THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2025

MODULE 3.02 – EU VAT OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Finance Director
HCSL
Merkia

11 December 2025

Dear Sir or Madam

Thank you for your request for advice concerning your business.

Imports of Goods

According to art. 32 of PVD, if dispatch or transport of the goods begins in a third territory or third country, both the place of supply by the importer designated or recognised under Article 201 as liable for payment of VAT and the place of any subsequent supply shall be deemed to be within the Member State of importation of the goods.

Hence, a movement from one of those territories into the 'main EU' is treated as an import for VAT purposes, and the charge arises in the Member State where the goods arrive. Therefore, HCSL will be the importer of record, and it will be obliged to pay the VAT and duty.

The relevant import VAT will be recoverable as it relates to the taxable supplies of the company.

Sales of hair care products to local businesses

According to art. 32 of PVD, where goods are dispatched or transported by the supplier, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins. Hence, those supplies will be subject to local Merkian VAT.

Sale of hair care products to EU based businesses (40% of its sales)

When the hair care products are sold to the businesses located in another EU member state this will be an intra-community supply of goods on which VAT is not chargeable (exemption with credit) under certain conditions.

Therefore, to safeguard that the supplies of goods to the businesses established in another member state will be exempt with credit, HCSL must obtain the customer's VAT number and hold two non-contradictory pieces of evidence that the goods have been transported out of Merkia. HCSL can check the number is valid by reference to the Europa website. In addition, HCSL will have to complete a recapitulative statement or EC Sales List, which requires the VAT Number and country of VAT registration of the factory to be shown. Failure to meet any of the above-mentioned conditions will result in Merkian VAT being due.

There may also a requirement to make Intrastat returns if the value of dispatches of goods made by HCSL to the businesses established in the other EU Member State is above the threshold applicable in Merkia.

Training services

B2B educational services are a general rule business to business service unless the service constitutes the right of admission to an event (art.53).

Therefore, since the training will be treated as a separate distinct supply of services, according to Article 53 PVD, B2B supply of services in respect of admission to educational events, and of ancillary services related to the admission are deemed to be supplied where those events actually take place.

It is evident from article 32 of the Implementing Regulation 282/2011 that this requirement is met, as it says: "services in respect of admission to … educational… shall in particular apply to the right of admission to educational and scientific events such as conferences and seminars".

Furthermore, according to the principles established in CJEU case Srf konsulterna AB, C-647/17, supplies in respect of admission to educational events, as described in Article 53 PVD, should be interpreted as meaning that it covers a service supplied solely to taxable persons whose essential element consists of selling rights for individuals to be admitted to a professional "educational seminar" extending over one or several days.

Therefore, the separate supply of training services to businesses is deemed to be supplied where those activities actually take place, i.e. the premises of the customers. Hence, HCSL's training services supplied to domestic business customers will be subject to Merkia VAT. In addition, in respect with the training supplied to EU business customers, the customer will account for VAT under the reverse charge mechanism instead of requiring HCSL to register and account for output tax, assuming that the respective member states have adopted Article 194.

Finally, it worth noting that it would be the country in which the place of supply of the training or education is situated that would decide on whether the participation fee is exempt from VAT (Article 132(1)(i)). However, it seems that the exemption will not be applicable since HCSL is not an organisation governed by public law.

Recovery of Overcharged VAT – Purchases of HCSL

HCSL should first seek a remedy directly from the seller who overcharged the company by applying the standard VAT rate instead of the reduced rate on the invoice. HCSL should request the seller to correct the error by issuing a credit note, effectively cancelling the excess VAT that was charged.

In Genius Holding BV case (C-342/87), the CJEU held that the right to deduct could only be exercised in respect of tax which was actually due under a taxable transaction which was subject to VAT. There was no right to deduct input tax which was wrongly charged. This meant it was up to the business to find the supplier and ask for the overcharged VAT back, rather than up to the tax authority to pay the claim and find the supplier.

Nevertheless, customers should be able to recover VAT overcharged from the tax authorities if the seller cannot (i.e., due to insolvency) or is not willing to correct the invoice and reimburse the overcharged VAT amount to the customer.

In Schütte case (C-453/22), the CJEU ruled that the EU VAT Directive and the principles of VAT neutrality and effectiveness require that a customer has a direct right to claim from the tax authorities the reimbursement of improperly invoiced VAT paid to their sellers and paid by those sellers to the public purse in circumstances where the customer cannot claim that reimbursement from those sellers due to the limitation period provided for by national law. The CJEU also ruled that if the VAT is not reimbursed by the tax authority within a reasonable time, the loss suffered by the customer of having borne the improperly charged VAT must be compensated by the payment of default interest by the tax authority.

I trust the information above is sufficient to enable you to consider the VAT aspects of your abovementioned activities and please do not hesitate to contact me if you wish to discuss any aspect in greater detail.

