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EU VAT FORUM
CROSS-BORDER RULINGS
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2013 / 1. PLACE OF SUPPLY OF GOODS AND SERVICES AND CORRECT ACCOUNTING PROCESS FOLLOWING BUSINESS RESTRUCTURE

(August - December 2013)

Member States concerned: United Kingdom, Netherlands

Facts: UK and Dutch (BV) companies are indirect subsidiaries of a US Corporation. UK and BV are both registered for VAT in the UK. BV is registered as a non-established taxable person ("NETPU") because it has no fixed establishment in the UK. BV is also registered for VAT in the Netherlands.

Prior to the restructure, UK purchased raw materials and manufactured products, which it then supplied to relevant business customers. BV was a dormant entity with no employees and no functions.

Under the new process UK will act as the agent of BV when purchasing raw materials. BV will have beneficial ownership of the raw materials and assume the risks involved in the manufacturing process. On import UK will immediately onward supply the goods to BV with the addition of an agency fee of 5% subsumed within the recharge for the goods.

UK will then use the materials to manufacture goods on behalf of BV (toll processing) and will charge a separate service fee for that work. Work on goods is subject to the business to business (B2B) general rule

When manufacturing is complete the bare legal title is transferred to BV. BV will supply the finished goods to their relevant business customers

Question(s): How should UK invoice BV for the purchase of the raw materials?

What is the place of service of the manufacturing services?

What is the place of supply of the finished goods?

Legislation: Articles 94 and 196 of Directive 2006/112

VAT ACT 1994 Sections 47(2A) and 7(2)

CBR: UK has to raise an invoice to BV for the purchase of the raw materials (as agent and nominee) showing BV's UK VAT number and showing UK VAT.

The place of supply of the manufacturing service is where the recipient (BV) belongs for the purpose of receiving the supply. As BV has no establishment in the UK, place of supply is therefore the Netherlands (B2B). UK has to raise an invoice for the manufacturing services to BV, showing BV's Dutch VAT number. VAT has to be accounted for by BV in the Netherlands under their Dutch VAT registration.

The supplies of the finished good by BV is subject to UK VAT as the goods will be located in the UK at the time of supply. BV has a right to treat as input tax, VAT they incur which relates to the making of a taxable supplies.

(May 2014)¹

Member States concerned: Belgium, the Netherlands

Facts: Company **A**, established in MS 1 provides an in-house training program in MS 2, for employees of other group companies (i.e. “in-house” training). Company **A** issues invoices to group company **B**, established in MS 3 for the training services.

Question: What is the place of supply of the services invoiced by company **A** to company **B**?

Is this in MS 2 (place of the event) or MS 3 (MS of the recipient)?

Legislation: Arts. 44 and 53 of Directive 2006/112

Art. 32 of the Council Implementing Regulation

CBR: the place of supply is MS 3 (MS of the recipient).

¹ No agreement in a similar case concerning other Member States.

2014 / 3. Organizing a symposium to present new products to clients

(May 2014)

Member States concerned: Belgium, United Kingdom

Facts: Company **A** of MS 1 organizes an event in MS 1, where some new products are presented to its clients. Some clients from MS 2 attend this event. These clients are taxable persons.

For the clients from MS 2, the following invoice flow is applied: company **A** charges a participation fee to its subsidiary **AA** in MS 2, which recharges this fee to the clients in MS 2. The amount invoiced to the clients includes the transportation and accommodation costs + a margin (cost plus).

Question: What is the place of supply of the services recharged by subsidiary **AA** in MS 2 to the clients in MS 2?

Is this place in MS 1 (place of the event; in accordance with Art. 53 of dir. 2006/112), MS 2 (MS of the clients; in accordance with Art. 44 of dir. 2006/112) or MS 2 (MS of the supplier; in accordance with Art. 307, 2nd para., relating to the special scheme for travel agencies).

CBR: The place of the supply of services is in MS 2; in accordance with Art. 307, 2nd para., of dir. 2006/112.

2014 / 4. Renovation of buildings in another Member State

(May 2014)

Member States concerned: Spain and Portugal

Facts: Company **A** of MS 1 has a subsidiary **AA** in MS 2. Company **A** renovates buildings in MS 2 for entities in MS 2.

Company **A** subcontracts with other companies in MS 1 to perform the renovation work in the buildings in MS 2.

Subsidiary **AA** transfers workers to company **A** for the execution of the renovation services. With regard to these transfers of workers, **A** is responsible for the wages and the social security obligations. Subsidiary **AA** sends invoices to **A** for the materials, the rental of equipment, waste management services, and the transferred workers' transport costs.

