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Course **Adv Tech Cross-Border Envrmnt Taxes**

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Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**1303**	**6129**	**7420**
Section 2	**693**	**3205**	**3894**
Section 3	**786**	**3689**	**4470**
Section 4	**486**	**2294**	**2777**
Section 5	**1166**	**5684**	**6834**
Section 6	**1150**	**5433**	**6557**
Total	**5584**	**26434**	**31952**

Answer-to-Question-_1_

VAT grouping conditions

An entity may be able to form or join a UK VAT group where it meets the grouping conditions set out in s 43A of the VAT Act 1994.

This requires:

- For entities to be under common control (i.e. 50% of the shareholding must be owned; and
- The companies corporate must be established in the UK for VAT grouping purposes.

BetBarb Limited (Barbados)

Where Betbard sets up an office in the UK, and the office has the necessary technical and human resources to carry out taxable functions in the UK, it is possible for the office to be considered a fixed establishment for VAT purposes. The office will be a branch and it is possible for branches to be UK VAT registered. There are several factors which determine fixed establishment, including whether Betbard has sufficient control over the branch, the branch making taxable supplies in its own right. This is further supported by having a presence in the UK by way of the office and engaging employees to provide support to the three companies.

As the employees will be making supplies of information technology support to the other subsidiaries, this will be a B2B supply and subject to VAT depending on where the subsidiary is based. Since once subsidiary is based in the UK, UK VAT would be due on the supply, which would give rise to a VAT registration obligation to BetBard Limited as a non-established taxable person (NETP) in the UK. Note, there is not threshold requirement for an NETP and so any supply made by the branch would trigger a VAT

registration obligation. The branch and the head office in Barbados for UK purposes will be considered a single taxable person in line with UK's position in Skandia and so, it is BetBard which will have to register for this VAT. It is possible for the entity to enter a UK VAT group on this basis and so, any supplies between the head office and the branch in the UK will be disregarded since the head office is not a separate entity from the branch in the UK.

Since the annual charge to the subsidiary is estimated to be £75,000, BetBarb Limited will be able to join the VAT group.

ZBetUK Limited

The subsidiary that is based in the UK will be able to meet the VAT grouping condition that is to be established in the UK.

It will have incurred VAT (subject to an option to tax) where it entered into lease agreeements with several retail premises in the UK.

The supply of bookmaking services would be an exempt supply where these are used to lay bets with UK customers. The supply of services where made with the fruit machines could be a single composite supply of books in line with the cases of CPP and Levob. The operation of fruit machines could be viewed as a supply of gaming or betting services as customers would be able to avail a cash prize which is unknown. Such services would be subject to the exemption contained within Group 4 Schedule 9 of the VAT Act 1994, and so ZBet UK Limited would also be carrying out exempt services. Currently, it appears the entity is making wholly exempt supplies.

The promotion of BetGib would be a taxable supply in the form of acting as an agent for BetGib Limited. It would act as a disclosed agent for these purposes since the customer

would be registering the account with BetGib Limited directly and any commission received by ZBet UK Limited would be reviewed as renumeration for its marketing or promotion services. These would be subject to the standard rate.

As there is a mix of taxable and exempt supplies, ZBet UK Limited would not have an entitlement to recover input VAT unless it makes any taxable activities. Where this is the case, it will be required to carry out a partial exemption calculation and attribute any input tax to direct, exempt or residual use. Where it meets the de minimis provisions, it should be able to recover input VAT in full. This will ofcourse be subject to ZBetUK Limited's taxable turnover in the year, and if it must perform a partial exemption calculation, it should be considered whether it would be commercially beneficial to group this entity with the other companies as this would create an administrative burden to calculate the residual apportionment. Currently, if BetBarb Limited becomes registered for UK VAT, ZBet UK limited will be incurring VAT, which will present a commercial cost if it is wholly irrecoverable.

BetGib Limited

It should be considered whether BetGib is acting in an intermediary capacity when providing services to UK customers. As the services are provided over the internet, this could be purely administrative in nature or where it acts in facilitating the supply of exempt betting and gaming activity, this will be seen as an extension of the supply and exempt in its own right.

