

**The Chartered Institute of Taxation**

**Advanced Technical**

**Cross Border and Environmental Taxes**

**November 2025**

**Suggested answers**

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## Question 1

### 1. Derbyshire Wetland Trust

#### *Ash and visitor waste*

If Derbyshire Wetland Trust dispose of the ash from the burning of the biomass and coal separately, it will be subject to the lower rate of Landfill Tax (Group 5 SI 2011/1017). This will include any incidental material within the load. If the ash and visitor waste are disposed of together, as a single disposal of a mixed load, the disposal will be subject to the standard rate of Landfill Tax. The visitor waste will not be incidental. It would be preferable for the ash to be disposed of separately from the visitor waste to reduce the tax cost.

In all cases where exemptions or the lower rate is claimed, evidence must be kept of what has been disposed of, how it has been disposed and, if appropriate, how it has been treated.

#### *Dredging*

The disposal of dredged material will be subject to Landfill Tax unless it is material which formed part of, or projected from the bed of a river, canal, watercourse, dock or harbour and was removed in the interests of navigation. In *Humberside Aggregates and Excavations Limited (2004) L00021* the Tribunal found that a watercourse is water with a natural source of waterflow, under the action of gravity with defined channel of bed or banks.

The material disposed from the lakes should therefore be disposed of separately from that dredged from the watercourses. When disposed of, the material must not be liquid waste. This is material that immediately flows into a space made in its surface and contains the lower of the following - more than 10% of the load volume, or 250 litres of free draining liquid. It may therefore be necessary to dehydrate the dredged material, so it qualifies for the exemption. Material that has been added to the dredged material to dehydrate it, or to bind any excess moisture, will also be exempt.

#### *Donation*

Bigquarry will be able to take advantage of the Landfill Communities Fund scheme if Derbyshire Wetland Trust has been enrolled by Entrust and its spending will be for 'approved objects'. If so, Bigquarry will be able to claim 90% of the value of the contribution up to a maximum of 5.3% of its Landfill Tax liability for the year. The contributions must be subject to a written contract that they will only be used for its approved objects. One of the approved objects is promoting biodiversity. The contributions also must not be repaid to Bigquarry or a third-party contributor.

#### Fenalik Ltd

Bigquarry may be able to claim bad debt (BD) relief in respect of the debt from Fenalik Ltd. It can do this if:

- normal invoicing rules were followed when the disposal was made;
- Fenalik Ltd was not connected to Bigquarry;
- the tax has been paid to HMRC;
- the debt has been written off and transferred to a separate BD account; and
- 12 months have passed.

## MARKING GUIDE

TOPIC	MARKS
<u>Ash &amp; Visitor waste (2.5)</u>	
Ash separately disposed of would be subject to the lower rate of Landfill Tax. This would include any incidental material within the load. Ash and visitor waste disposed of together would be subject to the standard rate of Landfill Tax, as the visitor waste would not be incidental.	2
It would be best for the ash to be disposed of separately from the visitor waste	0.5
<u>Dredged material (3)</u>	
Dredged material from watercourses will be exempt if to aid navigation. A watercourse has water that flows via gravity and in reasonably defined channels. <i>Humberside Aggregates</i> .	1.5
The material from the watercourses should be disposed of separately from that from the lakes.	0.5
Not liquid waste: material that immediately flows into a space made in its surface, and contains the lower 10% of the volume, or 250 litres of liquid. Material added to the dredged material to dehydrate it will also be exempt.	1
<u>Generally (0.5)</u>	
In all cases where exemptions or the lower rate is claimed, evidence must be kept	0.5
<u>Donation to trust (2)</u>	
If the trust has been enrolled by Entrust able to take advantage of the Landfill Communities Fund. Can claim 90% of the value of the contribution up to a maximum of 5.3% of LT liability for the year. Must be for an approved purpose, which includes biodiversity. Must be subject to written contract and not returned to donator.	2
<u>Bad Debt Relief (2)</u>	
Can claim bad debt if: normal invoicing rules followed; Fenalix was not connected; tax paid; debt written off and transferred to a separate account; and 12 months have passed	2
<b>TOTAL</b>	<b>10</b>

## Question 2

### Online Marketplaces

Usually, the seller of goods is responsible for paying the VAT on a sale. However, if goods are sold via an online marketplace, s.5A VATA 1994 may treat the supply as being made to and by the operator of the online marketplace rather than directly from the seller to the customer. The operator of the online marketplace is then responsible for accounting for VAT on the supply. T

It can apply where the goods are sold by a business which has no business establishment in the UK but sells goods to a UK purchaser. Such a business is known as an overseas seller.