Question: where do these supplies of goods and services take place?

CBR:

- the transfer of workers takes place in MS 1, where the recipient **A** is established (Art. 44 of dir. 2006/112). In this regard, account is taken of the work performed by the assigned staff. It appears that the work is limited to machinery leasing with staff and management of waste. In this case such services are not considered works of construction and therefore cannot be considered as related to immovable property.

Nevertheless, it should be noted that if the service provider compromises to implement all or part of a work, taking responsibility for the outcome, the transaction should be qualified as works of construction of immovable property, the special rule of Article 47 of VAT Directive should be applied and the service should be located in MS 2.

- the debt expense (i.e. the wages and the social security obligations) is ancillary to the transfer of workers and is also located in MS 1.
- the supply of materials which are in MS 2, without leaving the territory of MS 2, is located in MS 2 (Art. 31 of dir. 2006/112).
- the supplies of the renovation services by the subcontractors from MS 1 regarding the properties located in MS 2 take place in MS 2, since there is a direct relationship between such services (works of construction) and these properties (Art. 47 of dir. 2006/112).

2014 / 5. Supply of SIM cards for mobile phones

(March 2014 + from 2015 on)

Member States concerned: Spain, Portugal, United Kingdom

Facts Company **A** from MS 1 issues SIM cards with mobile phone numbers of MS 1. All its customers (consumers) are deemed to be established in MS 1.

Pay As You Go (“PAYG”) top-up vouchers are distributed outside MS 1, in MS 2, through refills terminals operated by company **B**, a local business partner (retail outlet) of company **A**, or through cash points.

Question: Where does this service (topping up of the SIM cards) take place? (under the current provisions and under the legislation applying from 2015)

CBR: a) under the current legislation (2014):

– These products have to be included within the category of supply of services "not clearly identified" and art 65 of VAT Directive, payments made on account, is not applicable.

– The marketing of telephone refills by a chain establishment that is located in MS 2 is a transaction not subject to VAT, because what is really provided is a means of payment for specific services that can be consumed in different territories.

The supply of telecom services by a MS 1 supplier to a MS1 final consumer is not deemed to be located in MS 2 (in accordance with Art. 45 of dir. 2006/112).

– Even if SIM cards allow for more than the supply of telecom services, it does not change the nature of these services.

– The fees charged by **B** to **A** for the intermediary service in the distribution of the refills must be accounted for VAT in MS 1, according to the B2B rules (in accordance with Art. 44 of dir. 2006/112).

b) From 2015 on:

– On the basis of a presumption, VAT regarding the top up will be located in MS 1 (Art. 24a(b) of Council Implementing Regulation n° 1042 of 7 October 2013)

– However, the Directive concerning VAT on vouchers, if adopted, may introduce new rules on this matter

2014 / 6. Separate sales of machinery and tyres assembled to the machinery

(May 2014)

Member States concerned: Estonia, Finland

Facts: Company **A** in MS 1 buys machinery from company **B** in MS 2. The machinery is shipped from MS 2 to MS 1. It is not disputed that this is an intra-community trade of goods.

Company **A** also buys a set of tyres from company **C** in MS 2. **C** directly transfers the property of the tyres to **A** (and **C** invoices **A** accordingly). However, the tyres are transported from **C**'s premises in MS 2 to **B**'s premises in MS 2.

In some cases, **B** assembles the tyres to the machinery. Once this assembly is done, the machinery is shipped from MS 2 to MS 1. In other cases, tyres are not assembled but they are also shipped to MS 1, together with the machines.

Question: What is the VAT treatment of the sales of the tyres?

Reply: The sales of tyres by **C** to **A**, assembled or to be assembled, can be considered as intra-community sales of goods, but **C** needs documents certifying the transport of the machinery (or the tyres if not assembled) and a contract with **A** or **B** where this use of tyres is clearly stipulated. If **C** does not have such documents, the sales by **C** are subject to VAT in MS 2, and **A** can ask for a refund of that VAT.

2014 / 7. TRADING IN PRECIOUS METALS SPOTS AND DELIVERABLE FORWARDS USING UNALLOCATED ACCOUNTS

(July - August 2014)

Member States concerned: **Cyprus**, United Kingdom

Facts: A Cypriot company is authorized by the Cyprus Securities and Exchange Commission to operate as a Cyprus Investment Firm. The principal activities of the Company are trading in Russian securities etc. and the provisions of services to affiliated companies related to operations with securities. The counterparties are various UK banking institutions. The Company introduced a new product “the trading in precious metals spots and deliverable forwards using unallocated accounts”.

