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EU VAT FORUM
CROSS-BORDER RULINGS (CBR) LIST
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List of contact persons of the Member States participating in the EU Cross-Border Rulings (CBR) pilot: https://ec.europa.eu/taxation_customs/sites/taxation/files/cbr_info-notice-to-the-public_en.pdf

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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 involved: **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.

2014 / 2. ORGANISATION OF "IN HOUSE" TRAINING

(May 2014)[1]

Member States involved: **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 involved: **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?

Legislation: 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 involved: **Portugal** and Spain

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 involved: **United Kingdom,** Spain, Portugal,

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 nº 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 involved: **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?

CBR: 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 involved: **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 involved: **Spain**, United Kingdom, (update Jan. 2016: France, Netherlands)

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 involved: **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 involved: **Belgium**, Netherlands, (update Jan. 2016: France)

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**:

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.

- 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.

- Scenario 2: **A transfers the goods from a BE warehouse directly to C in NL**:

- 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.

Note (*update Jan. 2016*):

France has confirmed that the VAT treatment described in scenario 2 applies correspondingly if A transfers the goods from a FR warehouse directly to C in NL:

- In principle, A carries out an exempt intra-community supply in FR (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 FR 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 involved: **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. ORGANIZATION OF IN-SERVICE TEACHER TRAINING COURSES IN OTHER MEMBER STATES

(second half 2014 – February 2015)

Member States involved: **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 involved: **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.

2015 / 14. PLACE OF SUPPLY OF AN INTRA-COMMUNITY SALE FOLLOWED BY A LOCAL SUPPLY CARRIED OUT BY A NON-ESTABLISHED TAXABLE PERSON.

(January 2015)

Member States involved: **France**, United Kingdom.

Facts: A company A, established in France, sends goods to the UK. In the UK, these goods are assembled by A before they are sold to a company B established in the UK.

Question: Which are the VAT rules applicable to the supplies following the assembly?

Legislation: Articles 17, 20, 40 et 138 of Directive 112/2006/EC.

CBR: The company A carries out an assimilated intra-Community supply of goods on the basis of paragraph 1 of article 17 of the VAT Directive. The transfer of goods from France to the UK is VAT exempted in France on the basis of article 138.

The same company carries out a deemed intra-Community acquisition, which is taxable in the UK (according to articles 20 et 40 of VAT Directive).

The subsequent supplies to company B constitute internal supplies in the UK, subject to VAT in the UK.

As a consequence, company A must be registered for VAT purposes in the UK.

2015 / 15. Place of supply of an intra-Community sale followed by a local supply of goods carried out by a taxable person non-established within the Member State of dispatch, but it has a fixed establishment in the Member State of delivery of goods.

(January - June 2015)

Member States involved: **France**, Belgium.

Facts: Company (B) established in Germany, with a fixed establishment in France, sells goods, purchased before from company (A) established in Belgium, to a taxable person (C) established in France. Different scenarios could be applied:

- In the first case, the goods are either transported directly from the establishment of the Belgian supplier A to the French company C or sent to France after having been stored in a warehouse owned by company B in Belgium.
- In the second case, the goods are first sent from Belgium to France, then introduced into a warehouse under a «call-off» regime. Under this scheme, company B introduces the goods in a warehouse located at the premises of its client C in France, but remains the owner of the goods, until they are extracted by the French client C.

Question: Which are the VAT rules applicable to the different supplies?

Legislation: Articles 20, 31, 32, 40 and 138 of VAT Directive 2006/112/CE.

CBR:

- In the first case, the supply of goods by company B to its client C established in France has to be considered as a supply with transport, whose place of taxation is not France, according to Article 32(1) of VAT Directive.

The French client C has to declare an intra-Community acquisition, subject to VAT in France, in accordance with Articles 20 and 40 of the VAT Directive.

- In the second case, company B is considered to carry out a transfer of goods, assimilated to a supply of goods according to Article 17(1) of the VAT Directive. The transfer of goods to France is VAT exempt in Belgium, in accordance with Article 138 of the VAT Directive. Company B also makes an operation assimilated to an intra-Community acquisition, subject to French VAT (Articles 20 et 40 of the VAT Directive).

