

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 3.02 – EU VAT OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Report on VAT aspects of Balbin and Zuton's activities

Sites for collection banks

Balbin is renting land in supermarket car parks for the siting of its banks of collection boxes, this activity takes place across 3 member states and is a supply related to land under Art 47 PVD and is made in the member state in which each of the supermarket car parks are located.

The supply of metered electricity is a separate supply of power and will be a supply of goods (under Art 15 PVD. A case could be made for it to be a composite supply under CPP principles as a means to enable the better enjoyment of the land supply, however the accurate quantification of the electricity consumed in contrast to an estimate, is an important feature suggesting a distinct and additional supply of electric to the collection box bank.

Balbin's supplies

Balbin is supplying a service of secure storage and access to customers of an infinite number of global businesses through its contract with Zuton, a USA established distribution business. The service of non-allocated secure storage is not within the scope of Art 47 PVD and therefore does not fall to be considered as a supply of land services made where the land is located. It is a B2B service where under basic principles of Art 44 the supply is made where the business customer belongs i.e The USA.

Zuton's supplies

Zuton is established in the USA and has arrangements with a multitude of on-line sellers to allow their customers to receive the goods that have been purchased remotely. Zuton's supplies are outside the scope of VAT for each of the 3 EU member states in which they are involved, since their supplies are mainly B2B and only a limited number of their on-line retail customers will be established in the same member state as the collection point . As such it is Zuton's EU business customers who will have an obligation to account for VAT under the Art 192 Reverse Charge procedure.

Zuton is also making supplies directly to consumers on the occasions that they charge for returned goods access to collection boxes. If this arrangement doesn't involve the retailer who has previously sold the goods, it will be necessary for Zuton to register for VAT in those 3 member states where additional charges are raised B2C. As a consequence, Zuton is required to register for VAT in each member state or can adopt the OSS (One Stop Shop) arrangement which allows registration in a member state of Zuton's choice (not being established in any EU member state). There is no registration threshold for a non-EU established business and so Zuton must register before making their first supply B2C.

Is Zuton "facilitating" supplies?

Zuton's involvement in assisting the delivery of goods from suppliers within and outside the EU may call it to consider the rules for on-line platforms that were introduced in 2021. The term "facilitates" is defined at Art 5b of the Implementing Regulations 282/2011 and specifically requires a facilitator to be a supplier offering goods for sale to a customer by the use of an electronic interface to enter into contact which results in a supply of goods. Since Zuton's only supply is one of services it will not be within the term and is not treated as facilitating the supply.

Yours faithfully
ADIT candidate

Question 2

Finance Director
Windrop
Ponolonia

12 June 2026

Dear Finance Director

Supplies of Food and Food Service products

I am replying to your request for VAT advice concerning your supplies of various goods and services related to and connected with the airline food industry. My comments are made in the order in which you have requested them and are based on the information provided. In the event that any of the details change it is important that we revisit the positions as the advice provided may need to be reconsidered in the light of those changes or additional information

Sale of ready meals

As a supply of goods made in Ponolonia the basic position is that Ponolonia VAT should be charged to your customers in accordance with Art 31 PVD as the place of supply is where the goods are located at the time when the supply takes place. However, where it is known that the goods are for the provisioning of aircraft operating on International routes the sale can be treated as exempt (with recovery of input tax) under Art 148e) PVD provided that the airline operates chiefly on international routes. Note this test is of the airline and not the route on which the specific aircraft is about to embark. The fact that the airlines to whom these supplies are made are variously established in Ponolonia, the EU and third country is irrelevant to the analysis as it is not determinative.

You also mention that occasional sales are made to private aircraft operators, as private operators are unlikely to operate chiefly for reward on international routes, in these cases the place of supply is Ponolonia and as a domestic supply, Ponolonia VAT must be charged.

