



**TAXAND ASIA SEMINAR  
SERIES: CASE STUDIES  
ON CROSS BORDER  
TRANSACTIONS**

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**22 OCTOBER 2020**

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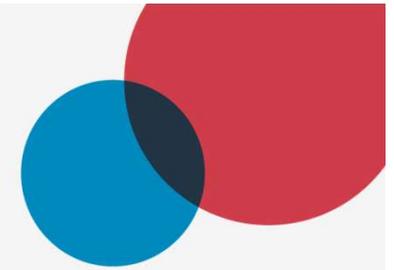
**CASE STUDIES  
ON VAT CROSS  
BORDER  
TRANSACTIONS**

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**CASE STUDY 1 – LICENSE  
TO USE KNOWHOW WITH  
OR WITHOUT SALE OF  
GOODS**

# License to use knowhow



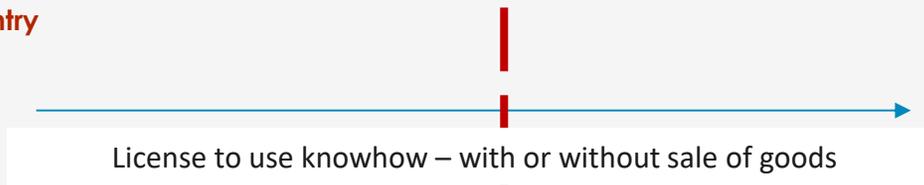
Asian / non-EU country



**ABC Inc.**

ABC Group - HQ

Engaged in manufacture and sale of goods; Owner of knowhow in respect of such goods



EU Country

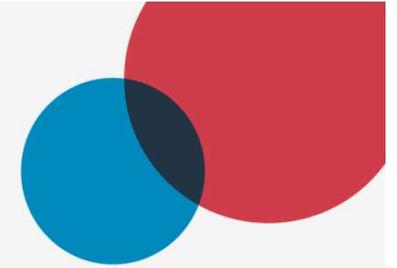


**ABC Co.**

Group company of ABC

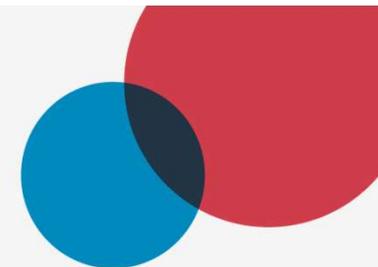
Engaged in sale of goods domestically manufactured using such knowhow/ trading of goods imported from ABC Inc.

# INDIA GST – KEY PROVISIONS



- Introduction of Goods and Services Tax ('GST') in India from July 2017
- Goods defined to mean other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply
- Services defined to mean anything other than goods....
- Schedule I – treats certain transaction as supplies, even if without consideration
  - Supplies of goods or services between related or distinct persons
- Schedule II – deems certain transactions as supplies of goods or supplies of services
  - Temporary transfer or permitting use or enjoyment of intellectual property rights is deemed to be a service
- Exports are zero rated; Import of services subjected to tax under reverse charge mechanism

# INDIA GST – KEY PROVISIONS



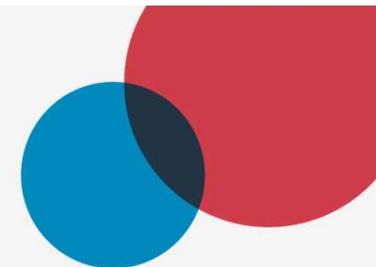
## Import and export of services

- Key conditions for a transaction to be treated as import / export of services
  - Import = Supplier outside India + Recipient in India + Place of supply in India
  - Export = Supplier in India + Recipient outside India + Place of supply outside India + Consideration in foreign exchange
- GST on import and export of services
  - Import – Typically the recipient in India liable to pay GST (reverse charge mechanism).
  - Export – Not liable to GST (export without payment, export with payment and obtain refund)

## Valuation of related party transactions

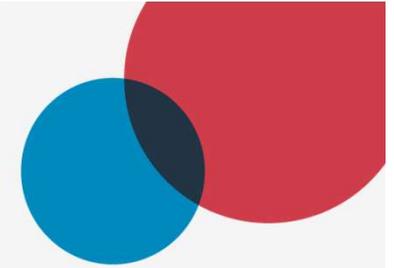
- Generally valuation of goods and services based on transaction value
- Value in case of related party transactions needs to be justified – concepts of valuation
  - Open market value
  - Value of supply of like and kind quality
  - Cost plus 10%
  - Residual method
- Valuation of related party transactions would not be disputed when recipient eligible for full tax credit – **no valuation disputes in revenue neutral situations**

# INDIA CUSTOMS – KEY PROVISIONS



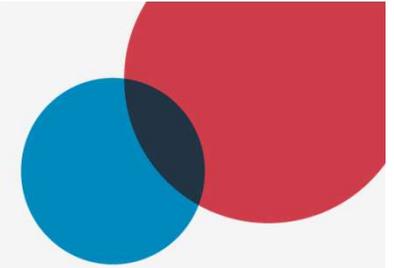
- Import of goods mainly liable to BCD + IGST
- Generally valuation based on transaction value subject to prescribed adjustments
- Valuation in case of imports from related parties need to be justified – valuation concepts
  - Transaction value acceptable if proved that relationship did not influence price
  - Alternative valuation concepts if transaction value not accepted as per above
    - Identical / similar goods
    - Deductive value
    - Computed value
    - Residuary
- Adjustments to transaction value (applicable in all cases – related or unrelated parties)
  - Freight + insurance
  - Commissions except buying commission
  - Goods / services supplied free / at reduced price by buyer in India in respect of imported goods
  - **Royalties, etc. paid by recipient in India as condition of sale**
  - Sale proceeds in India accrued to overseas seller
  - **All other payments made as condition of sale**

