

**The Chartered Institute of Taxation**

**Advanced Technical**

**Cross-Border Indirect Taxation**

**November 2021**

**Suggested solutions**

## 1) MAZZEL INC

Mazzel has been making intracommunity dispatches from the Netherlands and can utilise the call-off stock simplification mechanism in the UK [0.5 mark]. The call-off stock conditions are met as:

- all goods are delivered for the use of specified customers, who are registered for VAT in the UK, [0.5 mark] and
- each customer's stock is uniquely identifiable, and each customer is known to Mazzel at the time of transport to the UK [0.5 mark].

The call-off stock arrangement applies if the supplier has no establishment in the UK, which is the case as Mazzel has no human or technical resources in the UK. [0.5 mark] The ownership of a warehouse in the UK does not create an establishment given it is not operated by Mazzel's employees, as confirmed by HMRC's policy paper (dated 20 April 2020). [0.5 mark].

The tax point on call-off stock supplies arises on the date the goods are called-off [0.5 mark] and VAT is chargeable no later than the 15<sup>th</sup> of the month following the call-off [0.5 mark].

The acquisition must be accounted for in the country of destination no longer than 12 months after the date of delivery (art.17a EC/2006/112) [1 mark] and if the goods are not taken from stock by the designated customer, the seller is responsible for accounting for the acquisition in the UK [1 mark]. Part A and Part B stock has not been fully drawn yet and so the stock movements need to be analysed using the FIFO method to identify the remaining stock which no longer qualifies for the call-off stock simplification [0.5 mark].

Part	Remaining	Delivery
A	7,550	15 February 2021
B	100	10 October 2020
B	6,000	28 May 2021

The Part C stock can continue to be held as call-off stock as there has been no contractual change and the goods continue to be held for X-Brooms. [0.5 mark]

The deterioration of 5,400 units of Part A discovered on 02 February 2021 created an obligation for Mazzel to account for acquisition VAT at that date [1 mark] because the deteriorated stock accounted for more than 5% of total Part A stock delivered in the 12 months prior to that date. [0.5 mark].

100 units of Part B delivered on 10 October 2020 has not been fully drawn and the tax point for acquisition arose on 11 October 2021 [0.5 mark]. As the value of Part B stock was £6,300 (unit value: £850,500/13,500=£63 [0.5 mark] and below the VAT registration threshold in Sch. 3 VATA 1994 [0.5 mark], Mazzel's obligation to register for VAT was triggered on 02 February 2021 as no registration threshold is available to non-established taxable persons. [1 mark].

Mazzel was required to notify HMRC of its obligation to register by 30 March 2021 and account for the VAT due [0.5 mark]. The registration, which would have been effective from 01 April 2021 [0.5 mark], has no impact on the call-off stock arrangement (for all existing and future customers, including HW Irons and HW Kettles) after the date of registration provided Mazzel does not create a UK establishment [1 mark].

Part A exportations from the UK will break the call-off stock conditions as it meets the criteria of a 'relevant event' as per Sch. 4B of VATA [1 mark], resulting in an obligation to account for the acquisition of these goods in the UK, which Mazzel must account for on the date of export [0.5 mark]. The supply to Madellie can be made by dispatching the goods from the UK directly to the German customer and applying the VAT triangulation simplification by using Madellie's Dutch VAT registration number, provided Madellie's customer is registered for VAT in Germany, [0.5 mark] or as a dispatch to Madellie to Germany using its Dutch registration as the fall-back option for VAT zero rating purposes [0.5 mark].

The supply of goods from the UK will create an obligation to account for the acquisition of the goods delivered to the UK warehouse on 28 May 2021 and Mazzel will be required to account for UK VAT on the date of dispatch from the UK [0.5 mark]. The VAT registration number used to zero-rate the supply must be obtained and verified as valid before the goods are dispatched as it is a substantive requirement for the application of the VAT exemption (art. 138 Directive EC/2006/112). [1 mark] Satisfactory proof of removal from the UK must be retained as per HMRC guidance (published 20 December 2019) [0.5 mark].

As an alternative to treating the supply to Madellie as a dispatch from the UK, Mazzel can return the goods from the UK stock to The Netherlands without an obligation to account for an acquisition in the UK **[0.5 mark]** and make a domestic supply to Madellie there or make a dispatch from The Netherlands to Germany **[0.5 mark]**. All options are available on the basis that all substantive and administrative conditions for the intracommunity supplies can be met. **[0.5 mark]**.

