VAT Aspects of Installation Projects in Bulgaria

Installation projects can consist of various transactions with different VAT implications. The consequences are more complex in an international context, e.g. when foreign suppliers and subcontractors are involved. In this article, the author analyses some of the main VAT aspects of installation projects in Bulgaria in a B2B context that need to be considered by foreign participants in such projects.

1. Introduction

Bulgaria joined the European Union on 1 January 2007 and Directive 2006/112/EC (the “VAT Directive”) was implemented in the Bulgarian VAT legislation as part of the “acquis Communautaire”. The VAT Directive provides general and specific rules that are applicable to installation projects. Nevertheless, the VAT implications of such projects are different in the various EU Member States, mainly due to local specifics of implementation of the VAT Directive and interpretations of the local tax authorities and courts.

In this article, the author addresses some of the main VAT aspects of installation projects in Bulgaria, with a special attention to the country-specific rules related to such projects with respect to composite supplies, fixed establishment, VAT registration, advance payments received before the VAT registration, taxable event and input VAT deduction.

2. VAT Aspects of Installation Projects

2.1. Composite or separate supplies

One of the frequent questions that arise when the VAT treatment of an installation project is considered, is whether there is one single supply of goods including assembly and installation or whether there are separate supplies of goods and services. The ECJ already provided guidance in respect of composite supplies. As clarified by the ECJ, in order to determine whether a single complex supply is to be classified as a supply of goods or a supply of services, it is necessary that one predominant element be identified. The other elements should be ancillary to the main element, meaning that they should not constitute an aim in themselves for customers, but rather a means of better enjoying the principal service supplied. As regards a single composite supply in the context of an installation project, the ECJ held in its judgment on the landmark Aktiebolaget case that the relationship between the price of the goods and that of the services is an objective piece of information constituting an indication which may be taken into account for the purposes of determining which is the main element of the supply. The above criteria are also expressly referred to by the Bulgarian National Revenue Agency in its non-binding written clarifications concerning installation projects. However, in addition to the provided requirements, the Bulgarian VAT Act includes an additional criterion for a single composite supply. According to article 128 of the Bulgarian VAT Act, when the principal supply is accompanied by another supply and a total payment is determined, it is considered that one single supply is performed. Although the requirement for a total payment is not provided in the ECJ case law, the Bulgarian tax authorities maintain in their clarifications that this criterion needs to be met in order for a supply to be considered composite. From a practical perspective, this means that there is room for interpretation regarding the VAT treatment of many agreements related to installation projects. For example, if an agreement provides that goods will be supplied together with their installation services and there is one price agreed for the whole supply, it is likely that such transaction will be considered a single composite supply. However, if the supplies of goods and services are provided in separate agreements with separate prices or there is one agreement that mentions different prices (e.g. for engineering services, for delivery of goods and for construction services), it is possible that from a Bulgarian VAT perspective these transactions would not be considered bundled and each of them could have separate VAT treatment.

2.2. Fixed establishment

The potential creation of a fixed establishment for VAT purposes is another important VAT aspect that needs to be taken into account by each foreign supplier taking part in an installation project in Bulgaria. According to

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4. For example, see clarifications of the National Revenue Agency 24-34/12 of 13 Feb. 2014 and 96-00-220 of 17 Aug. 2017.

5. For example, see clarification of the National Revenue Agency 20-00-62/63/64 of 23 Apr. 2013.
article 11 of Implementing Regulation 282/2011, a fixed establishment is any establishment, other than the place of establishment of a business, characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to provide the services which it supplies. Although this definition provides some criteria that need to be met in order a fixed establishment to be created, there are still questions that remain open.

One of these questions concerns the concept of “permanence”. How long should the human and technical resources need to be present in a country in order to consider that there is a sufficient degree of permanence? Unfortunately, “permanence” for the purposes of article 11 of Implementing Regulation 282/2011 is defined neither in the EU nor in the Bulgarian VAT legislation. In such circumstances, various interpretations are possible by the tax administration. For example, in a case concerning a supply of equipment with installation to a client in Bulgaria, the tax authorities took the view that a company from another EU Member State created a fixed establishment as a result of several visits of its employees in Bulgaria mainly for the purposes of supervisions of the installation works for a total period of 35 days. Also, in the same case the tax administration considered that hiring of local subcontractors by the foreign supplier should also be taken into account when considering the creation of a fixed establishment. However, the Supreme Administrative Court did not support the position of the National Revenue Agency as it took the view that in order for a fixed establishment to be created, the mere performance of supervision functions in relation to a particular supply was not sufficient. The Court further considered that hiring of local subcontractors should not be considered as an indication for the intention of the company to perform activity with a sufficient degree of permanence.