# LICENSE TO USE KNOWHOW – INDIA TAX IMPLICATIONS



Scenario	GST	Customs	Income tax
<b>Indian Company grants a license to use know how and undertakes sale of goods</b>			
Only license to use knowhow	Treated as export of services, no GST	NA	<ul style="list-style-type: none"> <li>• Option to offer royalty income as business profits on net basis or offer royalty income to tax @10% on gross basis (subject to conditions)</li> <li>• Transaction with related parties subject to transfer pricing</li> <li>• Eligible to avail credit of foreign taxes withheld/ paid in other country</li> </ul>
License to use knowhow + sale of goods	<p>License to use knowhow qualifies as export of service, no GST</p> <p>No GST as exports are zero-rated</p>	Sale of goods qualifies as export of goods, no duties	<ul style="list-style-type: none"> <li>• Consideration towards knowhow will be same as above</li> <li>• Sale of goods chargeable to tax in India as business profits</li> <li>• Transaction with related parties subject to transfer pricing</li> <li>• Eligible to avail credit of foreign taxes withheld/ paid in other country</li> </ul>

# LICENSE TO USE KNOWHOW – INDIA TAX IMPLICATIONS

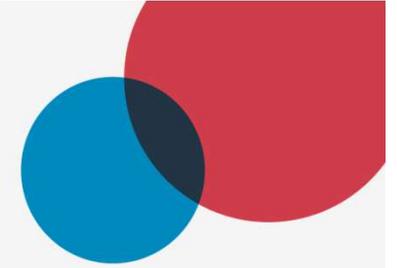


Scenario	GST	Customs	Income tax
<b>Indian Company is the recipient of license to use knowhow and purchaser of goods</b>			
Only license to use knowhow	Treated as import of services, GST payable by importer under reverse charge mechanism, need to justify value	NA	<ul style="list-style-type: none"> <li>• May be characterized as 'Royalty', subject to withholding @10% (subject to DTAA with Home country)</li> <li>• Transaction with related parties subject to transfer pricing</li> </ul>
License to use knowhow + sale of goods (with or without software owned by recipient and pre-installed on imported goods)	License to use knowhow treated as import of services, GST payable by importer, need to justify value	<p>Import of goods liable to Customs duty (BCD + IGST), inclusion of consideration towards license to use knowhow if treated as condition of sale</p> <p>Value of pre-installed software includible in value for payment of Customs duty<sup>1</sup></p>	<ul style="list-style-type: none"> <li>• Consideration towards knowhow will be same as above</li> <li>• Sale of goods - May not be subject to tax in India provided sale concluded outside India</li> <li>• Transaction with related parties subject to transfer pricing</li> </ul>

<sup>1</sup> Rule 10(1), *IndusInd Media & Communications Ltd. vs. Commissioner of Customs* [2019 (368) ELT 235 (SC)]

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – SINGAPORE

Perspective: Import of goods and services (licence) into SG



## 1. Import of goods into Singapore

A.) *GST is payable on most goods imported into Singapore*

B.) *Import GST is administered like a customs duty*

- It is collected by Singapore Customs
- It is paid by the importer, regardless of whether or not the importer is a taxable person for GST

C.) *No customs duty as such*

D.) *A GST-registered company will have an input tax claim for the import GST paid to Singapore Customs*

- Subject to the conditions for claiming input tax
- Such as import permits which show the company as the importer of the goods

## 2. Import of services into Singapore

A.) *GST is payable on B2B services received from overseas*

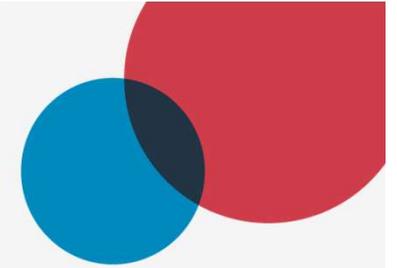
- 'B2B' means: the Singapore company is GST-registered
- 'Reverse charge' collection mechanism
- *But no reverse charge if the GST-registered Singapore company's own supplies are taxable or deemed taxable.*
- *Reverse charge is necessary only if the company makes both taxable and exempt supplies (because input tax attributable to exempt supplies cannot be claimed)*

B.) *10% withholding tax from royalty payments — subject to treaty:*

- With Austria: 5%
- With Germany: 8%
- With the Netherlands: exempt
- With India: 10% (no advantage)

# LICENSE TO USE KNOWHOW – GST TREATMENT – SINGAPORE

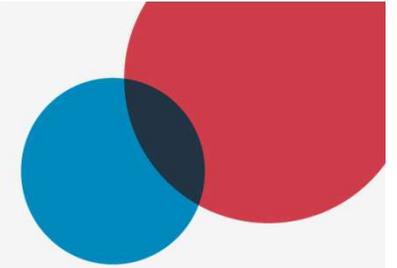
Perspective: Export of goods and services (licence) from SG



1. Export of goods
2. Export of services
  - Both are zero-rated supplies
  - Fundamental difference between exempt and zero-rated

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – AUSTRIA

Perspective: EU – Inbound supply of goods and license



## 1. Supply of goods by ABC Inc.

### A.) *ABC Inc. responsible for customs declaration / importation*

- Customs clearance/importation assumed in Austria
- ABC Inc. must register for VAT in Austria
- ABC Inc. is liable to pay custom duties and import VAT. License fees may be part of the customs value if not included in price (import by indirect representation)
- ABC Inc. has right to import VAT deduction (by submitting VAT returns)
- Supply of goods to ABC Co. subject to Austrian VAT
- ABC Inc. must issue invoice with Austrian VAT (20/13/10%)
- ABC Co. is obliged to withhold VAT and pay to TA (§ 27 Abs 4 USTG)!!!
- ABC Co. may deduct input VAT (withheld) from invoice of ABC Inc.

