

Institution **CIOT - CTA**
Course **Adv Tech Cross-Border Indirect**

Event **NA**

Exam Mode **OPEN LAPTOP**

Answer-to-Question-_1_

Leasecode will be importing goods in to the UK and leasing the printers within the UK. In order to import goods in to the UK, a GB EORI number will be needed. Import declarations called the C88 or SAD form must be completed upon importation. Leasecode will be the importer of record and responsible for the payment of any duties/import VAT. Import duty is a cost whereas VAT is recoverable. As they are based in UK, the UK rules of importation apply.

Leasecode should register for the Customs Declaration service before importing goods in to the UK - an electronic service that allows digital import and export declarations to be made. A GB EORI will be needed along with information such as address, name and when they intend to start bringing goods in to the UK.

Import duty is payable on the transaction value of the goods, plus any insurance and freight up to the first destination in the UK. Any customs duty can be deferred using the deferment account, Import VAT can be postponed using PVA where the importer is VAT registered.

As Leasecode will retain ownership of the printers in the UK and will be making the supply of leasing the printers there, they will be liable to register for UK VAT as they are making taxable supplies in the UK.

As Leasecode is established in Germany and has no UK fixed establishment, it does not benefit from the UK VAT threshold and must register at the point of the first supply - June 2023. Once registered, they must charge and account for output tax on the lease of the printers. Any input tax relating to the supply can also be recovered on box 4 of the VAT return where VAT invoices are held. UK VAT returns are generally submitted quarterly and are due one month and 7 days after the quarter end.

As a non established taxable person - Leasecode has 3 options when it comes to registration in the UK:

- 1) They can engage with HMRC themselves and submit their own VAT returns
- 2) They can appoint a tax representative to completes applications and VAT returns on their behalf. The tax representative is jointly and severally liable for any unpaid taxes
- 3) They can authorise an agent to act on their behalf in submitting VAT returns such as a UK accountant

As they are jointly severally liable, not many tax representatives are keen to engage with a NETP. As such, the best option for Leasecode would be to appoint a UK accountant to deal with their UK tax affairs.

The supply from Leasecode to business customers is a supply of services, as LEasecode retains ownership of the printers. There is no supply of goods. As such, the generally b2b service place of supply rules apply - the place of supply is where the recipient belongs.

As the the business customers are based in Germany and has no establishment in the UK, therefore the supply comes from Germany. As the recipients are based in the UK, the place of supply is the UK.

The UK customers will be liable to account for the VAT under the reverse charge procedure.

It is important for leasecode to obtain proof that the recipients are relevant business persons, such as obtaining VAT registration numbers or company letterheads.

The movement from Germany to the UK will be zero rated, however customs duty and import VAT are payable at the time of importation, unless deferred/postponed. Customs duty can be deferred using a deferment account - this allows payment to be deferred until the 15th of the month following the movement of goods. As the EU and the UK have the Trade and Cooperation agreement, it is unlikely that any customs duty will be due in practice. If it is, this is a cost for Leasecode as it is not recoverable unlike import VAT.

Import VAT can be postponed using PVA. This allows Leasecode to input their UK VAT registration number on the import declaration and the import VAT can be accounted for on their UK VAT return as output tax. As Leasecode is making taxable supplies in the UK, the full amount can also be recovered as input tax in the same return - resulting in a net nil effect. This doesn't require any authorisation - Leasecode can do this upon first importation without notifying HMRC of the intention.

Where the printers might be sold for scrap in the UK, the place of supply of the goods at the time of sale would be the UK, as such UK VAT would be chargeable on the supply and the output tax should be declared on the VAT return.

If the goods are shipped back to Germany, this would be an export from GB and export declaration should be made. A EU EORI number would be needed to import to the EU. This would be a zero rated export from the UK and the printers should be valued at market value. Returned goods relief may be available in the EU, it would be advisable for Leasecode to check with a Germany tax consultant.

The intercompany agreement between Leasecode and Supportco is a general supply of services. The b2b place of supply rules state

the place of supply is where the customer belongs. Leasecode as the recipient of the services in Germany would have to account for the VAT using the reverse charge procedure - 20% of the supply would be declared as output and input tax on the same return, resulting in a net nil effect. The time of supply for the continuous services is the earlier of the date of payment or date of invoice issue.