As the company is based in Gibraltar, where it makes B2C supplies of administrative services, the place of supply will be where the business is based and outside the scope of UK VAT. However, as the supply is made over the internet, this could be an electronically supplied service for which there is an override and the place of supply becomes the UK for these purposes. To determine whether this is an electronically

supplied service, many factors must be considered and this could potentially be a website hosting service depending on further information such as is BetGib Limited contracting with individual customers, is it simply on making a supply of the app, and is this reflected in the terms and conditions when the customer signs in on the app. Since BetGib Limited is paid £100, it could be seen as dealing in money as an intermediary.

If the company is acting as an intermediary, this could be an exempt supply and BetGib has faciliated the supply between the UK bookmakers and the customers. The treatment of the supply will follow the underlying service provided by the bookmaker and so this will be an exempt service.

The £100 payment could be a deposit for which separate VAT rules apply. For deposits, this is not considered a supply where consideration is received in return for no services. However, since this reflects a float charge for which is reduced in value, it is hardly reflective of consideration for a supply of services. The reduction of the consideration would not fall within voucher rules either as it cannot be seen as a supply of goods or services. Therefore, no VAT would be due when the float is lodged on the customer accounts.

The commission paid to BetGiB Limited will reflect its services as an intermediary and this will be separate from its supplies to UK customers. The commission will be standard rated, and since BetGib Limited is not registered for VAT in the UK and is established overseas, it is likely that the VAT on the supply would be outside the scope of UK VAT.

VAT grouping considerations

Based on the above, it is possible for BetBarb Limited and ZBet UK Limited to join a VAT group for services rendered in the UK. Since ZBet UK limtied will also be making

mixed supplies, it should be considered whether it would be more helpful to register BetBarb Limited as a standalone entity. However, BetGib Limited should not be registered for VAT purposes in the UK, since it is making wholly exempt supplies. Where it is deemed to be making a taxable supply of administrative services however, this would have implications as it should then be registered for VAT purposes in the UK as an NETP (and it would allow for the entity to join the VAT group).

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

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

Answer-to-Question-_2_

Home removal services provided to customers could be seen as freight and transport services to move goods from UK to Europe. The supply is taxable in the country in which the transport of the goods takes place, and to the extent the transport of the goods takes place in the UK, UK VAT will be chargeable.

The arranging of a temporary accomodation in the UK or Europe for two weeks could trigger an obligation for Eumove Limted to enter into the Tour Operator Margine Scheme ('TOMS'). This is applicable to companies that buy in packaging of hotels, accomodation and travel and resell these at a profit. Under TOMS, output tax is paid on the margin of the supplies and the operator is not able to recover input tax incurred with making the supply to the customer. Supplies that are made within the UK are subject to TOMS and for any supplies that consist of accomodation, or travel outside the UK, these are zero rated supplies.

Eumove Limited may have a liability to account for VAT on the margin where it makes a profit on the supply of temporary accomodation to customers in the UK. Where the accomodation is in a hotel or a similar establishment this would fall within TOMS as the supply is bought in and resold to the customer without material alteration. Eumove pays on the customer's behalf but since it also invoices the customer for an arrangement charge, the charge could be viewed as its margin of the supply. Further more, the commission paid by the hotel could also be viewed as the margin and so the payment from the customer plus the payment from the hotel will be a supply. However, in this

arrangement it seems that Eumove is acting as a disclosed agent as it provides the payment on the customer's behalf. Since the charges are also shown to the customer and hotel, these supplies would fall outside the TOMS and instead reflect agency services made by Eumove. The invoice to the customer should account for VAT on the agency services portion with the rest of the amount being classed as a disbursment. The commission received from the hotel would also be a standard rated supply in its own right since this is consdiration for the B2B supply of arrangement services.

Eumove should account for VAT in its invoice and make a provison for the VAT chargeable if the discount is availed by the customer and the hotel. This would mitigate the need for a credit and re-issue of the invoices where the customer and hotel make the payment within the stipulated time. The invoice should also be addressed to the customer/hotel and fulfil all the criteria laid out in SI 1995/2518 to be considered a valid VAT invoice.