Questions: Are these transactions treated as a supply of services for VAT purposes or a supply of goods, as there is no physical allocation of the precious metals?
Will the Company need to report sales of precious metals spot and derivatives to counterparties in the United Kingdom on the VAT Information Exchange System (VIES)?
Will the recipient of the supply of services in the United Kingdom need to apply the reverse charge on the services received from the Cypriot company?

Legislation:

- Art. 44 of Directive 2006/112 (UK: Memorandum of Understanding between H M Revenue & Customs and The London Bullion Market Association and London Platinum and Palladium Market on the transactions effected by their members and the VAT issues arising)
- VIES reporting - Articles 262-271 of Directive 2006/112.
- Reverse Charge - Article 194 of Directive 2006/112 (UK: S.8 of the VAT Act 1994)

CBR: This is a supply of services. It is considered to take place in the United Kingdom (Art. 44 of Directive 2006/112: application of the general B2B rule).
The Cypriot company needs to report these transactions via VIES (Art. 262-271 of Directive 2006/112).
The UK recipient of the services needs to apply reverse charge (Art. 194 of Directive 2006/112).

2014 / 8. ASSIGNING PITCH SPACE TO VARIOUS RACE TRACKS, SUPPLY OF VIP PASSES AND PERSONALIZATION SERVICES AT INTERNATIONAL EVENTS

(May – December 2014)

Member States concerned: Spain, United Kingdom

Facts: A Spanish company has exclusive rights to offer promotion and hospitality areas at race tracks hosting Moto GP motorcycle racing world championships events.

Question: What is the place of supply of the following services, performed at / around the race days:

- providing access to "selling areas" – specifically the designated areas around the trackside, "let out" to customers using those areas to put up their own stand and/or sell products;
- the supply of VIP Village passes – essentially race-day corporate tickets, including lunch and access to privileged areas; and
- "personalization" services, which include the same as the supply of VIP passes, but, if bought in sufficient number, the customer can upgrade to having its own personalized area, including access to promotional materials.

Legislation: - Articles 47 of Directive 2006/112 (UK Law - Schedule 4A paragraph 1 VAT Act 1994)
- Article 53 of Directive 2006/112 (UK Law Schedule 4A paragraph 9A VAT Act 1994)

CBR:

- Providing access to the "selling areas" is a service referring exclusively to the letting of immovable property (retail spaces). This service is related to real estate, and the place of supply is where the immovable property is located (Art. 47 Directive 2006/112).
- The sale of VIP Village passes is a supply of an admission service and the place of supply is where the event takes place (Art. 53 of Directive 2006/112).
- The "personalization" services, involving a particular area where the customer can have his own promotional material as a way to be identified by the guests, can be considered as advertising services, located at the place where the customer is established, in accordance with the general B2B supply of services rule (Art. 44 of Directive 2006/112) (on the condition that the personalization services are a single supply)

2014 / 9. GOODS SOLD AND TRANSPORTED FROM ONE MEMBER STATE TO ANOTHER AND INSTALLED OR ASSEMBLED BY THE SUPPLIER

(November - December 2014).

Member States concerned: **Finland**, Estonia

Facts: Finnish company A is planning to sell a piece of waste recycling equipment to Estonian company B. The equipment is transported from Finland to Estonia. A is also going to install the equipment in Estonia.

Question: Where is the place of supply? Is there an intra-Community supply of goods?
Does A has to register for VAT in Estonia because of this transaction?

Legislation: Art. 63 of the Finnish VAT Act
Art. 36 of Directive 2006/112

CBR: The supply takes place in Estonia. A does not have to register in Estonia, and B is liable to pay the VAT in Estonia.

Comments: – From Finland’s point of view, goods which are transported from one MS to another and which are installed by the seller are considered to be sold in Finland if the installation is performed there. Since in this case the installation work is done in Estonia, the goods are not sold in Finland. In this situation, goods transported from Finland to Estonia are not considered as intra-Community supplies. Such sales are treated and reported as “normal” zero rated sales (not zero rated intra-Community supplies or supplies of services within the EU).

– From Estonian point of view, the place of supply of goods is Estonia. Finnish A does not have to register for VAT in Estonia for this transaction since Estonian B is liable to VAT as a buyer based on the reverse charge mechanism.

