-

As per Article 55, place of supply for restaurant and catering services is where the services are physically carried out. In this case, it will be Holsta where the employees have spent 6 days for the trade conference. The hotel in Holsta will be charging applicable VAT on the invoice it issues to Alpin.

Total expenses- 2000 Euros

VAT rate- 20%

VAT charged- 400 Euros

VAT recoverable- 400 Euros

3. Entertainment expenses-

Although recovery of Input VAT deduction is fundamental concept in the EU VAT, as per Article 176, VAT incurred on non-business expenses like luxuries, amusement or entertainment is not recoverable.

Therefore the VAT on entertainment expenses for the 6 employees will be non-recoverable for Alpin.

Total expenses- 3000 Euros

VAT rate- 20%

VAT charged- 600 Euros

VAT recoverable- 0

As Alpin is established in Switzerland which is outside EU, the rules as per Council Directive 86/560/EEC will be applicable (refund of VAT to taxable persons not established in the community).

For the refund of the VAT incurred in Holsta, Alpin has to submit an application via an electronic portal of Holsta within the timelimit prescribed by Holsta.

Alpin has to submit proof of payment of VAT in Holsta in the form of invoices as documentary evidence.

Once the tax authorities are satisfied of the refund application, they may process the refund of VAT.

Answer-to-Question-7

Fiscal Neutrality is a fundamental concept of EU Law.

It seeks to ensure that businesses and individuals in the EU are not incentivised to base their business decisions on the basis of tax considerations. It is based on the premise that neither a tax advantage or disadvantage should be accrued to an entity/person as a result of choosing a particular product or service.

It is an important concept for removing distortion of competition within the single market in EU.

From VAT perspective, fiscal neutrality is two-fold-

a. VAT is a consumption based tax. It should not be a burden for the person not intending to bear that burden. Deduction for VAT paid is a relief given for paying VAT while it is charged on the final customer.

b. Similar goods and services should be treated equally and the VAT treatment should be similar. There should not be any discrimination from VAT perspective for two tax payers operating in similar conditions in the market.

Fiscal neutrality has been discussed by CJEU in the famous Marks and Spencer case. This case was related to differential tax treatment given for payment traders and repayment traders.

In this case CJEU ruled that the equal treatment that is expected in tax related matters apply to traders who are not only directly

competetion with each other but who are operating in the same business conditions as well.

Legitimate Expectations-

Legitimate expectation is another foundational concept of EU law. This is based on the premise that EU member states and EU institutions are expected to work within the framework of EU law, abide by the EU law at all times in their decisions and actions. And the taxpayers in EU as well have certain expectations regarding the behaviour of EU member states and EU institutions- example they will be treated fairly in refund situations or the any tax related litigation will be adjudicated in a reasonable period of time.

From VAT perspective, this principle can be applied where -

- a. When a VAT law changes, the taxpayers expect a reasonable time period to adopt the new laws
- b. During an application for VAT refund, taxpayers expect to receive the refund when they provide sufficient documentations as required by tax authorities

This concept has been reviewed by CJEU in many cases. One of the most important is the Marks and Spencers UK case. In this case, UK national legislation made a retroactive change, where it reduced the period within which claims for repayment of VAT could be made by taxpayers. CJEU found that this was against the principle of legitimate expectations as the VAT reclaim for a legitimate situation is a legitimate expectation of a taxpayer. Another case is Sudholz, Germany. Here again Germany changed a legislation that retroactively impacted the taxability of

transaction which put the taxpayer at disadvantage. CJEU held that this was against the principle of legitimate expectation.