The supplies by company B to its French client C, which take place at the moment of the property transfer, are taxable as internal supplies in France. As company B disposes of a fixed establishment in France, B is liable for the VAT on these supplies to C.

2015 / 16. RENTAL MOORING SERVICES TO INTRA-COMMUNITY CUSTOMERS

(November 2013)

Member States involved: **Spain**, France, United Kingdom.

Facts: The requesting entity provides **rental mooring services** to intra-Community customers not resident in the territory of application of the tax but whose vessels are permanently in the territory

Question: Place of supply of services provided by the consulting entity

Legislation: Article 47 VAT Directive 2006/112
(Article 70.Uno.1 of Spanish VAT Law 37/1992, 28 dec.)

CBR: Rental services covered by the question are considered directly related to real estate (Article 70.Uno.1 of Spanish VAT Law includes rental services of real estates.) It must be concluded that these services are performed in the territory where the real state is placed and therefore subject to VAT in that State, regardless of the nationality of the client requesting the service (article 47 VAT Directive).

2015 / 17. GRANTING OF CREDIT GUARANTEES

(2015)

Member States involved: **Cyprus**, Lithuania

Facts: A company incorporated in Cyprus has entered into a contractual agreement with a private limited company (hereafter "the Debtor"), registered in Lithuania whereby the company will provide security for the performance of the obligations of the Debtor towards a bank (hereafter "the Bank") The debtor entered into a credit agreement with the Bank, according to which the Bank granted the Debtor an amount of credit.

In accordance with the contractual agreement concluded between the company and the Debtor, the company provides security for performance of the obligations of the debtor against the bank, by putting under pledge movable property (shares) owned by the company. The company is liable to the bank to the extent of the assets that have been pledged if the Debtor fails to properly fulfill its obligations to the Bank.

As a remuneration for providing security against the performance of its obligations to the Bank, the Debtor will pay to the company a one-time fee plus a monthly fee for the period that the specific movable property is under pledge.

Question: The company grants a financial guarantee/security for money (being the shares pledged to the bank) and also undertakes a financial responsibility /obligation to the extent of the assets pledged, in the case of non-performance of the debtor.

What is the VAT treatment of the services supplied to the Debtor in Lithuania? (If the Lithuanian authority treats the services as exempt, then the taxable person in Cyprus would not be obliged to submit a recapitulative statement or have any other VAT obligation in Lithuania in relation to this transaction).

Legislation: Article 135(1)(c) of Directive 2006/112

CBR: Art. 135(1)(c) provides that "the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit" is exempt from VAT. Accordingly, the service of granting financial guarantees and securities is exempt from VAT in Lithuania, as in Cyprus.

The Cyprus company providing these services to Lithuanian company (Debtor) has no obligation to register or pay VAT in Lithuania. Also, according to the provisions of the Article 95 of Law on VAT the Lithuanian company will not be liable to pay to the state budget VAT on the services which are provided to it by the Cyprus company.

2016 / 18. PLACE OF SERVICE OF STORAGE OF OIL PRODUCTS IN BULK COMPLEX OF SERVICES: ONE INDIVISIBLE BUNDLE OF SERVICES

June 2016

Member States involved: **Netherlands**, Belgium

Facts:

A is a company registered and established for VAT in Belgium.
B is a company registered and established for VAT in the Netherlands.

B has entered into a storage agreement with A whereby B is entitled to store a certain quantity of oil products in specific storage tanks belonging to A in Belgium. No other company can store goods in the tanks specified in the agreement.

The storage agreement does not cover purely the rent of tanks but it also includes the following services: loading and unloading of vessels/ barges/ trains/trucks, tank to tank transfer, throughput into pipelines, blending and mixing different products or components, heating of products in the tanks, preparations of various types of documents (e.g. bill of lading, e-AD, import, export documents), customs clearances and representation services.
A grants to independent companies appointed by B access to the terminal in order to perform inspection operations, to measure the quantity and quality of the product. No other right than access to the territory of the storage is given by A to the employees of B, unless specifically authorised by A.