-----ANSWER-1-ABOVE-----

-----ANSWER-2-BELOW-----

Answer-to-Question-_2_

The UK rules apply to goods imported in to GB.

Companies generally only have one business establishment and this is where the essential decisions are made, generally where the head office is based, and this is clearly France for Dollivard. It is important to establish where the supplier and recipient is based as this can determine the VAT treatment.

However, businesses can have any number of fixed establishments. These are bases where they have sufficient human and technical resources to provide and receive services. There must be a degree of permanency. As the engineers of Dollivard will only periodically travel to the UK to oversee the contract, they are not based there permanently, this does not give rise to a fixed establishment in the UK.

Based on the above, Dollivard is established in France and does not appear to have any business or fixed establishments in the UK.

SUPPLY AND INSTALL

Where supplies are land related, the place of supply is the UK and this would give rise to a potential VAT registration for Dollivard, as the machinery is cemented in to the floor of the building, it may be argued that the supplies are land related. However, it is more likely that the installation of the machinery at the sewage plant is not land related as it does not directly

relate to any land/buildings and connected services such as architects etc.

Generally where goods are imported in to the UK and subject to an onward supply, this gives rise to a VAT Registration in the UK. Goods are treated as supplied in the UK where their supply involves their installation or assembly at a place in the UK to where they are removed.

There is no threshold for non established taxable persons and therefore Dollivard would have to register for VAT as soon as they intend to make supplies in the UK, which would be the point that they transfer the legal title to H20 once installation has been completed.

There is a concession allowed where non UK businesses have supply and install contracts in the UK. The whole contract is treated as a supply of goods and Dollivard would be exempted from registration where certain conditions are met:

- 1) Dollivard is not established in the UK
- 2) Dollivard has not made and does not intend to make any taxable supplies in the UK
- 3) Dollivard is the importer of record of the goods

The above conditions are met and as such Dollivard is not liable to register for VAT in the UK. The goods must also be supplied and installed for a VAT registered customer - it is up to H20 Industrial to account for the VAT on their VAT return and recover the input tax on the same return.

MACHINERY FROM FRANCE

Where the machinery is shipped from France to the UK, Dollivard will be the importer of record. Import VAT and customs duty will be payable upon importation. The duty can be deferred using the deferment account, it will not be payable until the 15th of the month following importation.

The services between Dollivard and Nowak SP will be general b2b services, as such the place of supply is where the recipient - Dollivard - is established. Although the services are carried out in the UK, these are outside the scope of UK VAT and Dollivard should account for the services under the reverse charge procedure on their French VAT return.

UK VAT REFUND

For companies not established in the UK, UK VAT can be recovered using the UK VAT refund scheme, the conditions are:

- the claimant is not established in the UK
- the claimant does not make or intend to make taxable supplies in the UK (other than reverse charge supplies and transport)
- the input tax would be recoverable by a UK taxable business (ie not blocked such as VAT on entertaining or relating to an exempt supply)

Dollivard meets the above requirements and as such should be able to make a claim in the UK. The prescribed period runs from 1 July - 30th June and claims must be made the UK tax authority by 31st December the same year.

The import VAT payable upon importation in to the UK would be recoverable using the refund scheme. PVA would not be available to Dollivard as they do not have a UK VAT registration and do not intend to register for UK VAT.

Dollivard will be able to recover the input tax incurred on materials that are sourced locally in the UK.

Nowak SP's staff will incur travel and subsistence costs with UK VAT. UK law states that input tax is recoverable where relating supplied to the taxable person who incurred the expense. The supply of travel and subsistence costs was made to The staff of

Nowak rather than Dolivard, therefore Dollivard will not be able to recover the UK VAT on these items. Nowak should include the VAT costs in the overall supply value on the invoice to Dollivard.

SOFTWARE

The purchase of the software licence from the UK company is a service. The generally b2b place of supply of services is that the place of supply is where the recipient belongs. As Dollivard is established in France and has no UK fixed establishment, the place of supply is France. Dollivard will be liable to account for the VAT on the software under the reverse charge procedure. Parsons should not charge UK VAT on the supply.

