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Answer-to-Question-\_1\_

ABA Tax Associates  
312 Avenue  
Bordonia

8 June 2023

The Finance Director  
Elan BV  
Bordonia

Dear Sir

**VAT IMPLICATIONS OF YOUR CURRENT AND PROPOSED BUSINESS MODELS**

I write to discuss the VAT implications of your current and proposed business models. References to legislation are in respect of the EU Principal VAT Directive (PVD) unless otherwise mentioned. I will address your comments in the order in which they were presented in your letter.

***Current Business Model***

(a) Boarding services for Animal - First, we have assumed that these kennels are permanent structures constructed on a fixed piece of land in Bordonia. Operation of a boarding kennels of this nature mostly likely can qualify as a lease or letting of immovable property. The place of supply is where the immovable property is located (Bordonia), but the service is specifically exempt from VAT. Now the tax consequence for providing services

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to your various classes of customers are outlined below:

(i) Supplies to customer in Bordonia - Exempt.

(ii) Supplies to customers in Astoria - exempt regardless of the fact that customers are in Astoria

(iii) Supplies to customers in 3rd countries - Exempt, regardless of the fact that customers are in a 3rd state.

#### Compliance Requirement

Elan must issue an invoice mentioning the reason for exemption. This transaction should also be disclosed in the firm's periodic VAT returns. Input taxes used in making these supplies in principle will not qualify for tax deduction.

#### Possibility of a different View

There is a possibility to consider the boarding services as taxable if Elan chose an option to tax.

Secondly, if the kennels were temporary in nature, such that they could be moved along with the animals from place to place, an argument of a lease of a movable property could be established. This option does not look practical in our view, so the tax elements are not considered.

(b) Veterinary services - Veterinary services most likely will qualify for VAT exemption. As such the Veterinary service provider is likely not to charge VAT on these services to the customers.

Elan is acting as a disclosed agent arranging the veterinary services for the customers. It is noted that, Elan is not charging or accepting any form of consideration for this service.

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As such there is no supplies in respect of intermediary services. EU case law have established a principle that, consideration is necessary but need not be adequate. No known consideration can be attributed to the agency services in the case at hand.

(c) Payments of Fees to Bordonian Government - Services provided by public authorities in the regulatory space that do not compete with the private sector do not qualify as economic activities. In the case at hand, it is unlikely that, the Bordonia Governmentt will be VAT registered and or qualify to charge VAT for these annual fees. These services are thus outside the scope of Bordonian VAT

***Proposed Business Model***

Vetinary services are specifically exempt.

The full package consisting of both boarding and veterinary service (exempt) and boarding (exempt) shall be considered as a single offering. However, one of the service is an ancillary service to the main supply. The case law established a principle that a service is an ancillary service if it is not an aim in itself for the customer, but a means of better enjoying the main supply. In the case at hand, boarding services appear to be the main service customers are looking for and the veterinary services are only anciliary to it.

It can be considered that the composite service is still a real estate supply qualifying for exemption.

***Issues that need to be considered***

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As an exempt business, input taxes will be restricted. It is therefore important to consider whether the options to tax will in a nutshell benefit the business operations. Here Elan should consider the fact that it will have other operating cost that attracts VAT at the standard rate. These costs will become a final cost to the business and translating into a higher pricing for the final consumer.

We trust the above clarifies. Do not hesitate to reach out to us if you have any questions.

Regards

Mark Junking

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Answer-to-Question-\_2\_\_

**ERASMUS SPA - VAT ANALYSIS OF OPERATIONS**

***Introduction***

A business with cross border operations need to identify the impact of the EU VAT rules to ensure that its cross border tax exposures are optimally managed. In this report, we have considered the place of supply rules relating to the supplies undertaken by Erasmus Spa (Erasmus) and the VAT consequences that follows from them. References to legislation are in respect of the Principal VAT directive unless otherwise mentioned.

***Analysis***

Erasmus operates advertising services in respect of real estate properties. The fundamental question is whether these are services related to immovable property or they can be considered as general supplies of services. In our view, an advertising services does not generally affect the title, nature etc of the property in question like the way the services of a surveyor, an engineer or architect does. In our opinion, the PVD allows for such services to be considered as "general supplies of services". Now, we consider Erasmus other business activities as follows:

**(1) Time share arrangement**

Vouchers come into question here. The PVD establishes a principle that, a voucher wherein the tax treatment is know at the time of

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issuance is not a supply for VAT purposes. Any other voucher is a non-qualifying voucher and will be considered as a supply capable of being taxed. We understand that, in your case the points may be redeemed for a hotel in United states or other member states, clarifying a point that the VAT consequence cannot be determined at the time of issuance of the points. **Place of Supply rule** - Accordingly the issuance of the points B2C to individuals (resident in Thebia) is a supply taking place in Thebia. Annual and exchange fees collected by Erasmus are subject to Thebia local VAT at the standard rate. Erasmus should declare these transactions on its VAT returns and pay the corresponding VAT liability to the tax authority (net of any allowable VAT credit).