## MARKING GUIDE

TOPIC	MARKS
<b>Call-off stock</b>	
Dispatch from The Netherlands and simplification in the UK	0.5
All customers are specified, and UK VAT registered	0.5
Individual customer's stock is identifiable (HMRC's policy paper ref not needed)	0.5
The supplier has no establishment in the UK	0.5
UK warehouse ownership does not create an establishment	0.5
Time of supply is when goods are taken from stock	0.5
VAT chargeable by 15 <sup>th</sup> day of month following the goods call-off	0.5
Acquisition must be accounted within 12 months of goods arrival	1
The seller accounts for acquisition if goods not called-off by the buyer	1
<b>Stock analysis</b>	
Stock movements on FIFO basis	0.5
Part A 7,500 units remaining	
Part A remaining stock attributed to 15 February 2021 delivery	0.5
Part B 6,100 units remaining	
Part B remaining stock: 100 units attributed to 10 October 2020 delivery	0.5
Part B remaining stock: 6,000 units attributed to 28 May 2021 delivery	0.5
Part C call-off stock arrangement unaffected	0.5
Stock deterioration created registration obligation	1
Discovery of deterioration date	0.5
Part B tax point arising on 11 October 2020 for goods remaining in warehouse	0.5
Value of Part B stock remaining from 11 October 2020 delivery	0.5
Value of Part B stock below registration threshold	0.5
Registration obligation triggered on 02 February 2021	0.5
Registration notification due by 30 March 2021	0.5
Registration from 01.04.2021	0.5
No impact of registration for X-Brooms call-off, unless establishment created	1
<b>Removal of stock from the UK</b>	
Exportation as 'relevant event'	1
Acquisition on exported goods due by Mazzel	0.5
Supply to Madellie as triangulation	0.5
Supply to Madellie as dispatch to Germany, fall-back option	0.5
Acquisition of dispatched goods due by Mazzel	0.5
VRN as substantive requirement for zero-rating	1
Satisfactory proof of removal required (ref to HMRC guidance not needed)	0.5
Movement of own goods to The Netherlands: no acquisition due to in the UK	0.5
Movement of own goods to The Netherlands: domestic supply there or a dispatch	0.5
Presentation and higher skills	1
<b>TOTAL</b>	<b>20</b>

## 2) BWAY LTD

The boats will need to be declared to HMRC as importations into the UK. Boats BWAY1 and 2 should be zero-rated as the boats' tonnage is above the 15 tonnes threshold and they meet the criteria of qualifying ships as per Schedule 8 Group 8 of VATA 1994 [0.5 mark]. VAT will be payable on BWAY3 as it is below the 15 tonnes threshold as per Note (A1) of Group 8 [0.5 mark]. VAT will also be payable on BWAY4 as it was designed for pleasure [0.5 mark].

BWAY's place of belonging should be confirmed as it is possible that no establishment exists in BVI despite the incorporation there [0.5 mark]. For a fixed establishment to exist there must be a sufficient degree of permanence and a suitable structure of human and technical resources to enable it to provide or receive services [0.5 mark]. As one company director appears to be based in the UK, a business establishment may exist here, if the director is involved in the general management and essential decision making or there are permanent premises, from which the business is carried out as per the ECJ judgment in *Planzer Luxembourg Sarl* (C-73/06), [1 mark]. If a UK establishment exists, all supplies made by BWAY and received by it would be within the scope of UK VAT [0.5 mark].

### Liability of supplies made by BWAY

The provision of a trip with a helmsman and crew in boats BWAY1-3 will qualify for zero-rating as passenger transport per item 4 Schedule 8, Group 8 VATA [0.5 mark] due to the boats' capacities being 10 passengers or more [0.5 mark] but BWAY 4 does not meet the criteria. The zero-rating will apply if the boat is hired to one person or several passengers [0.5 mark] and regardless of the status of the customer, B2B or B2C [0.5 mark]. Return journeys from Liverpool via international waters will be taking place wholly in the UK as not involving a stop-over in another country [0.5 mark]. The supply of BWAY4 with a helmsman and a crew will be subject to VAT at the standard rate [0.5 mark].

The hire of a boat without a helmsman will always have the place of supply in the UK regardless of the status of the customer as all hires are short-term as per art. 56 of Directive 2006/EC/112 [1 mark].

### Agency

Should BWAY decide to operate via the disclosed agency arrangement with BWAY providing passenger transport and vessel hire to the clients and BO&FUN acting as disclosed agent, it will be required to register for VAT to account for all supplies within the scope of UK VAT [0.5 mark]. The agency services supplied by BO&FUN to BWAY would be zero-rated under s.7A of VATA, assuming no establishment of BWAY exists in the UK [0.5 mark].