– Note:

- according to Estonian VAT Act, if the cost of installation or assembly work exceeds 5 % of the taxable value of the whole transaction, the transaction is treated as a sale of installed or assembled goods. If the cost of installation or assembly work is not more than 5 % of the taxable value of the whole transaction, the transaction is treated as an intra-Community acquisition of goods.
- Finnish VAT act does not have such or any other %-limit for installation costs.
- In this CBR case the Estonian B is liable to VAT instead of A in both occasions. But the reporting would not match in case the installation costs are not more than 5 %: in case the installation costs are not more than 5 %, Estonian B reports this particular transaction as an intra-Community acquisition. The same transaction is not considered intra-Community supply of goods in Finland and Finnish A does not report it as such.

2014 / 10. SUPPLY CHAIN, INTRA-COMMUNITY SALES, POSSIBILITY TO DIVIDE AN INTRA-COMMUNITY SUPPLY INTO A TRANSFER FOLLOWED BY A LOCAL SUPPLY

(September – October 2014)

Member States concerned: **Belgium**, Netherlands

Facts: A Belgian company is involved in a triangular case (ABC supply chain). The Belgian company (**B**) buys goods from a Swiss company (**A**) and (re)sells these goods to a NL company (**C**). The goods are shipped directly from A to C.

A is not established in NL nor in BE, but has a VAT number in all these MS.

B is not established in NL but has a NL VAT number.

Question: What is the VAT treatment with respect to the following scenarios:

- scenario 1: A transfers the goods from a BE warehouse to a NL warehouse;
- scenario 2: A transfers the goods from a BE warehouse directly to C in NL;

Legislation: Articles 183.1 and 138.2.c) of Directive 2006/112; conclusions of the meeting of 22 and 23 February 1993 of the Working Group n°1

- CBR:
- **Scenario 1: A transfers the goods from a BE warehouse to a NL warehouse:**
 - o A carries out an exempt transfer of goods in BE (article 138.2.c) of Directive 2006/112) and a deemed intra-community acquisition of goods in NL.
 - o Then, A carries out a local supply of goods to B in NL with application of NL VAT; there is no reverse charge as B is not established in NL (only VAT registered);
 - o Then, B carries out a local supply of goods to C in NL with application of the reverse charge mechanism.
 - **Scenario 2: A transfers the goods from a BE warehouse directly to C in NL:**
 - o In principle, A carries out an exempt intra-community supply in BE (article 138.1 of Directive 2006/112) and B has to carry out an intra-community acquisition in NL.
But it is possible to divide the intra-community supply into a transfer followed by a local supply. Hence, A could carry out an exempt transfer of goods in BE and a deemed intra-community acquisition of goods in NL (as in scenario 1) (Note: the possibility to divide the intra-community supply into a transfer followed by a local supply, is the application of the

conclusion of the meeting of 22 and 23 February 1993 of the Working Group n°1);

- Then, A carries out a local supply of goods to B in NL with application of NL VAT; there is no reverse charge as B is not established in NL (only VAT registered);
- Then, B carries out a local supply of goods to C in NL with application of the reverse charge mechanism.

2014 / 11. TRANSFORMATION OF CRUDE OIL

(October – November 2014)

Member States concerned: Netherlands, Belgium

Facts: A Belgian company (B) performs a work for a Dutch company (A). The work consists in the transformation of crude oil into refined products via the use of refining units located in Belgium. Both companies are related.

Question: What is the place of supply of this service ?
Is it possible to consider the Belgian facilities of B as a fixed establishment of A ?

Legislation: Article 44 of Directive 2006/112,
Article 11, paragraph 1, of Implementing Regulation 282/2011,
EUCJ case C-605/12, Welmory sp. Z o.o. of 16 October 2014.

CBR : Considering that B would not own the crude oil nor the refined products at any time (they would be and remain the property of A, the work performed by B for A qualifies as supply of services.

In case A has no infrastructure in Belgium which could constitute a fixed establishment within the meaning of article 44 of Directive 2006/112, the place of the supply of services rendered by B to A would be the place where A has established his business, i.e. the Netherlands.

In this respect, considering that A and B are two independent entities from a legal and a contractual point of view and that A would not employ any staff in Belgium nor own any fixed assets or machines in Belgium, the facilities of B (i.e. the Belgian refinery) would not constitute a fixed establishment of A in Belgium within the meaning of article 44 of Directive 2006/112.

Comments: Based on the additional information provided, the crude oil would enter into Belgium coming from inside and outside the EU (imports in Belgium would be done by A). Moreover, the refined product would be sold from Belgium by A within and outside the EU.

Although this is outside the scope of the CBR request, the above mentioned scenario could lead to some VAT obligations in Belgium for A (i.e. Belgian VAT registration).

