Answer-to-Question-_1_

Landcome - Merkia - EU member state
Arestia non-EU member
Customers - established in Merkia
hotels -
wrong invoice - VAT that company charged in errror on invoices

Dear finance director

Let me summarize the VAT aspects of the Landcome business activities.

Landcome services for landscaping plans, where the location of the immovable property is not known.

Landcome is providing the consultancy servcies, that are considered as a supply of services for consideration - being taxable transaction according to the Article 24.

General provision of the place of the supply of services to other taxable personis the place, where the customers are established - thus general B2B place of services should apply - thus the place of the services will be the place of establishment of the customers.

However, there are specific type of the services, where the general rules thus not apply and this is the case of the ,consultancy services, in relation to the immovable property - the place of services should be the place where the immovable property is located. Under article 31a) point. 2 - the dreawing up of plans for building regardless of whether or not the building is erected - however this is not the case of the consultancy services. It means that fact, that location of hotel is not known - it means it is not determined whether it will be the EU or non-eu country - makes this services taxable under the general rule, thus it means that place of these services will be the Merkia.

When invoicing - Landcome will apply the domestic rate of the Merkia - and supply will be considered as a local provision of the services.

Customer will be able to deduct the input VAT, provided that building

will not be used for the exempted supply or non-business activity. If so, customer will be entitled to full VAT deduction. If it will be used partially for business and partially for private purposes or exempted supply - it is elibigle to use the partial deduction according to the article 168a) of EU VAT directive or article 173.

Consultancy services made to Merkia - relating to the property located in arestia - a non EU member state

In case of services relating to the immovable property - located outside the EU member state - the services are taxable in the place where the property is located - thus outside the EU - so the place of the supply will in Arestia. When invoicing, the Landom will applly the reverse charge mechanism and supply will not be taxable in Merkia.

Issue concerning the VAT that the company charged in error on invoices issued

In case that VAT was issued incorrectly on the invoice, the company is obliged to correct the invoice and issue a new invoice with correct VAT rate

Best regards,
ADit candidate

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Answer-to-Question-__2_

livro - established in Astoria - member state
retail sale of academis testbooks to customers, flagship shop in astoria
e-shop selling the books to Bodonia or Calla

Dear BoD
let me provide you with the report on the VAT treatment and reporting

implications.

1) The sale of books by Livro via its physical bookstore in Astoria

The sale of the books is considered as a taxable transaction - supply of goods according to the Article 14 of EU VAT directive.
Place of the supply of the goods is the place where, the goods are located at the time when dispatch or transport to customer begins. Since the customer will purchase the books in physicall retail shop - the place of the supply will be still the Astoria, thus the company will charge a local domestic VAT. Under the article 98, books are likely to be charged under the reduced rate of 5 percent, as the books are stated in the article III. The company should report this transaction in the VAT return and pay the VAT to the Authority

2) Sale of books by livro via its online bookstore

Same as above, the transaction will be considered as a taxable supply, with the place of the supply accorging to the Article 14 (4) so it is considered as a distance sale of the goods. This is treatment for the physicall books, in case that the company would sold the electronic books - this would fall under the article of article 7 of the implementation regulation. HOwever based on the background, I understand this is not the case, so in further report - I am considering the books as a physicall books.
The place of the supply of the goods is the place where the customers are located. In the processing the orders, company is obliged to gather information on location of the customer, e.g. the billing address of the customer, IP address of the devise used by the customer, bank details. Since the place of the delivery of the good are the Bodonia or Calla - the company is obliged to charge the VAT of the BOdonia or Calla.
There are two options:
- Company will register in Bodonia or Calla since it is making a taxable supply, and file the VAT return in these country and paid the VAT in these countries. This however is administratively bit demanding,
- company can utilized the one-stop-shop mechanism, register for OSS in Astoria, file the One-Stop-Shop return in Astoria, paid the VAT via OSS system, while the OSS reallocated the VAT to the Bodonia or Calla.

3)The courier servies supplied to Livro

Couries services are considered as a taxable supply of servcies according to the ARticle 24, the place of the supply of services is the Astoria as residency state of the Livro. Since courier is established in Bodonia, courier will apply the reverse-charge mechanism - in the invoice it will state that Livro is obliged to pay a VAT on the services and will not apply a VAT. Thus the service will be taxable in Astoria. Since the services relates to the taxable transaction - being the sale of the books, Livro can deduct the VAT incurred by themselves on the delivery of the services.