Yours faithfully
ADIT candidate

Question 2

To: Ms Joan Valdemar

11 December 2025

Dear Joan

Thank you for your request for VAT advice concerning your proposed new business. I set out hereunder my comments on the queries you have raised.

VAT registration requirement

The proposed new business constitutes an economic activity for VAT purposes. In terms of Article 213 PVD, you are required to state when your activity as a taxable person commences to your country of establishment, namely Valdemar. On the basis of the nature of the envisaged supplies, which initially shall consist exclusively of domestic supplies of marketing consultancy services on a business-to-business (B2B) basis, you are in principle required to be registered for VAT and entitled to be issued with an individual VAT identification number by virtue of Article 214 PVD.

However, on the basis that during your first year of operation, your expected total annual turnover is below the domestic SME VAT threshold in Valdemar, you are eligible to apply for the special optional VAT registration scheme for Small and Medium-Sized Enterprises (SMEs) provided for by Article 284 PVD, in terms of which Member States may exempt the supply of goods and services made within their territory by taxable persons who are established in that territory and whose Member State annual turnover, attributable to such supplies, does not exceed the threshold fixed by those Member States for the application of this exemption. That threshold shall be no higher than EUR 85,000 or the equivalent in national currency.

Therefore, as you are expected to be a qualifying SME for VAT purposes during the first year of your operations, you are not obliged to register for the standard type of VAT registration initially, but may register as a VAT exempt SME instead. This would imply that you would be exempt from charging VAT on your otherwise VAT taxable domestic supplies, but at the same time in terms of Article 289 PVD you would not be eligible to recover input VAT. This exemption is primarily designed to alleviate the administrative burden for smaller businesses.

Kindly note that you have an option here: as an SME that qualifies for the exemption, you may nevertheless still choose to voluntarily register for the standard type of VAT registration. This option is expressly provided for by Article 290 PVD. This can be advantageous to you since it is expected that you will primarily be making supplies to other VAT-registered businesses (which means that, if your customers are also engaged in making VAT taxable supplies, they will in principle be eligible to recover the VAT you charge to them, and therefore the fact that you would add VAT on your invoices would not be an added cost to them), and would enable you to recover the input VAT you incur on your own purchases and expenses.

Furthermore, in view of the expected future expansion of your business, it is likely that at some point in the future you will no longer qualify for the SME VAT exemption, and therefore you would in any event be required to have a standard type of VAT registration in due course.

Online marketing consultancy services provided to businesses established in Valdemar

In terms of the general rule regulating the place of supply of services provided on a B2B basis as set out in Article 44 PVD, the place of supply of services to a taxable person acting as such shall be the place where that person has established his business. Since your customers will be other taxable persons, this rule applies and therefore the place of supply for VAT purposes will be Valdemar, which is where these business customers are established.

Accordingly, these transactions represent a domestic supply of services taking place in Valdemar. In terms of Article 193 PVD, VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person, for example in terms of the reverse charge mechanism set out in Article 194 PVD. However, on the basis that you are established in Valdemar, the reverse charge mechanism should typically not apply, and you would be required to charge VAT at the standard rate prevailing in Valdemar, unless you elect for the SME VAT exemption. In view of the nature of the services in question (i.e. marketing consultancy), it is most unlikely that any reduced VAT rate or VAT exemption would find application.

You would typically also be required to report your domestic VAT taxable supplies and declare and pay the VAT thereon via your periodic VAT returns in Valdemar.

Online marketing consultancy services provided to businesses established in another EU Member State

In terms of the aforesaid Article 44 PVD, the place of supply of these services shall be in the other EU Member State, therefore falling outside the scope of VAT in Valdemar. Accordingly, this supply represents a cross-border intra-EU B2B service and as such no Valdemar VAT is chargeable by you on the invoice. Instead, the responsibility for accounting for the VAT shifts to your business customer in the other EU Member State in terms of the reverse-charge mechanism as set out in Article 196 PVD. In line with the VAT invoicing rules set out in Article 226 PVD, since in this case the customer is liable for the payment of the VAT, the invoice issued to your customer should mention 'Reverse charge'.

As required by Article 262 PVD, you must also report this supply in your Valdemar EC Sales List (ESL), also known as a Recapitulative Statement, listing the VAT identification number of the business customer in the other EU Member State.

Even though you don't charge VAT on this type of supply, you would typically still be required to report the value of these supplies in your periodic domestic VAT return in Valdemar. This is typically declared in a specific box designated for non-taxable intra-EU transactions, which effectively informs your tax authority in Valdemar of the cross-border activity.

