THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

MODULE 3.02 – EU VAT OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Importations by Sodex

The importation of goods by Sodex from Asia requires Customs duty and VAT to be paid at the place of import into Bordonia. The Bordonian rate of VAT will apply and the value for VAT will be the cost of the goods plus freight, insurance and other costs arising up to the point of arrival at the Bordonia border. Any costs in foreign currency will require conversion to the currency of Bordonia at the published rate of exchange. Sodex will require an EORI (Economic Operator Registration and Identification) number allocated by an EU customs authority and valid throughout the EU for the completion of Customs import declarations. The duty and VAT due may usually be paid using a deferment account which allows the goods to be removed from the place of import and the charges to be taken from the importer's bank account at monthly intervals, thereby assisting cashflow. If Bordonia allows it the import VAT may be accountable using a reverse charge entry on the VAT return.

Onward Supply Relief Art 143 PVD

The 25% of goods which are expected to be sold to customers in other member states may be entitled to Onward Supply Relief under Art 143 1(d) PVD which allows for Bordonia VAT to be relieved providing that the onward supply falls within Art 138 PVD being to a taxable person identified with a VAT registration number in the other member state and for which evidence of removal and recapitulative statements have been made.

Input tax

The import VAT will be deductible as it will be incurred in making further taxable supplies of the imported goods.

Proposed laundry cleaning service

The options for the operation of the proposed laundry service include the creation of a new companies in each of the 3 member states in which it will provide the service or the transportation of laundry from customers in those member states to a facility in Bordonia and return. The first option would require each company to become VAT registered in each of its member states of establishment and for each company to charge domestic VAT to their business customers, this is the simplest option although VAT returns will be required in 3 member states and possibly varying currencies and languages . It may be possible for Sodex to use their existing VAT registered company to make laundry cleaning supplies to customers established in Bordonia.

The alternative to transport customers goods across EU borders to bring them to Bordonia for cleaning could be viewed as a temporary removal for processing and can be dealt with by the customers maintaining a register of temporary movements of goods recording the location of goods and their return to the customer in the member state when cleaned. The 2 year limit for goods remaining in Bordonia would not practically be a problem as it is expected that the laundry would be returned very soon after being sent to Bordonia.

The delivery vans performing the transportation would also be treated as temporary movements to other EU member states and require Sodex to record these on its own register of temporary movements rather than as a supply of own goods requiring acquisition tax to be accounted for in the 2 member states to which the vans travel.

Possible future expansion to non-taxable persons

If Sodex started performing laundry cleaning for private individuals it would need to charge VAT in the member states in which it performed those services under Art 54 2(b) PVD which would be accounted for in each member state in which a laundry existed under the first option and Bordonia VAT would be chargeable if the laundry was brought to that member state for cleaning before return.

I trust that this report addresses all points to enable Sodex to comply with its EU VAT compliance obligations.

ADIT candidate

Question 2

CFO
Snake LLC
Hong Kong

June 2025

Request for VAT advice on Luggage Tracker

Thank you for your recent request for VAT advice in connection with the sale of luggage tracking devices.

Supply of Good or Services?

It is important to initially determine whether the product being sold is goods or an electronic service. The single up-front payment without a regular subscription charge tends towards viewing this as a supply of goods, however the geolocation feature of the tag will clearly not function without proximity to a mobile phone network to connect the tag signal and the app. There is also no identifiable consideration for any future updating of the app. The delivery of the device is by physical means and on balance the sale of the luggage tag device is more strongly regarded as a supply of goods. The distinction between goods or electronic service is important as it determines eligibility for the various special schemes that exist some of which are not available to non-EU established suppliers of goods.

Supply of Goods

The sale of these devices by Snake LLC (Snake) directly to members of the public by for example, website or mail order, will require Snake to either register for VAT in Vergonia to account for VAT on the sales, or Snake may use the One Stop Shop for distance sales of goods if the goods are dispatched from another member state (but not an non-EU country) to customers in Vergonia Art 369b(a).