Cold storage warehousing

The availability of warehousing is a supply made in connection with land under Art 47 PVD and is specifically referred to in Reg 2(h) under “the storage of goods for which a specific part of the property is assigned for the exclusive use of the customer..”. The key word is exclusive and any areas in which goods may be stored but then moved to other parts of the warehouse can not be said to be exclusively used by a single customer. The effect of this is that under 2(h) the place of supply is where the property is located and under the alternative “non-exclusive” treatment the supply is subject to Art 44 PVD and made where the business recipient belongs.

The fact that the warehouse is at an airport would not change the treatment of the supply of storage but may be relevant to owners of goods who may sell their goods whilst in the warehouse

Food packaging services

Specialist food packaging services made to domestic and EU businesses would be supplies of services made in Ponolonia and subject to local VAT and in the case of EU business customers, treated as exempt with the right to recover. The latter would need to be entered on recapitulative statements showing the customer’s overseas VAT registration. The fact that these customers also supplied airlines would not affect the VAT treatment by Windrop since there is no ability to “look through” at the ultimate use of the service provided.

In this respect the treatment contrasts with the treatment of goods in circumstances where a “look through” was possible [CJEU case A Oy C-33/11].

Vending machines

Food and other goods supplied from vending machines are supplied from the location of the vending machine under basic principles concerning where goods are when title passes. In your case these would be supplies made in Ponolonia and Theta respectively.

Occasional surplus food donations

Donations of goods to local charities and foodbanks are supplies of goods for which the value is considered to be the cost value of acquisition/production rather than an “open market value”.

In some member states there are value limits for small value donations to be made without a VAT charge but these are generally very low and do not allow for regular or repeat gifts without aggregation in a calendar year. Charities are not specifically able to receive donated goods without a VAT liability arising for the donor, although some member states have arrangements which allow for small value donations to be made to charities without incurring a VAT charge.

I hope this advice is helpful and please contact me if I can be of further assistance.

Yours faithfully
ADIT candidate

PART B

Question 3

Balpa may be eligible for either the flat rate scheme or the small enterprise exemption depending on whether Theta has introduced simplification measures and consulted the VAT Committee before doing so. Art 281 PVD and Art 282 PVD refer.

Flat rate scheme

The flat rate scheme allows businesses to apply a fixed rate of VAT to all of its turnover irrespective of the rate that would apply if the business dealt with VAT in the conventional way. Whilst it may charge the normal rate of VAT on supplies it makes to customers (who can deduct the VAT charged in the normal way) it only needs to pay over to the tax authority a flat rate percentage which is less than the standard rate. It is however unable to recover VAT charged to it on goods and services or gain relief for VAT charged on Imports or Acquisitions.

It is important that the availability of the scheme does not lead to a reduction in the overall VAT collected in a member state when viewed across the whole VAT yield that would be expected from the member state in the absence of such a scheme. In some individual enterprises there may be winners and losers but as long as the overall VAT yield is not reduced the arrangements will be accepted.

A business that elects to use a flat rate scheme will need to apply the flat rate to exports and supplies such as despatches to other member states which would otherwise be exempt from VAT. Whilst the reduction on record keeping and return completion is reduced it will not always be financially beneficial for all small enterprises to adopt such schemes.

Small enterprise exemption

The small enterprise exemption was amended on 1st January 2025 and allows taxable persons to make exempt supplies of goods and services within their territory of establishment provided that the aggregate value of such supplies in a calendar year does not exceed €85,000 or the equivalent in national currency.

Following amendment effective from 1st January 2025 there can no longer be a turnover differentiation between businesses established in the member state and those that are not.

This effectively makes the Schmelz (C- 97/09) decision redundant as no discrimination on the grounds of establishment can be made.

Member states may vary thresholds for different business sectors but may not exceed the €85,000 threshold.

Member states that have put exemptions in place shall also grant the exemption to supplies made in their territory by businesses established in other member states providing the annual turnover does not exceed € 100,000 and that the value of supplies in the member state in which the business is not established doesn't exceed the threshold for exemption allowed to business established within that member state.