For the supplies of private home, Eumove is acting as an undisclosed agent as it negotiates prices with the owner of the home and the customer separately. Where it acts as a principal in the chain, the TOMS applies to the services and is applicable on the margin. This is further supported since the invoice to the customer is issued in advance and would not contain details of the owner Eumove has decided to contract with. However, if the principal supply of Eumove is home removal services, it is not required to account for TOMS where the provision of the accomodation services is incidental to the main supply and makes up no more than 1% of the total taxable turnover. A standard VAT invoice cannot be issued to the customer of a TOMS supply and instead the invoice will have to indicate that the supply is TOMS instead.

A reconciliation must be completed at the end of the year to determine the TOMS percentage and the correct amount of tax due to HMRC. There are two methods i.e. the

market value method and the cost plus method to determine the output tax payable at the end of the year. The cost plus method would work better in this case as the apportionment of the calculation is calculated over the direct costs incurred. Records should be kept for 6 years.

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

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

Answer-to-Question-_3_

Aggregates levy is due on the commercial exploitation of taxable aggregates which includes rock, sand and gravel. It is payable by the person exmploiting the aggregate (i.e. no threshold for registration is required). Commercial exploitation refers to exploitation of the aggregate:

1. In the UK; and
2. For the purposes of furtherance in the business.

The removal of sand and shale will be within the scope of the levy since it has been removed from a site within 12 nautical miles of the UK. For marine dredged aggregate, the levy becomes chargeable as soon as the aggregate first lands in the UK.

There is a special credit available for aggregate that has been moved to Northern Ireland provided it was imported from outside the UK and exploited in Ireland. Whilst this is not the case here, the aggregate that has been subject to commercial exploitation in Northern Ireland will not be subject to the levy in this case.

The aggregate that has been transported to Morecambe will be subject to the levy. The aggregate used to make a road on the Fleetwood site will be subject to the levy since it has been used to make new construction. The aggregate has not been excavated from any existing construction and so it is not exempt for these purposes. This will be payable at the rate of £2.08 per tonne of sand and shale.

The remainder that is sold to third parties will be subject to the levy provided there are no further exemptions. The purchase of the aggregate by a forestry business will not be considered non chargeable use of the aggregate, since this requires for the forestry business to have won the aggregate from its own site. Since sand and shale has been sold, the normal use of exploitation apply an dthe lecy is chargeable.

Gritsea drilling under the seabed pipelines will be an exempt activity for the purposes of the levy. There is a specific exemption which states that drill cuttings from oil exploration in UK waters is an exempt process. Since these relate to gas pipelines, this may refer to another exemption instead i.e. materials arising from utility works such as laying gas pipelines. It is unclear whether Gritsea Limited is participating in these utility works but where it does so, any crushed granite and quartz will be exempt from the levy as it will be regarded as spoil or waste from the exempt services. In all other cases, this would represent a taxable supply for the levy and it should be accounted for where the taxable aggregate lands in the Morecambe site. This will require accounting for the levy within the quarterly return and for completeness, payment is made for this at the end of the month following the end of the quarterly accounting period.

The mixing of the sand and shale should not have an impact as each of aggregates would have been subject to the levy when they were first won and came on site. Shale does not fall within the exempt materials for industrial processing and would be subject to the levy. However, since the customers will mix the taxable aggregate with tar for use in road building, this must be examined. The use of share for any other purpose other than construction is an exempt activity. However the use of the sand and shale to create roads is arguably a construction activity since it is used to support in the construction of a new permanent structure.

Some of the sand will be sold for making glass or sand paper. In this case, a credit is available for aggregates levy as the disposal of glass is a qualifying material for landfill tax purposes i.e. where this is disposed off on a landfill site, then a credit is available for any aggregates levy that has been paid and instead landfill tax will be due at the lower rate of £4.05 per tonne. The sale of the sand to a manufacturer that will bind it with resin will be exempt from the levy since the aggregate is being used in an industrial process to create the kitchen worktops. Any aggregate paid here must be credited and the amount due for payment from HMRC.

In all cases, evidence should be retained of instances where the material has been removed to the site and chargeable to aggregates levy in case of HMRC enquiry into the activities. It is important that Gritsea has a wegihbridge onsite to accurately account for the weight of the aggregate for the purposes of accurately paying the levy. Where it does not have a weightbridge, Gritsea should agree a special weighinh method with HMRC for correctly accounting for the aggregate.