If the goods are sent from outside the EU to customers in Vergonia they may be eligible for the IOSS (Import One Stop Shop) which allows for the VAT on the sale price to be accounted for directly to the Vergonia tax authority, Art 369l and m PVD refers. Under this scheme no import VAT is due as the VAT on the selling price is passed in full to the tax authority.The IOSS scheme requires the value of each consignment to be less than €150 and can therefore only be used for small individual consignments and not bulk imports of tags for later distribution from Vergonia. It is a requirement of IOSS that Snake is not established in Vergonia. Snake will be required to appoint a tax representative and must register for the scheme before starting to import the tags, an exception to the tax representative requirement is allowed if an administrative mutual cooperation agreement is in place between Hong Kong and Vergonia.

VAT returns need to be made quarterly in the OSS and monthly in IOSS in the currency of Vergonia (Euro) and records must be retained for 10 years

Business customers (B2B)

VAT on sales of these devices to taxable persons cannot be included under the OSS or IOSS schemes described above. They will be subject to Vergonia VAT which will need to be accounted for through a domestic VAT registration in Vergonia and require the issue of an invoice to enable the business customer to recover the VAT charged, where allowed. This domestic VAT registration will enable the recovery of Vergonia VAT incurred in making B2B supplies, this contrasts with any VAT incurred in relation to special scheme supplies which will need to be made under the 13th VAT Directive refund procedure.

An alternative arrangement would be for Snake to change the terms of trade so that business customers would import the goods into the EU and be liable for customs duty and import VAT themselves. This way Snake will not have to be involved in registration in any member state in relation to B2B sales to business customers.

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

Trustees of Community Church
Community Church
Theta

5 June 2025

Dear Trustees

Thank you for your recent enquiry concerning VAT in relation to the activities of the Trustees of the Community Church Group. I am pleased to explain the effect of VAT upon the 2024 expenditure detailed in your request.

As the Trustees are not registered for VAT in Theta you are not currently in a position to reclaim or account for any VAT to the Theta tax authority. As a consequence, if any of the €2,500 expenditure paid to local businesses was to any that were charging you VAT you would not be able to recover any VAT charged to you. It is also a requirement for VAT registration that the activities of the Trustees are "economic activities" as determined by Art 9 PVD which, in broad terms, requires you to undertake activities conducted independently on business terms which would not usually be expected to be made at a continual loss. The receipt of donations, when freely given, does not require them to be included in taxable turnover when considering VAT registration thresholds as they are not treated as within the scope of VAT.

I note that you have €1,000 income which falls short of the Theta compulsory registration requirement at €10,000. In some circumstances it is possible to register for VAT, despite having income below the registration requirement, such as when you begin to purchase stock or property for a future business activity. However, in the absence of an "economic activity" I do not believe the Theta tax authority would allow you to register to enable you to recover any VAT charged on purchases or the import of stone from Turkey on which I would expect you to have been charged import VAT on the €10,000 value of the stone for the restoration of the church spire.

A similar position exists for the acquisition of stained glass from a supplier in another EU member state, who, if VAT registered in that member state, would be required to charge you VAT at the rate applicable to stained glass in its member state because of the inability of you to provide a VAT registration number that would enable you to receive those goods and account for the acquisition tax on your own VAT return.

The expenditure on advertising and maintenance of the membership register paid to a Swiss business would not have been charged with EU VAT as the Swiss business would have treated this as outside the scope of EU VAT, However, these services can't be accounted for within the reverse charge arrangements detailed in Art 196 PVD as you are not in business in Theta, neither do you have a VAT registration number that you can provide to the Swiss supplier as evidence that you are a business receiving their supplies for business purposes. However, despite you not having been charged VAT on these services, it is possible, dependant on whether Theta has adopted the requirement for the inclusion of reverse charge services within taxable turnover for the purposes of the VAT registration threshold and that such expenditure (€12,000) is added to the income received from taxable supplies (€1,000) when considering whether the VAT registration threshold is met, since the registration threshold in Theta is €10,000 you may have become liable to register for VAT in Theta and need to notify your liability to register within the period provided by Theta law, Art 214 PVD refers.