-----ANSWER-2-ABOVE-----

-----ANSWER-3-BELOW-----

Answer-to-Question-__3__

Where services relate to contracts of insurance, they are exempted from VAT under group 2 sch9 of the VAT Act 1994.

As Travins is VAT grouped with a fully taxable company, the group is partially exempt. VAT groups are considered one entity for VAT purposes. Any intra group transactions are not a supply for VAT purposes and are outside the scope of VAT.

Where a group is partially exempt, input tax relating to exempt supplies cannot be recovered on the group tax return. Input tax relating to taxable supplies can be fully recovered. It must be apportioned on overheads that are not directly attributable to exempt or taxable supplies - such as rent on shared office space, accountancy fees relating to both businesses etc.

Where supplies are made directly from the UK to customers outside the UK, these are outside the scope of UK VAT. Input tax cannot be recovered on any supplies made as the insurance provided is an exempt supply.

It must established whether Travins will have fixed establishments in sweden and Spain.

A business establishment is one where the key business decisions are made, generally the head office. It is clear that the headquarters of Travins is in Belfast. There can only be one BE.

A fixed establishment is one where there are sufficient technical and human resources in order to make or receive supplies. They generally have a degree of permanency and there can be any number of businesses establishments

As Travins have staff and officers in England, this also created a fixed establishment in England.

As Travins plans to rent office space in Sweden and Spain and hire staff locally in these places, they will be considered FEs. Any supplies made to customers within these countries should be liable to local VAT. It does not look like the offices in the EU will be making supplies directly in Spain or Sweden, the supply will be made to Travins Ltd in Belfast.

Branches are part of the same legal entity as Travins. As such, they will be part of the VAT group. Any intra group supplies such as the cost of marketing and promotional services will be disregarded for VAT purposes.

Marketing and promotional services are taxable supplies. However, where the staff in Spain and Sweden arrange policies for customers, it needs to be considered whether the branches in these countries are acting as intermediaries. Where this is the case, the supply will be exempt and input tax relating to this cannot be recovered.

Any input tax on residual costs such as office rent (if charged) would have to be apportioned fairly using the standard partial exemption method.

Supplies are that of insurance intermediaries where the intermediary brings together, with a view of insurance, persons who are seeking insurance and those who provide the insurance. In order to qualify they must carry out work preparatory to the conclusion of contracts. It appears that The Spanish and Swedish officers will be doing marketing and promotional services rather

than carrying out work preparatory to the contracts, as such they will be fully taxable businesses. It will be Travins that supplies the actual insurance, therefore the offices in Spain/Sweden will be providing fully taxable services and as such will be able to recover input tax relating to these. This includes any VAT charged on the office rentals in the countries.

Subsidiaries are separate legal entities to the parent company and generally 100% wholly owned. IF Travins were to incorporate the offices there as separate legal entities, they should still be able to recover any costs attributable to the supplies on the separate Spanish and Swedish registrations. They should seek local advice in Spain and Sweden regarding the details of registrations and input tax recovery.

If Travins was to create subsidiaries however, the remuneration for the marketing and promotional service would be a b2b service. The general rule for b2b services is that the place of supply is where the recipient belongs.

As Travins as the recipient is based in NI, the Travins VAT group would have to account for the VAT on the services from the EU under the reverse charge procedure. Output tax would be accounted for on box 1 and input tax can be recovered on box 4 of the UK VAT return. However, as Travins is a fully exempt business and the input tax incurred on the marketing/promotional services relate to the exempt supply of insurance, the input tax would not be recoverable. This would become an additional cost to Travins Ltd.

Based on the above, it would likely be more beneficial if the offices in Sweden and Spain were branches rather than subsidiaries, so that Travins does not suffer the VAT cost on the services.

When completing the UK group return, if the Spanish/Swedish offices do remain as branches, the group cannot take in to

account the turnover of foreign branches when calculating input tax it can recover. This is following the decision in Le Credit Lyonnais. Therefore, supplies made by overseas branches are excluded from the partial exemption methods.

-----ANSWER-3-ABOVE-----

-----ANSWER-4-BELOW-----

Answer-to-Question-_4_

Tripage is based in the UK therefore the UK rules apply. It is important to establish where the customers are based, as this determinesthe place of supply.