If the decision is made to operate through an undisclosed agency, all supplies on behalf of BWAY would be treated as supplied to BO&FUN and then made by BO&FUN to the clients, (art.28 Directive 2006/112/EC) [1 mark]. The supplies made by BO&FUN to clients will fall within the Tours Operator Margin Scheme. [0.5 mark] BWAY would not be required to register for VAT as BO&FUN can account for VAT due on taxable supplies as reverse charges. [0.5 mark] The liability of the supplies made by BWAY to BO&FUN would be the same as the liability of the supplies made by BWAY to the clients, as explained above. [0.5 mark]

Under the undisclosed agency arrangement, any UK VAT incurred by BWAY on its purchases of goods or services can be recovered through the 13<sup>th</sup> Directive recovery process [0.5 mark]. If, BWAY has a UK fixed establishment, it can voluntarily register for VAT before it reaches the registration threshold, which would allow the VAT to be recovered as input through its VAT returns [0.5 mark]. All supplies made by BWAY to BO&FUN would then be domestic supplies of services and subject to VAT at the applicable rates [0.5 mark].

### Purchases made by BWAY

The overhaul services provided by ABA Boats and the services of helmsmen and crew will fall within the general rule, with the place of supply being in BVI, unless an establishment exists in the UK [0.5 marks]. The supply of spare parts fitted at the dock into the yacht and BWAY3 will be subject to UK VAT [0.5 mark] and those supplied for BWAY1 and BWAY2 can be zero-rated [0.5 mark]. If ABA Boats supplies all parts as part of the service, then VAT may not be due if ABA Boats is able to treat the parts as ancillary to the overhaul service and make a single supply of cross-border services, subject to the UK establishment status [0.5 mark]. Supplies of consumables, which are not within the scope of the zero-rating as specified supplies to qualifying ships, will be supplied in the UK and subject to the domestic rules, for all vessels [0.5 mark].

## MARKING GUIDE

TOPIC	MARKS
Zero-rating of BWAY1-2	0.5
Importation VAT due on BWAY3 and BWAY 4 as not qualifying ships (design or recreation purpose required)	1
<b>Disclosed Agency</b>	
Obligation to register for VAT	0.5
Agency services zero-rated by BO&FUN	0.5
<b>Undisclosed Agency</b>	
Treated as supplied to and by BO&FUN	0.5
Liability of supplies by BWAY to BO&FUN follows liability of supplies by BWAY directly to customers	0.5
TOMS applicable to BO&FUN	0.5
No registration obligation for BWAY, reverse charge by BO&FUN	0.5
13 <sup>th</sup> Directive reclaim of VAT	0.5
Voluntary registration as intending trader	0.5
Voluntary registration: supplies to BO&FUN become domestic	0.5
<b>Establishment of BWAY</b>	
Incorporation does not create an establishment	0.5
Fixed establishment definition	0.5
UK based directors and premises	0.5
Impact of UK establishment on PoS	0.5
<b>Liability: Rental with helmsman and with/without crew</b>	
Zero-rated passenger transport	0.5
Passenger capacity as condition for zero-rating (BWAY1-3)	0.5
Zero-rating applies regardless of how many passengers use it or status of the customer	1
Place of supply of the journeys is in the UK	0.5
Supply of the yacht is subject to VAT	0.5
<b>Liability: Rental without helmsman and crew</b>	
Short-term hire with UK PoS	1
<b>Overhaul/maintenance of vessels</b>	
General rule services	0.5
Spare parts supplied to yacht and BWAY3 are subject to VAT	0.5
Spare parts supplied to BWAY2-3 are zero-rated	0.5
If parts supplied by ABA as part of the service, then a single supply of general rule service	0.5
Consumables supplied to vessels are subject to UK VAT	0.5
Presentation and higher skills	0.5
<b>TOTAL</b>	<b>15</b>

### 3) UNIEDU FOUNDATION

As Uniedu is a charity the activities it undertakes may be non-business and outside the scope of VAT if they are provided for no consideration, but some supplies made by charities, especially if they are made for a consideration, will be business activities. It is likely therefore that Uniedu will be carrying out some business activities. **[1 mark]**.

#### Education supplied to schools, and paid-for courses

The place of supply of education is in the UK as this is the place where it is physically performed. **[0.5 mark]** The supply of web lectures does not fall within the electronically supplied services provisions as they will be live events delivered by lecturers and there will be a low degree of automation **[0.5 mark]**. As the supply of education to schools is made for no consideration, it meets the criteria of a charitable activity and is outside the scope of VAT **[0.5 mark]**.