Online marketing consultancy services provided to businesses established outside the EU

In terms of the aforesaid Article 44 PVD, the place of supply of these services shall be where the business customer is established, therefore falling outside the scope of VAT in Valdemar and indeed outside the scope of EU VAT. Therefore, no VAT is chargeable by you on the invoice.
Even though you don't charge VAT on this type of supply, you would typically still be required to report the value of these supplies in your periodic domestic VAT return in Valdemar. However, no ESL / Recapitulative Statement requirement applies here, since this applies exclusively to intra-EU transactions.

Online tuition services to private individual students based in Valdemar and other EU Member States

In terms of Article 45 PVD, the place of supply of services to a non-taxable person shall be the place where the supplier has established his business. It may be relevant to note that the online training is not pre-recorded and therefore the special place of supply rule applicable to electronically supplied services in terms of Article 58 PVD should not find application here. Accordingly, these supplies fall within the scope of VAT in Valdemar for both students based in Valdemar and students based in other EU Member States.

In terms of Article 132(1)(j) PVD, Member States shall exempt tuition given privately by teachers and covering school or university education. It would appear that your proposed services should fall within the ambit of this exemption, and therefore you would not charge VAT thereon.

It is pertinent to note that providing services that are exempt under Article 132 PVD generally blocks the right to deduct the input VAT paid on any costs associated with providing those services. Indeed, as established in Article 168 PVD, a taxable person has the right to deduct input VAT only to the extent that their purchases are used for the purposes of their taxable transactions.

Accordingly, you do not charge output VAT to your students on these tuition services, while any input VAT paid on costs which are directly and exclusively related to providing these services is not recoverable.

Even though you don't charge VAT on this type of supply, you would typically still be required to report the value of these supplies in your periodic domestic VAT return in Valdemar.

Input VAT incurred on procurement of services which are exclusively attributable to the provision of online marketing consultancy services

In terms of Article 168 PVD, in so far as the goods and services are used for the purposes of the
taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct input VAT. This clearly applies to the domestic taxable B2B online marketing consultancy services you will provide, and as regards future cross-border B2B online marketing consultancy services, the right of input VAT recovery is provided by Article 169(a), which provides that a taxable person shall be entitled to deduct input VAT in so far as the goods and services are used for the purposes of transactions carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State.

On this basis, as regards input VAT incurred on procurement of services which are exclusively attributable to the provision of online marketing consultancy services, these are in principle fully recoverable, unless of course you initially opt for the SME VAT exemption.

The right to recover input VAT is of course subject to the normal rules governing input VAT recovery, including the rules blocking the deduction of input VAT on certain types of expenditure in terms of Article 176 PVD, which amongst others provides that VAT shall in no circumstances be deductible in respect of expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Input VAT incurred on procurement of services which are exclusively attributable to the provision of private tuition services

As previously outlined, private tuition services are classified as "exempt without credit" transactions, which implies that because these services do not give rise to VAT taxable outputs, any input VAT paid on costs directly and exclusively related to providing them is not recoverable. Therefore, input VAT incurred on procurement of services which are exclusively attributable to the provision of private tuition services is a final, irrecoverable cost for your business.

Input VAT incurred on procurement of computer equipment which is used both for the purposes of online marketing consultancy work as well as for private tuition services

Because the expenditure in question is used for the purposes of making both supplies conferring input VAT recovery rights (namely the online marketing consultancy services) and supplies which do not confer such rights (namely the private tuition services), this is a general overhead cost that is subject to partial input VAT recovery rights.

Article 173 PVD provides that for goods and services used by a taxable person for both transactions with a right to deduct and transactions with no right to deduct, only the proportion of the VAT attributable to the former shall be deductible. Article 174 PVD then specifies the standard method for calculating the deductible proportion (often referred to as the "pro-rata"), which is a fraction having the numerator being the total annual turnover from transactions with a right to deduct (namely the online marketing consultancy services), and the denominator being the total annual turnover from both transactions with and without a right to deduct (namely the total turnover from both online marketing consultancy services and from private tuition services).

Therefore, in the year during which you buy the computer equipment, your initial right to deduct input VAT is determined by your business's overall pro-rata deduction percentage for that year, which represents the proportion of your business activities that are taxable. You apply this pro-rata percentage to the input VAT incurred on the computer equipment to calculate the amount you can immediately deduct in your VAT return upon purchase of the computer equipment.

Furthermore, the procurement in question constitutes a capital good of a moveable nature, and is therefore subject to an annual adjustment period of five years to reflect any changes in the computer equipment's use over time. This is set out in Article 187 PVD, which mandates that for capital goods (not being immovable property), the initial VAT deduction must be adjusted over a period of five years, including the year of acquisition. It specifies that the adjustment is based on changes in the deduction entitlement in the subsequent years compared to the year of acquisition, and the annual adjustment shall be made in respect of one-fifth of the VAT charged on the capital goods.

