

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2017

PAPER 3.02 – EU VAT OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3¼ HOURS

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

You need to answer **five** questions in total.

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.
- Start each answer on a new page and clearly indicate which question you are answering. If you are using the on-screen 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 presentation.
- 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 Parts B and C.
- The first 15 minutes of the exam consists of reading time. You will be allowed to annotate the question paper during this time; however, you will **not** be permitted to start writing or typing your answer, or use a calculator. The Presiding Officer will inform you when you can start answering the questions.

PART A

You are required to answer BOTH questions from this Part.

1. The Asko GmbH group (Asko) is established in Bordonia, an EU member state, in which its head office, manufacturing plant and distribution facilities are located. Asko produces high-tech electronic goods in Bordonia, using raw materials imported from Malaysia. The finished goods are then sold to business customers in Bordonia, other EU member states and the United States for onward sales.

Asko's management team is currently considering two options for changing the group's business model. The first is to sell the intellectual property rights to manufacture its products to Balpa SA (Balpa), a Swiss group subsidiary company, which will source raw materials for delivery to the manufacturing plant from suppliers in Bordonia and other EU member states. Balpa will then sub-license the IP to Asko, enabling Asko to manufacture goods to Balpa's order at its plant in Bordonia. Balpa will make sales of the finished goods to the customers previously supplied by Asko.

The alternative option under discussion is for a group company, established in another EU member state, to purchase from Asko the manufacturing plant including the building, machinery, staff and outstanding orders, to operate the business itself.

Balpa has also been asked by a major customer established in Thebia, another EU member state, whether they can provide a stock of goods to be held at the customer's Thebia warehouse after the changes have been made, for distribution as the customer requires.

You are required to identify all relevant transactions and advise the correct VAT treatment for all transactions made under the existing arrangements, and each of the two alternative arrangements proposed, with reference to relevant EU legislation.

(25)

2. LaGrosta is a haulage, storage and cargo handling business incorporated in Diabalo, an EU member state, and located approximately 50km from the border with Felixania, a neighbouring member state. LaGrosta has contracts with business customers, government departments and charities established in all EU member states. LaGrosta's storage premises include approved customs warehouses.

You have received a letter from the finance director at LaGrosta, asking you to advise on the correct EU VAT treatment of the following activities:

- 1) Work for a Netherlands-based business client, involving the unloading of goods from road trailers carrying cargo from France to the LaGrosta premises in Diabalo.
- 2) Loading cargo from the customs warehouse onto rail wagons for transport to Turkey, at the request of business clients established in Cyprus.
- 3) Transporting goods from Diabalo through a neighbouring EU member state, for delivery to premises 500km south in Diabalo.
- 4) Providing storage space at a warehouse in Diabalo for a humanitarian charity established in Austria.
- 5) Work for the Australian government, unloading goods from military vessels in Diabalo's main port.
- 6) Work performed for a Spanish client, involving the repackaging of goods in transit from Spain for onward transportation by a different business to South Africa.
- 7) Input tax incurred in relation to the holding and subsequent sale of shares in a subsidiary company to a Netherlands company. The subsidiary is established in Diabalo and is engaged in packaging fruit products. It has been actively managed by LaGrosta for five years, but no charge has been raised for these services to date.

You are required to write a letter to LaGrosta's finance director, advising the place of supply and VAT treatment of each of the services described. (25)

PART B

You are required to answer THIS question.

3. The concept of establishment is an important concept in EU VAT and determines many aspects of taxation for taxable and non-taxable persons.

You are required to identify and contrast the key differences between being considered established and non-established in an EU member state, and the consequences of each status. (20)

PART C

You are required to answer TWO questions from this Part.

4. **You are required to describe the meaning of ‘fiscal neutrality’ and ‘legitimate expectation’ in the context of European VAT law. Your answer should include reference to relevant EU case law.** (15)

5. EU member states may make reference to the Court of Justice of the European Union (CJEU), under specific circumstances and conditions.

You are required to provide an overview of the circumstances in which referrals to the CJEU are made, and outline two VAT cases in which the CJEU has provided a view regarding the doctrine of direct effect. In each case you should summarise the legal point at issue, the parties to the dispute, and the CJEU’s decision. (15)

6. In 2016 the European Council adopted changes to the Principal VAT Directive, relating to the future VAT treatment of vouchers.

You are required to outline the changes, the reasons for the changes, and the proposed implementation date. You should also describe two scenarios in which the VAT treatment of vouchers is affected by the proposals. (15)

7. McCormack SA purchased an office block in an EU member state for €200 million plus VAT, on 2 January 2010. In the first year of ownership the building was subject to 20% exempt use and 80% taxable use. In the third year of ownership the use changed to 45% exempt and 55% taxable, and in year five reverted to 80% taxable use before being sold at the end of year five with VAT charged on the sale. The VAT rate was 25% in the member state throughout these periods.

You are required to describe the circumstances in which the recovery of input tax relating to immovable property can be regarded as provisional, and subject to adjustment over a period of time.

You are also required to calculate the input tax recovery for years one, three and five of a ten year adjustment period, using the above information. (15)