The supply of a course consisting of face-to-face lectures for a fee would be a business activity. It will be taxable **[0.5 mark]** unless the education exemption in Schedule 9 Group 6 VATA 1994 applies **[0.5 mark]**. This is highly probable given the subject matter is a part of a course, class or lesson of instruction, is taught in many UK schools, and Uniedu meets the criteria of an eligible body due to its not-for-profit status **[0.5 mark]** but this would need to be confirmed with HMRC before this activity begins given Uniedu is established overseas and does not yet have charitable status in the UK. If HMRC does not accept that the exemption applies, then the fees will be subject to UK VAT and Uniedu would need to register for VAT. **[0.5 mark]**

#### On-line education content supplied to individuals for a fee

The supply of paid-for electronic content will fall within the definition of electronic services as it is listed in Annex II of 2006/112/EC **[0.5 mark]**, with the place of supply being the UK, which is where the customer belongs **[0.5 mark]**. As Uniedu is established in the EU and already registered for VAT in Spain, it will need to account for Spanish VAT on its supplies through its Spanish VAT registration until the revenues exceed the €10,000 threshold. **[0.5 mark]** Thereafter, based on expected turnover, it will be required to register for EU MOSS and account for UK VAT instead **[0.5 mark]**,

#### Purchases made by Uniedu

Web development and hosting services will have a place of supply in Spain and will be outside the scope of UK VAT **[0.5 mark]** as Uniedu is VAT registered in Spain and involved in business activities (and can be treated as a business customer despite also making outside the scope supplies of education) **[0.5 mark]**. Uniedu will be required to account for reverse charge VAT in Spain **[0.5 mark]** but it will need to apportion input tax recovery with reference to its business and non-business activities as per the ECJ judgment in *Wellcome Trust* (C-459/10) **[0.5 mark]**. It will also need to take account of partial exemption. The place of supply of education by the teachers will be in the UK and it will not fall within the exemption in Schedule 9 Group 6 VATA 1994 because the teachers are not providing private tuition as per article 131 Directive EC/2006/112 **[0.5 mark]** as the supply is not made directly to the students **[0.5 mark]**. VAT will be charged to Uniedu by any teachers who are VAT registered or who act through VAT registered companies **[0.5 mark]**.

The supply of leaflets dispatched from Germany can be zero-rated as an intracommunity supply by using Uniedu's Spanish VAT registration number, based on the fallback option **[0.5 mark]**. As reference material prints and laminated leaflets are excluded from the zero-rating provided for in Schedule 8 Group 3 of VATA 1994 **[0.5 mark]** an acquisition of them into the UK would be required **[0.5 mark]**. The value of the leaflets is, however, below the registration threshold in Schedule 3 VATA 1994, which means that Uniedu will not be required to register for UK VAT and no acquisition tax will be due in the UK **[0.5 mark]**.

Lecturing venue hires will have a place of supply in the UK as land-related services **[0.5 mark]**. Hotels' supplies will be subject to 20% UK VAT as the hotel buildings are most likely opted to tax and supplies made by universities may be exempt or subject to VAT depending on whether the relevant buildings are opted **[0.5 marks]**.

#### UK VAT Recovery

As Uniedu does not register for VAT in the UK, it may be able to recover some of the VAT charged to it through the EU VAT refund scheme. **[0.5 mark]** The costs of lecturers, which are used in the taxable and outside scope supplies, will need to be apportioned appropriately as only the VAT on expenditure related to the taxable supplies can be reclaimed as input tax **[1 mark]**.