On redemption of the points, the location of the hotel would determine the place of supply for the underlying service (i.e. the hotel service). As such, the customers are likely to incur EU VAT or foreign VAT (i.e GST from the US).

EU taxable individuals may be eligible to VAT refund under the 2008/9 directive, while individuals from 3rd countries (the US) may obtain a refund through the 13th directive.

## (2) Rental Income for Hotels (Thebia and Switzerland)

Supply of real estate by way of lease, let or rental takes place where the real estate is located. Therefore rental income for hotels in Thebia are supplies in Thebia whereas those from Switzerland are supplies taking place in Switzerland.

Thebia Hotel Income - Rental or letting of Hotel and similar immovable properties such as inns, motels etc., are specifically

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excluded from the exemption provisions. These are taxable at the standard rate. Accordingly, Erasmus will charge local VAT on Thebia hotel income and disclose same in the VAT returns

Switzerland Hotel Income - Switzerland although geographically located in the EU is not part of the EU member states for purposes of the application of the PVD. Accordingly, the VAT rules of this 3rd country will determine how this income is taxed. However, from Thebia perspective, the income is outside the scope of Thebia VAT.

### (3) Insurance Brokerage services

Insurance services are specifically exempt in line with the provisions of the PVD. The key question here is whether Brokerage services can be considered as related services for insurance. The case law within the EU establishes a clear principle that, these are separate supplies. Now therefore:

*Brokerage services to Thebian customers (for properties located in Thebia)* - These are general supplies of services where the place of supply is Thebia. These are subject to VAT at the standard rate.

*Brokerage services to Canadian customers (for properties located in Canada)* - This is general supplies of services which is an export of service to a third country. The place of supply is where the customer is established. As such, the supply will be outside the scope of Thebian VAT but with input credit deduction. Canadian local VAT rules will determine how the customer treats the supplies in Canada.

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4) Thebian Input VAT relating to purchase of Accountancy services

Input VAT incurred which is used in making taxable supplies (or exempt supplies with input credit) are claimable through the submitted Thebian VAT returns. In the case at hand, all the activities of Erasmus (insurance brokerage, hotel rental, time share points) are taxable. A strong argument could be made to claim the input tax in full.

**Conclusion**

It should also be noted that, Erasmus has a hotel in Switzerland. If there are permanent presence of staff managing this hotel, Switzerland most likely can qualify as a Fixed Establishment (see case law examples such Berkholz, Welmory, Titanium. If so, did some of the consultancy expenses relates to this Fe? If so, the portion of the consultancy related to the Fe will be deductible in Thebia if similarly recharged to the Fe.

Please note that, the Lennartz case whereby input VAT is claimed in full ex ante is no longer applicable. So the property view is to consider allocating the input tax and blocking any portion that is not related to taxable activities or the establishment in Thebia.

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Answer-to-Question-\_4\_\_

From : Junking, Mark

To: : Etna Finance

Date : th June 2023

Subject : Re - VAT implications of Etna's proposed business and other matters

Hello Eli

I trust that you are doing very well.

Thank you for reaching out to me regarding your proposed activities. I will address the VAT implications and consequences in the order in which you mentioned them in your email.

**Catering services aboard a train**

A means of transport that travels will have sections wherein each section of transport is where the transport stops to allow passengers alight/board. The place of supply for catering services, is the place where each section/segment of the transportation commences. Accordingly, the VAT consequences on services provided in the various routes are as follows:

**Catering services aboard Trains operating within Theta**

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These are local supplies as the means of transport commences and terminates in Theta. These services are subject to VAT at the standard rate. Etna having an establishment in Theta will be exposed to VAT registration (if local threshold requirements are met). The transactions should be disclosed in the periodic VAT return (monthly or quarterly). The liability (net of allowable credit) should be paid to the tax authority.

**Catering services aboard Trains From Theta to EU MS (and the return legs)**

Here we assume that, these are non-stop services. Accordingly, services provided in the outbound trips have their place of supply as Theta. VAT at the standard rate applies on these services. There are compliance requirements (see above as mentioned earlier).

Catering services for return journeys have their place of supply in the other EU member state, where the journey commences. Etna will be exposed to VAT registration in all the EU member states where there scheduled return train services in which it offers catering services.

**Catering services aboard Trains From Theta to Zurich (and the return legs)**

As noted above, catering services where the outgoing leg to Zurich will be taxable in Theta, as the segment commenced in Theta. Thetan VAT at the standard rate will apply to these transactions.