An online marketplace is defined by s.95A VATA 1994 as a website, or similar, that facilitates the sale of goods through it. The Meeple website meets this description. An operator is defined as someone who controls the website and is involved in determining the conditions of sale, facilitating the payment and facilitating the ordering of the goods. Meeple AG does this because it sets the terms and conditions, processes the payments, and enables the goods to be advertised and ordered. It is therefore an online marketplace operator.

Additionally, online marketplaces may be made joint and severally liable for VAT which should be declared by sellers of goods through the marketplace. This can apply where the seller is responsible for declaring the VAT.

### Location of goods

If the goods are already in the UK at the point of the sale to the end customer and the supplier is established outside the UK, the supply will be treated as being made by Meeple AG except if the purchaser is registered for VAT. This exception will only apply where the purchaser provides Meeple AG with its VAT number, and Meeple AG forwards the overseas seller this VAT number and details of the supply within 7 days.

If the goods are outside the UK, then the supply will be treated as made to and by Meeple AG if the customer is in the UK and the value of the goods is under £135. The value of the goods does not include separately charged transport, insurance and taxes. If the value is over £135, Meeple will not need to account for VAT.

Additionally, no VAT will be chargeable where the goods are zero rated. This will be the case where what is sold is one or more rulebooks.

From the information provided description, it therefore appears very likely that the officer's view that Meeple AG should account on all sales to UK purchasers is incorrect.

### Unregistered businesses

Although Meeple AG does not need to account for VAT on sales by UK established businesses, a UK incorporated company is not necessarily UK established.

A business is in the UK for VAT purposes if it is either established, or has a fixed establishment, in the UK. A business is established where the essential decisions concerning its general management are taken and where the functions of its central administration are exercised (e.g. *Planzer Luxembourg Sàrl* [2007] EUECJ C-73/06). A business has a fixed establishment where it has sufficient permanent human and technical resources to enable it to make supplies (eg *Gunter Berkholz* [1985] EUECJ C-168/84) or to receive and use the services supplied to it for its own needs (e.g. *Welmory sp. z o.o.* [2014] EUECJ C-60]). Serviced offices are unlikely to create a fixed establishment and HMRC state this view in their guidance.

The presence of many of these companies at the same serviced office, selling goods that were previously advertised by overseas sellers, suggests that they may not have a UK establishment.

The management and control could be exercised outside the UK. There might not be sufficient human and technical resources in the UK to make or receive supplies. The companies may have been created to circumvent the overseas seller rules. Meeple AG should find out where these companies are managed and controlled from and what their UK presence is.

If these companies do not have a UK establishment, they should be VAT registered as non-established taxable persons. Whether or not they are registered, they would be overseas sellers. Meeple AG should therefore account for the VAT on the sales by those overseas sellers to UK customers if the goods are in the UK and the customer is not VAT registered, or if the goods are outside the UK and the value of the goods is under £135.

## MARKING GUIDE

TOPIC	MARKS
<u>Online Marketplaces (OM) (4)</u>	
Goods sold via OM may be treated as to and from operator in which case the OM is responsible for accounting for VAT on the supply. This is an anti-fraud measure applying to supplies made by suppliers not established in the UK.	1
Meeple is an operator of an OM. It controls a website that facilitates the sale of goods. It is involved in determining the sale conditions, facilitating payments and in facilitating the ordering of goods	2
Potential joint and several liability	1
<u>Location of goods (2)</u>	
If goods in UK, treated as by Meeple unless seller VAT registered. The customers VAT no. and supply details must be passed to the seller.	1
If goods outside UK, treated as by Meeple if under £135. The value of transport, insurance and taxes are not included. Otherwise Meeple does not have to account for the VAT,	1
<u>Accounting for VAT (2)</u>	
No VAT if zero rated. Rule books are zero rated.	1
Officers view that Meeple should account for VAT on all sales is wrong	1
<u>Unregistered businesses (7)</u>	
No need to account for VAT on UK established businesses. Established where essential management decisions are taken, <i>Planzer</i> or similar	1.5
FE where sufficient human and technical resources to make or receive supplies. <i>Berkholz</i> and <i>Welmory</i> or similar	2
Serviced offices unlikely to create establishment. The circumstances of the Nottingham companies suggest they may not be UK established.	1.5
Meeple should investigate those companies to check its own VAT position. If they are not UK established, they should be VAT registered, but regardless, Meeple should account for tax on those sales.	2
<b>TOTAL</b>	<b>15</b>

### Question 3

#### Intermancy Corp

##### Whether Intermancy Corp is established in the UK

Although Intermancy Corp is not UK established, it is possible for a subsidiary to act as a fixed establishment for a parent. In *DFDS A.G.* [1997] EUECJ C-260/95 the Court found that the UK subsidiary had all the resources necessary to make the parent's supplies acted as its fixed establishment. However, cases such as *Berlin Chemie A. Menarini SRL* [2022] C-333/20 indicate this can only be the case if the parent controls the resources of the subsidiary as if they were their own. In this case Intermancy UK Ltd decides how the human resources are used, so Intermancy Corp does not control those resources as if they were their own. Accordingly, Intermancy Corp does not have a UK fixed establishment.