The effect of this may result in you accounting for VAT on the value of services received from Switzerland as if they had been charged to you with VAT (which you can't recover) from a domestic supplier. This measure ensures that there is no tax advantage in non-taxable legal persons such as yourselves sourcing services from outside the EU above the domestic VAT threshold.

Should you continue to purchase services from Switzerland there will be an on-going requirement for you to remain registered for VAT in Theta and to pay VAT to the tax authority. I therefore suggest you consider whether equivalent services can be provided from a supplier in Theta which would relieve you of the requirement of VAT registration.

Please advise me if I can be of further assistance.

Yours sincerely
ADIT candidate

Question 4

On 1st July 2021, as part of the package of e-commerce reforms, the European Union introduced legislation at Art 14a PVD that requires taxable persons who operate “electronic interfaces”, such as website marketplaces to account for VAT made on sales to consumers (B2C) at the VAT rate applicable in the member state in which the consumer belongs as a deemed supplier.

One of the reasons for the introduction of this change was to ensure effective and efficient collection of VAT while reducing the administrative burdens for suppliers, tax administrations and consumers..

The changes made the electronic interface operator or marketplace liable to account for the VAT on sales which they “facilitated”. If the seller was not VAT registered the marketplace would need to assume the liability for VAT due. In particular the measure was aimed at:

1) Distance sales of goods imported from third territories in consignments of intrinsic value less than €150, and
2) Supplies of goods already within the community by a taxable person, not established there, to a non-taxable person, both domestic supplies and distances sales.

The meaning of the phrase “electronic interface” is not defined in the legislation but encompasses marketplaces, platforms, portals and similar arrangements which allow distance sales of imported goods to be made.

The term “facilitates” is specifically defined at Art 5b Implementing Regulation 282/2011 as “the use of an electronic interface to allow a customer and a supplier offering goods for sale through the electronic interface to enter into contact which results in a supply if goods through that electronic interface”.

There are additional provisions all of which need to be met in order for a taxable person not to be regarded as facilitating a supply of goods, they are:

1) That the taxable person does not set any of the terms and conditions under which the supply is made,
2) That the taxable person is not involved in authorising the charge to the customer in respect of the payment made, and
3) That the taxable person is not involved in the ordering or delivery of the goods.

These provisions also to ensure that advertisers, payment processors and inventory managers who solely perform those functions are not included within the term “facilitates”

To determine who is responsible for the VAT on the sale the transaction is regarded as two supplies for VAT purposes, the first being by the actual seller to the marketplace operator who is deemed to have purchased the goods, this is outside the scope of VAT as the sale is outside the EU. The second transaction is the onward sale by the marketplace operator to the final consumer at the VAT rate applicable in the member state in which they belong.

In the event that a taxable person operating an electronic interface does not apply the IOSS scheme to account for VAT on sales of imported goods made to EU consumers, there is a fallback method Art 369y – 369zb PVD, which results in the person to whom the goods are to be delivered becoming liable for the VAT and the courier or other business which imported the goods into the EU being enabled to collect the VAT due from the ultimate consumer, accounting for the VAT to their tax authority accordingly.

PART C

Question 5

The place of supply of services is determined under the “General rule”, Art 44 PVD, as being the place in which the recipient has established his business when made to a taxable person. When made to a non-taxable person, the place of supply of services shall be where the supplier has established his business, Art 45 PVD. The determination of where a business is established is assisted by Regulation 10 of Implementing Regulation 282/2011 which states that a business is established where its central administration is carried out which is where essential decisions are made.

However, there are several other rules relating to the place of supply of specific types of services which result in the place of supply being neither of the two alternatives above, for example the place of supply of services connected with immovable property which under Art 47 PVD are treated as being made where the property is located.