### B.) *ABC Co. responsible for customs declaration / importation*

- No registration duty of ABC Inc. in Austria
- Supply by ABC Inc. to ABC Co. is out of scope of Austrian VAT (place of supply outside Austria)

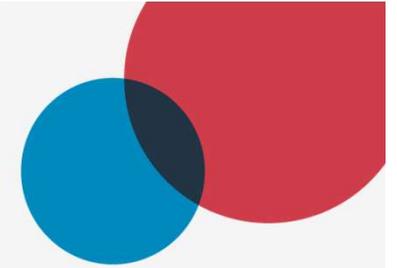
- ABC Co. is liable to pay custom duties and import VAT. License fees may be part of the customs value if not included in price
- ABC Co. may deduct import VAT in its regular VAT return

## 2. Supply of services by ABC Inc. (licenses)

- Place of service is Austria (where recipient is established § 3a Abs 6 USTG)
- Reverse Charge, ABC Co. liable for VAT (§ 19 USTG)
- ABC Co. may deduct input VAT
- NO Vat consequences for ABC Inc. in Austria

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – AUSTRIA

Perspective: EU – Inbound supply of goods and license



## 3. Customs value if license is provided by EU entity

- ECJ, decision of 10.9.2020, C-509/19, *BMW Bayerische Motorenwerke AG*
- Development costs for software have to be added to the customs value of the goods if not already included in purchase price of the goods (Art. 71 (1) lit b of the Union Customs Code)

## 4. Withholding tax (WHT)

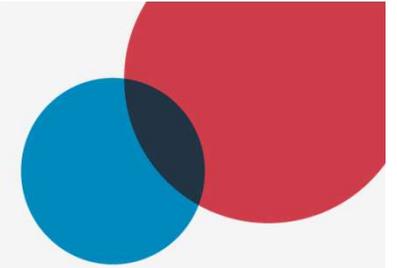
- License fee for use of know-how subject to 20% WHT under Austrian domestic tax law (§§ 99 *et seq* EStG)
- Full relief from WHT under DTC-provisions following Art 12 OECD-MTC (attention: exceptions in various DTCs, e.g. India 10%, Singapore 5%)
- Treaty relief directly at source subject to certificate of residence of licensor (ABC Inc.) on Austrian form ZS-QU2 + “substance” of licensor (business activities, own business premises, own personnel)

## 5. Please note:

- Different consequences might occur by using (customs or VAT) warehouse/stocks or in case of chain transactions!!

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – AUSTRIA

Perspective: EU – Outbound supply of goods and license



## 1. Supply of goods by ABC Co.

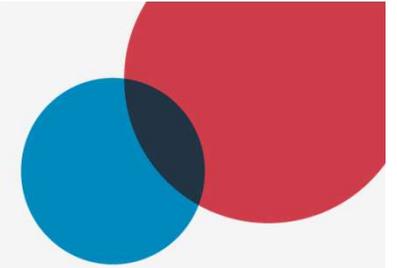
- Place of supply in Austria (where transport begins § 3 Abs 8 USTG)
- Exempt from Austrian VAT as export of goods (§ 7 USTG)
- Proof of exportation by customs necessary

## 2. Supply of services by ABC Co. (licenses)

- Place of service outside Austria (where recipient ABC Inc is established § 3a Abs 6 USTG)
- No use & enjoyment rule
- No Austrian VAT due

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – GERMANY

Perspective: EU – Inbound supply of goods and license



## 1. Supply of goods by ABC Inc.

### A.) ABC Inc. responsible for customs declaration / importation

- ABC Inc. has to register for VAT in Germany
- Custom duties and import VAT have to be paid by ABC Inc. License fees can be part of the customs value if not included in price (import by indirect representation)
- Deduction of import VAT possible in German VAT returns
- Supply of goods to ABC Co. subject to German VAT
- ABC Co. can deduct input VAT from invoice of ABC Inc.

### B.) ABC Co. responsible for customs declaration / importation

- No registration duty of ABC Inc. in Germany
- Supply by ABC Inc. to ABC Co. is not in scope of German VAT (place of supply not in Germany)
- Custom duties and import VAT have to be paid by ABC Co. License fees can be part of the customs value if not included in price
- ABC Co. can deduct import VAT in its German VAT returns

## 2. Supply of services by ABC Inc. (licenses)

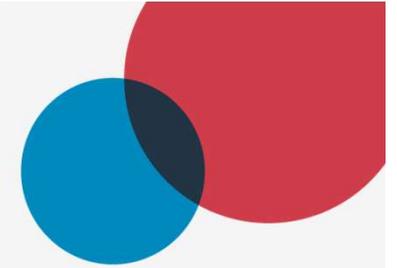
- Place of service in Germany
- Reverse Charge, ABC Co. liable for VAT
- ABC Co. can deduct input VAT