##### Basic Service

Even though Intermancy Corp does not have a UK business establishment, it may have to account for VAT on supplies in the UK if the place of supply rules makes it responsible for doing so. The basic rule for supplies made to consumers is that the supply is made where the supplier belongs. The basic rule for supplies made to a business is that the supply is made where the recipient belongs. There are exceptions based on the nature of the services.

The basic level matchmaking service is provided to consumers, but para 15 Sch 4A VATA 1994 provides an exception for electronically supplied services with minimal human intervention. Such services are treated as supplied where the recipient belongs. Given that the basic level matchmaking is provided via the internet, supported by artificial intelligence, there is minimal human intervention. Where a client belongs in the UK, because it is their usual place of residence, Intermancy Corp must account for VAT.

##### Advertising

Advertising services are mainly provided to businesses and so supplied where the recipient belongs. VAT will need to be accounted for on Intermancy Corp's supplies to UK advertisers. However, the s.8 VATA 1994 reverse charge applies so it is the advertiser that must account for the VAT, not Intermancy Corp.

The position is more complex for the charities which Intermancy Corp supplies. They are treated as a consumer. There is an exception for advertising services provided to consumers in para 16(2)(c) Sch 4A VATA 1994, but only where the customer belongs outside the UK and Isle of Man. The supply is therefore made in the US where Intermancy Corp belongs. Even if the charities had business activities, items 8 and 8A Group 15 Sch 8 VATA 1994 provide a zero rate for charities advertising to the public, so no VAT would be chargeable.

##### Enhanced Service

The enhanced level service involves a mix of different elements being supplied. *Město Žamberk* [2013] EUECJ C-18/12 ran a water park providing a range of supplies for a single price. The Court said that the nature of a supply should be determined by identifying the predominant element of the services. In *Secret Hotels2* [2014] UKSC 16 the Court said that what is supplied should be determined by examining the contract. In this case the contract specifies that introductions to potential matches will be provided. This is the predominant element of what is supplied.

The enhanced services are different from the basic level service. Despite computer involvement in providing these services the services are too complex to be electronically supplied services. There is significant human intervention. The only other relevant exception is "*the services of consultants, ... and similar services*" but that only applies where the customer belongs outside the UK. The services are in any case too complex to meet that exception as per *Gray & Farrar*

*International LLP* [2023] EWCA Civ 121. The enhanced level service is therefore a basic rule service. The place of supply is where the supplier belongs. Accordingly, Intermancy Corp does not have to account for VAT on such services.

In respect of the photography, this is an optional extra and not merely a better means of enjoying the main supply. It appears to be a separate supply. As Intermancy Corp do not take responsibility for the service, they seem to be acting as an agent to introduce the photography services. Additionally they appear to be making the supply to the customer rather than the photographer. This is therefore a para 10 Sch 4A VATA 1994 supply, treated as supplied where the underlying supply of photographic services are provided. When the photography is provided by a UK photographer, this will be the UK. Intermancy Corp must account for VAT on these services.

The fashion consultancy services are also optional and also seem to be separate supplies. They do appear to be consultancy services, as confirmed by the Upper Tribunal in *Gray & Farrar*, although the Court of Appeal did not address the point. These are basic rule services when the customer belongs in the UK so the place of supply is where the supplier belongs and Intermancy Corp do not need to account for VAT on these services when provided to UK resident consumers.

#### Intermancy UK Ltd

The provision of the services of the consultants by Intermancy UK Ltd to Intermancy Corp appear to be consultancy services. However, that does not affect the supply position when provided to a business customer. These are not electronically supplied services, so are basic rule business to business supplies, supplied where received. The place of supply is in the US where Intermancy Corp is established.

Although the event hosting services are held in a specific location, they are not land related because they do not meet the descriptions in para 1 of Sch 4A VATA 1994. Intermancy UK Ltd are charging for hosting and organising the event rather than for admission to an event. This is therefore a basic rule business to business service, and the place of supply is in the US.