A business which chooses to apply the small enterprise exemption is not required to submit a VAT return or to be registered for VAT in their member state of establishment. However, a consequence of this treatment is the inability to reclaim any VAT incurred.

As Balpa has turnover in its country of establishment which is below € 85,000 and has turnover in other member states which is below € 15,000 it is eligible for the small enterprise exemption and should approach the Theta VAT authority to notify its application for the exemption.

A failure to comply with the rules concerning the small enterprise exemption may lead to the tax authority requiring a business to register for VAT and submit VAT returns, Art 284d PVD.

It should be noted that an enterprise may not be eligible for more than one of the simplifications and cannot seek an advantage by combining features of the small enterprises exemption with other reliefs.

Question 4

Recent referrals to the CJEU concerning the application of PVD have resulted in the Court considering the circumstances in which adjustments to achieve an “arm’s length price” for corporation tax purposes should be considered for VAT purposes.

The decided cases of Arcomet Towercranes (C-726/23) and Högkullen AB (C-808/23) ruled in Arcomet that payments adjusting a subsidiary's profit margin up to an OECD-aligned target constitutes consideration for services and is subject to VAT. It also confirmed that tax authorities can request documentation beyond the invoice to verify these adjustments.

In Högkullen AB (C-808/23) the CJEU clarified that intra-group management services, even if provided under a comprehensive agreement, must be assessed individually to determine their open market value for VAT purposes, rejecting a blanket revaluation by tax authorities.

Another case Weatherford Atlas Gip (C-527/23) concerns the interpretation of Article 168 PVD with Weatherford Atlas Gip SA challenging the Romanian tax authority’s refusal to allow VAT deductions for administrative services acquired within the same group of companies. The Romanian tax authority refused the VAT deduction, arguing that the services were not necessary for Weatherford Atlas Gip’s taxable activities and were also provided to other group companies. The Court ruled that national legislation or practice cannot refuse VAT deductions on the grounds that services were simultaneously supplied to other group companies or deemed unnecessary, provided the services are used for the taxable person’s own taxable transactions.

Stellantis Portugal C 603/24 has received the Advocate General’s Opinion and considers whether end of period transfer pricing adjustments within a corporate group amount to a separate VATable supply of services. Stellantis Portugal, acting as the national sales company, bought vehicles from EU manufacturers and resold them to independent dealers. Warranty and distribution costs were handled through a contractual profit allocation mechanism, with transfer prices later adjusted to ensure an agreed profit level. The Portuguese tax authority argued that a downward adjustment, supported by a credit note was consideration for services provided by Stellantis to the manufacturers.

The Advocate General rejects this, stating that price adjustments cannot constitute supplies of services, nor can ‘negative consideration’. Simply bearing warranty or distribution costs does not amount to a service because there is no payment in return for a supply. Group profit allocation mechanisms are irrelevant for VAT. The Opinion distinguishes three situations: genuine, contractually remunerated services, unilateral tax authority adjustments (irrelevant for VAT), and variable contractual pricing linked to specific supplies—applicable here. Such adjustments merely modify the taxable amount of the original supply under Articles 73 and 90 of the PVD.

The CJEU judgement states that the national court must determine if a legal relationship exists, beyond the profit margin agreement, where GMP was explicitly obligated to provide repair services to the OEMs for which the adjustments served as direct remuneration. If not, the adjustments are not consideration for a service. The Court also noted that if the adjustments are viewed as a post-acquisition price modification, national authorities would need to assess its impact on the VAT taxable base for the initial vehicle supply (under Article 11 of the Sixth VAT Directive).

The general feature from these cases is that the economic reality of the situation needs to be looked at in detail and an adjustment will only lead to a VAT transaction where there is a nexus between services and a payment. The CJEU does not favour VAT adjustments for every adjustment of profit to achieve an arm’s length return between related parties.

PART C

Question 5

The basic position regarding VAT deductibility is determined by Art 168 PVD which allows the deduction of VAT due or paid by a taxable person on goods or services supplied to them, imported or acquired when used for the purposes of taxed transactions. In all cases the VAT due or paid can be deducted from the VAT which is liable to be paid (output VAT).