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

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

Answer-to-Question-_4_

Landfill tax is chargeable on taxable disposals that occur on landfill sites. The tax is payable by the operator of the site and since Proruse Limited is the operator, it will be liable for landfill tax that is due as a result of its operations.

The clothing material does not meet any exemptions specifically outlined therefore any disposals of the clothing material will be subject to the tax. There are tswo rates of landfill tax i.e. the standard rate and the lower rate which is available for qualifying materials. The clothing does not meet the criteria to be considered qualifying materials and so would be subject to the standard rate. The disposal would be due in the quarterly return.

Where the items are recycled and removed from the site, a credit is available for the operator. The conditions are that the material would have to be in a reuse condition. Since the items are recycled by way of donating to the charity and permanently removced from the site, Prouse would be able to credit the rate of tax paid on these items. The discarded garments on the site would be subject to landfill tax and it is important for Prouse to keep evidence of this by way of maintaining appropriate records to show the HMRC officer. One way to do this would be to have a designated information site which keeps track of items that are not taxable to landfill tax and Proruse should ensure that items that are sent to the business in Ireland are dumped here. Since the officer is not satisfied with the accounting of landfill tax, it is safe to presume this has not been the case.

However, it should be noted that Proruse is instead engaging in taxable activity. The movement of the goods to Northern Ireland will be a supply of goods from one business to the other and subject to separate rules since for the supply of goods, Northern Ireland is considered part of the EU. However, it seems that the business is only processing the goods before sending them back to Proruse, therefore is performing a B2B supply of services, for which Northern Ireland follows the UK rules. VAT would be chargeable on the supply made by the business and Proruse should recover this VAT to the extent this is incurred as part of its fully taxable business. The supply of the goods to customers in Northern Ireland would be a B2C supply, and would fall within distance selling rules to Northern Irish customers.

HMRC could potentially raise an assessment where landfill tax has not been accounted for correctly and may request for further information. It is important for Proruse to provide this information within 21 days from the date of request and where it has received an assessment, it should ask for an independent review within 30 days where it believes the HMRC officer is being unreasonable.

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

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

Answer-to-Question-_5_

Import implications

When Newcarimp imports the goods into the UK, ordinarily customs duties and import VAT would be due on the import of the goods. It must have an EORI number in order to import the goods and act as the importer of record with respect of the goods. However, where customs warehousing is used, customs duties and VAT are both suspended on the value of the import as the goods imported have not yet been released to free circulation. The benefit of the procedure is that goods can be stored indefinitely til they are released and the duty point then become when the goods are released into free circulation, however Newcarimp has to exercise caution under its authorisation to use the special procedure that it keeps up with all the requirements. Under a full declaration, customs warehousing is available for 5 years unless there is a breach in the conditions in which HMRC may declare customs duties and import VAT due on all stock items.

Damage to cars

Under customs warehousing, there are certain activities that can be undertaken on the goods which will fall under the procedure. This includes any actvities that relate to usual forms of handling, intended to preserve, maintain and improve the look of the goods. It could be argued that the parts taken from the warehouse to repair the vehicles falls under the special procedure however this is unlikely. The goods are taken from a workshop that is outside the designated customs warehouse, which may give HMRC cause to question whether the activities actually consitute handling. This may instead constitue processing of the goods within the warehouse which would breach the conditions Newcarimp must

follow in order to continue to use the special procedure. The warehouse operator must keep the operations limited to the goods stored within the warehouse and if in breach, customs duties and import VAT may become liable as a result.

To mitigate this, Newcarimp should request the manufacturers to instead repair the cars before they are entered into the warehouse. It is also possible under customs warehousing regulations to destroy of the damaged goods without the goods ever becoming liable to import VAT and duty, however given the cost of the stock, this would not be a viable option. Instead, it should be sought to mitigate the repair instead. In any case, there is a risk that HMRC determine that Newcarimp has undertaken processing activity in the warehouse.