## 3. Addition: Customs value if license is provided by EU entity

- ECJ, decision of 10.9.2020, C-509/19, *BMW Bayerische Motorenwerke AG*
- BMW has provided software without consideration to the supplier of the goods outside the EU which the supplier has integrated in the goods before shipment
- Development costs for software have to be added to the customs value of the goods if not already included in purchase price of the goods (Art. 71 (1) lit b of the Union Customs Code)

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – GERMANY

Perspective: EU – Outbound supply of goods and license



## 1. Supply of goods by ABC Co.

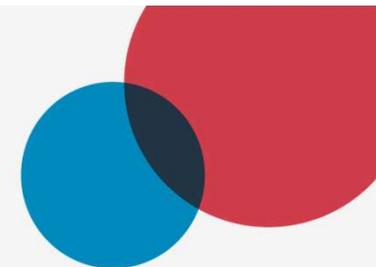
- Place of supply in Germany
- Exempt from German VAT as export of goods
- Proofs are necessary (esp. “Ausgangsvermerk” from customs)

## 2. Supply of services by ABC Co. (licenses)

- Place of service not in Germany, no German VAT

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – THE NETHERLANDS

Perspective: EU – Inbound supply of goods and license



## 1. Supply of goods by ABC Inc.

### A.) ABC Inc. responsible for customs declaration / importation

- Custom duties and import VAT payable by ABC Inc.
- License fees can be part of the customs value if not included in price (import by indirect rep)
- Refund of import VAT via refund request or via VAT registration in the Netherlands
- Supply of goods to ABC Co => subject to reverse charge, ABC Co liable to self-account for Dutch VAT
- ABC Co recovers input Tax through same return, no VAT cash flow.
- **NL Fiscal rep: ABC Inc can appoint fiscal rep. preventing import VAT payments and, depending on type fiscal rep, preventing the VAT registration**

### B.) ABC Co. responsible for customs declaration / importation

- Supply ABC Inc to ABC Co outside scope NL VAT
- ABC Co to handle all VAT/Customs requirements
- Custom duties / import VAT levied from ABC Co.
- License fees can be part of the customs value
- ABC Co can use license to prevent cash flow on import. Otherwise, reclaim in NL VAT return

## 2. Supply of services by ABC Inc. (licenses)

- Place of service in the Netherlands
- Reverse Charge, ABC Co. liable for VAT
- ABC Co. can deduct input VAT => no VAT cash flow

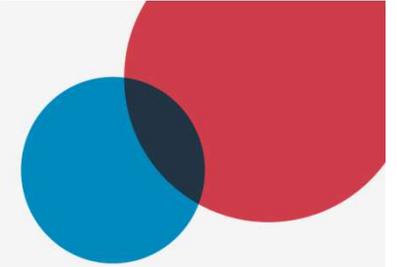
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- BMW has provided software without consideration to the supplier of the goods outside the EU which the supplier has integrated in the goods before shipment
- Development costs for software have to be added to the customs value of the goods if not already included in purchase price of the goods (Art. 71 (1) lit b of the Union Customs Code)

*Always consider risk additional customs duty becoming due upon import into EU since these are not refundable. Also as penalties might be severe*

# LICENSE TO USE KNOWHOW – TAX IMPLICATIONS – THE NETHERLANDS

Perspective: EU – Outbound supply of goods and license



## 1. Supply of goods to Asia by ABC Co.

- Place of supply in the Netherlands
- Export from NL to non-EU location exempt from Dutch VAT
- Proof required to substantiate use of 0%
  - Customs documentation, etc.
  - Be ware of potential restrictions

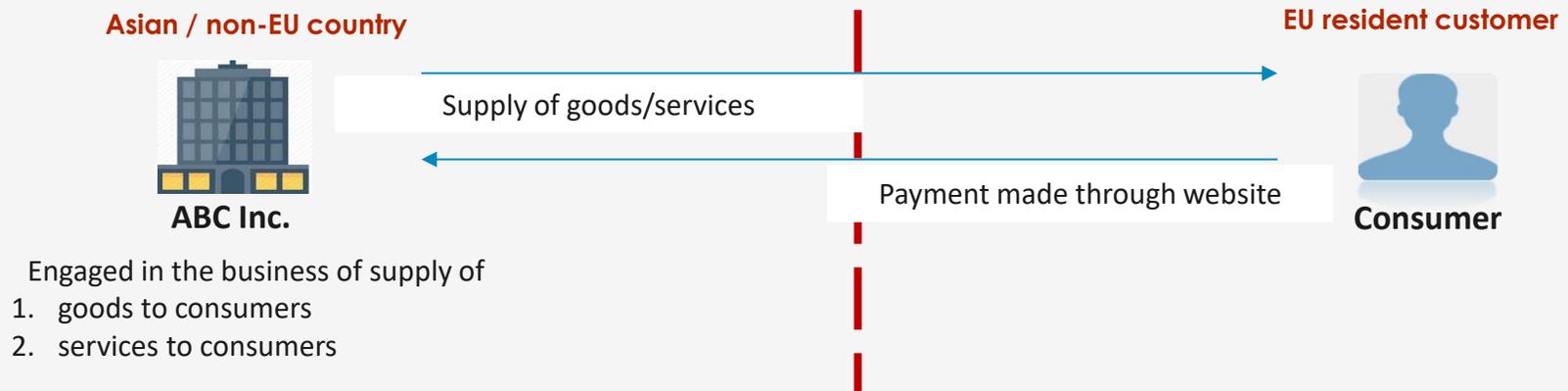
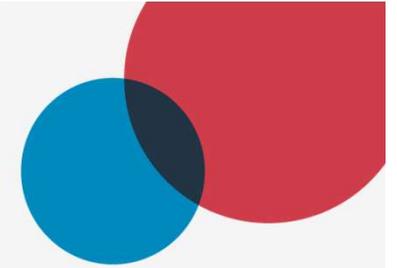
## 2. Supply of services by ABC Co. (licenses)