## MARKING GUIDE

TOPIC	MARKS
Business v non-business activities	1
<b>Education to schools and paid-for courses</b>	
PoS of education where performed	0.5
Web lectures not e-services	0.5
Supplies to schools are outside the scope	0.5
Supply of educational courses within scope of VAT	0.5
VAT education exemption may apply	0.5
Education exemption: subject matter on school curricula	0.5
If no exemption available, then VAT chargeable if VAT registration threshold is exceeded	0.5
<b>Paid-for on-line content</b>	
Falls within e-service definition	0.5
PoS in the UK for B2C	0.5
EU MOSS scheme in Spain to account for UK VAT	0.5
EU MOSS VAT due on revenues exceeding €10,000	0.5
<b>Purchases by Uniedu</b>	
Web development and hosting PoS in Spain	0.5
Zero-rating applies as Uniedu is a taxable person and registered in Spain	0.5
Reverse charge VAT due in Spain	0.5
Input tax apportionment in Spain (Wellcome Trust C-459/10)	0.5
Supplies by teachers not within the education exemption	0.5
No private tuition supplied by the teachers	0.5
VAT will be charged by VAT registered teachers	0.5
Supply of leaflets can be zero-rated applying fall-back option	0.5
Printed reference material excluded from zero-rating	0.5
Acquisition of leaflets within scope of VAT	0.5
Value of leaflets below registration threshold	0.5
Supply of lecturing venues is land-related	0.5
VAT will apply to supplies of lecturing venues depending on the option to tax	0.5
<b>Recovery of UK VAT</b>	
EU refund scheme recovery	0.5
Taxable and outside scope inputs must be apportioned as only VAT incurred on business activities is recoverable	1
<b>Presentation and higher skills</b>	0.5
<b>TOTAL</b>	<b>15</b>

#### 4) **MONITORS INC**

As Monitors Inc is not setting up separate legal entities in Europe it will be responsible for VAT and Customs Duty obligations.

##### **Month 1**

When the goods are shipped directly to the customer from the US with DDP Incoterms, Monitors Inc will be required to act as importer of record into the customer's country. The goods will need to be cleared through customs by the 3<sup>rd</sup> party freight agent, with Monitors Inc being liable for import VAT and any customs duty (assuming a positive rate applies or the value exceeds £135). The goods will then be supplied to the customer with local VAT unless any reliefs apply (see below), so Monitors Inc will need to register for VAT in each customer country. Therefore, supplies to UK customers would be subject to UK VAT, unless reliefs are available. The UK VAT registration would be via HMRC's non-established taxable person's unit (NETPU) as Monitors Inc is not established in the UK. Import VAT incurred will be recoverable on the VAT return and will be offset against VAT due on sales. Customs Duty is not recoverable and so will be a cost. The appropriate tariff classification for the goods will need to be determined and the value of the goods at import will be the CIF value which would usually be the sale from the US (including insurance and freight charges). The software will be included in the value for duty too as it relates to the goods being valued. When a sale is CIF, customs duty is calculated as a percentage of this figure and import VAT is calculated on a duty inclusive CIF value. As the terms are DDP, the price on the invoice is deemed to include the customs duty and taxes due, so the customs duty will need to be calculated 'backwards' from the invoice figure.

Monitors Inc would need an Economic Operator's Registration and Identification (EORI) number to enable it to import into the EU; and for sales to non-EU customers (e.g. Switzerland or Norway), a local import registration number similar to an EU EORI may be required. It is only possible to have one EORI in the EU and based on the fact the warehouse is in the UK from month 2, it would be advisable to obtain a UK EORI. Monitors Inc can use a deferment account to pay the import taxes in each location although it is a common practice to use a freight forwarder's account (they will levy a charge for this). Guidance should be provided to the agent completing the import and export entries on how this should be done to ensure accuracy (this applies in all cases). The local rules in each country will determine what evidence is required to claim import VAT credit (see below for UK position).

##### **Month 2**

From month 2, the VAT and Customs Duty position is different, as the goods will be shipped to a warehouse in the UK for storage for later delivery to customers. Again, a UK EORI is required and a C79 import VAT certificate will be generated by HMRC to allow Monitors Inc to recover import VAT on its UK VAT return.

The place of supply of goods is the place the goods are located when supplied, so the 'ship to' location for the goods is the key determining factor for VAT, not the customer's place of belonging, which may differ. The software provided as part of the price for the goods will be regarded as ancillary to the goods as the software has no use/benefit in isolation and the goods do not function without it. The VAT treatment of the various 'ship to' locations is as follows (not for profit organisations that are not registered for VAT would be treated as B2C below)

- UK B2B and B2C – UK VAT due (see below regarding reliefs);
- EU B2B – no UK VAT provided customer has an EU VAT ID and proof of shipping is retained. The customer's VAT ID should be shown on the VAT invoice to the customer. The customer will self-assess local acquisition VAT in his country. If the customer does not have a valid VAT ID in the ship to location or a different EU Member State (using the fall back provisions) UK VAT should be charged (subject to distance selling – see below)
- EU B2C – subject to UK VAT (subject to distance selling -see below)
- Non-EU B2B and B2C – zero rated export from UK, proof of export evidence to be retained. As the Incoterms are DDP, Monitors Inc would need to clear the goods through customs in the non-EU customer's country and would need to VAT register there. It may be advisable to have different Incoterms with non-EU customers so that they are responsible for importing locally, meaning Monitors Inc does not need multiple additional VAT registrations.

