

THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Cross-Border Indirect Taxation

November 2020

TIME ALLOWED
3 HOURS 30 MINUTES

- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should indicate this where relevant.
- Scots Law candidates may provide answers referring to Land and Buildings Transaction Tax rather than Stamp Duty Land Tax.
- Unless otherwise indicated by the provision of additional information, you may assume that 2019/20 legislation (including rates and allowances) continues to apply for 2020/21 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.
- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. You are Delia Gibb, a tax senior in a firm of Chartered Accountants. Gerry Kray, one of the general practice partners has sent you the following email:

To: Delia Gibb, CTA
From: Gerry Kray, Partner
Subject: Netherclean Ltd
Date: 28 October 2020

Dear Delia

I have recently read an article discussing the circumstances in which the place of supply of hired goods can differ from the general rule for the supply of services. It would be useful to get your views on whether this is of any relevance to one of our existing clients, Netherclean Ltd.

Netherclean Ltd is a UK incorporated VAT registered company whose only activity is to lease office cleaning equipment to Cleanbean Ltd, a Jersey incorporated, wholly owned subsidiary, which operates a cleaning business from Jersey. There is a single lease for all of the equipment which requires monthly payments to be made and contains no option for the transfer of ownership.

Cleanbean Ltd has office cleaning contracts in the Channel Islands and France under which its staff operate the equipment in those countries. Cleanbean Ltd is about to enter into a 12 month contract to clean the head office of a London bank, and some of the leased equipment will be moved to the UK to be used on this contract. Following completion of the London contract in June 2021, it is expected that the equipment used on that contract will be reallocated to another Cleanbean Ltd cleaning contract for a non-business charity customer based in France.

I look forward to hearing from you.

Kind regards

Gerry Kray

Requirement:

Write a memo to Gerry Kray advising on the application of the place of supply rules for Netherclean Ltd. (15)

2. You are Terri Une, a senior VAT manager working in the UK branch of a large French magazine publishing company, Marche SA, which specialises in travel and lifestyle publications. Marche SA has a French head office (business establishment) and a UK branch, and each is VAT registered in their respective countries. You have received the following email from Jules LaTour, the Finance Director, regarding some proposed changes to the company's European operations.

To: Terri Une, t.une@marche.net
From: Jules LaTour, Jlatour@marche.net
Subject: Changes to Group Operations – VAT aspects
Date: 27 October 2020

Dear Terri

As you may have heard at this week's management meeting, we have decided to implement two changes as part of a move to online ordering and publishing for our prestigious titles:

- 1) On 1 December 2020 we will cease circulating paper magazines via wholesalers and retailers in our UK, Irish and French markets and will switch over to taking orders and payments directly from customers via our website. Orders and payments taken on our website for paper magazines will result in them being despatched by us through the post directly to our customers in the UK, Ireland and France. We have yet to decide which of our two establishments should be the point of despatch for the paper magazines. Please advise on the VAT aspects of each option.
- 2) From 1 March 2021 customers in the UK, France and Ireland (initially) will be able to purchase electronic versions of our magazines, which will contain online advertising and links to third party websites. We will also continue to sell paper magazines for the foreseeable future.

Following these changes, we expect 90% of turnover to be from online advertising and the balance will be obtained from monthly subscriptions and fees for accessing special online reviews of emerging travel destinations.

Worldwide advertising sales are made through an unrelated UK advertising agency which acts as our disclosed agent. It charges us a fee of 4% of gross advertising revenues for its services. Currently we have a small team in the UK which liaises with the agency. We will continue to use the advertising agency but are undecided whether our liaison team should be in the UK or at the head office in France. Which would be better from a VAT perspective?

Please let me have your full reply as soon as possible.

Yours

Jules

Requirement:

Write an email to Jules LaTour advising on the VAT implications of the proposed changes. (20)

3. You are a VAT manager at Black & White VAT LLP, a firm of Chartered Tax Advisers and your client is Walviss Renewables BV, a Dutch energy company which specialises in innovative renewable energy generation systems. You have received the following email from Niels Kraase, the company's Project Manager who has very limited knowledge of the UK VAT regime.