- Dutch Business provides services to Asian customer =>
  - Place of supply outside NL
  - No Dutch VAT
  - Full input tax recovery

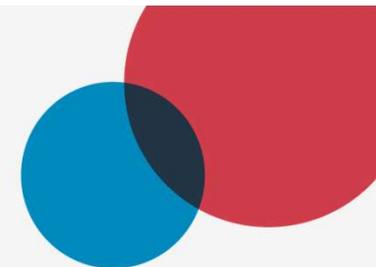


**CASE STUDY 2 –  
E-COMMERCE B2C  
SUPPLY OF  
GOODS/SERVICES**

# E-COMMERCE B2C SUPPLY OF GOODS/SERVICES

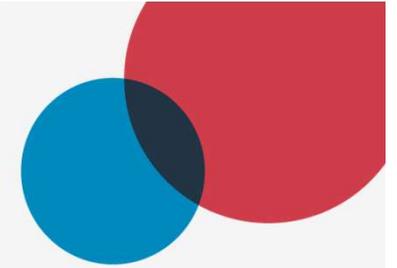


# E-COMMERCE B2C SUPPLY OF GOODS – INDIA TAX IMPLICATIONS



GST	Customs	Others
<b>Indian Company sells goods</b>		
Supply of goods treated as export, no GST	Transaction treated as export – no duties	<ul style="list-style-type: none"> <li>• Chargeable to tax in India as business profits</li> <li>• Eligible to avail credit of foreign taxes withheld/ paid in other country</li> </ul>
<b>Indian consumer purchases goods from overseas e-commerce supplier</b>		
Import of goods from outside India – governed under the Customs law.	Import of goods for personal consumption liable to Customs duty (BCD + IGST)	<ul style="list-style-type: none"> <li>• Online sale of goods/provision of services through digital/electronic facility is subject to Equalisation levy @2%</li> <li>• No foreign tax credit available to non-resident e-commerce operator on Equalisation Levy paid in India</li> </ul>

# E-COMMERCE B2C SUPPLY OF SERVICES – INDIA TAX IMPLICATIONS

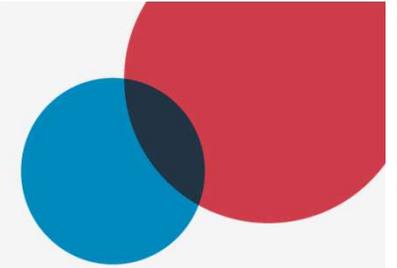


- **GST regime for OIDAR services**
  - Online supply of digital contents, etc. treated as supply of Online Information Database Access and Retrieval (OIDAR) services
  - B2C supply treated as supply to non-taxable online recipient
  - Place of supply in India if consumer recipient's address / IP / bank account, etc. in India
  - Supplier of OIDAR services located outside India supplying services to B2C recipient in India liable to obtain registration in India (directly or through a representative) and pay GST in India
- **India tax implications**

GST	Custom	Income tax
<b>Indian Company supplies services</b>		
Supply of services treated as export, not liable to GST	NA	Same as on supply of goods
<b>Indian consumer receives services from overseas e-commerce supplier</b>		
ABC Inc. liable to obtain GST registration in India or appoint a representative for payment of GST in India, ABC Inc. liable to pay GST in India and undertake GST compliances	NA	Same as on supply of goods

# E-COMMERCE B2C SUPPLY OF GOODS & SERVICES – GST TREATMENT – SINGAPORE

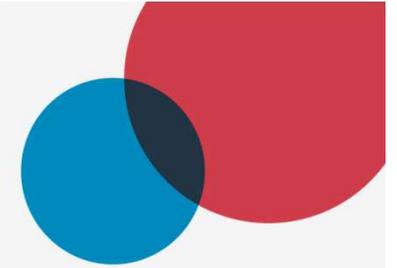
Perspective: Inbound/outbound e-commerce sales to consumers



1. **Export of goods**
2. **Export of services**
  - Both are zero-rated supplies, denoting input tax recovery
  - 'International services' include: services with and to persons overseas
3. **Import of goods**
  - No customs duty
  - But import GST for parity with locally-supplied goods
  - Payment handled by courier company
  - Import relief on parcels: no GST for goods up to \$400 (inclusive of shipping)
4. **Overseas vendor registration for digital consumer services**
  - Global turnover more than SGD 1 million
  - Digital services more than SGD 100,000 to consumers in SG
  - E-commerce platforms ("electronic marketplaces") are regarded as suppliers

# E-COMMERCE B2C SUPPLY OF GOODS – TAX IMPLICATIONS – GERMANY

## Perspectives: Inbound and Outbound



### 1. EU: Outbound supply of goods

- Supply of goods by ABC Inc. is VAT exempt
- VAT exemption has to be proved (esp. “Ausgangsvermerk”)

### 2. EU: Inbound supply of goods

#### A) Supplier makes customs declaration

- ABC Inc. has to register for VAT in Germany
- Custom duties and import VAT have to be paid by ABC Inc. (indirect representation for customs)
- Deduction of import VAT possible in German VAT returns
- Supply of goods to customer subject to German VAT

#### B.) Customer responsible for customs declaration / importation

- No registration duty of ABC Inc. in Germany
- Customer is liable for customs and import VAT