Question(s):

Are the supplied services to be considered as one indivisible bundle and one service and is the place of supply of the service for the storage of oil products governed by art. 44 or art. 47 of the VAT directive?

Legislation:

Articles 44 and 47 VAT Directive
Article 31a, 3(b) Implementing Regulation nr. 282/2011
ECJ case C-155/ 12 RR Donnelley Turnkey Solutions Poland, ECJ case C-174/06 CO.GE.P.

CBR: Belgium and the Netherlands agree that the services of storage and the services of loading and unloading of vessels/barges/trains/trucks, tank to tank transfer, throughput into pipelines, blending and mixing different products or components, heating of products in the tanks are one indivisible bundle which are so closely linked that they form a single indivisible service which would be artificial to split. The place of supply of this service is accordingly to art. 44 of the VAT directive the place where the recipient of the service is established, in the Netherlands. Art. 47 of the VAT directive is not applicable, since no specific part of the immovable property is assigned for the exclusive use of the customer.

The services of preparations of various types of documents, customs clearances and representation services should be considered as a separate service. These services do not form objectively a single indivisible service with the storage services. This place of supply of this service is also accordingly to art. 44 of the VAT directive the place where the recipient of the service is established, in the Netherlands.

2016 / 19. MEDIATION SERVICES IN TRANSACTIONS INVOLVING THE LEASE OR LETTING OF DWELLINGS FOR A PERIOD EXCEEDING ONE MONTH

As of 1 January 2017

Member States involved: **Spain,** Bulgaria, Denmark, Ireland, France, Italy, the Netherlands, Sweden, United Kingdom.

Facts: A trade Company established exclusively within the Spanish VAT territory supplies mediation services in transactions involving the lease or letting of immovable property for a period exceeding one month. The rental immovable properties can be placed in different Member States. The Company operates through a website where the lessors post their immovable properties, upon contact between the lessor and a prospective lessee the contractual terms are settled.

Question(s): Tax treatment of operations carried out for lessors and lessees.

Legislation: Spanish legislation Act 37/1992 Articles 4,5, 69 and 70
Article 47 of Directive 2006/112/EC, Regulation 282/2011/EC, Articles 72(p), 31a

CBR: Under Article 70.one.1° of Act 37/1992, the intermediation service provided is qualified as a service related to immovable property which will be understood as provided in the Spanish VAT territory, and therefore liable to this tax, in cases where the immovable property is placed in said territory, irrespective of the nature and place of establishment of the recipient.

Otherwise, intermediary services provided in relation to the lease or letting of immovable properties outside the Spanish territory are not liable to this tax.

Comments:

Denmark points out that the place of supply of the service is in the Member State where the immovable property is located.

France considers that articles 13b and 31a of the Council regulation (EU) 282/2011 of 15 March 2011 were not applicable before January 1st; 2017. Therefore, for intermediaries services delivered to taxable persons before 2017, it is the principle of article 44 of Council Directive 2006/112/EC of 28 November 2006 which had to be applied.

Sweden clarifies the criteria it uses for qualifying mediation services displayed from a web site[2]: a supply of intermediation services by use of a website can fulfil the criteria for being an electronically supplied service if the supply is essentially automated and involving minimal human intervention. The place of supply would in that case be in the Member State where the customer is established, has his permanent address or usually resides.

The trade company in question operates through a web site. However the services include more than a minimum involvement of human intervention. Under these circumstances the services do not qualify as electronically supplied services. The services should instead be considered as services in connection with immovable property. If the property is situated in Sweden the company is liable for VAT in Sweden.