DISCLOSED AGENT

Tripage is acting as a disclosed agent. This means that customers are aware that Tripage is arranging the travel on behalf of the principal. Generally the principal will invoice issues in their own name to the customer and Tripage will invoice Tripage for the commission.

As Tripage is a disclosed agent, Toms is not applicable.

Commission

The commission that Tripage charges is general b2b service. As such the place of supply is where the the recipient belongs.

Where the travel providers are located overseas and are in receipt of services from Tripage, the place of supply will be overseas. The commission transactions will therefore be accounted for under the reverse charge procedure by the overseas customers.

Tripage will account for UK VAT on the commission to the UK travel provider, as both are established in the UK. It is not relevant that the UK customer arranges overseas hotel accommodation as the customer belongs in the UK and the supplies are between 2 UK businesses.

Service charge

Where Tripage levies a service charge to the customers, this is a taxable supply. The place of supply for b2c service is where the supplier is based. As Tripage is based in the UK, the service charge should have 20% included. Private individuals will not be able to recover the VAT on the costs.

Booking fee

The booking fee of £5 per customer where the charge to the booking is made over the internet can be considered an electronically supplied service to private individuals.

As such, the place of supply is where the recipient is. This would give rise to VAT registration obligations in each country where Tripage makes the charge to. As an alternative to registering in each country, Tripage could register for OSS - One Stop Shop scheme. This allows for registering in one country in the EU and submitting a single quarterly return. VAT is charged based on the country of the recipient and only one payment is made each quarter. The payment is then divided up and paid to the recipient's countries. As the booking fee is for a small amount, it may not be worth the administrative burden to charge this to non UK clients.

UK VAT would be charged on the booking fee to UK individuals as the OSS does not apply in the UK.

TOMS

The Tour Operators Margin Scheme (TOMS) is a compulsory scheme for businesses such as Tripage that buy in and re sell travel and accommodation as a principal or undisclosed agent. As Tripage intends to act as a principal, TOMS will apply.

Under TOMS, the package holidays that Tom will sell in the UK and overseas are seen as a single supply, rather than split in to the

individual elements. Any supplies that come under TOMS are margin scheme supplies:

- accommodation
- passenger transport
- hire of transport
- trips/excursions
- tour guides

The hotels, car hire and flights are all margin scheme supplies subject to TOMS. Supplies such as catering or admission tickets when supplied with the above, also fall within the category of margin scheme supplies when bought in and sold on with no material change to the supply.

Under TOMS, VAT cannot be recovered on the cost of the services bought in and re-sold. The VAT is accounted for on the difference between the price of the bought in supplies and the amount that the package is sold for. VAT is accounted for on 1/6 of the profit made. Any holidays relating to the UK are standard rated whereas EU and rest of world package holidays are zero rated.

Input tax can be recovered on the UK VAT return on supplies made outside of TOMS, such as costs relating to the disclosed agent supplies. It can also be recovered on VAT incurred on overheads incurred outside of TOMS.

TOMS does not apply when sold to business customers for subsequent resale.

VAT invoices are not issued for TOMS supplies as the VAT amount is not known at the time of supply. This can affect business customers as they are not able to recover the input VAT on the costs. IF Tripage does intend to provide services to business customers, it would be preferential if these were as disclosed agent as in this instance, VAT invoices could be issued and the

business customers could recover the VAT.

TOMS does not apply to supplies that are arranged as disclosed agents, therefore this won't affect the existing arrangement where Tripage is a disclosed agent.

The tax point for TOMS is earlier of the date of departure of the traveller or the date they occupy any accommodation.

Commission under TOMS

Where Tripage receives commission from the travel providers relating to the TOMS supplies, this income must be included within the TOMS calculations.

T SHIRTS

Where companies are in a VAT group, they are considered a single entity for VAT purposes. Any supply made between the groups, such as the invoicing of the NI company to the UK co, is disregarded for VAT purposes and no VAT should be charged.

The free of charge t shirt, when sent for promotional purposes, can also be provided VAT free.

Alternatively where considered a gift, the gift rules apply. Output tax is not chargeable when the cost of the t shirts to Tripage is less than £50.