#### C) General information on imports

##### Currently:

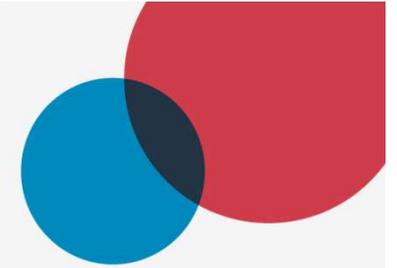
- No customs and no import VAT for imports  $\leq$  EUR 22
- Import VAT and no customs for imports EUR 22 - 150
- Import VAT and customs for imports  $>$  EUR 150

##### Expected July 2021:

- In general: Import VAT on all imports
- Declaration of imports  $\leq$  EUR 150 can be made by parcel service provider on behalf of the customer. Import VAT does not have to be paid immediately. Parcel service provider then collects import VAT from customer and pays import VAT (relevance unclear -> liability of the parcel service provider)
- Sales of goods  $\leq$  EUR 150 in Germany can be declared via a newly implemented IOSS (Import One Stop Shop) in the Member State of Identification (only one registration in the EU)
- Imports of goods are exempt from import VAT if declared in IOSS.
- Special rules for sales over online market places / platforms (fictive chain transaction); market place liable for VAT

# E-COMMERCE B2C SUPPLY OF SERVICES – TAX IMPLICATIONS – GERMANY

Perspectives: Inbound and Outbound



## 1. EU: Outbound supply of services

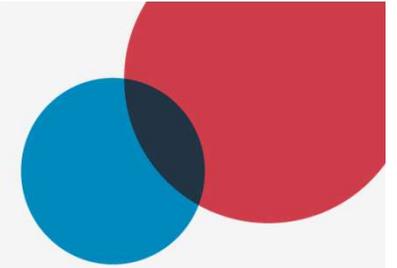
- E-Commerce B2C supply of services = electronically supplies services;
- Place of supply at the place of the recipient, i.e. out of scope of German VAT

## 2. EU: Inbound supply of services

- Place of supply in Germany;
- Either registration in Germany plus VAT filing obligation; or
- Application of the Mini-One-Stop-Shop-Rules (MOSS) in one member state and declaration of turnover for all EU-services by MOSS
  
- Expected July 2021: Declaration of VAT via OSS (One Stop Shop) possible for all services to consumers (not only electronically supplied services (registration only in one country of the EU)

# E-COMMERCE B2C SUPPLY OF GOODS – TAX IMPLICATIONS – THE NETHERLANDS

## Perspectives: Inbound and Outbound



### 1. EU: Inbound supply of goods

#### • Current rules:

#### A.) General information on imports

- No customs and no import VAT for imports =< EUR 22
- Import VAT and no customs for imports EUR 22 - 150
- Import VAT and customs for imports > EUR 150

#### B.) Supplier makes customs declaration

- ABC Inc. registers for VAT or appoints an NL fiscal representative with limited license in the Netherlands
- Custom duties and import VAT have to be paid by ABC Inc. (indirect representation for customs), value dependent
- Deduction of import VAT possible in Dutch VAT returns
- Supply of goods to customers subject to Dutch VAT, unless.

#### C.) Customer responsible for customs declaration / importation

- No registration duty of ABC Inc. in the Netherlands
- Customer is liable for customs and import VAT
- This structure is heavily scrutinized by Customs as packages often remain untaxed in their view

#### • New rules expected July 2021 (request for delay Jan 2022):

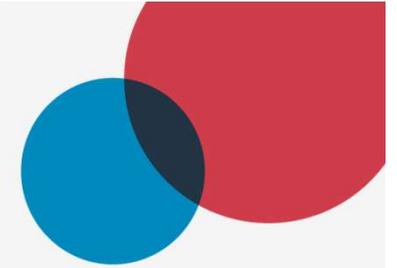
- In general: Import VAT on all imports
- Declaration of imports =< EUR 150 can be made by parcel service provider on behalf of customer. Import VAT does not have to be paid immediately. Parcel service provider then collects import VAT from customer and pays import VAT (relevance unclear -> liability of the parcel service provider, yet can collect uplift from cons.)
- Sales of goods =< EUR 150 in the Netherlands can be declared via a newly implemented IOSS (Import One Stop Shop) in the Member State of Identification (only one registration in the EU). A requirement is that the transport is at the supplier's expense.
- IOSS imports of goods are exempt from import VAT
- Special rules for sales over online market places / platforms (fictive chain transaction); market place liable for VAT

### 2. EU: Outbound supply of goods

- Supply of goods by ABC Co. is VAT exempt.
- Full right to recover input Tax incurred
- VAT exemption has to be proved by administration

# E-COMMERCE B2C SUPPLY OF SERVICES – TAX IMPLICATIONS – THE NETHERLANDS

Perspectives: Inbound and Outbound



## 1. EU: Inbound supply of services

- Digital services: place of supply is Netherlands;
- Either registration in the Netherlands plus VAT filing obligation; or
- Application of the Mini-One-Stop-Shop-Rules (MOSS) in one EU member state and declaration of turnover for all EU-services under MOSS

Expected July 2021 / Jan '22:

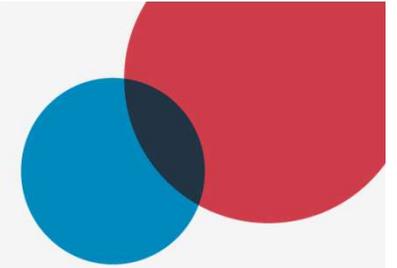
- Declaration of VAT via OSS (One Stop Shop) possible for all B2C services for which NL is place of supply (e.g. online ticket sales, real estate broker NL real estate)
- Registration only in one country of the EU
- Thus not only electronically supplied services
- Tax authority systems might not be ready in time!