For example if, in the year of acquisition of the computer equipment, your turnover consists mostly of revenue from online marketing consultancy services, with relatively little revenue from private tuition services (hence implying a high pro rata percentage), the initial deduction in respect of input VAT incurred on procurement of the computer equipment in question would accordingly be a high proportion of that input VAT. If, in the following years, Joan generates increasingly more revenue from private tuition services relative to revenue from online marketing consultancy services (hence implying a reducing pro rata percentage over time), then for the subsequent four years post-acquisition, Joan would typically be required to make an annual adjustment in favour of the Valdemar tax authorities to claw back part of the input VAT originally recovered upon acquisition of the said computer equipment.

I trust you will find my comments helpful to address your queries and therefore to enable you to consider the VAT aspects of your proposed new business. Please do not hesitate to contact me if you wish to discuss any aspect in greater detail.

Yours faithfully
ADIT candidate

PART B

Question 3

Discussion of statement

The distinction between single composite supplies and multiple independent supplies for Value Added Tax (VAT) purposes is indeed one of the most controversial issues, as it is not specifically addressed in the legislation, i.e. the PVD and the Implementing Regulation. This distinction is crucial for determining the correct VAT treatment, including the applicable VAT rate and any possible exemptions, and the invoicing.

The general principle established by the CJEU is that each transaction must normally be regarded as distinct and independent. However, a transaction consisting in economic terms of a single supply should not be artificially disassembled, as this would affect the proper functioning of the VAT system.

VAT treatment and relevant principles

The Court has developed criteria and considered specific factors in various contexts to determine whether a supply is single or multiple, and, if single, whether it is a supply of goods or services, and which element is predominant for VAT rate purposes.

The question of whether supplies are “so closely linked that they form, objectively, a single, indivisible economic supply which it would be artificial to split” is the core test for determining a single composite supply.

In summary, the CJEU’s approach to distinguishing between single composite and independent multiple supplies for VAT purposes is highly fact-specific and focuses on the economic reality of the transaction from the perspective of a typical consumer.

The determination relies on evaluating the relationship between the different elements, their indispensability, and whether they form a single, indivisible economic whole that would be artificial to split. If a single supply is identified, the VAT treatment, including the rate, is generally determined by the principal element.

Relevant case law - CJEU cases

Card Protection Plan (CPP) (Case C-349/965)

The Court established that an important step of the VAT analysis of such supplies is to consider if there are two or more distinct supplies or one single supply. In CPP, the CJEU held that two points must essentially be taken into account:

- the general rule stemming from the PVD that every supply must in principle be regarded as distinct and independent;
- the Court acknowledged that where two or more elements or acts supplied by the taxable person to the customer are so closely linked that, from an objective point of view, they form a single, indivisible economic supply, such a supply should not be artificially split so as not to distort the functioning of the VAT system.

In the latter case, the additional elements are considered as being merely ancillary to the principal supply, meaning that they serve as a means of better enjoying the principal supply rather than themselves constituting an autonomous aim for the customer.

Therefore, in the ancillary supplies would share the VAT treatment of the principal supply. In this regard, the CJEU established that one would need to ascertain the essential features of the transaction. For example, the existence or otherwise of a single price is an indicative feature, albeit not conclusive, that could be taken into account to determine the existence of a single supply.

Levob (Case C-41/04)

CJEU held that the assessment should be based on the economic reality of the transaction as viewed by the typical consumer. If the subordinate supplies are so closely linked that, in isolation, they lack practical benefit for the customer, they may form a single supply.

Deutsche Bank (Case C-44/11)

CJEU held that a service is considered ancillary to a principal service if it is “not an end in itself for the customers but a means to make the main service of the provider more attractive”.

Stadion Amsterdam (Case C-463/16)

CJEU ruled that a single supply composed of a principal and an ancillary element, where the elements would have different VAT rates if separate, “must be taxed solely at the rate of value added tax applicable to that single supply, that rate being determined according to the principal element”.

This principle means that even if a specific part of a composite service (like a visit to a museum within a stadium tour) could be attributed a price and would normally have a reduced rate, the overall single supply is taxed at the rate applicable to the principal element (the stadium tour in this case), unless the ancillary element is so dominant that it changes the overall nature of the supply.

Dyrektor Krajowej Informacji Skarnej (Case C-282/22)

CJEU held that in the context of electric vehicle charging, the supply of electrical energy and the provision of charging equipment and technical support are considered a single transaction, and are to be regarded supplies of goods, i.e., supply of electricity.

Purple Parking and Airparks Services (Case C-117/11)

A parking service combined with passenger transport between the car park and the airport is a single composite service. The transport service is considered ancillary to the parking service, as the customer’s primary aim is parking, and the transport is a means to enable access to the airport from the off-site location. The cost of the transport service alone is not a determining factor for classification as ancillary.