Accordingly, no VAT is due from Intermancy UK Ltd on its services to Intermancy Corp.

**MARKING GUIDE**

<b>TOPIC</b>	<b>MARKS</b>
<u><i>Establishment (3)</i></u>	
Corp is US established, so not UK established. A subsidiary can create a FE e.g <i>DFDS</i> or similar, but only if the parent controls the resources as their own. <i>Berlin Chemie</i> or similar. Corp does not control its subsidiaries resources because Intermancy UK can choose how to allocate them, so Corp does not have a UK FE.	3
<u><i>Basic service (3)</i></u>	
Basic B2C rule where the supplier belongs. B2B where the customer belongs.	1
Basic level service provided to customers but exception for electronic services involving minimal human interaction.	1.5
Intermancy must account for UK VAT on supplies to clients who belong in the UK because that is their usual place of residence.	1
<u><i>Advertising (2.5)</i></u>	
VAT must be accounted for on services to business advertisers, but subject to the reverse charge,	1
Non-business entities are treated as consumers. There is an exception for B2C advertising but only applies for no UK recipients. No VAT chargeable. There is also a zero rate for advertising by charities so wouldn't be VAT if charities had business activities..	1.5
<u><i>Enhanced Service (9)</i></u>	
In mixed service cases, examine the predominant element. <i>Mesto Žamberk</i> or similar	1
Start with the contract. <i>Secret Hotels2</i> or similar	1
Matches are the predominant element. Too complex for electronically supplied services. Corp does not need to account for VAT on these services,	2
Photography separate supply. Corp acting as agent. Agent supplies where the underlying supply takes place. When photography in the UK, Corp must account for VAT.	2.5
Fashion consultancy separate supplies. Consultancy services. Supplied where supplier belongs.	1.5
<u><i>Intermancy UK (2.5)</i></u>	
Consultancy services, B2B, so in US because Corp established there	1
Event hosting is not land related, not admission to an event. Supply is basic rule so in US. UK do not need to account for VAT on services to Corp.	2
<b>TOTAL</b>	<b>20</b>

#### Question 4

1. 100 tonnes of limestone – **6.5 marks**

The weight of the barytes in the limestone is included for the levy as it is naturally occurring in the limestone. **(0.5)**

Whilst the limestone doesn't come within any specific exemptions, it has to be 'commercially exploited'. **(0.5)** Removal to a registered site in order to have an 'exempt process' applied to it is not commercial exploitation. (s19(3) FA 2001). **(0.5)**

As the extraction of the barytes from the limestone is an exempt process, no levy is due at the time of removal to Agz21 Ltd's registered site. **(0.5)**

The baryte itself is not an aggregate so it is not liable to the levy. **(0.5)** Therefore, no Aggregates Levy (AGL) is due.

Agz21 Ltd would need to account for the levy on the limestone after the barytes have been removed if this constitutes the commercial exploitation of taxable aggregate. **(0.5)**

The levy will not be due where the limestone is the 'spoil from the process' by which the barytes have been extracted. **(0.5)** The limestone is not saleable and this would count as spoil. **(0.5)** The process of extracting the baryte was also carried out by a mechanical process, involving a machine, so the MMC case would not apply here. In MMC the separation was carried out by an excavator that simply sorted the limestone from the mineral and did not amount to 'separation' under s17(3)(f). The High Court held that the word 'separation' had to mean some sort of physical separation from each other. (MMC Midlands v HMRC 2009 (BTC 8071)) **(1)**

90 tonnes of limestone

This limestone is not commercially exploited, as it is not removed from the site, it is not supplied to another person, it is not used for construction purposes, and it is not mixed with other substances **(0.5)**, so no AGL is due. **(0.5)**

250 tonnes of limestone

The sale of the limestone is commercial exploitation of taxable aggregate.

£507.50 AGL is payable ( $£2.03 \times 250$ ). **(0.5)**

2. 87.5 tonnes of sand - **3 marks**

Sand is an aggregate. Removal to the third party's site would be the commercial exploitation of taxable aggregate. **(0.5)** Dredging from a pond is not a 'watercourse', so that exemption does not apply. **(0.5)**

The levy would need to be accounted for ( $£177.62 (87.5 \times £2.03)$ ), but a tax credit could be claimed as the sand is being used in a prescribed industrial process. **(0.5)** If it all happens in the same quarter, then no levy would need to be paid to HMRC. The levy due would be cancelled out by the tax credit. Otherwise, the credit can be claimed in a later return, provided this is within four years. **(0.5)**