Furthermore, VAT is deductible under this arrangement at the same time as it becomes chargeable upon the supplier (or import etc) Art 167 although in practice the ability to claim VAT is only possible when a VAT return is due to be made which is generally either monthly or quarterly.

By allowing recovery in full and immediately the concept of fiscal neutrality is achieved for fully taxable businesses and ensures that VAT is borne not by the business but ultimately the consumer of goods or services.

Whilst this arrangement is suitable for taxable persons who have an excess of output tax over deductible input tax it does not allow for circumstances in which a non-VAT registered entity can reclaim any VAT incurred.

Examples of these types of entities include non-established entities who have incurred VAT in a member state other than where they are established, third country entities in a similar situation, entities who have incurred VAT after deregistration which related to supplies whilst registered and non-taxable travellers who are able to reclaim VAT incurred on retail purchases of goods once removed from the EU.

Businesses not established in the member state in which VAT has been incurred are able to claim a refund, in contrast to a deduction, by virtue of Arts 170 and 171 PVD. These are most commonly made under the Electronic Cross Border Refund scheme or the Thirteenth Directive claim procedure for non-EU established business. Each scheme has its own conditions regarding time limits, periods of claim and reciprocity.

The arrangement for travellers in Art 146 PVD equires a claim for VAT to be made from the supplier rather than the tax authority as in Art 171, nevertheless the mechanism gives effect to what is technically an exemption for the supply of goods in limited circumstances after the receipt of evidence of export has been received and enables a visitor to the EU to get a refund of VAT.

Question 6

The sale of a car is a supply of goods for which the place of supply is where the car is located when title passes (1). A car is also a means of transport and dependant on the age and mileage it is considered a new means of transport if it falls within the conditions at Art 2 (1)b (ii) which defines a means of transport as being “new” if :

- i) the supply takes place within six months of the date of first entry into service, or
- ii) where the vehicle has travelled for no more than 6 000 kilometres.

In this case the car is therefore treated as being new and the seller is entitled to treat it as exempt with credit providing that it obtains evidence of movement from Theta and enters the transaction on a recapitulative statement Art 138 (2) PVD and on any Intrastat return (if required).

The non-taxable purchaser has an obligation to account for acquisition tax on the car when it arrives in Bordonia under Art 2 1(b)(ii) and is likely to have to do so before a vehicle registration number will be issued. The value for acquisition tax will be the cost of the car plus the cost of transportation to Bordonia as well as any incidental costs such as insurance.

The rate applicable will be the domestic rate of VAT applicable to the same goods if sold in Bordonia.

New Means of Transport can't be dealt with under Distance Selling rules so the arrangement to transport the goods by the seller will not be relevant to the analysis.

The invoice issued by the seller shall specify that the goods are a new means of transport in accordance with Art 226 PVD.

It is for the Bordonia tax authority to lay down the specific rules to enable the customer to make a VAT return and provide all necessary information for the payment of the acquisition VAT due Art 258 PVD.

Question 7

Direct Effect

Direct effect is the EU law concept that allows the provisions of Treaties and Directives to give rise to rights or obligations which individuals may enforce before the national courts, if the necessary EU provisions have not been implemented or implemented correctly in national legislation.

Direct effect applies to those articles of the Directives, which are i) unconditional and ii) sufficiently precise, and allows them to be relied upon as against any national provision which is incompatible with the Directive, or in the case of individual's rights are assertable against the state.

Perhaps the most notable VAT cases concerning Direct Effect has been Becker (C- 8/81), which remains a leading case. Becker was a self-employed credit negotiator who invoked before her German national court the provision in the 6th VAT Directive which made the granting and negotiation of credit an exempt supply. Germany had not yet implemented the Article into national law. Becker wished to apply the exemption to the period of time from the coming into force of the Directive until the German law changed. The ECJ subsequently held that when a Member State has failed to implement a Directive correctly and not before the end of the period prescribed for implementation, that it had breached Article 189 of the EU Treaty which states that a Directive shall be binding upon each Member State.