Question 4

Part 1

Article 17 PVD stipulates that when a taxable person moves goods being business assets forming part of their economic activity from one EU Member State to another, this movement is treated as a supply of goods for consideration.

Therefore, this transaction represents a deemed intra-Community supply of own goods from MS1 to MS2. In terms of Article 138(2)(c) PVD, a deemed intra-Community supply of own goods is VAT exempt. From a VAT reporting point of view, this is typically required to be reported in the VAT return in MS1 as a zero-rated intra-Community supply of goods. The company must also file an EC Sales List (ESL), also known as a Recapitulative Statement, in MS1 in which it declares the deemed supply, listing its own VAT identification number in MS2 (being the Member State of arrival) as the VAT identification number of the recipient. If the company's annual value of goods dispatched to other EU countries exceeds the relevant national threshold in MS1, an Intrastat dispatch declaration must also be filed in MS1.

Corresponding to the deemed intra-Community supply of own goods in MS2, this transaction gives rise to a deemed intra-Community acquisition of own goods in MS2 in terms of Article 21 PVD, which provides for the deemed intra-Community acquisition corresponding to the transfer of own goods. Article 2(1)(b) PVD provides that an intra-Community acquisition of goods, including a deemed intra-Community acquisition, is a taxable event.

The company would therefore typically be required to account for VAT on the deemed intra-Community acquisition in its MS2 VAT return, under the so-called reverse-charge mechanism whereby the business simultaneously reports output VAT due on the acquisition (as if it were a sale), and input VAT deductible on the acquisition (as if it were a purchase). If the company has full input VAT recovery rights in MS2, this results in a fiscally neutral transaction on the VAT return, with no actual VAT payment due. This outcome should apply insofar as the goods in question, which are subsequently subject to a domestic supply of goods in MS2, are attributable to a VAT taxable or zero-rated domestic supply of goods in MS2.

If the company's annual value of goods arriving from other EU countries exceeds the national threshold in MS2, an Intrastat declaration for arrivals is also required to be filed.

The deemed intra-Community supply/acquisition is followed by a domestic supply of goods in MS2. Article 31 PVD provides that where goods are not dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time when the supply takes place. Therefore, this supply takes place in MS2 and is subject to VAT in MS2, typically at the standard rate of MS2 unless, by way of exception, a reduced rate of VAT or exemption applies to the goods in question. Since the supply is made to final (non-business) customers, the liability to charge and collect VAT lies on the company in terms of Article 193 PVD. The company would typically be required to report this domestic supply in its MS2 VAT return.

Part 2

In principle, this transaction may also appear to represent a deemed intra-Community supply/acquisition, this time from MS2 to MS1 rather than vice-versa. However, Article 17(2) PVD includes several exceptions to the concept of a deemed intra-Community transfer of own goods. More specifically, Article 17(2)(f) PVD specifies that a deemed intra-Community supply does not arise in respect of a transfer of own goods for the purpose of supply of a service performed for the taxable person and consisting in valuations of, or work on, the goods in question physically carried out within the territory of the Member State in which dispatch or transport of the goods ends, provided that the goods, after being valued or worked upon, are returned to that taxable person in the Member State from which they were initially dispatched or transported.

Therefore, this transaction generally falls outside the scope of VAT and typically should not give rise to any specific VAT reporting obligations in either MS1 or MS2. However, the company would be required to record the goods moved to MS1 for repairs in its temporary movement of goods register as required by Article 243 PVD.

Part 3

This transaction generally falls outside the scope of VAT and typically should not give rise to any specific VAT reporting obligations in either MS1 or MS2. As a general rule, for VAT purposes, a head office and its branch are considered to be parts of the same single legal entity. Since a company cannot make a supply to itself, an internal charge between its own head office and branch is generally considered to be an internal allocation of costs and falls outside the scope of VAT. This principle was established by the Court of Justice of the European Union (CJEU) in the FCE Bank case (C-210/04). The Court ruled that because a head office and its branch together form a single

legal person and are not legally and economically independent of each other, there is no legal relationship between them where one provides a service to the other for consideration.

Part 4

This transaction is very similar to the previous transaction, with the crucial difference that the branch joins a VAT Group in MS2, which VAT Group is made up of that branch and a related company established in MS2. This triggers an exception to the aforesaid principle established in FCE Bank. This exception stems from the later Skandia judgment of the CJEU (case C-7/13). In this case, because the branch has joined a VAT Group in MS2, it is treated as a separate taxable person. Effectively, by joining a VAT Group in MS2 of which only the branch in MS2 (and not also the head office in MS1) forms part, the branch is deemed for VAT purposes to be part of a new, separate taxable person (namely the VAT group itself) in MS2. This breaks the single-entity principle and makes transactions between the head office and the VAT-grouped branch fall within the scope of VAT. Therefore, this is deemed to be a cross-border B2B supply of services for consideration between the head office in MS1 and the branch in MS2.