Credit notes

The issuance of credit notes could potentially have an impact on the customs value of the goods. As the goods have not yet been declared to free circulation in GB, the credit notes will decrease the customs value, thereby making customs duties repayable. As these have not yet been declared yet by Newcarimp, this should not have an immediate impact. However, it could be argued that the value of the repairs are instead a service carried out by Newcarimp in GB and should not have an impact on the customs value, but rather are a separate service in its own right. This is very dependent on the clauses contained within the contract, as the customs value of the stock of the cars would have been declared on import and the warheousing procedure noted within the CPC code of the SAD declaration in GB. HMRC might argue that the credit notes do not have an impact on the customs value at all, and rather are a separate service which would be chargeable to VAT. As Newcarimp has been reducing the customs value of the stock without agreement from HMRC in this matter, this could potentially lead it to underdeclare both customs duties and VAT on the customs value of the goods.

Furthermore, Newcarimp has also not been accounting for the credits against the relevant stock that is housed in the warehouse. There are special rules for housing equivalent goods, however where repairs are specific to the car model, it would be pertinent to account for the credit note against the specific car for which alterations have been carried out. Proceeding in this way without having a note of the proper records, or even recording this within the logistics system is in breach of the customs procedure and could invite challenge from HMRC.

HMRC stance

HMRC is able to make an assessment for the treatment of the goods where it believes that Newcarimp has not been accounting for the customs value correctly. It is possible for HMRC to carry out its own investigation and within a year raise an assessment in addition to removing Newcarimp from operating the customs procedure. Where it does so, Newcarimp will not be able to operate the procedure for atleast three years before making an application again to do so. Furthermore, HMRC could challenge the further additional upgrades including the installation of non-standard items, which instead reflect a wholly separate supply made from Newcarimp to the manufacturer i.e. this is not a term of the repair contract. Where this is the case, this would reflect a single supply of upgrade services alongside the provision of ancillary goods (where the goods are minor to the main supply of installation services) and a B2B supply. Since the manufacturer is overseas, this would be outside the scope of VAT.

Temporary removal of cars

Where Newcarimp decides to remove the higher value cars to exhibit them in showrooms, it should agree this in advance with HMRC to give them oversight of the position. Temporary removals usually do not become due to customs duties and import VAT as the goods have not yet been released to free circulation, however this should be

agreed with HMRC so as not to breach the conditions from using the special procedure.

Engagement with Gebecar

The customs warehousing procedure is only discharged upon sale of the goods, movement of the goods into another procedure or where there is a transfer of rights and obligations to another party which is authorised by HMRC to carry out the procedure. Provided Gebecar is authorised by HMRC to use the customs warehousing procedure, it should be possible to move the stock of cars from one special procedure to another.

This would require Gebecar to:
- Be established in the UK;
- Have an EORI number;
- Have robust procedures;
- Detail which premises are to be used for the warehousing procedure;
- Ensure it is not in breach of any compliance procedures;
- It's directors act in good faith and are also not in breach of any procedures either;
- Carry out a health and safety assessment in respect of the intended warehouse among other requirements.

Where the cars are released into free circulation in GB, customs duties and import VAT will become due at that poin in time, and it should ensure this is paid to HMRC in a timely manner. Where some goods are exported to a public warehouse, care should be taken that the records are noted correctly and accurately to reflect the export.

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

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

Answer-to-Question-_6_

Customs Valuation method

Customs duty is payable when goods are imported from overseas. In order to determine the appropriate value of duty payable, it is important to understand the chargeable value of the goods at import. Note, customs duties is an irrecoverable cost and at the point of import, customs duties are due alongside import VAT. It is important for customs value to be determined on an arms length basis.

Given that Glyno has agreed to supply plastic injection moulds and electric motors to Malymach, it may be possible for Glyno to use a special procedure called outwards processing for the purposes of exporting the goods to the supplier based overseas and importing the finishes product. This would only calculate customs duties on the value added to the processing of the finished product that is made available to Glyno. However, it does not seem like this will be available since the goods will directly move from countries outside of the EU to the supplier in Malaysia rather than Glyno providing domestic UK goods to the supplier.