Because of the existence of the general rule and other more specific rules that apply in certain circumstances e.g. land, leasing, travel etc the possibility of a place of supply being regarded as outside the member states exists, for example, the hire of a car to a person visiting from the USA. But this treatment appears illogical where the car is made available to the person at an EU airport of arrival and is used continuously within the EU and is therefore consumed entirely within the EU but without any VAT being charged..

To deal with such situations, the concept of “use and enjoyment” has been developed under Art 59a PVD which aims to deal with the prevention of double or non-taxation. The scope of Art 59a allows for the place of supply which would otherwise be dealt with by Articles 44,45, 56, 58 and 59 to be replaced with a place of supply which if within the territory of a member state is allowed to be treated as being made outside the EU and if made outside the EU to be considered as made within a member state if the “use and enjoyment” of such services takes place there.

The extent to which the use and enjoyment provision is to be applied can be determined by each member state and some have elected to apply it in circumstances in which others don’t.

Cases in which the “use and enjoyment” principle has been applied include SK Telecom C-593/19 in which a South Korean telecoms provider charged South Korean customers a roaming charge when they visited Austria, the CJEU ruled that Austria was entitled to receive VAT on the charge for the use that took place in that country. Also, Athesia Druck C-1/08 in which an EU supplier of advertising to a non-EU business resulted in material being distributed to individuals in the supplier’s member state. The CJEU found that since “use and enjoyment” was within the EU the supply was subject to VAT.

(Other relevant cases will also attract the equivalent marks.)

Question 6

To correctly determine the place in which Thor SA (Thor) has received the supply of services, and consequently whether a domestic or cross border supply has been made to it, it is important to initially determine where Thor has 1) Its Business establishment and 2) whether it has any Fixed establishments in other member states. It is important to recognise that although Thor has registered for VAT in Azuria, due to its distance sales, that feature alone does not mean that it has any establishment in that member state.

It is clear that Thor has its business establishment in Sigma as this is where the company is registered and has its head office. Art 10 of the Implementing Regulation 282/2011 says that for the purposes of determining the place of supply of services under Articles 44 and 45 PVD, the place where a business establishment is located is where the central administration is carried out and account should be taken of the place where essential decisions of the business are taken, where the registered office of the business is located and where management meets.

It follows that if Thor has a business establishment and no fixed establishment the only place in which it can receive services is Sigma and it would be correct for Borodonian suppliers to treat their supplies as being in Sigma and subject to the reverse charge under Art 44 PVD.

However, if Thor has sufficient human and technical resources with which it can receive supplies in Azuria it follows that the supplies made to its fixed establishment are subject to Azuria VAT and the suppliers have incorrectly treated the supplies they have made to it and will need to correct this.

Art 11 of the Implementing Regs says that a fixed establishment shall be any establishment other than a business establishment characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs. In the case of Thor, it would, as a minimum, require employees working in Azuria capable of using the services supplied to them and have a presence of tangible assets related to the services received. In case law, the existence of solely a gaming machine in Berkholtz (C- 168/84) or cars in ARO Lease (C-190/95) were held not to be sufficient to create a fixed establishment of their owners.

In conclusion, it would be necessary for Thor to have staff and assets located in Azuria capable of using the services provided to cause the place of supply to be considered Azuria.

(Other relevant cases will also attract the equivalent marks.)

Question 7

For a payment to be treated as consideration for a supply it is important to show that there is a connection or nexus between the thing supplied and the receipt of the consideration such that it creates a liability to account for VAT on the supply. The mere receipt of a payment or other consideration alone is not sufficient to illustrate that a taxable supply has been made and case law has shown that a voluntary donation is not within the scope of a supply, see Tolsma C-16/93 in which a barrel organ player received donations and played whether or not passers-by offered money, since there was no agreement between the parties it was held that there was no necessary link between the supply and the consideration.