##### **VAT Reliefs for Goods**

VAT reliefs for medical devices such as those sold by Monitors Inc typically only apply to supplies directly to qualifying medical bodies registered on local registers (e.g. public or private hospitals, clinics). The rules in each country would need to be considered to determine whether a particular customer qualifies for VAT relief. In terms of the UK position, zero rating is available for supplies to charities, which provide medical care to handicapped persons (Group 15 Schedule 8 VAT Act 1994).

### **Distance Selling**

Once sales to B2C EU customers exceed certain thresholds (either Euros 35,000 or Euros 100,000 per annum, or a limit based on the relevant currency equivalent), a local VAT registration is required. UK VAT would no longer be due on such sales and instead VAT must be charged at the rate applying in the customer's country.

### **VAT Processes and Compliance**

Sales to each country have to be monitored so detailed records should be maintained. Monitors Inc should have an accounting system that makes use of tax codes to 'tag' each sale with the correct VAT treatment. Shipping evidence and import documentation in addition to any purchase invoices will also need to be retained, with a clear audit trail to the underlying transactions. Intrastat declarations for supplies to EU delivery locations may be required depending on the value. EC Sales Lists will only need to report the sales to EU VAT registered customers.

### **Customs Warehouses**

Whilst a Customs warehouse could produce savings on Customs Duty applying to goods imported for sales to non-EU customers, in addition to general cashflow savings, the associated costs are likely to make this uncommercial.

### **Recommendation**

Monitors Inc will have a significant number of VAT registrations. In particular for month 1, where the websites have launched and goods are shipped direct from the US, a registration could be needed in each EU (and non-EU) country. This would fall away from month 2 for the EU locations and it would therefore appear advisable to consider alternative options to avoid an unnecessary temporary compliance burden and cost:

- Set up the warehouse from month 1
- Delay the website 'go-live' to month 2
- Change the Incoterms so that Monitors Inc is not the importer of record for month 1

This would enable Monitors Inc to continue trading in a compliant manner without the cost of the VAT registrations and associated compliance.

## MARKING GUIDE

TOPIC	MARKS
VAT Treatment of Sales:	
- UK	1
- EU B2B	1
- EU B2C	1
- non-EU	1
VAT Reliefs	2
VAT Registration Obligations:	
- UK	2
- distance selling	1
- other countries in month 1	1
Customs Duty Considerations	
- importer of record in UK and overseas	1
- bonded warehouses	1
- import entry	1
- EORI	1
VAT Processes required	
- proof of export/despatch	1
- monitoring distance selling thresholds	1
- tax codes to apply correct treatment to sales	1
Recommendations re month 1	2
Presentation and Higher Skills	1
<b>TOTAL</b>	<b>20</b>

**5) GRADECS LTD**

Deferment

Customs Duty and Import VAT must be paid or secured by deferment before goods are released. A deferment account would allow GraDecs Ltd ("GraDecs") to delay payment of liabilities incurred at import. All amounts due for one calendar month are collected electronically on the 15th day of the following month.

[1 mark]

As an agent GraDecs will not, routinely, be incurring liabilities in its own name. It may however, allow its clients to use its deferment account to defer their own liabilities. GraDecs would pay these on their behalf and can, of course, charge them for this facility.

[1 mark]

HMRC will agree the Deferment Account Limit (DAL), which is the maximum amount that can be deferred each month.

[0.5 mark]

A deferment account must be backed by a guarantee provided by a bank or other financial institution. The guarantor agrees to pay up to twice the amount of the DAL, because there may be two months' liability outstanding by the time the company defaults on payment.

[1 mark]

Amounts deferred are referred to as "actual" debts, this determines which rules for the guarantee apply.

[0.5 mark]

There are two levels of "actual guarantees" for Customs Duty. A 100% guarantee is required unless the applicant is an Authorised Economic Operator – Customs (AEOC). An AEOC only needs a 30% guarantee.

[0.5 mark]

GraDecs is not automatically entitled to have a deferment account or guarantee; it must apply to HMRC and meet certain conditions, set out below.

Compliance – HMRC would check whether "the applicant" had committed any serious breaches of Customs law and other taxation law. This criterion applies more widely than just to the entity making the application, it includes any individual exercising control over the company and the employee in charge of the Customs matters.

[1 mark]

Normally, HMRC would look back three years when considering this condition, but as GraDecs is a new business, they would use the information available. This may mean that the company is subject to more checks going forward.

