



CBR –Cross Border Rulings

THE SPANISH EXPERIENCE

FUTURE OF VAT “Round Table”

Brussels, November 18th 2014



1º) CBR Request received from business: 2

Accepted: 1

Rejected: 1

2º) CBR Request presented in other member states involving Spain: 5

Accepted:4

U.K (2), Portugal and Belgium

Rejected: 1

U.K.



1º) CBR Request received from business: 2

The DGT received two CBR request:

One was rejected because all of the questions were related to procedural matters relating to inspection procedure in France and Spain against a particular company. It was given the usual processing of national consultations.

One request was accepted for CBR treatment. Issue:

The consulting entity supplies rental mooring services to intracommunity customers not resident in the territory of application of the tax but whose vessels are permanently in the territory. Place of supply of services provided.

UK COMMENTS:

Do not believe that this is a CBR case. The case in question relates solely to the charging of Spanish VAT.

(The reason for admission was that there may be different interpretations of the meaning of services related with immovable property for the purposes of applying the rule of location article 47 of the VAT Directive. So the Implementing Regulation 1042/2013 clarified what it means services relating to immovable property).

Both Administration had the same criteria: services that relate to land or property, the place of supply of those services is where the land itself is located (article 47 VAT Directive).



2º) CBR Request presented in other member states involving Spain: 5

Three were submitted in UK, one in Portugal and one in Belgium. Three reports were elaborated by Spanish Tax Administration and one request presented in UK was rejected because Spain was not directly involved in the case. A last one was submitted in Belgium and the report from DGT is pending nowadays (Issue: a commercial event organized in Spain involving hotels, flights etc).



a.- First CBR presented in UK :

Services related to the management of real estates funds. Place where the services are performed.
Ordinary location rule or services related to real estate, art 44 Vs. art 47 of VAT Directive
2006/112/EC.

REPORT FROM DGT:

The service must be considered as a single one, whose location is governed by art 47 of VAT
Directive, services related to real estate.



b.- Second CBR presented in UK

TOPIC:

VAT treatment of Pay As You Go ("PAYG") top-up vouchers distributed outside the UK in Spain and Portugal. The requesting entity established in the UK provides mobile telecommunications services through refills terminals. Refills can be made at retail outlets or through ATMs. The question is whether refills made in Spain must charge the Spanish Tax.

REPORT FROM DGT:

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 Spain is a transaction not subjected to this tax, because what is really provided is a mean of payment for specific services that can be consumed in different territories.

In the present case, there is also an intermediary service in the distribution of refills between the requesting entity and the final consumer . In these circumstances, this performance is conceptualized, for the purposes of value added tax, as intermediary on behalf and for others. This intermediary service is governed by the general rules of VAT on service location listed in Article 44 of VAT Directive. Thus, in the provision between two businessmen or professionals, the brokerage service will be located at the destination, ie, UK, and therefore this transaction is not subjected to Spanish tax.



c. CBR presented in PT

TOPIC:

The requesting entity established in Portugal with a subsidiary in Spain, makes rehabilitation of buildings located in Spain. The consultant subcontracts with Portuguese companies the construction services. Also, the Spanish subsidiary transferred workers to consultant for the development of such works.

The location of the services received by the consultant is questioned.

REPORT FROM DGT:

Works of construction performed by portuguese companies subcontractors regarding properties placed in Spain , will be located in this country by applying the special rule of Article 47 of VAT Directive.

Transfer of staff by the Spanish subsidiary: We must think in the work actually performed by the assigned staff. From the query presented appears that these are limited to machinery leasing with staff and management of waste. In this case such services are not considered works of construction and therefore can not be considered as related to immovable property. These services will be located by the general rule of Article 44 VAT Directive, which locates at the destination (Portugal) services performed between businessmen or professionals.

Both Administration had the same criteria.



ADVERTISEMENT AND REQUIREMENTS

The test is currently posted on the official website of the Spanish Tax Agency. It highlights the requirements for acceptance of a CBR query



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Prueba piloto Consultas sobre operaciones intracomunitarias "CBR"

La Comisión Europea pone en marcha una prueba piloto en la que participan trece de los Estados miembros, entre los que se encuentra España, con el objeto de que los empresarios que realicen operaciones intracomunitarias puedan formular consultas sobre la tributación en el Impuesto sobre el Valor Añadido y recibir respuesta por parte de los países implicados.

La prueba piloto comienza el 1 de junio de 2013 y está prevista su finalización el 31 de diciembre de dicho año. Esta prueba piloto se enmarca dentro del Foro Europeo de IVA, grupo integrado por representantes empresariales y autoridades fiscales, creado por la Comisión con el objeto de mejorar el funcionamiento del IVA.

Requisitos para la presentación de un Consulta Tributaria "CBR" (Cross-Border Ruling)

1. La consulta solo puede referirse a operaciones en las que estén implicados los Estados miembros participantes en esta prueba piloto que son los siguientes:

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Estonia
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THANK YOU