From a VAT reporting perspective, the head office reports the supply in its MS1 VAT return. The supply is treated as a cross-border B2B service, which is typically a supply that is outside the scope of MS1 VAT, with the right to deduct. Accordingly, no MS1 VAT is charged on the invoice. The company must also report this supply on its MS1 ESL, listing the VAT identification number of the VAT Group in MS2 as the customer.

As the recipient of this supply of services, the VAT Group in MS2 would account for the VAT on the service it receives under the reverse-charge mechanism. The representative member of the VAT Group reports the transaction in the VAT Group's MS2 VAT return. Using the reverse-charge mechanism, it will declare the output VAT due on the value of the service (calculated at the VAT rate applicable in MS2), and if applicable the same amount of VAT is simultaneously reported as deductible input tax deductible according to the input VAT recovery rights of the VAT Group in MS2. If the VAT Group has a full right to deduct input VAT (since e.g. it makes fully VAT taxable supplies), then the transaction is fully VAT neutral, with the output VAT and input VAT cancelling each other out. If the VAT Group has a partially or fully VAT exempt profile, it will not be able to deduct the input VAT, whether in part or wholly, resulting in an actual irrecoverable VAT cost to the VAT Group.

Part 5

In this case, the input VAT incurred by the company via its branch in MS2 is exclusively attributable to VAT taxable supplies made by the company in MS1. Since those supplies would also be VAT taxable if made in MS2, the branch is entitled to recover the domestic input VAT it incurs in MS2.

The right to this deduction is provided for in Article 169(a) PVD, which allows a taxable person to deduct input VAT incurred in one Member State for goods and services used for its business transactions in another country, under the condition that the transactions would have been eligible for a VAT deduction had they been carried out in the Member State where the input VAT was incurred.

Since the branch is VAT registered in MS2, it will recover the domestic input VAT incurred in MS2 through its regular domestic VAT return in MS2.

Part 6

In this case, the branch is not entitled to recover any of this specific domestic input VAT it incurs in MS2. Although the input VAT incurred by the company via its branch in MS2 is exclusively attributable to VAT taxable supplies made by the company in MS1, those same supplies would be exempt without credit (and hence would not confer a right of deduction) if they had been carried out in MS2, which is the Member State in which the VAT was incurred. Therefore, Article 169(a) PVD is not satisfied and the input VAT is not recoverable.

PART C

Question 5

Although the EU member states apply Value Added Tax (VAT) under a common framework, each member state sets its own rates according to the provisions of PVD, which sets:

- A standard rate (at least 15%).
- Up to two reduced rates (at least 5%).
- Possibility of super-reduced rates (below 5%) or zero rates in some cases.

Therefore, reduced VAT rates in the EU are special lower-than-standard rates that member states can apply to certain goods and services. These reduced rates are exceptions to the standard VAT rate, which must be at least 15% under EU law.

It is worth noting that since 2025 there is more flexibility for member states in relation to the following:

- Digital books, e-publications, and online journals can get reduced/zero rates (same as printed).
- Environmental-friendly goods (solar panels, bicycles, energy-efficient heating) may benefit from lower rates.

Reduced rates on admission to cultural events

Member States are permitted to adopt reduced rates below the standard rate, but are not obliged to do so. According to the provisions stipulated in art.98 of PVD, they can only apply them only to supplies which are listed in Annex III. The admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities or access to the live-streaming of those events or visits or both are specifically listed in Annex III.

Nevertheless, it has to be noted that where the PVD gives flexibility to Member States:

- a Member State can choose whether to take advantage of the rule or not;
- it must apply it consistently, and must not create the possibility of distortion of competition by applying the rule selectively; and
- any application of the rule must fall within the scope permitted by the Directive.

CJEU Cases

European Commission v Federal Republic of Germany (C-109/02)

Germany allowed a reduced rate of 7% for supplies of musical groups playing for the public or for a concert organiser, and to soloists playing for the public.

However, the standard rate applied to supplies by soloists working for a concert organiser. The Commission applied to the CJEU for a declaration that this distinction was not permitted. The CJEU agreed with the Commission.

Erotic Center BVBA (C-3/09)

A ‘private cinema’ provided its customers with the facility to watch erotic films in a cubicle on their own. It accounted for output tax at 6% and claimed that this was covered by the wording of Annex III. The CJEU disagreed, holding that admission to a cinema did not include allowing someone to watch a film on their own.

Elite Games (C-576/23)

Elite Games carries out, in Romania, recreational and leisure activities for children, by providing them with play equipment in specially designed premises inside large shopping centers. Children’s access to this equipment is through the purchase, from vending machines, of tokens.