Commission:

Eventually, some further guidance from the VAT Committee can be found on the Europa web site:

http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf

Intermediation services have been recently discussed in a broader context (107th VAT Committee meeting on 8.7.2016). A guideline has been published on *Interaction between electronically supplied services and intermediation services and initial discussion on the scope of the concept of intermediation services when taken in a broader context*.
(Ref. document D – taxud.c.1(2017)1402399 – working paper nr 914 final)

[2] in line with article 7 Regulation 282/2011

2018 / 20. CAR RENTAL AND TRANSPORT SERVICES BOOKED THROUGH INTERNET

CBR ADOPTED 31.10.2018

Member States involved: **Finland**, Portugal, Estonia, Belgium, Ireland

Facts: The applicant provides two kind of packages for private individuals and for business customers:

1. Package 1 “subscription based package” has a fixed monthly fee for unlimited use of public transport, taxi trips, car hire and bike hire;
2. Package 2 “pay as you go package” has no monthly fee, but all the services will be charged by a purchase.

   Customers have access to transport services provided and operated by selected transport service providers that have been engaged by the applicant. The service of the applicant is more than an intermediation service consisting of connecting service providers with customers.

Question(s):

1. Is the sale of the package to customers considered a multi-supply service in the field of transportation and hire of means of transport?
2. Is the applicant’s mobile app considered as ancillary to other elements identified as the principal service, so that it will be treated as part of such a principal service?

Legislation: Art. 48, 56, VAT Directive

CBR:

1. Car rental and transport services booked by internet are not considered to be electronically supplied services;

2. The consumer’s download and use of the mobile app is to be considered ancillary to the car rental and transport services;

3. The sale of package 1 is to be considered a multi-supply service.

2018 / 21. ROADSIDE ASSISTANCE SERVICES

CBR ADOPTED 23.11.2018

Member States involved: **Belgium**, Denmark, Ireland, Estonia, Spain, Latvia, Lithuania, Malta, Hungary, Portugal, Slovenia, Finland, Sweden, United Kingdom, Italy.

Facts: A Belgian company provides services for vehicles by organizing roadside assistance in case of a breakdown with the aim of getting the vehicle repaired and operational again. Those services are rendered through a network of certified repair dealers. The customers are home dealers that all qualify as VAT taxable persons (in principle entitled to a full input VAT deduction).

In the framework of its roadside assistance services, the Belgian company is involved in two types of cross-border transactions:

Firstly, the Belgian company's certified repair dealers established in another Member State render cross-border repair services to the Belgian company, consisting generally of two or more elements, namely the diagnostic services, the spare parts used (to the extent required) and the effective repair services performed (repair hours, towing, etc.) for making the vehicle, as soon as possible, operational again.

Secondly, the Belgian company renders roadside assistance services to its VAT taxable customers (including the cross-border repair charges incurred by the Belgian company in this respect).

Question:

What is the applicable VAT Treatment to (i) the intra-Community repair services, which are acquired from certified repairers; (ii) and the road assistance services provided to the customers?

Legal Framework: Articles 14(1), 24(1), 36, 44 and 196 of Directive 2006/112/EC

CBR:

The supplies received by the Belgian company from the certified repair dealers are a supply of services, irrespective of whether or not spare parts are used during the repair and what their value might be. The cross-border repairs rendered to the Belgian company are to be treated as complex general B2B services from a VAT perspective (Articles 24(1), 44 and 196 of Directive 2006/112/EC).

The roadside assistance services rendered by the Belgian company to its VAT taxable customers are to be treated as complex general B2B service transactions from a VAT perspective (article 24(1), 44 and 196 of Directive 2006/112/EC).

2019 / 22. VAT TREATMENT OF RESTORATION, MODIFICATION AND CUSTOMIZATION WORKS ON MOTOR VEHICLES

CBR ADOPTED 12.03.2019

Member States involved: **United Kingdom**, Malta, Latvia, Estonia, Belgium, Slovenia, Denmark, Finland, Sweden, Portugal, Italy.

Facts: Company A is a US company in the process of setting up a UK operation to carry out the same business model as it carries out in the US. Its services include providing substantial restoration, modification and customization of their private customers' vehicles. The customer, a private individual, typically sources a 20-30 year old road-worthy vehicle and continues to retain ownership of the vehicle throughout the process. Company A never takes the ownership of the vehicle. Company A then provides restoration, modification and customization services on these vehicles and charges for the works carried out. The works will be carried out in the UK but the vehicle may be registered to the vehicle owner who resides in either the UK or another EU Member State. Once the works on the vehicle have been completed, the enhanced vehicle will then be delivered to the customer.