## 2. EU: Outbound supply of services to Asian residents

- E-Commerce B2C supply of services = electronically supplies services;
- Place of supply at the place of the recipient, i.e. out of scope of Dutch VAT
- Other services may be in scope of VAT, such as online ticket sales for events

# E-COMMERCE B2C SUPPLY OF GOODS – TAX IMPLICATIONS – AUSTRIA

## Perspectives: Inbound and Outbound



### 1. EU: Inbound supply of goods

#### A.) Supplier responsible for customs declaration/importation

- ABC Inc. must register for VAT in Austria
- ABC Inc. is liable to pay custom duties and import VAT (indirect representation for customs)
- ABC Inc. has right to import VAT deduction (by submitting VAT returns)
- Supply of goods to customer subject to Austrian VAT (no VAT withholding regime applicable!)

#### B.) Customer responsible for customs declaration / importation

- No registration duty of ABC Inc. in Austria
- Supply by ABC Inc. is out of scope of Austrian VAT (place of supply outside Austria)
- Customer is liable to pay custom duties and import VAT

#### C.) General information on imports

- Currently:
  - No customs and no import VAT for imports  $\leq$  EUR 22
  - Import VAT and no customs for imports EUR 22 - 150
  - Import VAT and customs for imports  $>$  EUR 150

#### • Expected 1<sup>st</sup> of July 2021:

- Import VAT on all imports
- Declaration of imports to Austria  $\leq$  EUR 150
  - can be made by parcel service provider on behalf of the customer (Import VAT has to be paid once parcel service provider collects import VAT from customer) OR
  - can be declared by supplier (ABC Inc) via a newly implemented IOSS (Import One Stop Shop) in the Member State of Identification (only one registration in the EU)
- Imports of goods are exempt from import VAT if declared in IOSS.
- Special rules for sales over online marketplaces / platforms (fictive chain transaction); marketplace liable for VAT

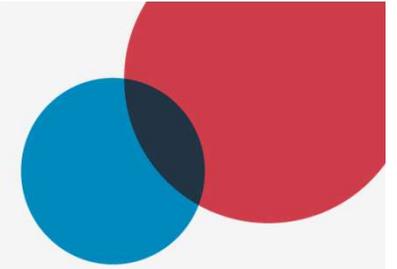
### 2. EU: Outbound supply of goods by ABC Inc.

- Place of supply in Austria (where transport begins § 3 Abs 8 USTG)
- Exempt from Austrian VAT as export of goods (§ 7 USTG)
- Proof of exportation (by customs or courier) necessary



**CASE STUDY 3 – SUPPLY  
OF SERVICES TO GROUP  
COMPANY**

# SUPPLY OF SERVICES TO GROUP COMPANY



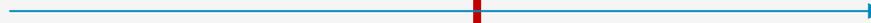
Asian / non-EU Country



**ABC Inc.**

ABC Group - HQ

1. Providing marketing, administration and other support services



2. Selling goods



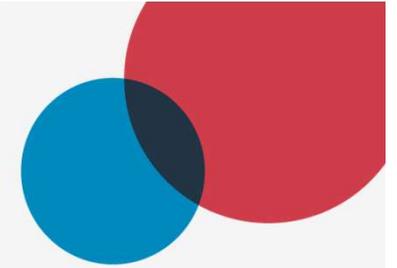
EU Country



**ABC Co.**

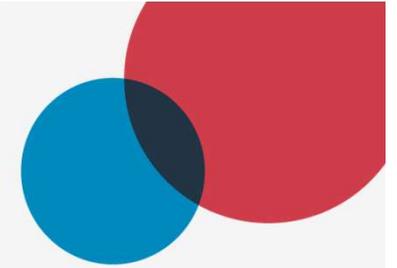
Group company of ABC

# SUPPLY OF SERVICES TO GROUP COMPANY – INDIA TAX IMPLICATIONS



GST	Customs	Income Tax
<b>Indian Company renders services to foreign group company</b>		
Treated as export of services, no GST	Valuation of any import of goods from group co.. may be disputed on allegation of lower valuation of export of services	<ul style="list-style-type: none"> <li>• Chargeable to tax in India as business profits</li> <li>• Transaction with related parties subject to transfer pricing</li> <li>• Eligible to avail credit of foreign taxes withheld/ paid in other country</li> </ul>
<b>Indian Company receives services from foreign group company</b>		
Treated as import of services, GST payable by importer, need to justify value – open market value, like and kind quality, cost plus, residuary	Valuation of any import of goods from group co.. may be disputed on allegation of over valuation of import of services and under valuation of import of goods (BCD not eligible for tax credit)	<ul style="list-style-type: none"> <li>• May be characterized as FTS, subject to withholding tax @10% (subject to DTAA with Home country)</li> <li>• Transaction with related parties subject to transfer pricing</li> </ul>

