

No response. 96

OBJECT: VAT - Territoriality integrated logistics performance

As requested a ruling specified in the subject, and 'was exposed as follows

QUESTION

Alfa Srl (hereinafter "Company", "Instant" or "Contributor") reports that a company set up with the aim of providing logistics services and highly specialized computer architectures.

Petitioner to the attention of the undersigned a contract to provide integrated logistics services that reshapes the contract previously entered into (subject of dispute for tax purposes defined with the use of the simplified procedure referred to in DL n. 119 of 2018) and defining more precisely the relationship between the parties (the Company and Gamma), the relative rights and mutual obligations (" *Amendment Agreement* " signed in December 2019 - hereinafter also "Agreement").

The Instant is that the new contract has to object, basically, the integrated logistics service, awarded in *outsourcing* from the second to the first.

The Company is a *providers* Logistics service *leader* National in the field of *fashion*, can provide an integrated logistics service to its customers. The service is embodied essentially in a complex operation, consisting of elements

related to the movement of goods, its transportation, storage, fulfillment services and customs formalities, care labeling, sorting, in conditioning, in the packaging, accounting and, in general, in all related services the qualification *hub* integrated logistics for third-party goods.

The Taxpayer should also be noted that this service is carried out predominantly way to Gamma as the Instant care of the logistics sector Client for all shipments to the domestic market, Union, the *Middle East* and certain special destinations (eg. Brazil and other South American countries), in response to supplies that are made in Europe and, primarily, in *Far East*.

More specifically, the Instant recalls contract terms that it considers most relevant to the classification of the service, such as to those governing the following definitions:

- Logistics Services " *integrated logistics services, in support of the Company's activities in the region, including, among other things, receipt of goods, custody, with Value Added Services, the installation order (order picking), loading, shipping and the count, either manually or by weighing the Goods from the Supplier to other "pool point" and Logistics services at the facilities of the Supplier and / or other Warehouses, the tariff management and VAT, and services relating to the claims of the Customer* "(letter Y of the Contract);

- Services with Added Value " *services that change or alter the nature, composition or packaging of goods, different from storage. Such activities include, without limitation, repacking, labeling and any form of different assembly dall'allestimento of orders* "(QQ letter of the Contract);

- Services *e-commerce*: selection of goods at the level of single specific unit, in relation to the details of which the order of various customers, as from time to time indicated by Range; more specifically, the services relate " *packaging and*

Preparations for the expedition, including gift boxes, gift cards and custom goods, with the label application and the fulfillment of each outbound shipment and the creation of supporting documentation and return label orders "(letter P of the Contract).

The activity actually turns that characterize the integrated logistics contract, according to the instant, include:

- services provided for goods intended to Gamma-owned stores;
- activities *seasonal*, services provided for goods intended to shopkeepers customers, not the range of properties;
- is- *commerce* or services made for the goods to be sent to customers *ecommerce* Gamma;
- Statistics management (activities carried out by personnel dedicated to the production of reports and statistics for the enforcement of logistic performance, interfacing with Gamma, the overall customer satisfaction, telecommunications);
- integration project *software* SAP (business dedicated to the development of the integration project *software* warehouse management, personnel dedicated analyzes, design and implementation of interfaces, system testing and data analysis);
- customs export (activities devoted carrying out of customs clearance for the shipment of goods to non-EU destinations);
- returns (gestion logistic returns to client the range, testing, reconditioning, labeling and refurbishing stock, dedicated staff);
- embroidery work and customizations requested by Gamma (for special embroidery, uniforms events);
- home online - *home collection* (home line operating cycle, space management, labeling, personnel, costs for cartons and consumables, control

stocks);

- *creative invoice* (logistics management for objects of furniture stores, Management *software* Creative, managing creative spaces).

The Company also noted that under the new Agreement can such services, using different types of properties, known as:

- "*Facilities*" or warehouses used as a rule for the supply of a range services;
- "*warehouse*" ie more warehouses, buildings or premises might be used in the performance of logistics services, also in favor of other clients.

It is also planned, as always happens in the contractual arrangements to protect and guarantee the customers (Article 5 of the Agreement, point QQ as amended), which range, after reasonable notice, have access to the facilities and warehouses and that the sole purpose of overseeing, the narrow time, the quality of service provided and, therefore, the performance quality of the work done on his behalf by the lender.