The CJEU decision acknowledged that the installation, in a demarcated area within commercial spaces or shopping centers, of entertainment machines for individual or collective use and operating using tokens purchased from their holder or, where applicable, after paying a right to it, does not fall within the notion of “amusement parks”, within the meaning of Annex III. Consequently, the services giving access to them cannot benefit from the reduced rate that the States members have the right to apply for admission to amusement parks.

Phantasialand (C406/20)

The CJEU decision acknowledged that a difference in VAT rates at permanent and temporary attractions is not in conflict with EU law, provided that the principle of tax neutrality is observed.

Question 6

The “place of belonging” of a non-taxable natural person is very important, because it determines which member state’s VAT applies when that person buys goods or services.

The place of belonging for private individuals, i.e. non-taxable persons, is the place where the individual has his permanent address or usually resides. This is the address where they habitually live, not where they might temporarily stay.

These aspects are defined in Articles 12 and 13 Implementing Regulations (IR 282/2011) which state that the permanent address of a natural person shall be the address entered in the population or similar register, or the address indicated by that person to the relevant tax authorities (unless there is evidence that this address does not reflect reality). The place where a natural person “usually resides” is the place where that natural person usually lives as a result of personal and occupational ties. Where the occupational ties are in a country different from that of the personal ties, or where no occupational ties exist, the place of usual residence shall be determined by personal ties which show close links between the natural person and a place where he is living.

The place of belonging of a non-taxable person determines the place of supply in many cases, for example:

Telecommunication, Broadcasting and Electronic services (TBES)

TBES are supplied where the non-taxable customer has his permanent address or usually resides, this needs to be determined because the supplier will need to account for VAT to the customer’s Member State at the applicable rate (Art 58 PVD).

For instance electronic and broadcasting services (e-books, apps, streaming, software, etc.) are taxed where the customer belongs, i.e., a consumer living in Spain buys broadcasting services will pay Spanish VAT.

A supply of services to a non-taxable person who belongs outside the EU

When certain services are supplied to non-taxable persons the identification of the customer’s permanent address or usual residence outside the EU is essential for the supplier to determine whether VAT is chargeable or not (Art 59 PVD).

Long-term hiring of means of transport

The place of supply of hiring a means of transport, for longer than 30 days (vessels 90 days), is where the non-taxable customer has his permanent address or usually resides belongs (Art 56 PVD). This can potentially require a business to register in the member state of their customer where they otherwise have no connection with that member state.

Distance sales of goods (e-commerce)

After the 2021 EU VAT reforms, VAT is due in the member state of the consumer (their place of belonging), once thresholds are exceeded and certain conditions are met (Art 33 PVD). This can potentially require a business to register in the member state of their customer or apply VAT through OSS.

Purchase of goods VAT free for export

Travelers not established within the Community are eligible to purchase goods VAT free for export. However, suppliers need to identify the permanent address or habitual residence of potential purchasers to ensure their eligibility (Art 147 PVD).

Question 7

Introduction

The VAT treatment of a holding company is fundamentally determined by whether its activities fall within the scope of the term 'economic activity' as defined in the PVD. The jurisprudence of the Court of Justice of the European Union (CJEU) has established a key distinction between 'passive' holding companies, which generally fall outside the scope of VAT, and 'active' holding companies, which are considered taxable persons. This distinction influences the holding company's requirement to register for VAT and its corresponding rights to deduct input VAT.

Passive holding companies

A holding company is classified as 'passive' where its sole purpose is the acquisition and holding of shares in other undertakings, without any direct or indirect involvement in the management of those subsidiaries. As a result, its sole source of income, if any, would be any dividends received from investee companies, and any share disposal proceeds.

Status as a Taxable Person

The mere acquisition and holding of a financial interest in another company do not, in themselves, constitute an economic activity. This principle was established by the CJEU in Case C-60/90 Polysar, where the Court held that if the holding of shares is not accompanied by any direct or indirect involvement in the management of the companies in which the holding has been acquired, it does not amount to an economic activity for VAT purposes. Consequently, a purely passive holding company does not qualify as a taxable person.

Requirement to register for VAT

As it is not a taxable person, a passive holding company generally has no obligation to register for VAT. Its activities, such as the receipt of dividends, are considered to be outside the scope of VAT. It would only be required to register for VAT in specific instances such as making intra-Community acquisitions of goods in excess of the annual acquisitions threshold applicable in its Member State of establishment – in practice, it is very unlikely that a passive holding company would make such acquisitions.

Input VAT recovery rights

A significant implication of being a non-taxable person is the inability to recover input VAT. In Case C-16/00 Cibo, the CJEU ruled that a holding company that does not engage in an economic activity has no right of deduction for the VAT incurred on costs associated with the acquisition of its shareholdings. The Court found that since these costs were not attributable to any VAT taxable output transactions, the requisite direct and immediate link for input VAT deduction was absent.