-----ANSWER-4-ABOVE-----

-----ANSWER-5-BELOW-----

Answer-to-Question-_5_

Carresflav is based in GB and therefore the UK rules apply. They will need a GB EORI to import in to the UK and import duty/VAT/excise duty is payable at the time of importation. Import VAT can be postponed using PVA as Carresflav is VAT registered in the UK. A GB EORI will be needed in order to import goods in the UK.

If Jocelyn acts as principal, she will be purchasing the goods in her own name and then selling the goods on to CARresflav. She will be issued the invoice in the Caribbean and if she acts as importer in to the UK, will be liable for the customs duty/import VAT. As she will be making a taxable supply in the UK, she will have a liability to register for VAT in the UK. There is no VAT registration threshold for non established taxable persons therefore she must register from the fiurst point of sale. CARresflav would be able to recover the input tax paid as it relates to a taxable supply, providing VAT invoices are provided.

The other option is for Jocelyn to act as agent. In this instance she would act on behalf of CARresflav when purchasing the goods and they would be the importer of record, liable to any import VAT/duties etc. IT would likely be more convenient for Carreflav to be the impoter of record as they are already VAT registered. In this case Jocelyn should likely act as agent on behalf of Carresflav.

Jocelyn is providing a service to Carresflav, the general b2b

supply rules state the the place of supply is where the recipient belongs. Carresflav is liable to account for UK VAT under the reverse charge procedure on the finders fee that is charged.

VALUATION

When goods are imported in to the UK, the 6 methods of valuation must be used. IT is important to establish the correct valuation as this is what the customs duty, import VAT and excise duty is applied to.

Customs duty and excise duty are costs that are not recoverable, unlike import VAT.

The methods of valuation should be looked at in a hierarchical basis. Method 1 is the transaction value of the goods plus any insurance and freight to the first destination in the UK - the CIF value. The first destination in the UK is generally the address on the consignment note or any other customs documentation. Any other specified matters should also be included - these include the cost of the containers, packaging, and any selling commission.

Elements to be excluded from the customs value include buying commission in respect of the goods, the right to reproduce the goods in the UK and transport and insurance after the time the goods are imported in to the UK.

The finder's fee that Jocelyn charges at 3% should not be included in the value of the goods for customs/import VAT purposes as it is a buying commission and specifically excluded.

Method 1 is not available to use where the supplier and buyer of the goods are related parties, and HMRC believe that the transaction price was not at arms length. HMRC are allowed to assume that the price was influenced by their relationship, except where evidence to the contrary is provided. Where method 1

can't be used, further rules of valuation should be looked at.

Two parties are deemed connected where they are:

- officers/directors of each others businesses
- in an employee/employer relationship
- or one holds over 5% shares in the other

As the above does not apply here, although Jocelyn is a friend, if she does act as principal, the related parties rule does not apply. Assuming that Jocelyn charges an arm lengths fee for the goods, method 1 can be used.

LABEL DESIGN

Where Carresflav provides the label design free of charge, this is to be included in the value of the goods for customs/import VAT purposes. the value for VAT purposes includes any assists. The assist in this case would be where Carresflav provides the label free of charge.

The value for import/customs duty also should include any work done on the goods before importation. If the local Cuban company designs the artwork, the value of the work should also be included in the transaction value that duty/VAT is applied to.

Alcohol imported in to the UK must be duty stamped - the retail container of the alcohol must be marked with the duty stamp. This applies to alcohol with strength of 30% or more, so is a requirement for the rum that will be imported. The stamp indicates that the appropriate duty has been paid on the alcohol. The stamp can be incorporated in to the lavel, as the local Cuban company can do, under the authority of HMRC.

SPIRITS PURCHASE

When importing spirits in to the UK, excise duty is payable. This is in addition to import VAT and customs duty and is payable on the value for customs duty. Import VAT is calculated based on the customs duty value, plus the customs and excise duty, plus any transport/freight relating to the goods movement within the UK.

Excise duty is not recoverable and will be a cost to Carresflav. It can be deferred using the duty deferment account until the 15th of the following month after importation. It is assumed that Carresflav does not have an excise warehouse, therefore will not be able to defer duty any more than the 15th of the next month.

Excise duty is calculated based on the strength of the alcohol in hectolitres.