[1 mark]

GraDecs must also be a regular user of the procedure i.e. making import declarations and deferring duty – which it is not, or meet the "practical standards of competence or professional qualifications" criteria. If GraDecs can employ one of Grant's ex-colleagues who could demonstrate a minimum of three years' practical experience, GraDecs should meet that condition, though it would involve an additional cost.

[1 mark]

AEOC

These two conditions also apply to AEOC, along with other conditions. GraDecs must demonstrate a high level of control of its business operations through a system of commercial records. It must also have a good record of paying taxes connected with Customs matters; be financially solvent and capable of meeting its financial commitments going forward.

[1 mark]

If GraDecs demonstrates that it meets these criteria it could become an AEOC. However, GraDecs should balance the cost saving of a 30% guarantee against the time and cost involved in obtaining AEOC status, especially when setting up a new business.

[1 mark]

It is likely in a small business that some of GraDecs procedures are not written down. An AEOC application requires documented procedures – especially in relation to record keeping and GraDecs' interactions with customers – which may be time consuming to set up.

[0.5 mark]

1. Being an AEOC could be useful in a number of ways:
2. marketing the business.
3. having fewer checks by HMRC and receiving priority where goods are selected for checks.
4. being an AEOC means that some conditions are deemed to be met should it apply for other Customs authorisations.

[1 mark]

However, for a new business that is likely to be offset by the need for greater monitoring of the AEOC status that comes from GraDecs having been established for less than three years. It may be better to concentrate on building up the business in the early years and consider applying for AEOC in the future.

[1 mark]

#### Import VAT

The guarantee for Import VAT is dealt with separately to the guarantee for Customs Duty. GraDecs will either need to put up a 100% guarantee or no guarantee at all.

[0.5 mark – Import VAT]

The ability to put up no guarantee is called SIVA – Simplified Import VAT Accounting. GraDecs must apply separately for SIVA and the conditions are similar to those for a Customs Guarantee but applicants must also be registered for VAT.

[0.5 mark – Import VAT]

GraDecs may allow its clients to use its deferment account to delay payment of Import VAT but GraDecs must not claim this VAT on its VAT return. If GraDecs completes the Customs declarations correctly, the Import VAT will appear on their client's C79 Import VAT Certificate and the client can claim the VAT through their return.

[1 mark – Import VAT]

## Crazin Ltd's Proposal

### Indirect Rep

If GraDecs acts as an Indirect Representative it will become jointly and severally liable for debts arising from the entry. This clearly increases the risk GraDecs is exposing itself to but it should be able to charge a higher fee for acting in this role. Whether this is worthwhile depends on the extra amount that can be levied and the company's attitude to risk.

[0.5 mark]

### Signing the Processing Application

Although an agent can make up to three declarations per year applying to use a Special Procedure, such as Processing, on a declaration they cannot apply for a full Processing Authorisation on behalf of a client.

[1 mark]

Firstly, the application must be signed by an officer of the applicant company. Secondly, it cannot apply for Processing in its own name as it would not meet several of the authorisation criteria such as maintaining the records; ensuring the procedure was carried out properly and so on.

[1 mark]

Even if it were possible it is unlikely to be desirable as the authorisation holder is liable for any debts that become due from incorrect operation of the procedure.

[0.5 mark]

### Transport Charge

Crazin may be suggesting that GraDecs' mark-up could be left out of the customs value as a buying commission. This would be considered incorrect as the role GraDecs would be operating in would be as Indirect Representative as opposed to Buying Agent. The ruling in the CJEU case *The Shirtmakers BV C-59/16*, found that the value declared must reflect the real economic value of the imported product including additional elements like transport. Whilst that decision has been criticised in that the agent's supplement could have been considered a commission if separately distinguished, here the roles would be quite different.

[2 marks]

PHS [1 mark]