It is agreed that the service is made to the Company no exclusive agreement, only guarantees in terms of quality, efficiency, space, staff, etc., All necessary efforts to meet the requirements of speed and high performance, both in the *inbound* both in the phase *outbound*.

With regard to real estate, the Instant clarifies that no rights of succession, pre-approval, interference, *in-step*, that could compromise its independence about the location and manner of execution of the service provided, however, managed completely independently.

The Taxpayer shows, finally, that the contractually agreed remuneration (art. 6 and 10 of the Contract) is constituted by a fixed part and a variable:

- the first is functional to the reimbursement of a series of fixed costs incurred by the Company for the execution of the tasks;
- the second varies according to the number of pieces handled during

reference period.

Everything decritto, the Instant seek the opinion of the writer regarding the qualification of the services covered by the "new" contract, in order to define the VAT territoriality of complex service provided.

INTERPRETATIVE proposed SOLUTION FROM THE TAXPAYER

The Company believes that:

- the integrated logistics service in question, although complex, is to be considered unique and indivisible and not due to the mere storage. It is actually a service that integrates numerous activities, management, accounting, shipping, transport, customs, reporting, with operations on goods and their packaging, their profiling information technology and its quality, tested and controlled;
- at the same time, storage is not configured as the main service of the complex performance, but it is an inherent element to the integrated logistics understood in its entirety;
- the property where the activity takes place are not constituent and essential elements of performance;
- there is exclusive use of the property by the customer, which normatively element required in order to qualify as a real estate service. Range does not participate to provide integrated logistics services, nor the directing and coordinating and access to the sites where he expresses the exceptional form in service and periodic prior notice, only to test the quality of services rendered.

As a result of the above, the Company excludes the possibility that the integrated logistics activities it carried out and formalized in the new logistics service contract is attributable among *'Services connected with immovable property'* ex Article 31- *BIS* Regulation 282/2011 / EC, as amended by Regulation 1042/2013 / EC,

resulting in application of Article 7- *quater* of presidential decree No. 633 of 1972 (Article 47 of Directive 2006/112 / EC), which locates in Italy the place of taxation of these services ..

The Instant is of the opinion that the performance in question are due to rule on the subject of VAT territoriality referred to in Article 7- *b* (Article 44 of Directive 2006/112 / EC), since it is a generic service held in a taxable person not established in Italy, and as such to be taxed for VAT purposes in the place where the seat of the customer, ie the place of final consumption.

OPINION OF REVENUE AGENCY

In the field of VAT territoriality, the general rule contained in Article 7- *ter* the Decree of the President of 26 October 1972, 633 (hereinafter, "VAT Decree "), provides that the tax is payable in the State of establishment of the customer (relations *B2B*) or the lender (relations *B2C*).

This rule is an exemption for real estate services, which are taxable at the place where the property is situated, no importance him *status* of taxable or not the customer.

In particular, Article 47 of Directive 2006/112 / EC (in short, the "VAT Directive") provides that: " *The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites for camping, granting of rights to use immovable property and services for preparing and coordinating the execution of construction work, such as services provided by architects and of supervision, shall be the place where the good "is located.*

In turn, Article 7- *quater*, paragraph 1, letter *to*), of the VAT Decree provides that " *Notwithstanding the provisions of Article 7- *ter*, paragraph 1 shall be deemed*

carried out in the State:

a) the provision of services connected with immovable property, including surveys, the Agency performance, the provision of accommodation in the hotel sector or in sectors with similar functions, including that of accommodation in holiday camps or developed land for camping, the granting of rights to use immovable property and services relating to the preparation coordination and execution of the construction work, when the property is situated within the state. "

Article 31- *BIS* of the Implementing Regulations (EU) n. 282/2011 of the Council of 15 March 2011, as amended by Commission Implementing Regulation (EU) No. 1042/2013 of 7 October 2013, with value as of 1 January 2017, clarifies what is meant by its service with immovable property and lists as an example a number of services that can be considered as such, whereas others can not be considered relating to immovable property.