2015 / 12. ORGANISATION OF IN-SERVICE TEACHER TRAINING COURSES IN OTHER MEMBER STATES

(second half 2014 – February 2015)

Member States concerned: Sweden, United Kingdom, Portugal

Facts: The applicant is a Swedish school, which is organising in-service teacher training courses in the UK and Portugal for teachers and school staff. The participants are from different countries in Europe and different schools. Course leaders are not employees of the applicant, but sub-contractors who charge the applicant for their services. The training courses last for a maximum of six days.

The applicant purchases accommodation, food, and local transport and charges these all on to the schools signed up to the course. The schools are invoiced for the full package, including course materials.

The applicant takes full responsibility for the bookings and payments and asks the trainees to come to them if there are any issues.

The participating schools receive grant funding to pay for the courses. (The applicant receives no direct funding.) If the funding the schools receive is not sufficient to cover the cost of the course, the schools will have to cover the balance themselves.

Question: What is the nature of the supply and the place of supply?

Legislation:

- Arts. 53, 54 and 307 of Directive 2006/112
- SE Value Added Tax Act (1994:200), Chapter 5 section 11 and 11 a, Chapter 9 b section 4
- UK Value Added Tax Act 1994, section 53, and Schedule 8, Group 8, item 12

CBR: The Tour Operators Margin Scheme should be applied on the supply of accommodation, food and local travel arrangements as these supplies are bought-in and not in-house services. The place of supply for those services will be in Sweden where the applicant is established (Art. 307 of Directive 2006/112).

The training arrangements are in-house services that should be considered as admission to an event. The place of supply for those services will be in UK or Portugal depending on where the event takes place. (Art. 53 of Directive 2006/112 if the customer is a taxable person and Art. 54 if the customer is a non-taxable person).

Comments PT: Training courses for school teachers have an unmistakable educational nature. Because they are of a singular nature or short duration and self-contained, not being part of an overall comprehensive supply of education, we see these courses as an event, so the admission is supplied where the event takes place.

The supply of books and other course materials, unless optional or if invoiced separately, not directly related to the event, is covered by the admission to it, so does any catering provided therein, generally being considered incidental or ancillary to the event itself.

If Portugal would be the place where the event takes place (i.e. the place of supply), the supply of training courses could be exempted according to article 9 (14) of the Portuguese VAT Code, which exempts the supply of services and of goods connected with it, related to congresses, conferences, seminars, courses, or other similar events of a scientific or educational nature, provided the supplier is a non-profit making body. The conditions for this correspond to those stated in article 133 (a) to (d) of the Directive.

Concerning the supplies of accommodation, food and local transport, considering that these supplies are bought-in, and not in-house supplies as the training courses, it is possible to consider the application of the special scheme for travel agents (also known as Tour Operators Margin Scheme or TOMS).

2015 / 13. Exemption for supply of services by independent groups of persons – cross-border application

(March 2015)

Member States concerned: **Latvia**, Sweden

Facts: An independent group of persons in Latvia supplies services to a Swedish taxable person. The supply is considered to take place in Sweden, according to Art. 44 of Directive 2006/112.

Question: Is it possible to apply the exemption for supplies by an independent group of persons in Art. 132(1)(f) of Directive 2006/112 on supplies made by the Latvian group of persons to the Swedish taxable person?

Legislation: Art. 132(1)(f) of Directive 2006/112
Chapter 3 section 23 a) of the Swedish VAT Act

CBR: The exemption for supplies of services by independent groups of persons, mentioned in Art. 132(1)(f) of Directive 2006/112 can be applied cross-border, if the services are rendered to a Swedish taxable person belonging to the same independent group.

However, the exemption only applies if the conditions of the Swedish VAT act are fulfilled. Services supplied within an independent group of persons are exempt from VAT – according to Chapter 3 section 23 a) of the Swedish VAT Act (in line with the provision of the Directive) – if the following conditions are met:

- the group or the members of the group should not be liable for VAT for other activities,
- the services supplied by the independent group should be directly necessary for the exercise of the member's activities,
- the consideration should be an exact reimbursement of the cost for supplying the services, and
- the services should normally not be supplied by someone outside the group (the distortion of competition test).

The Latvian taxable person has no right to deduct Swedish input VAT relating to the exempt supplies. (Questions about deduction of input VAT incurred in Latvia fall outside the scope of this CBR).

If the exemption is applicable, the Swedish recipient of the services does not have to report VAT on the supplies made by the Latvian supplier.