In another case concerning an installation project, the tax authorities considered that a fixed establishment was created based on the assumption that in order to perform the agreed supply, the foreign company needed the involvement of adequate human and technical resources in Bulgaria. However, the Supreme Administrative Court did not agree with this approach and considered that the tax administration should prove that the company created a fixed establishment instead of making assumptions based on the expectation for the resources that will be required for performance of the activity in the country. The above examples demonstrate that a fixed establishment could be an area of uncertainty for installation projects that need to be considered carefully before the start of the project.

2.3. VAT registration in Bulgaria

Another important question that has to be taken into account by a foreign participant in an installation project in Bulgaria is the potential obligation for VAT registration. The Bulgarian VAT Act provides that in the case of a B2B supply of goods with installation, the reverse charge mechanism is applicable if the Bulgarian recipient is registered for VAT purposes and the supplier is established in another EU Member State. However, if these conditions are not met, the reverse charge mechanism will not be possible, and the supplier would generally be obliged to register for VAT purposes in Bulgaria and to charge VAT to its client. Also, based on the indicated provisions of the VAT Act, the reverse charge mechanism would not be applicable when the supplier is a company established outside the European Union. Such suppliers would be required to apply for mandatory VAT registration once they reach a registration threshold of taxable turnover of BGN 50,000 (approximately EUR 25,600) during any 12-month period. Therefore, in this respect, the Bulgarian legislation provides for a different VAT treatment for EU and non-EU companies supplying goods with installation in Bulgaria. This having been said, both EU and non-EU companies would generally be required to register for VAT purposes if they create a fixed establishment in Bulgaria and perform taxable supplies through it that exceed the VAT registration threshold.

In should be taken into account that an obligation for VAT registration could arise also on other grounds. For example, if a company performs intra-Community acquisitions in Bulgaria and is not VAT registered on other grounds, it should apply for VAT registration before the amount of the acquisitions reach BGN 20,000 (approximately EUR 10,200) during a calendar year. However, companies that are VAT registered for this reason are not allowed to deduct input VAT. In addition, the Bulgarian VAT Act provides an opportunity for a voluntary VAT registration even before the registration threshold is reached. Therefore, the foreign participants in installation projects in Bulgaria need to consider in advance the potential obligations to be registered for VAT purposes that can occur for them as a result of their activity in the country.

2.4. Advance payments received before the VAT registration

In practice, the agreements for installation projects often envisage advance payments in relation to the agreed supply. A special attention is required for what concerns advance payments received before the VAT registration of a foreign supplier of an installation project in Bulgaria. The Bulgarian VAT Act provides that in the cases when an advance payment is received before the VAT registration of a taxable person and the supply is performed after the

10. Art. 96(1) Bulgarian VAT Act.
11. Art. 99(1) and (2) Bulgarian VAT Act.
VAT registration of the person, it is considered that the received advance payment includes VAT which becomes due on the date when the VAT for the supply is chargeable.\textsuperscript{14} For example, such situation can occur when a supplier from another EU Member State issues invoices to his Bulgarian client for advance payments related to supplies of goods with installation before creating a fixed establishment and before its VAT registration in Bulgaria. In such case, the Bulgarian client would be required to self-assess VAT under the reverse charge mechanism for the advance payments by issuing and reporting special documents called protocols. However, if the foreign company performs the supplies after its VAT registration in Bulgaria, it will need to charge local VAT for the received advance payments and the recipient will need to cancel the protocols for self-assessment of VAT.\textsuperscript{15}