62.5 tonnes

The use on site for construction purposes is commercial exploitation. **(0.5)**

AGL -  $£2.03 \times 62.5 = £126.87$  due. **(0.5)**

3. 15,000 tonnes of rock sold – **3 marks**

When it is removed to Aggrix Ltd's registered site there is no levy at that point as it is being moved between sites under the same registration. **(0.5)** When it is sold, if it has previously been used for construction purposes, then no levy is due on the sale (s17(2)(b) FA 2001). **(0.5)**

Further information is required to determine whether the levy is due. For example, if the floor of the playground was originally built with the rock this would have been use for 'construction purposes.' However, if the rock has simply been under the ground in its original format and is now excavated as a consequence of the playground works, this would not constitute previous use for 'construction purposes'. **(1.5)**

If the exemption does not apply then £30,450 will be due ( $£2.03 \times 15,000$ ). **(0.5)**

4. RAAC – **2.5 marks**

RAAC may contain rock, gravel or sand. Where it does then it is potentially an aggregate as the definition of aggregate includes other substances incorporated with rock, gravel or sand. **(0.5)** However, even if the RAAC were an 'aggregate', as it has previously been used for construction purposes (ie it was used in a building), it is exempt from the levy. **(0.5)**

Landfill tax will be due at £990 ( $£3.30 \times 300$ ) if it is a qualifying material. The RAAC is likely to fall within group 1 or 2 of the Qualifying Materials Order, which covers bricks and concrete materials. Covering the waste in the landfill cell is not 'using' the material on the landfill site for non-taxable uses so no exemption from the tax applies. **(1.5)**

## MARKING GUIDE

TOPIC	MARKS
<u>Part 1 (6.5 marks)</u>	
<i>100 tonnes of limestone</i>	
Weight of barytes is included in the levy	0.5
No specific exemption but needs to be commercially exploited	0.5
Removal for exempt process is not CE	0.5
Extraction of barytes is an exempt process	0.5
Sale of barytes is not an aggregate	0.5
Limestone remaining could have the levy (0.5) but not where it is the 'spoil'. (0.5) Not saleable = spoil (0.5). Reference to MMC case and mechanical separation (1)	2.5
<i>90 tonnes of limestone</i>	
Not commercial exploitation - four points	1
<i>250 tonnes of limestone</i>	
Sale is commercial exploitation – calculation of levy due	0.5
<u>Part 2 (3 marks)</u>	
<i>87.5 tonnes of sand</i>	
Commercial exploitation and pond is not a watercourse	1
Levy due (calculation) but tax credit, explanation of netting off or claim within 4 years	1
<i>62.5 tonnes</i>	
Use on site is commercial exploitation, calculation of levy	1
<u>Part 3 (3 marks)</u>	
<i>15,000 tonnes of rock</i>	
Removed between registered sites, no levy	0.5
Sale is commercial exploitation but if previous use for construction purposes, no levy. Explanation of what previous use could be	2
Calculation of levy if exemption does not apply	0.5
<u>Part 4 (2.5 marks)</u>	
If RAAC contains aggregates then potentially levy due, but previously used for construction purposes so no levy	1
Landfill Tax – possible inactive material, lower rate (group 1 or 2), covering waste is not exempt	1.5
<b>TOTAL</b>	<b>15</b>

## Question 5

### Customs Duty

Anyone who can physically present the goods, meet the establishment rules and provide the information to complete the Customs declaration may make Free Circulation declarations (para 2 Sch 1 TCTA 2018). The person in whose name the declaration is made is the declarant and is legally responsible for the declaration. This is not driven by ownership or terms of trade. Vltec must decide commercially on whether it wishes to operate within the UK and is willing to be named on UK import entries.

[2.5 marks]

The declarant must be established in the UK (Reg 15 CIDEER) which for a company means it must be registered with Companies House or have a permanent UK place of business. (Reg 3 CIDEER).

[1 mark]

Vltec could register at Companies House to become UK-established for Customs purposes and then could be represented in a direct capacity, making it liable for any debts relating to these imports.

[1 mark]

With direct representation, the agent acts in the name of and on behalf of the declarant. The agent can only be held liable for any debt in exceptional circumstances such as claiming to act for someone without authority or where they are found to have provided information which they knew or ought reasonably to have known was false.

[1 mark]

If Vltec remains non-established, it can be named as the importer or consignee and still be liable for Customs Duty and Import VAT but it must be indirectly represented by a UK-established representative (s21 TCTA 2018).

[1.5 marks]

Under indirect representation the agent acts in their own name, as declarant, on behalf of the other party. The agent is liable for any debt and the importer or consignee is jointly and severally liable with the agent.