In particular, pursuant to paragraph 1 of Article 31- *BIS* in comments " *The services connected with immovable property referred to in Article 47 of Directive 2006/112 / EC only includes the services that are sufficiently direct connection with such goods. It is considered that present sufficiently direct connection with real estate services:*

a) derived from a property if the property is a constitutive element of the service and it is essential and indispensable for its performance;

b) disbursed or intended to immovable property, having as their object the physical alteration or entity of such property. "

The following paragraphs 2 and 3 contain limited to a listing of services that can and those that can not be considered in real estate.

In particular, as far as here detects, paragraph 2, point *h*), It provides that " *within the scope of paragraph 1 shall include, in particular: h) the leasing or letting of immovable property, including the storage of goods by assigning part of the property specification for the exclusive use of*

recipient", but paragraph 3, letter b), It provides that " within the scope of paragraph 1 shall not include: b) storage of goods in real property if no specific part of the property for the exclusive use is not assigned to the recipient. "

The current wording of Article 31- *BIS* of the Implementing Regulations (EU) n. 282/2011 transposes the principles provided by the ECJ in its judgment *RR Donnelley Global Turnkey Solutions Poland* (Case C-155/12 of 27 June 2013).

The case *RR Donnelley* concerns a case similar to that under consideration, consisting in providing low-cost operators, subject to VAT and established in Member States other than the Republic of Poland and with no permanent establishment in Poland, a complex service of cargo storage. This service includes, in particular, receipt of goods in stock, the arrangement of the same in the special storage areas, storing, packaging for customers, delivery, unloading and loading (paragraph 24).

The development of storage areas available is only one of many elements that are part of the logistics process operated by the RR.

If logistic services in question and services *e-commerce* in letters

Y) and P) of the definitions of the contract represent a benefit to be measured unitarily for VAT purposes. In fact, for the client range the service consisting in the storage of goods, the receipt, in the arrangement, delivery, into the drain, loading of cargo and other ancillary activities constitutes a single service where storage of goods in the properties (...) is the main element.

The value-added services referred to in point QQ) definitions of the contract in which is included repacking will have an independent value for VAT purposes since they are not directly linked to the benefits referred to the letters Y) and P). However, the value-added services can be considered accessories to the benefits referred to letters Y) and P) if the relative remuneration assumes secondary nature in respect

to those benefits.

Without the above clarifications, in order to verify the territoriality of the integrated logistics service in question, as evidenced by the Court of Justice importance are the following circumstances that you pass to examine.

Firstly, the benefit in question must be connected with immovable property expressly determined. In our case, such a link exists, being the breakthrough performance in integrated logistics sites in factories (...).

It should, secondly, to verify if the property can be regarded as a constituent element, as it represents a central and indispensable element of the service under consideration.

It should be carefully circumscribe the scope of the norm, since - as noted by the Court of Justice - a large number of services relates to immovable property.

To this end, the Court noted that the provision of services listed in Article 47 of the VAT Directive are united by the fact that the property constitutes the object of the service regarding the use or the installation of a real estate or management, including exploitation, and the evaluation of the same.

Since - according to the Court - *"the a storage service such as this can not be considered to relate to the arrangement, management or evaluation of a property, the same can be within the scope of that Article 47 only if the right is recognized for its recipient to use all or part of a property specifically determined"*

". Therefore, the Court concludes, if, for example, the beneficiaries of the service do not have any right of access to the property in which they stored their goods or property on which or in which the same are to be stored is not a central and indispensable element of the provision of services, the provision of complex logistics services can not be caught by Article 47 of the VAT Directive (cf. paragraphs 37-39).

That said, returning to the matter, the Company noted that range is not participating to provide integrated logistics services, nor the directing and coordinating and access to the sites where it carries out in exceptional form service and periodic prior notice, only in order to test the quality of services rendered (QQ clause of section 5.2 of the new contract).

If the above conditions and in the absence, in any case, the conditions are met to set up a permanent establishment in Italy of the Purchaser, which still remains all powers of financial control of the administration, it can not be considered that the customer has the right to use all or part of the real property in which took place the integrated logistics service in question, which does not fall within the scope of Article 7- *quater* of the VAT Decree, but among the general benefits in Article 7- *b*.

THE CENTRAL

(Digitally signed)