



THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2015

PAPER 3.02 – EU VAT OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3¼ HOURS

- You should answer **FOUR** out of seven questions.
- Each question carries equal marks.
- Start each answer on a new sheet of paper. 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.
- All workings should be made to the nearest month and appropriate monetary currency, unless the question requires otherwise.
- Marks are specifically allocated for good presentation.

1. You are the advisor to a European transport business with operations in several countries. You have been asked to provide your views concerning the VAT treatment of the activities described below. Please support your answers with reference to EU law where applicable.

1) The cruise ship division operates ships on voyages between ports in EU Member States and occasionally undertakes a voyage to Gibraltar.

You are required to advise the correct VAT treatment of the following for each type of cruise:

a) **Sales of goods made to passengers from on-board shops; and**

b) **Supplies of health spa and massage treatments to passengers whilst at sea between ports.** (8)

2) The German rail division has leased trains to a customer established in France, for operation on French domestic routes. The leases commenced in December 2013 and last for ten years.

What is the correct VAT treatment for the lessor and the lessee? (7)

3) The Netherlands air division has purchased a large passenger aircraft from a manufacturer in France, and is leasing the aircraft to a national airline based in the Netherlands for use on scheduled flights. The aircraft is delivered from France to the Netherlands immediately before entering service.

You are required to outline the VAT issues which need to be considered by the lessor. (5)

4) The Spanish car hire subsidiary provides cars for hire from a depot in Spain to members of the public for terms of seven, fourteen, twenty-eight and sixty day hire. The vehicles can only be driven in EU Member States and are collected from the depot.

What is the VAT treatment of the supplies made? (5)

Total (25)

2. You are required to explain, with reference to case law where required, the meaning of the following terms:

1) **Legitimate expectation;** (5)

2) **Abuse of right;** (8)

3) **Fiscal neutrality; and** (7)

4) **Direct effect.** (5)

Total (25)

3. A senior colleague has been asked to provide advice regarding supplies made by a commercial French laboratory that tests human and animal tissue samples for hospitals and veterinary practices in Europe and elsewhere. The testing services are provided under long term contracts between the laboratory and the hospitals and veterinary practices. They consist of testing, technical analysis and detailed recommendations contained in a written report for each sample.

You are required to draft a letter to enable your colleague to respond to the following points:

- 1) **European hospital clients have questioned whether it is appropriate for them to be charged French TVA (VAT) on supplies made to them. Please provide a response and reasoning.** (8)
- 2) **USA hospital clients have raised similar questions. Please advise which features are relevant in determining the VAT treatment of such supplies.** (8)
- 3) **What reporting requirements exist for supplies made by the French laboratories to hospital clients in EU Member States?** (3)
- 4) **How should EU private hospital clients treat the supplies made to them?** (3)
- 5) **Supplies are occasionally made directly to private individuals resident in the UK and Jersey. How should these be treated by the French business?** (3)

Total (25)

4. A UK VAT registered business has approached you, seeking advice regarding the possibility of making a recovery claim for German VAT incurred in connection with an awards ceremony, which it hosted in Berlin in 2014 with the intention of making a profit. The awards ceremony was organised by the UK business for employed and self-employed professional hairdressers working in the UK, who paid to attend and who received hotel accommodation, a banquet dinner, a commemoration pack and award prizes. The ceremony was presented by a well-known UK entertainer.

- 1) **You are required to detail the requirements for a successful recovery claim, and the conditions which your client needs to meet.** (6)
- 2) **When the entertainer's invoice arrives, it displays his VAT registration number but does not show any VAT being charged. What is your view on this? Is the invoice correct, or would you expect VAT to be charged in these circumstances?** (6)
- 3) **Some of the self-employed hairdressers attending the awards ceremony are not registered for UK VAT and were concerned that they may be charged VAT on an event which is taking place outside the UK. What advice would you offer your client, to handle such enquiries?** (6)
- 4) **Your client has asked what the TOMS scheme is, and whether it is relevant to its activities. What is your reply to these questions?** (7)

Total (25)

5. An electronics group based in Singapore, Lion PTE Ltd, is considering marketing its products in Europe through the group's website. The products consist of:
- 1) Downloadable games;
 - 2) Ringtones for mobile phones;
 - 3) Anti-virus software; and
 - 4) Training packages comprising live webinars, printed course materials and a telephone support service.

The group does not currently have any establishments in European countries.

You have been asked to provide advice concerning the VAT treatment of these products, and to discuss any tax compliance aspects that the group will need to consider before trading in Europe. You are required to present your advice in the format of a letter to the group taxation director. (25)

6. The term 'fixed establishment' is used extensively throughout the Principal VAT Directive and Implementing Regulations.

Please explain what is meant by 'fixed establishment', providing references to EU case law which are relevant to this term. (25)

7. The Strauss Corporation has business interests throughout Europe. These interests are held through subsidiaries and branches of the main trading company, Strauss Trading, Inc. (Strauss Trading), headquartered in Chicago, USA.

Branches of Strauss Trading have been established in Belgium and Germany since 2010; each of these branches makes both taxable and exempt supplies. The Belgian branch of Strauss Trading is registered for VAT in Belgium as a single-entity registration. The German branch is VAT registered as part of a German VAT group with two other corporates; the representative member of the German VAT group is Swann GmbH. A Luxembourg branch has also been established, which has not yet made any taxable supplies but which intends to rent out office space from an office block it is developing in Luxembourg.

During 2014 the Strauss Corporation introduced standardised accounting software worldwide at a cost of \$150 million, which it recharged to each of its business units. A charge of \$50 million was incurred by Strauss Trading, who recharged \$20 million to the Belgian branch, \$15 million to the German branch and \$5 million to the Luxembourg branch. The branches use the software in all aspects of their business for budget controls, financial management, forecasting and management reporting to the US parent. In addition to these software recharges, occasional recharges of staff salaries take place when personnel are seconded between the German and Belgian branches.

In early 2015 a wholly owned subsidiary, Strauss Trading A/S (Strauss Denmark), became registered for VAT following the purchase of shares in two companies. Strauss Denmark takes an active role in providing management and technical services to both companies and adds VAT to the charges made. Three months after the purchase it sold its 100% shareholding in one of the companies, Muller A/S, a Danish subsidiary, for which it incurred input tax of €1 million directly attributable to the share sale. Muller A/S engages in dairy farming and makes only taxable supplies.

Continuation

7. Continued

You are required to:

- 1) Explain the correct VAT treatment for the IT recharges made to each of the three branches, supporting your answer with reference to case law where relevant. (15)**
- 2) Briefly explain the likely VAT treatment of a recharge for staff secondments from the German branch of Strauss Trading to the Belgian branch. (4)**
- 3) Describe the likely consequences for the VAT incurred by Strauss Denmark in connection with its sale of shares in Muller A/S. (6)**

Total (25)