The declarant in direct representation is the same person as the importer or consignee, the agent is the representative.

[1 mark]

It is very difficult for an agent to know whether they hold all relevant information to correctly declare the goods, valuation presents a particular risk. The risk of being financially liable for errors on the declaration means agents charge more for indirect representation.

[1.5 marks]

Regardless of who is named on a declaration, anyone who was in control of the goods or who knew or ought reasonably to have known an incorrect declaration had been made can be held liable for debts (s6 TCTA 2018).

[1 mark]

The terms of trade do not determine whose name appears on the Customs declaration; they create a legal contract for liability to various charges which the parties could try to enforce through the courts. This can lead to confusion over who is named on the import declaration where the overseas party is responsible for payment of import charges and may instruct an agent without considering the other options.

[1 mark]

The agent must consider whose name(s) should appear on the import declaration particularly where Delivered Duty Paid terms are used. They could seek empowerment from the UK company and represent it. Without that empowerment they should look at where the seller is established and consider the rules set out above to determine which type of representation is possible. This tends not to be an issue under FOB terms as the customer is responsible for Customs charges and usually arranges clearance.

[1.5 mark]

### VAT

A C79 Import VAT certificate will be issued when a GB/XI EORI is entered as importer or consignee on the import declaration.

[0.5 mark]

The VAT rules for establishment are different to the Customs rules. If Vtlec registered at UK Companies House (becoming UK-established for Customs purposes) it would also need an operational UK establishment to be established for VAT purposes. Without that it would have to register as a non-established taxable person (NETP).

[1 mark]

A non-established importer who incurs Import VAT in the UK could make an overseas refund claim to recover the Import VAT provided it does not have a UK VAT registration requirement. However, under VAT Act 1994, Sch1A (and *Schmelz* [2010]) overseas companies do not benefit from the VAT registration threshold, so Vtlec will immediately become liable to register for VAT if it makes taxable supplies within the UK which it would where the supply of goods takes place within the UK. Where the supply by Vtlec takes place outside the UK before the import and Engtelly is named as importer or consignee there is no VAT registration requirement for Vtlec.

[1 mark]

The normal VAT rules apply to the recovery of Import VAT -i.e:

- There must be a taxable supply of goods or services;
- The supply must have been made for a business purpose;
- The taxable person must hold evidence of the supply and amount involved; and
- There must be a direct and immediate link to a taxable supply.

Who is named on the import declaration will have an impact on who may recover the Import VAT.

[1 mark]

Customs agents are not importing goods in the course of their business so they can never recover the Import VAT. Agents can elect to use Postponed Import VAT Accounting (PVA) on import declarations but only where the importer or consignee has a right to recovery, is VAT registered and has requested use of PVA. PVA allows Import VAT to be accounted for on the VAT return rather than paid at import.

[1 mark]

For recovery of Import VAT, HMRC are not prescriptive on when title must pass. Provided the person who recovers the Import VAT will take title to the goods at some point, for example on payment, they can be considered the owner.

[0.5 mark]

If an error is made on an entry where PVA has been legitimately elected, any post-clearance adjustment is made through the VAT return. However, if PVA is elected where it should not have been e.g. if the importer is not eligible to reclaim the import VAT, HMRC will notify a debt and possibly apply penalties.

[1 mark]

Vtlec should ensure it does not inadvertently become liable to register for UK VAT. There is no benefit to Vtlec being named on UK import declarations other than the possibility that it might help it generate some business. It is advisable for Vtlec to encourage its UK customers to be named on the import declarations.

[1 mark]