In the case of subsidies there needs to be a relationship between the consideration received to replace a shortfall caused by other reasons and the goods or services provided. The general rule on this is at Art 73 PVD which says that "..the taxable amount shall include everything which constitutes consideration obtained by the supplier … from a customer, third party, including subsidies directly linked to the price of the supply".

Cases that have been heard before the CJEU concerning subsidies include two joined cases involving subsidies received by agricultural co-operatives which enabled members to purchase equipment at reduced prices. (C-573/18 and 574/18 C GbmH & Co KG and C-eG.) It was held that the subsidies were part of the consideration paid for the equipment in addition to amounts paid by members. Also, Keeping Newcastle Warm C-353/00 in which an organisation received a payment from a local authority for each home visited and provided with advice, it was held that the entire payment was consideration for the advice given.

In summary, subsidies are generally included with consideration however there needs to be a link between the thing supplied and the receipt of the subsidy for it to be included as part of the taxable amount. No such link was considered to exist in the CJEU case C-102/86 Apple and Pear Development Council where a levy collected from members was not viewed as consideration for any benefit provided to members. A taxable person therefore needs to consider whether a subsidy is making up a shortfall or allowing a discount to be offered, possibly in full, in the payment required from other parties to the same transaction.

Question 8

Derogations can be made under four broad headings; these being:

1) Continuation of treatments applied by member states at 1 January 1978, Articles 370 to 374.
2) Measures granted to member states that acceded to the EU after 1 January 1978, Articles 375 to 390(b).
3) Special measures that were applied by member states before 1 January 1977 and notified to the Commission before 1 January 1978, Article 394, and
4) Special measures authorised by the Council under the procedure provided for in Article 395.

Articles 370 to 374

Arts 370 to 374 allow member states which at 1 January 1978 taxed or exempted transactions or applied provisions derogating from principles relating to the right to deduct and agency in Arts 179, 28 and 79, that existed at 1 January 1978, to continue with those tax treatments.

Articles 375 to 390(b)

Arts 375 to 390b permit specified member states, which acceded to the EU after 1 January 1978, to retain former tax treatments on particular activities until specified future dates.

Article 391 provides the opportunity for member states to allow taxable persons the right to opt for taxation of transactions covered in some of the Arts 371 to 390b which allowed for exemption.

The existence of the Art 370 to 390b derogations are kept under review by the EU Commission with a view to facilitating the transition to definitive arrangements. (Art 393).
The EU Commission website publishes a list of all Derogations in force under the various headings.
Member states are not obliged to apply the Derogations for which they have received authorisation.

Article 394

In addition to any general derogations allowed under Articles 370-374, member states may be allowed to retain special measures, in existence on 1 January 1977, to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. These are provided that they have notified the Commission accordingly before 1 January 1978 and that such simplification measures comply with the criterion laid down in the second subparagraph of Article 395(1) – not to affect the VAT collected on final consumption except to a negligible extent.

Article 395

Article 395 PVD allows member states to derogate from the Directive's provisions to simplify the procedure for collecting VAT or preventing certain types of evasion or avoidance.

Derogations authorised under Art 395 intending to simplify the procedure for the collection of VAT may not, except to a negligible extent, affect the overall amount of tax revenue of the member state collected at the stage of final consumption.

A member state wishing to introduce a measure covered by Art 395 is required to send an application to the European Commission and provide all necessary information. Once the Commission has all the necessary information it has one month to notify the requesting member state accordingly and to send the request to the other member states. Within three months of giving the notification, the Commission shall present to the Council an appropriate proposal or where appropriate a communication setting out its objections to the derogation request.

The whole procedure detailed in Art 395 should be completed within eight months of the receipt of the application by the Commission, although this is shortened to six months in cases of imperative urgency, covered under Art 199b "Quick Response Mechanism" special measure to combat sudden and massive fraud e.g. measures to tackle MTIC fraud.

Examples of member states introducing transitional derogations include the taxation of the supply of services by dental technicians and the continued exemption of the supply of a building before first occupation. Examples specific to particular member states are listed at Art 375 to 390c PVD.