The court concluded that it would be incompatible in view of the binding Article to exclude the possibility of the obligations imposed being relied upon by persons affected. Consequently a Member State which has not adopted the measures required by a Directive in time may not plead, as against individuals, its own failure to perform the obligations that the Directive entails.

Other tax cases in which Direct Effect has been considered include the following:

- GMAC (C-589/12) in which bad debt relief was allowable on the difference between the VAT originally accounted for on a hire purchase vehicle sale and the amount subsequently received from a defaulting customer plus auction sale proceeds for the vehicle, where that was a lower amount. The ECJ rejected the UK position that bad debt relief was not available under UK legislation and applied the principle of direct effect.
- Linneweber & Akriditis (C-453/02 and C-462/02) the CJEU found that Article 13B(f) of the Sixth Directive had direct effect and could be relied upon by an operator of games of chance or gaming machines against national rules which were inconsistent. In this case the German government had made the exemption dependent on the identity of the operator.
- In JP Morgan Fleming Claverhouse Investment Trust (C-363/05) the ECJ found that Art 13B(d)(6) of the Sixth Directive had direct effect and that the words 'special investment funds' are capable of including close-ended investment funds such as Investment Trust Companies. In exercising the Member State's discretion in defining 'special investment funds' the Court said the UK had to respect the objective of the exemption.
- In British Film Institute (C-592/15) the CJEU held that the wording in the VAT Directive was not precise enough for it to have direct effect such that admission to cinemas in the UK should be exempt.

Legitimate expectation

Legitimate expectation is the term used to describe the doctrine under which a party (usually a business) can place reliance upon the position of an authority whether made through policy, statute or similar means, in which it may place confidence in understanding the treatment it may reasonably expect to apply to a transaction or course of action. It is not fundamentally an EU concept although it has been applied to EU tax and other matters through the judgments of national courts and the CJEU.

One of the better-known CJEU VAT cases concerning this point is Marks & Spencer (C- 62/00) in which it was held that national legislation retrospectively curtailing the period for exercise of a right of a taxpayer provided for in the 6th EU VAT Directive, was incompatible with the principle of legitimate expectation. The principle has also been established in Sudholz (C-17/01) where it was held that Article 3 of Decision 2000/186/EC was invalid due to the violation of this principle, in that it allowed for a change of tax treatment, to the detriment of the taxable person, retrospectively. In general terms, the principle of legal certainty precluded a Community measure from taking effect from a point in time before its publication.

Question 8

ViDA (VAT in the Digital Age) is an initiative of the European Commission which seeks to address several issues which are modernisation of the EU VAT system; resilience to fraud; better working for businesses and to address the challenges raised by the development of the platform economy (4). The initiative was adopted by the European Parliament in March 2025 as Directive 2025/516 amending the PVD. The timescale for completion extends to 2035 and requires co-ordination of changes across all member states.

Key features of the initiative include real-time digital reporting of cross-border trade DRR (Digital Reporting Requirements) based on e-invoicing by default. This will ultimately lead to the replacement of the recapitulative statement system.

Platforms facilitating supplies of passenger transport and short-term accommodation rental will become responsible for collecting and remitting VAT when Principals do not because they may be small businesses or unregistered.

A single pan-EU VAT registration, SVR, will be aimed at reducing the number of situations in which several VAT registrations in many member states may be required.

This will be a further extension of the existing OSS (One Stop Shop) arrangement to additional B2C supplies.

Other proposals include a TOOG (Transfer of own goods) regime and mandatory use of the reverse charge mechanism to some domestic supplies where one party is not VAT registered.

The proposed measures have staged dates of effect which started in April 2025 with member states having the ability to mandate e-invoicing in certain circumstances and the introduction of improvements to the IOSS (Import One Stop Shop). The changes will be introduced over a lengthy period which recognises the extensive changes required in business and tax authority IT systems.