EXCISE DUTY

| | Calculation | Total | |
|---------------|--|---------|--|
| Cost of rum | £4 x 50 bottles | £200 | |
| Freight to UK | | £300 | |
| Excise duty | 50 litres x 45% = 22.5 litres of pure alcohol. 22.5l x £28.74 | £646.94 | |
| | | | |
| | | | |

CUSTOMS DUTY

| | | Total | |
|---------------------|-------------------------------------|---------|--|
| Cost of rum | £4 x 50 bottles | £200 | |
| Freight to UK | | £300 | |
| Customs duty | $(£0.50 \times 50 \times 45\%) / 2$ | £140.63 | |
| 2% of customs value | $£200 + £300 = £500 \times 2\%$ | £10 | |
| Total cust duty | | £150.63 | |

IMPORT VAT

| | Calc | | |
|---------------------------|--------------------|----------|--|
| Cost of rum | £4 x 50 bottles | £200 | |
| Freight to UK | | £300 | |
| Freight to UK premises | | £80 | |
| Excise duty | | £646.94 | |
| Customs duty | | £150.63 | |
| Total | | £1377.57 | |
| Import VAT | at 20% | £275.51 | |

-----ANSWER-5-ABOVE-----

-----ANSWER-6-BELOW-----

Answer-to-Question- _6_

T Wheels is based in NI and therefore for goods purposes, the EU rules apply. HMRC can go back 3 years to recover any unpaid import duty/VAT therefore they are within the time frame.

C18 letters are purely for the collection of unpaid import VAT and duties. Although T Wheels have paid the underpaid amount, HMRC still require a penalty for a misdeclaration.

A right to be heard letter is issued and HMRC declare what their intention is in relation to assessing for any unpaid import duties or VAT. Generally a company has 30 days in which to respond to this, giving any counter arguments. As T Wheels was refused an extension on this period, they did not get the opportunity to put forward any further information or counter-arguments.

As The penalty was issued in April 2023, T Wheels have 30 days in which to accept the offer of an independent review from HMRC. A HMRC officer will then have 45 days in which to carry out the review. If T'Wheels does not hear anything back after the 45 days, the decision is deemed to be affirmed. If the independent review confirms the decision, T Wheels can then appeal to the First Tier Tribunal within 30 days. The FTT then look at the situation within another 45 days and assess whether the penalty is fair. Alternatively, T Wheels can appeal directly to the FTT within 30 days of receiving the initial penalty.

Alternative dispute resolution is also an option. This is where mediators are appointed to try and come to an agreement between T Wheels and HMRC. This can be done instead of or alongside the appeal process as outlined above.

Penalties can generally be mitigated where there is disclosure and based on the quality of disclosure - in this instance, HMRC have already discovered the error so T Wheels cannot disclose it themselves. They are generally reduced where T Wheels offer 3 things - telling/helping/access. At this point it may be too late

as the error has been found and T Wheels admits to the incorrect declaration.

It is the second time that T Wheels has committed the same offence - declaring the incorrect country of origin. In this instance, it may be unlikely that HMRC accept the request to reduce the penalty as a penalty was not issued in September 2021.

Direct representatives sign import declarations on behalf of and in the name of T Wheels, they were the agent that actually completed the import declaration and so it could be argued that they are responsible for the error. Generally only indirect representatives are jointly and severally liable for any unpaid duties and VAT however if T Wheels could prove that express written instructions were given to the direct representatives of the beneficiary country that weren't followed, the penalty could be mitigated. IT should be looked in to whether clear written instructions were given.

Reasonable care has not been taken therefore there are maximum penalties for this. The mistake was not made knowingly and T Wheels have accepted the prior c18s, so this will work in their favour.

If T Wheels can show expressly that going forwards reasonable care will be taken in order to ensure the import declaration is completed correctly, HMRC may also take the view that the penalty can be reduced.

Underpaid import VAT is recoverable on the UK VAT return assuming that evidence is available, however customs duty is a cost to T Wheels and so are the penalties.

Each separate line on the import declaration constitutes a separate debt so a civil penalty can be issued for each of the entries on the declaration. However, the maximum penalty is £2,500 for misdeclarations total and therefore the £3,000 is too high by £500. T Wheels should include this information in the appeal.