## MARKING GUIDE

TOPIC	MARKS
Deferment	
Debts must be paid or secured before goods are released. Deferment Account allows payment of one month's liabilities on 15th of following month.	1
Can allow client to use account and charge for this	1
Maximum amount is DAL	0.5
Require a guarantee and guarantor must pay twice DAL	1
This is actual debt – determines the rules	0.5
100% guarantee unless AEOC, then 30%	0.5
Compliance criteria – wider than applicant	1
Would be based on information available and as newly established there might be more checks in future	1
Would not meet "regular user" criteria so must meet professional competence – ex-employee could meet that.	1
AEOC	
Other conditions for AEOC are records and financial solvency	1
Should weight cost of becoming an AEO against benefits - cheaper guarantee	1
Documenting procedures might be particularly burdensome	0.5
AEO Benefits – any two (other than guarantee reductions) e.g. Marketing the business; Fewer checks and priority checks; Some conditions deemed to be met for authorisations.	1
The fewer checks benefit is offset by being a new business – might be better to build up business and then apply	1
Import VAT	
100% guarantee or no guarantee – separate application process	0.5
SIVA similar conditions to Customs Guarantee but must be VAT registered	0.5
Cannot reclaim the VAT – that is proper to its clients	1
Crazin Ltd' proposals	
Indirect Representative	
GraDecs could act as an Indirect Rep. Increases its risk but allows it to charge more.	0.5
Signing the Processing Authorisation	
Agent can make 3 "Authorisation by declaration" entries per year they cannot sign the application.	1
Application must be signed by officer of the company. GraDecs cannot meet the conditions.	1
Even if they could apply, they would be exposing themselves to more financial risk.	0.5
Transport Charge	
Must declare full cost to importer of transport. (The Shirtmakers BV – case name is not needed for mark.)	1
The agent's profit on transport cannot be seen as buying commission.	1
PHS	1
<b>TOTAL</b>	<b>20</b>

## 6) **WASHINGTON BOATS LTD**

There is a Customs Duty relief, called “End Use” that reduces the Customs Duty due (often to zero) provided boat parts are used appropriately (usually fitting the item to a boat) and the conditions of the relief are met. The “End Use” is usually the authorisation holder fitting the item to a boat or using the item to repair a boat.

[0.5 mark]

The relief may be used three times a year with a limit of £500,000 value by applying to use it on the Customs declaration at import, but if Washington Boats Ltd (WBL) wish to use it more often it will need to apply in writing to HMRC to be authorised.

[1 mark]

In order to be authorised WBL would have to demonstrate to HMRC that it has the ability to carry out End Use properly including keeping good records.

[0.5 mark]

It would also need to demonstrate that it is financially solvent and has a good record of compliance.

[0.5 mark]

HMRC should give its decision on whether WBL will be authorised within 30 days and authorisation may last up to 5 years.

[0.5 mark]

WBL will have to agree a “throughput period” or period of discharge with HMRC, this is how long WBL have to use the item, this applies to all items, so it needs to consider how long it expects to keep items in stock.

[1 mark]

WBL will have to submit returns (Bill Of Discharge) usually quarterly advising HMRC of how it has complied with the terms of End Use and demonstrating what goods were imported, that goods were used within the period of discharge and how they were used.

[0.5 mark]

It is important to note that good record keeping is essential in order to demonstrate compliance with the relief. Failure to submit the return or to have evidence of how they disposed of each item makes WBL liable for the full rate of Customs Duty.

[1 mark]

It may be easy to evidence correct and timely disposal of items ordered for specific contracts, but it may be harder for stock items, particularly any held for long periods. The records need not be overly complex but WBL must be able to demonstrate that goods have not overstayed their period of discharge. Where a number of the same items are imported over a period of time HMRC will allow WBL to assume use on a first in, first out basis. HMRC may also request an annual stocktake of items entered to the relief.

[1 mark]

It should be noted that End Use does not relieve or delay payment of Import VAT. This may be deferred and reclaimed as normal.

[1 mark – Import VAT]

WBL would need to provide a comprehensive guarantee to cover any debts that arise from not completing End Use. This would need to cover the average amount of Customs Duty due at the full rate for goods held at any one time.

[1 mark]

This guarantee may be reduced, to 50%, 30% or 0% of the Customs Duty due, if WBL can demonstrate that it meets conditions necessary to become an Authorised Economic Operator – Customs (AEOC) relating to record keeping, compliance and financial solvency.

[1 mark]

PHS

[0.5 mark]

## MARKING GUIDE

TOPIC	MARKS
End Use is usually fitting the part to the boat	0.5
Can use three times a year with a value up to £500,000 on declarations otherwise need an authorisation	1
Must demonstrate would be able to carry out End Use and keep records	0.5
Would also need to demonstrate a good record of compliance and financial solvency.	0.5
Would get reply in 30 days and authorisation could last 5 years	0.5
Agree a period of discharge	1
Must submit BODs	0.5
Must keep good records – no BOD or no evidence means Customs Duty is due	1
Records are key especially on stock items and items held for long time. Stocktake may be required.	1
End Use does not relieve Import VAT	1
Potential Guarantee required – cover Customs Duty at stake	1
Guarantee can be relieved if can demonstrate compliance with conditions	1
PHS	0.5
<b>TOTAL</b>	<b>10</b>