The catering services on the return leg will have their place of supply as Switzerland, as this is the place the journey

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commenced. We note that Switzerland although geographically part of EU is not considered an EU MS for purposes of EU VAT. Etna may be exposed to Swiss rules regarding the services concerned. However, from Theta perspective, revenues on meals sold on return journeys from Zurich are outside the scope of Thetan VAT. Input taxes used in these supplies are claimable.

### **Options to Manage EU VAT Compliance**

As noted above, Etna is likely to be exposed to VAT registration in several EU MS where it provides catering services on the return journeys. There are two options to meet the VAT requirement.

(1) Consider obtaining VAT registration in all the relevant EU MS. This option will allow local VAT to be refunded through the respective EU MS VAT returns (a quick and easy way to refund tax). However, the VAT compliance burden in filing and dealing separate VAT authorities across the EU can be a daunting task.

(2) Consider the EU One stop Scheme (EU OSS). The OSS allows taxable traders who are VAT registered in one member state to meet their EU wide VAT obligations through a single return. This return is filed with the taxpayer's country's local tax authorities. However transactions for each EU MS have to be disclosed separately. In order to qualify to use the OSS, Etna should not have a Fixed Establishment in the EU MS that it intends to meet the compliance requirement for.

A Fixed establishment is a place other than place of establishment characterised by a degree of permanence of human

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and technical resources in a manner that allows the taxable person to receive and utilise resources. You should consider whether Etna's operations will typically require you to locate human and technical resources in order to run the restaurant operations aboard the trains. This is unlikely to be so.

Where Etna opts to use the OSS, it will not be able to claim input VAT in respect of expenses in other EU MS through the OSS return. It must in principle seek refund for these VAT credits through the EU 2008/9 directive. Annually, refunds are submitted on the 30 September for expenses in the prior year. Lengthy approvals processes may also apply.

#### **Approach for Dishonoured Payments**

However, from a VAT perspective, payments that has been dishonoured and there is sufficient evidence/proof that reasonable attempts to recover the debts have been undertaken, then bad debts provisions would apply. The PVD and national legislations will allow you to claim from the authority the VAT paid to the tax authority in respect of these bad debts. This approach will minimise the impact of the fraud on the business (only the VAT cost). Your revenue is still out there with the thieves. You should consider obtaining a view from a payment processing specialist to arrest the problem.

To Conclude, customers who purchase food aboard the international return legs (whether from Zurich or other EU MS) are responsible for having to import the goods into Theta. This is subject to the applicable thresholds for low value imports as per Thetan legislation.

I trust the above clarifies. Do not hesitate to reach out to us if you have any other questions.

Regards

Mark

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Answer-to-Question-\_5\_\_

A Triangulation Transaction can be described as a situation whereby a supply of goods from supplier X (established in EU MS A) to Customer Y (established in EU MS B) is delivered to an appointed person Z (in EU member state C). So, the goods move directly from member state A to C without first going through member state B.

If a triangulation transaction such as the one described above occurs, the customer (B) is likely exposed to VAT registration in either member state A or C. This is because, he will need state A registration in order to receive the supplies locally in A and then dispatch them to C. Alternatively he may need to VAT register in C, in order to account for acquisition tax on the goods (arriving straight from A) and then supply them as local supplies to his customer Z.

In order to simplify the compliance burden and to remove the need to customer Y in registering for VAT in either state A or C, the PVD introduced triangulation simplification. If a simplification is applied, the final customer (Z) will account for acquisition tax on the goods and no registration or compliance requirement for Y. To apply triangulation simplification, the following must be met:

- (a) All the three parties must be VAT registered in their respective states
- (b) The invoicing arrangement should make reference to the fact

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that triangulation simplification applies

(c) The relevant documentation requirement must be met including (intrastat declarations, recapitulative statements, Single Administrative documents (SAD) etc).

The party at greater risk if the triangulation requirements have not been met is Customer Y. This person will be exposed to VAT registration in either EU MS A or C.

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Answer-to-Question-\_6\_\_

The concept of "use and enjoyment" is a principle used in the EU Directive for purpose of determine the place of supply of certain special services (often in a B2C scenario). In cases where the place of supply of a service is determined by the customers place of location, the "use and enjoyment principle may be used.

This principle is specifically used in determining the place of supply for electronic and electronically supplies services (B2C). The place of supply here is where the services are essentially enjoyed. The PVD allows certain data points to be used to determine this including

- (a) Bank account details of the customer
- (b) Internet IP address of the customer
- (c) national phone code / phone line of the customer

The principle of use and enjoyment is also applied in determine the place of supply for B2C supplies of short term means of transport. Here the place of supply is where the services are essentially made available to the customer, laying credence to the "use and enjoyment principle".