

# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2021

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## MODULE 3.02 – EU VAT OPTION

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### ADVANCED INTERNATIONAL TAXATION (THEMATIC)

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TIME ALLOWED – 3½ HOURS

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This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **The** question in **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

#### Further instructions

- All workings should be made to the nearest month and in appropriate monetary currency, unless otherwise stated.
- As you are using the online method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks are specifically allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

## PART A

**You are required to answer BOTH questions from this Part.**

1. The Builders Group (Builders) is a construction group established in Estora, an EU member state, specialising in property development projects. You have been asked to advise on the place of supply of the following transactions:
  - 1) Services provided by Builders for the architectural design and construction of an extension to an existing hospital in Estora, owned by a UK consortium of hospitals. The UK hospital's tax director is considering whether the resulting input VAT will be recoverable for the hospital, and on what basis.
  - 2) Builders paid subcontractors to undertake construction work specific to the development of a big shopping mall located in Estora, with Builders claiming the input tax charged on the subcontractors' invoices. However, one of the subcontractors was alleged to have been involved in tax fraud and the tax authority rejected Builders' right of deduction on the basis that the subcontractor was the subject of a tax inspection. Builders' tax director seeks your advice, arguing that the alleged involvement of the subcontractor in tax fraud should not prevent Builders from deducting VAT that was paid in good faith.
  - 3) Builders recently constructed an office building in Boldonia, an EU member state, with the intention to lease offices to businesses. Builders did not have any staff located in Boldonia and appointed a real estate agent to manage the lettings. The Boldonian tax authorities made an oral statement to Builders' tax director that a property which is to be rented out will constitute a fixed establishment, and that Builders should therefore register and charge Boldonian VAT on its invoices. Boldonia has exercised its option to allow the tax shift under Article 194.
  - 4) Builders was in financial distress and an independent consultant was appointed by the bank to provide additional financial information regarding Builders' financial position. As Builders paid the fees, its tax director believes that the input tax incurred is recoverable by Builders.
  - 5) Builders has prepared plans for an Estoran client, in relation to the potential future development of a hotel. The hotel location has not yet been determined, but will be in either Estora or Boldonia.

**You are required to write a letter to Builders' tax director, outlining the VAT aspects of Builders' activities and the issues which need to be addressed. (25)**

2. Omega Ltd (Omega) is a VAT-registered company that owns and operates a drone factory in Nordia, the EU member state in which it is established. Omega manufactures and sells drone solutions for aerial inspections, along with professional training sessions, to assist its customers. The customers include VAT-registered persons in Nordia and other EU member states. For all sales, Omega arranges transport with a local Nordian logistics company directly to the premises of its business customers. An admission charge is made for the customers when their staff attend live, in-person training seminars which are provided on-site at Omega's Nordian facility. In addition, following the Covid-19 pandemic and the resulting restrictions on in-person gatherings, Omega has begun delivering pre-recorded training webinars to its customers.

Omega also sells downloadable software which must be loaded onto the drones. Omega imports some of the drone components from India and assembles the drones in its factory in Nordia.

**You are required to write a letter to the finance director of Omega, detailing the VAT treatment relevant to each aspect of the business and advising on the compliance obligations that need to be met in Nordia and other EU member states. (25)**

**PART B**

**You are required to answer THIS question.**

3. Mark is a national and permanent resident of Astrioca, an EU member state. Mark does not qualify as a small undertaking for VAT purposes, and therefore has a standard VAT registration in Astrioca. The applicable VAT rate in Astrioca is 19%.

Mark owns and operates an e-commerce website that sells fitness accessories directly to private customers on a business-to-consumer basis. Although the domestic market in Astrioca is Mark's primary geographical market, he also makes a relatively small volume of online sales of goods to customers established in the following countries, all of which are also EU member states:

	<u>Applicable VAT rate</u>	<u>Value of turnover (exclusive of any applicable VAT)</u>	
		<u>2020 (€)</u>	<u>2021 (€)</u>
Bestria	20%	5,000	6,000
Chiora	24%	8,000	12,000

Mark arranges for the dispatch of goods sold from his warehouse in Astrioca directly to the respective customers' addresses in Astrioca, Bestria and Chiora.

**You are required to prepare a memorandum, advising Mark on the VAT treatment applicable to his online sales to private consumers established respectively in Astrioca, Bestria and Chiora. In particular, you should distinguish between the VAT treatment applicable to sales made up to and including 30 June 2021, and sales made on or after 1 July 2021.**

**You are also required to comment briefly, from a VAT compliance perspective, on how Mark may discharge his liability to collect and remit the sales-derived VAT due to the respective tax authorities in Astrioca, Bestria and Chiora.** (20)

## PART C

You are required to answer TWO questions from this Part.

4. Service transactions between a head office and a branch are typically disregarded for VAT purposes; in certain instances, however, this rule does not apply in a VAT grouping context.

**You are required to discuss the above statement, making reference to any relevant pronouncements of the Court of Justice of the European Union (CJEU).** (15)

5. You are required to describe the VAT treatment of the transfer of a business from one legal entity to another legal entity, both of which are established solely in Fuselia, an EU member state.

**You should distinguish, as appropriate, between the VAT treatment of the transfer of individual business assets (both tangible and intangible) and that of the transfer of the entire, combined assets of a business on a going concern basis.** (15)

6. “The reverse charge mechanism is essentially a simplification measure aimed at avoiding the need for in-country VAT registrations for non-established cross-border suppliers.”

**You are required to explain the practical meaning of the VAT reverse charge mechanism, and indicate whether or not you agree with the above statement. You should provide at least three examples of situations in which the reverse charge mechanism may be applied in a cross-border situation, and outline in general terms how this mechanism works from a VAT reporting perspective.** (15)

7. Events Ltd (Events) is a group that specialises in the organisation of entertainment events on behalf of third parties and is established in Andonia, an EU member state. During 2021, Events organised two entertainment events on behalf of BC Organisers Ltd (BCO), a company established in Bithania, another EU member state, for an agreed fixed fee. The events were hosted in Bithania, and were presented by a VAT-registered Andonian film actor. The admission to each event was controlled by BCO, which sold tickets for each performance to individuals. Events employees incurred some accommodation and restaurant costs and VAT in Bithania, in the course of organising the event.

The actor's invoice, which was raised in the name of Events, has recently arrived, displaying her VAT registration number but not recording any VAT as having been charged. Events' financial controller has asked whether the invoice is correct, or whether you would expect VAT to be charged in these circumstances and, if so, how such input VAT could be recovered.

**You are required to advise Events' financial controller on whether the company can recover any of the overseas VAT incurred in Bithania relating to the events organisation, the requirements for a successful recovery claim, the conditions which need to be met, and the basis on which the actor's invoice may require revision to include VAT.** (15)