4)Payment services provided (PSP) by the company established in Denares - country outside the EU

It can be questioned whether the PSP is not considered as a deemed supplier of the goods who facilitates, throught the electronic interface distance sale according to the Article 14a), however this should not be the case, as according to the article 5b) of implementing regulation, the term facilitiates does not apply for pure processing of payments in relation to the supply of goods.

The payment services are considred as a supply of services according to the article 24, and are not exempted according to the article 135 (financial services). The place of the supply of services, is the Livro according to the article 44. The livro shoud apply the domestic VAT and apply the deduction as the service relates to the taxable transaction.

5) extension of the automated sales of e-books across the EÚ

Sale of the e-books to customers across the EU will qualify as the provison of the service, with the place of the supply according to the article 58, it means that the place of the supply will be the place where the customers resides. Acording to the article 7 of the implementing regulation , the electronically supplied services is the supply of digitised products. When selling the e-books via platform, Livro is obliged to fullfil the obligation and to demonstrate the residency of the customers, via gathering the location of customers - the billing address of the customers, IP addres of the PC, bank details

or other relevant information. WIthout being able to demonstrate the location of the customer, company should apply the domestic VAT applicable in Astoria..

There are two possible ways how to settle the VAT
: 1) administratively demanding which is to register for VAT in each country where the customers resides and file the VAT returns in each teritorry
or to
2) utilize the ONe-Stop-Shop, and to register for OSS procedure in Astoria, file the OSS VAT return in Astoria, while the payments of the VAT to the OSS system will be allocated to the each member state of the customer.

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Answer-to-Question- 3

Dear CFO,

The supply of the goods is considered according to a Article 14 as a taxable transaction and the place of the supply of goods in case that goods is transported is according to the article 31 the place where the transportation starts. However based on the article 138, since the goods are dispatched outside the EU member state - this delivery is exempted in the Acropolis. We need the prove that the goods was returned from the Acropolis based on the particular evidence such as:
two non-contradictory evidence issued by two different parties. This rule is based on the Article 45a of implementing regulation 282/2011. Such an evidence is for example confirmation about transporation, delivery list, invoice from transportation company, bill of ladding. If thoser evidence is provided, we are free to apply exemption in Acropolis. Thus no VAT in Alesia will apply

On the otehr side, the associated company - will have a taxable transaction being the intracommunity acqusition of the goods - subject

to taxation in the country where the transportation of the goods ends. It means they will be liable to incur VAT and deduct it if it is used for the taxable purposes.

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Answer-to-Question- 4

1) Answer
Abuse of the right is one of the main principle of the VAT towards the proportionality, purpose, direct effect, legal certainity, principle of effectivnesess.

Abuse of law is the situation, that even transaction is gramatically incurred in line with the meaning of the VAT provision, however it is used with the aim of the gaining the VAT advantage and the main of the transaction is not the business reason, but the gaining the VAT advantage and the transaction is the contrary to objection of the VAT provision and aim of the creator of VAT legislation. Of course the creator of VAT legislation is not aiming to allowed VAT frauds. :-)

. In case that abuse of the right is identified by the member state - it is important that member state needs to provide an evidence, that there is an abuse of law. If so - member state is allowed to deny the resulting VAT advantage, that was incurred by setting up this artificial and vat avoiding transaction/scheme

The one of the most important case in area of the abuse of right, is the Halifax case - which set-up the direction for member state on how to proceed in this area.

Case C255/02
If transaction from which the right on VAT deduction by taxable person

is derived from abusive practice - member state is allowed to deny it. It is necessary first, that member state needs to prove, that it result in the accrual of a taxa dvantage the grant of which would be contraty to the purpose of those provisions.
Second, it must be apparent from the number of factors, that essential aim is to obtain a tax advantage.
When an abusive practice is recognizied, the member state should re-establish and redefined the situation that would have prevailed in the absence of the transactions consituting the abusive praCTIce.

It seems that halifax case - gave the member states a powerful weapon how to tackle the abusive practice - however some attempts used in line with Halifax case was not successfull by Member States. Such case is for instance a Cussens Case C-251/16, however the member state also take similar approach as in Halifax approach, however they redefined the transactions as needed. ECJ said, if the transactions, should be redefined pursuant to the principle of abusive practices are prohibited, those of the transactions that are not abusive, may be subject to value added tax - basis of the relevant provisions of national legilsation prividing for such liability.