Active holding companies

An active holding company is one that, in addition to its holding of shares, participates in the management of its subsidiaries and / or carries out any other economic activity. This economic activity typically takes the form of supplying administrative, financial, commercial, technical, or management services to its subsidiaries for a consideration.

Status as a Taxable Person

The provision of services to subsidiaries for a consideration is clearly an economic activity. This brings the company within the scope of VAT and confers upon it the status of a taxable person for VAT purposes.

Requirement to register for VAT

As a taxable person making VAT taxable supplies, an active holding company is obliged to register for VAT, assuming that the value of its supplies exceeds the relevant VAT registration threshold applicable in its Member State of establishment.

Input VAT recovery rights

An active holding company has the right to deduct input VAT on costs that have a direct and immediate link to its taxable economic activities. There is significant CJEU jurisprudence in this area. For instance, in the joined cases C-108/14 Larentia + Minerva and C-109/14 Marenave, the CJEU clarified that input VAT incurred on costs related to the acquisition of shareholdings in subsidiaries to which the holding company provides management services can be

regarded as part of its general overheads. As such, these costs are considered to have a direct and immediate link to the company's economic activity as a whole, and the associated input VAT is, in principle, fully deductible.

Mixed holding companies

For so-called mixed holding companies – namely those involved in managing some subsidiaries but not others – the right to deduction may becomes more complex. Such entities carry out both economic activities (i.e. the management services) and non-economic activities (i.e. the passive holding of certain shares). In these circumstances, the input VAT should in principle be apportioned. Input VAT which is directly attributable to the managed subsidiaries is deductible, whereas input VAT which is directly attributable to the passively held subsidiaries is non-deductible. Input VAT incurred on general overheads covering both economic and non-economic activities should in principle be apportioned between the economic and non-economic activities according to a method that objectively reflects the extent to which the costs are used for each type of activity.

Conclusion

The VAT status of holding companies is driven by the nature of their specific activities. A passive holding company, by virtue of not engaging in an economic activity for VAT purposes, remains outside the scope of VAT system and is accordingly denied any right to recover input VAT. Conversely, an active holding company, through its provision of services to subsidiaries for a consideration, assumes the full status of a taxable person, entailing both the obligation to account for VAT on its supplies and the right to deduct input VAT on its related costs. Involvement in management of subsidiaries and provision of services thereto for a consideration is a key determining factor that makes a holding company an active rather than passive holding company, and hence a taxable person for VAT purposes.

Question 8

Part 1

This transaction is a supply of goods falling within the scope of VAT. In terms of Article 73 PVD, the taxable value is the consideration – namely €340,000. Business A and Business B are unrelated, and therefore the open market value should not find application.

Part 2

Article 16 PVD provides that the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, shall be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible.

Clearly, the goods in question are not samples or gifts of small value, and therefore this supply of goods free of charge is treated as a supply of goods for consideration i.e. a deemed self-supply of goods.

According to Article 74 PVD, where a taxable person applies or disposes of goods forming part of his business assets as referred to in Article 16 PVD, the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time when the application, disposal or retention takes place.

There is no specific purchase price since the goods were produced by Business A itself from purchased raw materials. The cost price is €270,000, and therefore this will be taxable value of the deemed self-supply on which Business A would be required to self-account for and pay output tax in terms of Article 16 PVD.

Part 3

This is a barter transaction and therefore there are two reciprocal supplies, namely a supply of goods from Business A to Business B for which the taxable value is the value of the consideration – namely €340,000, and a supply of services from Business B to Business A having the same taxable value of €340,000.

Part 4

This is a supply of goods from Business A to Business B. The taxable value is €300,000, which is the consideration received by Business A from Business B (namely €250,000) plus the €50,000 subsidy directly linked to the price of this supply received from the national investment incentive agency, in line with Article 73 PVD.

Part 5

In terms of Article 79 PVD, amongst others the taxable amount shall not include price reductions by way of discount for early payment. Therefore, this is a supply of goods and the taxable value is €340,000 less 10% early payment discount, i.e. €306,000.

Part 6

In terms of Article 79 PVD, amongst others the taxable amount shall not include price discounts and rebates granted to the customer and obtained by him at the time of the supply. Therefore, this is a supply of goods and the taxable value is €340,000 less the €10,000 coupon, i.e. €330,000. In Case C-126/88 Boots, the CJEU confirmed that such a coupon is not part of the taxable value since it is merely an entitlement to a discount at the time of supply. This is in contrast to the CJEU's judgment in Case C-398/99 Yorkshire Co-operative, where the coupon was deemed to be part of the taxable value since the value of the coupon was in fact paid to the supplier by the manufacturer, and therefore represented third party consideration received by the supplier.