

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2022

MODULE 3.02 – EU VAT OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3½ HOURS

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.
- 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. You work for a VAT consultancy firm established in Estoria, an EU member state, and have been approached by Alexander Pappas, a businessman established in the United States and expert on green automobile technology. Alexander has approached a number of European government agencies with a view to providing them with consultancy services regarding their green transportation programmes. He was informed that he must form a company within the EU to be able to provide these services, and has therefore incorporated a company in Estoria, Green Gaia Ltd (GG), to meet this requirement.

Alexander is concerned about whether his company will be regarded as established and required to register for VAT in Estoria. His plan is for GG to invoice the government agencies, all of whom are registered for VAT in their respective countries, for the consultancy services. Customers will be based in all EU member states, including Estoria.

Alexander and two other Estoria-based directors will hold board meetings in Estoria. GG will operate from its rented office in Estoria, with five Estoria-based employees who undertake call centre, invoicing, drafting of reports and other administrative operations.

GG will use the services of independent consultants as well for the purposes of its business. Most of them will be based in the US, and they will invoice GG in respect of their services rendered.

GG will pay a fee for your firm to provide administration services including accounting, filing statutory returns, and preparing accounts for statutory and management purposes.

Some of the government agencies have expressed an interest in receiving additional training services. They envisage the consultants visiting their premises in different EU member states and using their facilities to present courses to groups of employees. GG will charge separately for the training services at a daily price of €1,000.

Alexander expects GG's consultants to incur accommodation and transport costs, including car hire as well as air transport, as they will be travelling around Europe.

He also wants to know what VAT the company may incur in Estoria or elsewhere, and whether and how he can recover any such VAT incurred.

You are required to write a letter to Alexander, detailing the VAT treatment relevant to each aspect of the business and advising on the compliance obligations that must be met in Estoria and other EU member states. (25)

2. Blue Bridge Ltd (BB) is a company based in Boldonia, an EU member state. It is a member of a multinational consortium, the activities of which involve energy projects, manufacturing and the trading of goods and public media.

You have received a letter from BB's finance director, seeking your advice regarding the correct EU VAT treatment of the following activities:

- 1) BB purchased some land for a new oil refinery in Estoria, another EU member state, and spent a significant amount of money in preparatory activities, including VAT, in relation to the proposed refinery construction project. It then discovered that the government of Estoria would not grant permission for the use of the site for this purpose, and was forced to sell the land at a huge loss to the relevant local authority in a compulsory purchase deal. The authority did not pay VAT on the purchase of the land from BB, and your explanation is sought on whether BB will have the obligation to pay back the input VAT recovered.
- 2) One of the owners of BB has recently incorporated another company to proceed with a digital publishing activity which she intends to undertake. She personally incurred significant expenditure in relation to the project, but always intended to carry out the business through a limited liability company. The individual did not make any supplies personally, and has now decided to transfer the whole of the undertaking to the newly incorporated company. She seeks advice on whether she or the company can claim relief for input tax on the expenditure incurred.
- 3) A major supplier of BB ran a business which was recently prosecuted for breach of various trading rules, having been caught selling trademarked goods that turned out to be counterfeit. He has been prosecuted for several criminal activities, and has also been assessed by the tax authorities for failing to account for VAT on the takings of the illegal activities. He has appealed, arguing that the state should not make money by claiming VAT from criminal undertakings. To what extent are his arguments valid?
- 4) One of BB's subsidiaries sells mobile phones and accessories by mail order to customers. The company allows credit of up to €800 to its retail customers, and charges 5% interest on outstanding balances at the end of each month. Customers can avoid the interest charge if they settle the bill in full before the end of the month. Explain the treatment of the credit facility, and its effect on input VAT recoverability.

You are required to write a letter to BB's finance director, advising on the likely VAT treatment of these transactions on the basis of the provisions of the Principal VAT Directive and with particular reference to the relevant Court of Justice of the European Union case law. (25)

PART B

You are required to answer THIS question.

3. Several general principles of EU law find application within the sphere of VAT. These include, among others:

- Abuse of law;
- Direct effect;
- Effectiveness;
- Equivalence; and
- Legitimate expectations.

You are required to provide a brief explanation of each of the above principles, as they relate specifically to indirect taxes such as VAT, making reference to ONE applicable judgment of the Court of Justice of the European Union in relation to each principle. (20)

PART C

You are required to answer TWO questions from this Part.

4. The supply of certain services that are closely linked to sport or physical education by non-profit-making organisations to persons taking part in such activities shall be exempt.

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

5. You are required to discuss the extent to which an overseas subsidiary company may constitute a fixed establishment of the parent company, with reference to any relevant pronouncements of the Court of Justice of the European Union. (15)

6. Where a taxable person arranges business transactions for someone else, they may act as a disclosed agent/intermediary, or alternatively as an undisclosed agent/intermediary.

You are required to distinguish between a disclosed agent/intermediary and an undisclosed agent/intermediary in the context of EU VAT legislation. Your answer should describe the VAT treatment of these two types of agent/intermediary. (15)

7. The decision by the Court of Justice of the European Union, in San Domenico Vetraria (Case C-94/19), has clarified the VAT treatment of the supply and/or secondment of employees and other personnel.

You are required to describe the VAT treatment applicable to employment in terms of the EU VAT Directive, and the VAT treatment of the supply and/or secondment of employees, with specific reference to Case C-94/19. (15)