Also another case, when the member state failed to prove the abusive practice is the case C-273/18 Kuršu Zeme, member state refused to right the VAT deduction on the ground that transaction was an abusive practice. ECJ ruled, that the fact that an acquisition of goods took place at the end of a chain of transactions, between serveral persons and that the tax. person acquired possession of the goods stored in the warehouse of a person part of the chain, other then a person stated on invoice, is not in itself sufficient to find the existence of abusive practice.

Another case when the member state failed to prove the abusive practice is the case C-662/13 Surgicare Undidades. ECJ ruled, that in case of proving the abusive practice, member state must follow its own legislation.

2) Answer

Generally there are main two types of the the VAT fraud -

first is the missing trader - where the VAT is charged by supplier based on the invoice to customer, while the customer will paid the invoice including VAT, deduct the VAT as an input tax, while the supplier will dissapear with collected VAT and not remmit the VAT to the tax authority. In reality the fraudulent transactions are more sophisiticated, involving the several chain of transactions and suppliers - in order to make the scheme more unclear and harder to investigate for Tax Authority, sometimes they concern the intracomnunity transactions - becoming transactions more unclear.

Second is the dispatch fraud - which concernes the intracommunity sale of the goods, in situation when the customer in one EU member state supply to goods to the other customer, in other EU member state, apply the exemption of IC delivery, thus there is no VAT incurred in domestic EU member state, however in the reality, the goods have never been removed from the delivery EU member state and in reality it is used for domestic supplies - for instance for lower price, etc..

The most famous ECJ case is definitely the case C-439/04 Axel Kittel, which gave an important precedens for further VAT disputes, that concernes the concept of knowing or outght to know. In this case, where the recipient of the supply is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, cannot be refused to deduct the VAT. If the taxable person should or ought to know that the transaction is fraudulent, than the right of the VAT deduction would be denied. The examples may be that the price for the goods is too low, or the ownership of the company is not clear, but there may be other evidence of suspicions. It means that in order to avoid such situation, the taxpayer should made the proper "know-your-client" procedures and to investigate its business partner, in order to avoid such a situations.

The principles setted up in the axel kittel case was replicated in further ECJ cases such as:
C-354/03, C-355/03 - optigen - ECJ ruled, that if transaction which are not vitiated by VAT fraud constitute supplies of goods or services. the right to deduct input VAT of a taxable person cannot be affected by the

fact that in the chain of supply vitiated by VAT fraud, taxable person did not know or have a menas of knowing of the VAT fraud.

Case C-131/13, C-163/13 and 164/13 - Italmoda, Turbu
Also the ECJ replicated in those cases the principle of "should know or ought to know" that transaction is of a fraudulent nature.

Case C-108/20 HR
ECJ ruled, that the right to deduct VAT can be precluded to taxable person who has acquire goods having been the subject of input VAT fraud committed upstream in the supply chain and who knew or should have known, even though the taxable person did not actively participate in that fraud.

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Answer-to-Question- 5

Based on the article 306 - the Travel Agents scheme applies onlyto travel agents, who deal with customers in their own name.

Relevant case laws in this area are case 787/19 - EC vs. Republic of Austria, C-422/17 Skarpa Travel, case 552/17 - Alpenchalets Resorsts GMBH

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Answer-to-Question- 6

The basic principle of the VAT is that is the VAT is charged by the supplier, supplier needs to remmit the VAT to the Tax Authority, before it gets pay by the customer. It means that supplier - is giving kind of credit in form of VAT to the Member State. The basic element is that

after the VAT is paid to the state - supplier needs to collect all receivables together the VAT.

However member state may adopt a so called bad-debt rules in case that customer fail to paid its debt. Under such a scheme - in case that a customer fail to pay its debt including VAT - supplier is allowed to correct the VAT from the defaulted receivables and claim back the VAT that he paid. It is important to mentioned - that it is only possible under specific circumstances to be met - e.g. insolvency proceeding, death of taxapayer - where the claim cannot be fulfilled by heritage, loging the receivable into insolvency proceeding etc. Also it is important, that supplier needs to issue a corrective invoice - reflecting its eligility for VAT reduction.