### 2.5. Taxable event

Installation projects typically include various types of supplies for which different rules related to the taxable event could be applicable. For example, it is common for such projects to be performed in different stages, which are delivered by the suppliers and accepted by the clients. Before 2017, the Bulgarian VAT Act provided that in the case of supplies in different stages, the taxable event was the date when the payment was due for each stage.\textsuperscript{16} Also, the Regulations for application of the Bulgarian VAT Act (RAVATA) mentioned that in the case of supplies of services in stages, the taxable event was the date of acceptance of each stage which should be evidenced by a delivery-acceptance protocol signed by the supplier and the recipient.\textsuperscript{17} However, the RAVATA was silent about the cases when goods were supplied in several stages. Therefore, there were different rules for taxable supplies of goods and services in the discussed circumstances. In addition, the definitions in the VAT Act and the RAVATA provided for two different rules for the date of taxable event in the cases of supplies of services on stages, i.e. the date when the payment is due versus the date when a stage is accepted. As of 1 January 2018, the VAT Act has been amended and now it provides that in the case of supplies of goods or services in different stages, the completion of each stage is considered a separate supply for which the taxable event occurs on the date when the stage is completed.\textsuperscript{18} Similar amendments were introduced also in the RAVATA in 2017 and now the same VAT treatment is applied for supplies of goods and services in stages.\textsuperscript{19}

### 2.6. Input VAT deduction

Another important aspect for the participants in installation projects is the deduction of the incurred input VAT. In terms of planning, this question needs to be considered in advance particularly by foreign participants in such projects taking place in Bulgaria. Usually, foreign suppliers still make substantial local purchases related to the installation projects that they perform. As regards the goods, if they are delivered in Bulgaria without transportation, a local supply is taking place, which is generally subject to the standard Bulgarian VAT rate of 20\%.\textsuperscript{20} In respect of the services, the place of supply would be in Bulgaria for what concerns services related to an immovable property (which could be the installation project), office rental, hotel accommodation,\textsuperscript{21} short-term hiring of means of transport,\textsuperscript{22} etc. Generally, there are two approaches for refunding of input VAT incurred in Bulgaria in such cases:

1. via a local VAT return when the person is registered for VAT purposes in Bulgaria;
2. through the procedure for cross-border VAT refunds which for EU companies is based on Ordinance N-9/16.12.2009 of the Ministry of Finance (implementing Council Directive 2008/9/EC\textsuperscript{23}) and for non-EU companies is provided in Ordinance N-10/24.08.2006 of the Ministry of Finance (implementing Council Directive 86/560/EC\textsuperscript{24}).

The decision to apply one or the other approach is not always straightforward and different factors need to be considered. Therefore, it is strongly recommended to perform an analysis on a case by case basis. Usually, for installation projects that will not create a fixed establishment for the foreign supplier in Bulgaria, the procedure for cross-border VAT refunds would be applicable. However, it needs to be taken into account that in terms of refunding VAT to non-EU companies, Bulgaria applies the reciprocity principle and currently VAT is refunded only to companies from a limited number of countries.\textsuperscript{25}

Regarding projects creating a local fixed establishment of the supplier, the incurred VAT can be deducted as input VAT only through its periodical VAT return once a Bulgarian VAT registration is performed. A specific Bulgarian rule that needs to be considered is that the deduction of input VAT incurred before the VAT registration is possible only in relation to assets that are available at the date of the VAT registration (and very limited services).\textsuperscript{26} Therefore, in order to mitigate the risk of non-recoverable input VAT, the option for voluntary VAT registration can be considered.

\begin{itemize}
\item \textsuperscript{20} Art. 17(1) Bulgarian VAT Act.
\item \textsuperscript{21} Art. 21(4)(1) Bulgarian VAT Act.
\item \textsuperscript{22} Art. 23(1) Bulgarian VAT Act.
\item \textsuperscript{25} According to Order of the Ministry of Finance N-10/24.08.2006 of the Ministry of Finance N-9/16.12.2009 of the Ministry of Finance.
\item \textsuperscript{26} Art. 159 of Council Directive 2006/112/EC of 25 October 2006 on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory.
\end{itemize}
3. Conclusion

The installation projects performed in Bulgaria have various country-specific VAT implications that need to be considered by parties to such projects. This is particularly the case when it comes to projects performed by foreign suppliers. In this article, the author sought to explain some of these specifics related to the rules concerning composite supplies, fixed establishment, VAT registration, advanced payments received before the VAT registration, taxable event and input VAT deduction. In order to mitigate the risk of negative VAT consequences, the author would strongly recommend that parties to installation projects duly analyse in advance the VAT aspects of the performed activities and take them into account during the life-cycle of the project starting from the planning phase and negotiating the agreement(s).