

# THE LEASE OF A WAREHOUSE FOR THE DISTRIBUTION OF PRODUCTS CONSTITUTES A PERMANENT ESTABLISHMENT FOR VAT PURPOSES. BINDING CONSULTATION OF DECEMBER 17, 2019

By Javier Galván Posted 28 February, 2020 In TAX NEWS

The consulting entity is tax resident in Norway and distributes products obtained from a raw material that the entity sends to Spain for a local entity to transform into the final product based on a tooling contract. The raw materials and the final product are always owned by the Norwegian entity, which distributes the product in Spain or sells it to other Member States or outside the EU territory.

In addition, another sub-product obtained from the tooling work is sold to a Belgian entity.

For the storage of part of the raw material and the sub-product derived from the transformation, it has a lease contract for a warehouse in Spain with an entity that also provides logistics services for the receipt and shipment of the merchandise.

The entity asks the Spanish General Tax Directorate (DGT) if it has a permanent establishment in the Spanish VAT, as well as whether the Permanent Establishment should be considered the actual recipient of the tooling services.

First, in order to determine the existence of a permanent establishment (PE), the DGT uses the jurisprudence of the ECJ, Gunter Berkhof case, ARO Lease case or DFDS case, among others, whereby the existence of a PE is **characterized by an adequate structure in terms of human and technical means, own or subcontracted, with a sufficient degree of permanence**. Thus, the DGT recalls that the criterion regarding the mere maintenance of goods stored in the VAT territory or the reception of logistics services over them does not necessarily imply the existence of a PE, nor does it give rise to a PE the contracting of a service of tooling, but to the extent that the no

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On the other hand, it will be necessary to consider, based on the Implementing Regulation 282/2011 and its article 21, if the PE is the effective recipient of the service purchased, depending on the context of each case. In the present consultation, since part of the raw material and the sub-product obtained is stored in the warehouse, it should be understood that it intervenes in the production process, so that this will be the effective recipient of the tooling service.

Finally, regarding the consideration of the PE as a taxable person of the sales operations in the VAT territory, it is necessary to assess whether it orders its material and human production factors, or one of them, in order to carry out these operations. Here, the DGT considers that it is enough that **the PE is the recipient of the tooling services and that it is the place where the sub-products sold are stored to understand that this is the taxable person of the supplies of the processed products and sub-products.**

The consultation number is V3458-19, of December 17, 2019.

For more information you can contact at [info@diligens.es](mailto:info@diligens.es).

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