## MARKING GUIDE

<u>Customs Duty</u>	
Law allows anyone who can present, meet establishment rules and has information to make FC declaration. Person named is declarant and legally responsible. Not driven by terms of trade or ownership. Vltec must make commercial decision on whether wishes to operate in UK and be named on entries.	2.5
Declarant must be established in UK. For company that is registered at Companies House or have permanent place of business.	1
If Vltec remains not established can still be consignee and liable for charges, but must have indirect representative.	1.5
Direct representative acts in name and on behalf of declarant. Agent only liable in exceptional circumstances.	1
Vltec could register at Companies house and so become UK-established for Customs purposes. Could then use direct representative.	1
Indirect representative acts in own name on behalf of other party. Agent is liable for debt and other party is jointly and severally liable too. Declarant in DR is the importer or consignee, in IR it is the agent.	1
Extra risk means IR is more expensive. Agent must rely on client for information.	1.5
Regardless of who is named, anyone who knew or ought reasonably to have known that declaration is incorrect can be held liable for debt.	1
Terms of trade do not drive whose name appears on Customs declaration. Create legal contract for liability which parties can try to enforce. Can lead to confusion on who is named on declaration.	1
For DDP agent must consider whose name(s) should appear. Could seek empowerment form UK company and represent on DR or IR basis. Otherwise must look at where seller is established and go from there. Less of an issue with FOB as importer tends to instruct agent.	1.5
<u>VAT</u>	
If valid GB or XI EORI is entered in importer or consignee on declaration a C79 is generated.	0.5
VAT establishment rules are different. Needs operational UK establishment not just Companies House registration. Otherwise must register as NETP and have UK VAT representative.	1
A non-established importer who incurs Import VAT could make an overseas refund claim unless liable to be registered. No registration threshold for overseas companies and any supply makes them liable to register for VAT.	1
The normal VAT rules apply to the recovery of Import VAT: must be a taxable supply of goods or services; for a business purpose; taxable person must hold evidence of the supply and amount involved; and must be a direct and immediate link to a taxable supply. So who is named on declaration may impact who can claim Import VAT.	1
Agent not importing in course of their business, so cannot recover the VAT. Can elect to use PVA on client's behalf, if conditions met (right to recovery, VAT registered and client wants to use PVA). PVA allows Import VAT to be accounted for on VAT return.	1
For Import VAT HMRC are not prescriptive on when title must pass.	0.5
If error detected where PVA is legitimately used, VAT is adjusted through return. If PVA is used incorrectly HMRC will issue bill and seek payment.	1
Vltec needs to ensure it does not create a situation where it becomes liable to register for UK VAT. No benefits to Vltec being named on UK Import declarations, other than possibly helping to generate some business. Should encourage UK customers to be named on the declarations.	1
<b>TOTAL</b>	<b>20</b>

### Question 6

Wiltig should consider using Inward Processing (IP) relief. This gives the option of importing a percentage of components to IP and some to Free circulation or importing all to IP.

Finished products, made using components imported to IP, which are sold within GB may be released to free circulation with Customs Duty calculated at the value and commodity code of the components imported (so this is the same cost as if just imported to free circulation). No Customs Duty is due on those goods exported.

[2 marks]

To be authorised Wiltig must be UK-established and have an EORI. Under Reg 9 of SI 1249/2018 (The Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018), it must satisfy HMRC that:

- it is financially secure;
- that it and its directors have not committed serious breaches of tax or Customs obligations;
- that the directors do not have criminal convictions;
- that the company has a suitable logistical system;
- it keeps good records to allow control of IP
- HMRC will be able to control the goods; and
- that it has the skills to operate IP correctly.

[2.5 marks]

It could be worth considering using authorisation by declaration rather than applying for IP. However this can only be used three times a year with a value limit of £500,000 per import. It cannot be used with Prior Export Equivalence, see below.

[0.5 mark]

Also Wiltig could apply for a retrospective IP authorisation going back up to one year before date of application if Wiltig can demonstrate it holds the records, has met the conditions of the relief and has a reasonable explanation as to why it did not apply earlier.

[0.5 mark]

Wiltig would probably benefit from Prior Export Equivalence (PEE). Under normal IP goods are imported (with Customs Duty and Import VAT relieved), processed and re-exported within the agreed period for discharge (throughput period). Under PEE, Wiltig could export products made using free circulation components and at a later date import components to IP to make equivalent goods which would be released to Free Circulation within six months and claim the IP relief at import.

The bespoke goods it makes are less likely to fit a pattern of trade appropriate to PEE but these may still incorporate some chemicals or components that are used in other products. Not everything that makes up the final product needs to be processed under PEE. Wiltig could use several IP components in a finished processed product, some imported under IP and some under IP PEE.

[2 marks]

Using IP with PEE the exported product can be made with either domestic components (subsequently replaced by components imported to IP) or from components imported to IP. This offers flexibility in the manufacturing process.

[0.5 mark]

To use PEE Wiltig must have a full IP authorisation which specifically allows for use of PEE.

[0.5 mark]

The normal IP rules apply to PEE, such as there being an agreed throughput period, rate of yield and the need to submit Bills of Discharge, with some additional conditions. NB as above PEE is not available with authorisation by declaration. There is no need to physically segregate the free circulation goods and those imported to IP but stock records must be detailed enough to record quantities of both. The goods must be "equivalent". This means that they must not only have the same 8-digit commodity code but must also have the same technical characteristics and be considered interchangeable by the customer.