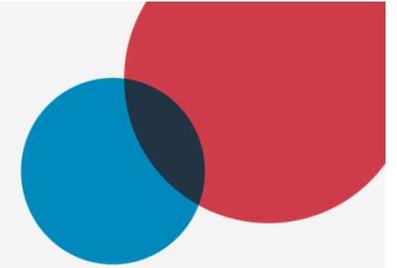
# SALE OF GOODS TO GROUP COMPANY – INDIA TAX IMPLICATIONS



GST	Customs	Income tax
<b>Indian Company sells goods to foreign group company</b>		
No GST as exports are zero rated	Valuation of any import of goods from group co.. may be disputed on allegation of lower valuation of export of goods	<ul style="list-style-type: none"> <li>• Sale of goods chargeable to tax in India as business profits</li> <li>• Transaction with related parties subject to transfer pricing</li> <li>• Eligible to avail credit of foreign taxes withheld/ paid in other country</li> </ul>
<b>Indian Company purchases goods from foreign group company</b>		
NA	Import of goods liable to Customs duty (BCD + IGST), valuation needs to be justified	<ul style="list-style-type: none"> <li>• Sale of goods - May not be subject to tax in India provided sale concluded outside India</li> <li>• Transaction with related parties subject to transfer pricing</li> </ul>

# GROUP REGISTRATION – GST – SINGAPORE

Perspective: SG – Inbound supply of goods and services



## 1. Group registration

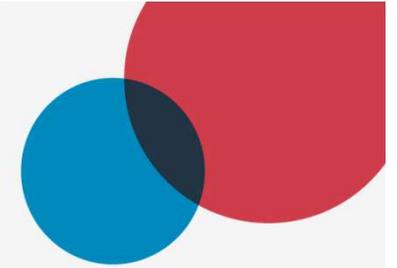
- Vis-à-vis external parties, supplies of goods or services made by or to any member are treated as being made by or to the representative member
- Supplies between members are not subject to GST — except when a reverse charge applies on a service supplied by an overseas member to a local member

## 2. Import GST and reverse charge

- Still apply after group registration
- Re services: reverse charge on services supplied by an overseas member (see above)
- Re goods: GST is charged on any supply of goods and services *made in Singapore*
- The supply of goods involving their removal *to* Singapore shall be treated as supplied *outside* Singapore
- GST is charged (1) on the supply of goods and services, and (2) on the importation of goods

# SUPPLY OF SERVICES TO GROUP COMPANY – TAX IMPLICATIONS – THE NETHERLANDS

Perspective: EU – Inbound / Outbound supply of goods and services



## 1. Inbound

### A) Supply of goods

- Place of supply and registration duty depends on if the supplier or the customer declares import (see case study 1)

### B) Supply of services

- Place of service in the Netherlands (general rule; exceptions!)
- Reverse-Charge-Mechanism: customer liable to self-account for VAT due

## 2. Outbound

### A) Supply of goods

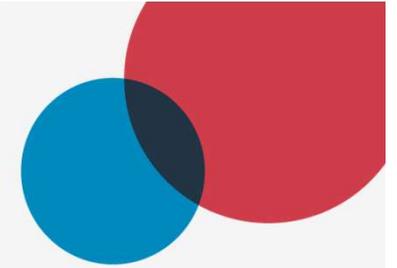
- VAT exempt export of goods
- Proof necessary to substantiate exemption

### B) Supply of services

- Place of supply where customer belongs (general rule; exceptions!)
- No Dutch VAT

# SUPPLY OF SERVICES TO GROUP COMPANY – TAX IMPLICATIONS – AUSTRIA

Perspective: EU – Inbound / Outbound supply of goods and services



## 1. Inbound

### A) Supply of goods

- Place of supply and registration duty depends whether supplier or customer is responsible for customs declaration/import (see case study 1)

### B) Supply of services

- Place of service in Austria (general B2B rule where recipient is established § 3a Abs 6 USTG)
- Derogating B2B place of supply rules to consider
- Reverse-Charge-Mechanism for B2B services: Austrian company is liable for VAT
- no VAT obligations/consequences for ABC Inc. in Austria

### Withholding tax (WHT)

- Marketing, administration and other support services not subject to Austrian WHT
- Only relevant for Commercial or technical consulting services performed in Austria (99/1/5 EStG) or members of supervisory boards (99/1/4 EStG)

## 2. Outbound

### A) Supply of goods

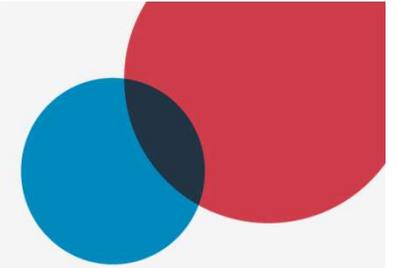
- VAT exempt export of goods
- Proofs of exportation necessary

### B) Supply of services

- Place of service outside Austria (where recipient ABC Inc is established § 3a Abs 6 USTG)
- No use & enjoyment rule
- No Austrian VAT due

# SUPPLY OF SERVICES TO GROUP COMPANY – TAX IMPLICATIONS – GERMANY

Perspective: EU – Inbound / Outbound supply of goods and services



## 1. Inbound

### A) Supply of goods

- Place of supply and registration duty depends on if the supplier or the customer declares import (see case study 1)

### B) Supply of services

- Place of service in Germany (general rule; exceptions!)
- Reverse-Charge-Mechanism: German company liable for VAT

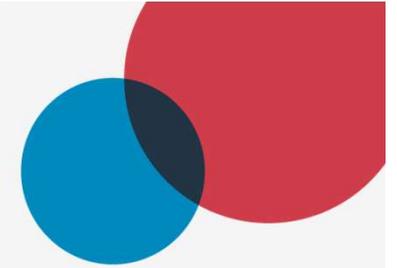
## 2. Outbound

### A) Supply of goods

- VAT exempt export of goods
- Proofs necessary

### B) Supply of services

- Place of service not in Germany (general rule; exceptions!)
- No German VAT



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