Questions:

1. Do the works carried out by Company A on a customer's vehicle represent:

   a) a single supply of goods (i.e. an 'enhanced vehicle' supplied to the Customer)?
   b) multiple supplies of goods (i.e. each new component supplied and installed in the Customer's vehicle)?
   c) a single service (i.e. the 'enhancement' of the Customer's vehicle)?

2. What is the place of supply/supplies made by Company A to its customer?

3. Where should the VAT be accounted for on the supply offered to each customer?

Legal Framework: Article 54(2)(b) VAT Directive 2006/112/EC

CBR:

1. The company's supply of restoration, modification and customization services of motor vehicles is a supply of a single complex service.

2. According to Article 54(2)(b) of the VAT Directive 2006/112/EC, the place of supply of B2C services, consisting of works made on movable tangible properties, shall be the Member State where such works are physically carried out, thus the UK.

3. VAT should be accounted for in the UK. (The company should account for VAT on the service that it supplies to each costumer in the EU MS where the works are undertaken. That is, the UK.)

2019 / 23. VAT TREATMENT OF PERISHABLE GOODS

CBR ADOPTED 15.04.2019

Member States involved: **Ireland,** Estonia

Facts: Private individuals (Ordering Customer) purchase gifts of perishable goods sold online or over the phone by retailers. The Ordering Customer wants these perishable goods to be delivered to another private individual (Recipient Customer) in another Member State. The Ordering Customer pays the retailer the amount of the gift and an additional amount as a separate for the International Delivery Charge.

Because the goods supplied are perishable, the retailer does not want to ship its own goods cross-border to the Recipient Customer. Instead, the retailer (Sending Member), through a network organisation of retailers of similar perishable goods, asks that the goods be delivered from another retailer (Executing Member) to the Recipient Customer. The Executing Member picks out from its own stock the perishable goods and delivers them to the location of the Recipient Customer. The Executing Member does not take any payment from the Recipient Customer.

The network is constituted by several Member Organisations dealing with the orders of perishable goods and the flow of cash, from the Ordering Customer to the Executing Member. The Clearing House, part of the network, makes sure that all the Members are paid, i.e. that the Executing Member receives the payment of the perishable goods ordered and that the other Members receive their commission.

Questions:

1. Which entity makes a B2C supply of goods for VAT purposes and who is the recipient of that supply for VAT purposes?
2. What is the taxable amount for that B2C supply of goods for VAT purposes?
3. What is the place of supply of the service for VAT purposes supplied by the Sending Member in return for the International Delivery Charge that is paid by the Ordering Customer to the Sending Member?
4. What is the overall VAT analysis of the supplies between the various entities?

Legislation: Articles 14, 30, 44, 45, 46, 58, 73 of Council Directive 2006/112/EC.

CBR:

1. The supply of the perishable goods is performed by the Executing Member for having ownership over the goods. The Ordering Customer is the recipient of the supply of goods, regardless that the goods are in fact delivered to the Receiving Customer.
2. The taxable amount for the supply of the goods is the total consideration payable by the Ordering Customer for the perishable goods, exclusively.
3. The International delivery Service is considered as a separate supply of service. The taxable amount for the supply of this service is the total consideration payable by the Ordering Customer. The place of supply of the international delivery service / delivery service (for both orders made over the phone and online) to private individual customers should be the place where the supplier (Executing Member) has established his business, under Article 45 of the VAT Directive 2006/112/EC.
4. The supplies between the various entities involved in the supply chain is complex. Ireland are of the view that there is not a supply of goods between the Sending Member, the Member Organisation 1 and the Executing Member, the Member Organisation 2 or the Clearing House. No goods have been supplied between these entities. The clearing house matches entities to facilitate the supply of the flowers and is not involved in the supply of goods. The Commission payments relate to supplies of services and not goods and are taxable under the rules provided for under general rules set out in Article 44 of the VAT Directive 2006/112/EC.