[2.5 marks]

Wiltig will have to be careful with the "equivalent" condition. If a customer demands a particular type or standard of plastic or a specific mix of chemicals to create the "ink" the components used may not be close enough to be considered "equivalent" to those it has imported into IP so PEE may not be possible. Wiltig must always consider whether their customer would accept the alternative product. If a specific product or "ink" mix has been specified this may be hard to argue.

[1 mark]

It is not possible, for example, to export a low quality cheap component in a finished product and then import a high quality expensive replacement to IP for use in the goods released to the UK market. This would be an abuse of PEE and would result in the Customs Duty and Import VAT becoming due.

[1 mark]

UK-produced or third-country goods can be used as the equivalent goods. Imported goods become "domestic goods" when released to free circulation.

[1 mark]

PPE gives Wiltig the flexibility to switch supplier as market forces dictate and maximise use of IP. Using PEE does not by itself increase the Customs Duty saved but gives greater flexibility.

[1 mark]

The use of IP with PEE at worst delays the payment of Customs Duty and would provide a Customs Duty saving on all goods exported where the IP conditions are met.

[0.5 mark]

A Customs Warehouse that allows indefinite storage of both components and finished goods could be used in conjunction with IP. This would allow Wiltig to import all components to CW or IP, release them to IP for processing and any that were not immediately needed for Free Circulation or re-export could be entered to Customs Warehousing until an order is received.

[1.5 mark]

#### *Calculation*

#### Customs Value

	£
Value of Product	72,500
Freight and Insurance to border	<u>2,500</u>
Customs Value	<u>£75,000</u>

[1 mark]

#### Duty Saving

£75,000 import of component at 3% = £2,250 Customs Duty due.

£150,000 if released to free circulation at 5% = £7,500 Customs Duty due,

But Wiltig should instead declare £45,000 worth of component, the 60% used to make goods released to Free Circulation at 3% = £1,350 Customs Duty due.

Therefore, a saving of £900 is made, compared to the Customs Duty due on the total amount of imported component.

[2 marks]

## MARKING GUIDE

TOPIC	MARKS
Consider IP. Can import all components to IP or split between IP and FC. Finished products sold within GB can be released using Duty Rate etc of components – so same cost as if imported to FC. No Customs Duty due on exported products.	2
Wiltig must be UK-established and have EORI. Must satisfy HMRC: it is financially secure; it and directors not committed serious breaches of tax obligations; directors do not have criminal convictions; and records to manage IP; and company has skills to operate IP.	2.5
Could use authorisation by declaration three times per year, value limit of £500,00 per import. Can't use this for PEE.	0.5
Could apply for retrospective IP	0.5
Probably benefit from PEE, especially for generic goods. Normal IP in and out rules relaxed to allow export followed by import of equivalent goods; must respect throughput period. So can export finished product and then import components to make replacements. Bespoke goods less likely to fit this pattern unless there are components / chemicals that are also used for other goods.	2
At worst IP with PEE delays point of payment of Customs Duty on those goods released to FC and provides savings on those exported.	0.5
Must have full IP authorisation which allows for PEE to use PEE	0.5
Normal IP rules apply, except import by declaration. No need to segregate FC and IP goods but stock records must show quantities of both. Must be "equivalent" meaning: same 8-digit commodity code; same technical characteristics; and be considered interchangeable by the customer.	2.5
Must be careful of equivalent condition where customer specifies particular mix of "ink" or sets a standard for quality. Must make sure what is imported is equivalent or is an appropriate amount of a component.	1
Can't export low quality item and import high quality replacement. This would be an abuse of IP PEE and Customs Duty would become due.	1
Can use UK-produced or third-country goods as equivalent. Goods imported become "domestic" goods on release to Free Circulation.	1
Use of PEE gives greater flexibility. Doesn't itself create any additional saving.	1
Using IP with PEE the exported product can be made with either domestic goods (subsequently replaced by components imported to IP) or goods made from components imported to IP.	0.5
CW allows indefinite storage of both components and finished goods and could be used in conjunction with IP. Store either components or finished products in duty suspension until needed.	1.5
<u>Calculation</u>	
<u>Customs Value</u>	1
Value of Product	72,500
Freight and Insurance to border	2,500
Customs Value	75,000
<u>Duty Saving</u>	
£75,000 import of component at 3% = £2,250 Customs Duty due.	0.5
£150,000 if declared released to free circulation at 5% = £7,500 Customs duty due. But should instead declared £45,000 worth of component released at 3% = £1,350 Customs Duty due.	1
Therefore, saving of £900 is made, compared to the Customs Duty due on the total amount of imported component.	0.5
<b>TOTAL</b>	<b>20</b>