ECJ Case C246-16 - stated that member state may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insovlency proceedings have been unsuccessful when such proceedings may last longer than ten years.

ECJ Case C/146-19 - taxable person is refused the right to a reducxtion of the VAT paid in respect of an irrecoverable claim where he has failed ot lodge that claim in insolvency proceedings commenced againt the debtor. This case describe that the taxpayer needs to do its best to gain its debt back with all possible legal ways. It is not possible to reduce the VAT without any legal background or legal steps. It means that if the management has decided to writeoff certain trade receivables - it must have been on the reasonable background - which should be defined by domestic VAT legislation of Outopia.

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Answer-to-Question- 7

Article 19 of the EU VAT directive state, that transfer whetеher for consideration or not to a company of a totality of assets or part thereof Member states may consieder that no supply of goods has taken place and that the person to whom the goods are transferred is to be treated as the successor to the transferor.
It means that it is up to the discretion of Member State whether to consider the transfer of a TOGC as not being a supply of goods.

Also one step back - it is neccesarry to determine, whether the sale of company shares is considred as a taxable activity.

Based on the Case C-29/08 - ECJ ruled, that where a parent company disposes of all the shares in a wholly oowned subsidiary, that disposal is an economic activity coming within the scope of the directive. HOwever in so far as the disposal of shares is equivalent to the transfer of a totality of assets, it is necessary to check, whether the member state has chosen ot exercies the option provided for by those provisions, that transaction does not constitute an economic activity subject to VAT. A disposal of shares must be exempted from VAT based on article 135f. There is a right to deduct input VAT paid on services supplied for the purpoes of a disposal of shares - if there is a direct and immediate link between the costs associated with the input services and the voerall economic activities of the taxable person.

Based on the ECJ Case C-155/94, the concept of economic activity, is to be interpreted as not including an activity - consisting in the purchase and the sale of shares and other security by a trastee i the course of the management of the assets of a charitable trust - however as this case conserned charitable trust - if this would the case - the transaction would not be considered as a econonic activity, thus outside the VAT

However there are also the cases- where it is possible to recover the VAT incurred on the sale of company shares

ECJ Case C-320-17
Expenditure conneted with the acquisition of shareholdings in subsidiaries incurred by a holding company, which involves itself in the

management of only some of those subsidiaries and which, with regartd to the other does not by contrast carry out an economic activity - must be regarded as only partially belonging to its general expenditure - so that the VAT paid on that expenditure may be deducted only in proportion ot the expenditure - which is inherent i the economic activity.

It means in particular situation - it is possible to VAT incurred on costs relating to the a sale of company shares may be recoverable

Another ECJ case C-651/11 stated, that is is important to determine the percentage of the shares that are disposed. IN particular case, ECJ ruled, that disposal of 30 percent of the shares in a company to which trh transferor supplies services taht are subejct to VAT does not amount to the transfer of a totality of assets or services or part thereof. It means that in this case - it is possible to not considred this case as a transfer of TOGC

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Answer-to-Question - 8
1) Date of the chargeable event is meant the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled, and the VAT become chargeable when the tax authority becomes entitled under the law at a given moment to claim a tax from the person liable to pay tax, even though the time of payment may be deffered.
2) According to article 64, contious supplies of goods over a period of more than one calendar month which are dispatched or transported to a member state other then where the goods transportation start, shall be regarded as being completed on expiry of each calender month until such time as the supply comes to an end.

In case of services, supplies of services for which VAT is payable by the custgomer, which are supplied continuously over a period of more than one year, and which do not give rise to payment during that period shaall be regarded as being completed on expiry of each calendar year until such time as the supply of services comes to and end.

Example of the continuous supply is the provision of the internet and mobile phone services by a mobile operator, when the contract is concluded for two years and payments for services are done based on the monthly basis, the VAT is charged on the monthly basis until end of the provision of the services.

3)According to article 65 - where a payment is to be made on account before the goods or services are supplied, VAT shall be ome chargeable on the receipt of the payment and on the amount received. It means that if cash or payment is received before delivery - the taxable event is the moment of the receiving a payment

4) Principal VAT directive offers member states possibility to derogate from Arrticle 36, 64 and 65 that VAT is to become chargeable in respect of certain transactions or certain categoriesa of taxable person - at one of the following times:
- no later than the time the invoice is issued
- no later than the time the payment is received
- where an invoice is not issued - or issued late, within a specivied time -