To: Cheryl.Joyce@BWWAT.co.uk
From: NKraase@walviss.nl
Date: 28 October 2020
Subject: UK VAT queries

Dear Cheryl

Over the last five years we have been making investments in offshore windfarms and our R&D team have developed a new method to install wind turbines by giving the base of the turbine pole buoyancy and fixing it to the seabed using metal ropes. This allows us to install the turbines in much greater depths of water than before and move them to different locations, if required.

Walviss Renewables BV has been successful in obtaining planning permission for an offshore windfarm comprising 20 turbines in the North Sea off the coast of the UK. The turbines will be between two and 15 nautical miles away from the shore, with two of them over 12 nautical miles from shore. Once completed, the windfarm will be sold to a UK based electricity generator specialist in December 2021.

The windfarm installation will take four months to complete and it will be undertaken by our own employees who are based in the Netherlands. Walviss Renewables BV does not have an establishment in the UK. The equipment and all materials necessary for the installation will be moved from our warehouse in the Netherlands. The turbines will be delivered from Hval SA, a third-party company based in Norway. The gearboxes for the turbines will be delivered from Germany and installed by Wale GmbH, our German subsidiary. After the gearboxes are installed, Hval SA will undertake a technical inspection and final testing of the turbines to ensure the engines are working as per the specification.

The UK government is very supportive of this development although they recognise that the installation may have a direct impact on residents in Eastwich, the town closest to the installation site. The planning permission includes an obligation under Section 106 of the Town and Country Planning Act, under which Walviss Renewables BV is required to install solar panels and air source heat pumps in 200 private residences in Eastwich as nominated by the local council. The solar panels and heat pumps will be delivered in January 2021 by a manufacturer in the Netherlands and installed for us by local subcontractors.

Despite the Section 106 work, we expect some resistance from the local community and so intend to promote the benefits of the green electricity which our new windfarm will generate. We have instructed a London based PR agency and the strategy will be to distribute brochures by post to homes and businesses along with a local radio campaign and billboard advertising.

Continued

3. Continuation

Below are the planned activities and their projected costs.

Projected costs

	£
Turbines from Hval SA	42,500,000
Specialist transport of turbines to the UK	289,000
Gearbox and installation from Wale GmbH	1,575,000
Solar panels and air source heat pumps	443,000
Materials needed for installation moved from the Netherlands	489,000
Legal fees related to the planning permission	64,000
PR campaign – management	38,000
PR campaign – radio and billboard advertising	44,000
PR campaign – letters and brochures printing	26,000
Planning application fees	18,884
Hval SA technical inspection of turbines	<u>225,000</u>
Total	45,711,884

Please can you explain the VAT implications of the above transactions for Walviss Renewables BV and Wale GmbH? Please note that all legal entities are only registered for VAT in the jurisdictions where they are based.

If you have any questions, please do not hesitate to contact me.

Kind regards

Niels Kraase

Requirement:

Draft an email response to Niels explaining the VAT implications of the above transactions. (20)

4. You are Sian Adviser, an indirect tax adviser in a firm of Chartered Tax Advisers. You have just finished a meeting with Gayan Udawatte, the tax manager at your client, Consoles'R'Us Ltd, a UK incorporated and resident company with a branch in Ireland. Its Irish branch is registered for VAT in Ireland.

Consoles'R'Us Ltd purchases handheld games consoles from Gamerzon Ltd, a UK incorporated company, for £75 each (including VAT). Gamerzon Ltd buys the consoles (as part of a larger shipment) from a company incorporated in the Czech Republic, Herní S.R.O, which contracts with an Italian incorporated company, Elettrico Gioco SRL, to fulfil the orders by delivering the consoles directly to Gamerzon Ltd.

Herní S.R.O has opted for the simplification procedure and notified The Non-Established Taxable Persons Unit. Elettrico Gioco SRL zero-rates the supply and has met the relevant conditions to do so.

On receipt, Consoles'R'Us Ltd transfers the consoles to its Irish branch where upgrading works take place on them. The Irish branch then sends the consoles back to the UK warehouse before they are sold on to Game Mode Ltd, an unrelated UK incorporated company, for £120 (including VAT) each. Game Mode Ltd in turn sells the consoles to a French Company, All Things Gaming SARL. Game Mode Ltd zero-rates the supply and has met the relevant conditions to do so.