There are six customs valuation methods available to Glyno for determining the customs value of the finished processor. Method 1 requires that the customs value of the goods is the transaction value for when goods are sold within the UK. This requires that transaction value is the payable amount for the goods. From the information provided, this seems like the best method to use since we have discounted other method below

(please see for completeness). The goods will be treated as originating outside of the UK since the last place of substantial work to the goods will be Malaysia. The normal rule for determining the origin is the place where the goods are wholly obtained. Since this will be very complex as materials are obtained from Malaysia and Phillippines, it would be easier for Glyno to state that the origin of the goods is Malaysia since this is where Malymach produces the goods. To support this, Glyno must obtain a copy of the certificate of origin from Malymach when making the declaration to the customs authority as importer. Therefore, since Glyno has purchased the materials from other companies, it will factor the cost of the materials into the customs value of the final processor that is received at the border.

Method 2 requires the customs value to be based on the price of identical goods that are supplied in the UK. Method 3 requires for the customs value to be determined based on the value of similar goods in the UK. Both these are unavailable as we do not have information to hand about what a competitor would charge for the provision of identical or similar goods to customers in the UK. Method 4 is known as the cost minus method and requires for the importer to deduct costs from the sale price in the UK to determine the customs value and such costs include freight, insurance, customs duties and so on. This requires for the seller to have the sale price to hand. Method 5 is the cost plus method, which adds in costs incurred to the UK border in addition to the value provided by the seller. It is quite difficult to use this method as Glyno would be required to have knowledge of the costs incurred by Malymach in order to use this method. Since the company is also unrelated, it would be extremely difficult to get Malymach to agree to provide the costs, from a commercial perspective. While Glyno has provided Malymach with the materials to produce the processor, this does not include the cost proce of Malymach's other materials and labour, which makes this customs method unviable to use as well.

Method 6 is the fall back method and stipulates for the customs value to be determined as fair and reasonable. This would require agreement from HMRC in which case it would be helpful to obtain and advanced tariff ruling which lasts three years, in order to strengthen the position in case of any enquiry from the customs authority.

It is required for method 1 to be used in priority, followed by method 2 and method 3 where the prior method is unavailable. However, there is a preference to use method 4 and method 5 interchangibly for valuation purposes.

Since Method 1 will be used to determine the customs value, Glyno should include the following when determining the customs value:
1. Cost of the goods;
2. Labour to make the goods;
3. Freight and transport costs when entering into the UK;
4. Insurance costs;
5. Selling commissions; and
6. Royalty payments that are conditional on the sale of contract.

Customs value and Customs duty

Customs value for 3,000 processors would be:

Moulds = £24,750 / 250,000 processors * 3,000 = £297
Electric motors = £36,000/1,000 motors * 3,000 = £108,000
Malymach charge = £150,000
Freight and insruance to the border = £6,500

Total = £264,797

Carrying out testing = 3% *£264,797 = £7,943. Note, the value of the testing conducted by Bucl will be included within the customs value on the assumption that this is stipulated as part of the sales contract with Malymach. This could be regarded as a royalty payment for each invoice that Malymach issues and so should be factored into the value of the goods.

Customs value = £264,797 + £7,943 = £272,740

Customs duties payable to HMRC = 2% * £272,740 = **£5,454**

Freight and insurance to Glyno's premises is disregarded since this takes place within the UK.

VAT treatment of moulds and processors

Import VAT will be due on the import of the final processor into the UK and it is important for Glyno to act as the importer. Care should be taken so that Glyno has title of the goods when these are imported so that it has an entitlement to recover the associated import VAT. The moulds and electric motors have been purchased by Glyno, however on the basis that these have not been imported into the UK, no import VAT would have been due. Further more, since this would have been a supply of goods between businesses, VAT would have been due in the place where the goods are physically delivered. As this would have been outside the UK, there are no further UK VAT considerations in relation to the above.

There are two ways to account for the import VAT:
1. Either pay this upfront to customs by way of a C79 certificate; or

2. Account for this using the postponed VAT accounting method PVA, which will require decalring this VAT and recovering it within Glyno's VAT return. This is a better method since there is a cash flow benefit to Glyno where it will not have to pay the VAT upfront.

Import VAT will be calculated on the customs duties inclusive value of:

(£272,740 + £5,454)*20% = **£55,638**