Until 30 September 2016 Consoles'R'Us Ltd bought similar consoles from a Spanish supplier (Consolas SRL) for £100 (including VAT) each. These consoles required less work to be done on them in Ireland than is the case with the consoles from Gamerzon Ltd, however this additional work is at minimal cost to Gamerzon Ltd. Overall therefore, switching suppliers has meant Consoles'R'Us Ltd has a better profit margin. Consoles'R'Us Ltd receives a monthly shipment of 200 units on the 10th of each month.

Two days ago, Consoles'R'Us Ltd received a letter from HMRC with the heading "notification of joint and several liability". The letter states that HMRC believes Consoles'R'Us Ltd had reasonable grounds to suspect the supplies it was receiving were part of a supply chain where VAT would go unpaid, and in particular that Gamerzon Ltd was the relevant non-payer. The notification relates to VAT quarters ending December 2016 to September 2020.

Gayan assures you that this is the first he has heard of any missing VAT in the chain of supplies and is concerned about Consoles'R'Us Ltd's potential exposure to a VAT liability.

All the companies are established and VAT registered in their country of incorporation.

Requirement:

Write a letter to Gayan Udawatte advising on the VAT issues relating to its purchase and sale of consoles, including Consoles'R'Us Ltd's potential VAT. You are NOT required to consider penalties and interest. (15)

5. You are John George, Customs Duty specialist in a firm of Chartered Tax Advisers.

You have received the following email from Raymond Hawks, who joined one of your clients, Milligan Home Improvements Ltd, as Buying Director a couple of months ago. Milligan Home Improvements Ltd is a UK based retailer of DIY, home improvement products and furniture. Many of the goods sold by Milligan Home Improvements Ltd are imported.

Raymond has been looking for cost savings within the company.

From: RHawks@MilliganHomeImprovements.co.uk
To: JGeorge@CTA.co.uk
Date: 28 October 2020
Subject: Classifying our goods

Dear John

I understand that we have been importing many of our products from the same suppliers for a number of years and that we have good relationships with these and make best use of preferential Customs Duty rates and Customs Duty reliefs. However, I still think that there are savings that could be made here.

I have looked at the Customs Duty rates we pay for a number of our goods. Whilst I understand that the heading in the Tariff tells us what Customs Duty rate should apply, I admit that I am no expert in Customs matters, and we may have taken a very cautious approach previously as I understand penalties can be applied if we get it wrong.

I do consider however that we should look at the Commodity Codes that we declare for these goods going forward to consider if any savings can be made. If we can get anything retrospectively that would be great.

I would be grateful if you could advise me on how we should approach classifying goods and what you think we should do.

Regards

Raymond

Requirement:

Draft an email to Raymond Hawks advising on the Customs Duty issues arising from his email. (20)

6. You are the Customs Duty specialist in a firm of Chartered Tax Advisers and your clients are Toy'n'Game Wholesale Ltd and its 100% subsidiary Toy'n'Game Retail Ltd.

Toy'n'Game Wholesale Ltd is an importer, manufacturer and wholesaler of toys and games. Toy'n'Game Retail Ltd operates retail shops in the UK. Both companies are UK incorporated and resident.

On 1 September 2020 the two companies became a VAT group with Toy'n'Game Wholesale Ltd being the representative member.

You have received the email below from Jenny Mathers, the Sales Director at your client.

From: Jenny@Toy'n'Game.co.uk
To: Ron@CTAAdvisers.co.uk
Date: 28 October 2020
Subject: Goods supplied to UCY Co

Dear Ron

Toy'n'Game Wholesale Ltd sold and exported some EU-produced toys and games to a US retailer (UCY Co) two years ago. This was a new line of products aimed at young children and unfortunately they have not caught on well in the US.

They have asked us whether we would take back the products, if not they will destroy them.

UCY Co is a good customer of ours and so we would like to do what we can to help them out, without it costing us too much. To be clear the product is not defective it just does not sell well in the US.

There is a reasonable (though not very profitable) retail market for the goods in the UK and EU, and so our subsidiary company Toy'n'Game Retail Ltd, could buy and import the goods from UCY. However, importing them would lead to us being charged 4.7% Customs Duty; which would wipe out any profit. The Import VAT would also cause us a cash flow problem.

Could you advise me on the best way to proceed?

Thanks

Jenny

Requirement:

Write an email to Jenny Mathers advising on any Customs Duty and Import VAT saving available to the group. You should assume that the products are correctly classified.

(10)