



Chartered Institute of Taxation

Excellence in Taxation

(pm) 0 3 0 5 2 0 1 7 Date of Examination

- Tick box if you have answered in accordance with Scots Law
- Tick box if you have answered in accordance with Northern Ireland Law

Please tick which Advisory Paper you have attempted (if not already ticked below)

- |  |   |
|--|---|
| <input type="checkbox"/> Taxation of Owner-Managed Businesses        | <input type="checkbox"/> Taxation of Individuals                                      |
| <input type="checkbox"/> VAT on UK Domestic Transactions, IPT & SDLT | <input checked="" type="checkbox"/> VAT on Cross-Border Transactions & Customs Duties |
| <input type="checkbox"/> Inheritance Tax, Trusts & Estates           | <input type="checkbox"/> Advanced Corporation Tax                                     |
| <input type="checkbox"/> Human Capital Taxes                         |   |

Please tick here if you have used an extra answer booklet (ensure you attach your second answer booklet to the first using a treasury tag which will be provided).

# Advisory

You must ensure that the Advisory Papers chosen are not the same as the corresponding Awareness Modules you have sat or will be sitting.

- For those candidates on the Indirect Tax Route you must sit the VAT on UK Domestic Transactions, IPT & SDLT Advisory Paper.
- For those candidates on the Indirect Tax Route you must sit the VAT on Cross-Border Transactions & Customs Duties Advisory Paper.

## Instructions

Your script will be scanned electronically. Failure to comply with these instructions may lead to your script not being marked. You must:

- (a) Complete the details on this page and in the booklet using BLACK or BLUE ballpoint pen only.
- (b) Write on both sides of the page.
- (c) Not write in the margin areas indicated.
- (d) Start a new page for each question you answer and indicate the question number in the box provided at the top of each page.
- (e) Not remove any pages from this answer booklet or damage it in any way.

Please do all of the above before the end of the examination.

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1		6	
2		7	
3		8	
4		9	
5		10	

**DO NOT WRITE ON THIS PAGE**

To: Sally Smith

From: Samuel Jones

Subject: VAT treatment Madrid

Date: 3 May 2017

Dear Sally,

Thank you for your email, I have responded to the points raised.

### Sourcing fee

Firstly, with regards to your sourcing fee from Viva, Spanish VAT is incorrectly charged.

This is a business to business supply of services within Article 4.4 of the VAT directive and there is a mandatory requirement in Article 196 for you to self-account for VAT due as a reverse charge.

This is an administrative entry in boxes 1 and 4 of your VAT return and you will recover in full.

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You should contact Viva to request that it credits and re-raises without local VAT.

### Spanish Registration

You are providing services of admission which have special place of supply rules.

Delegates should be charged Spanish VAT on the basis that the place of supply is Spain per Article 5.3 of the VAT directive and assuming no reverse-charge is available (to confirm locally). You must register and charge local VAT.

The deposit is likely to have crystallised a tax point so you should seek local advice as soon as possible to avoid penalties and/or interest.

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It may be that retained deposits for 'no shows' can be classed as compulsory in nature and outside the scope of VAT.

Assuming you must register for Spanish VAT, Spanish costs should be recoverable through your Spanish return subject to the local rules.

### Italian costs

Italian costs on which VAT has been incurred should be recoverable via an EU Cross Border refund claim provided:

- you have no place of business in Italy;
- you make no supplies there other than under the reverse charge;
- you are not liable to register.

You will also need local advice to confirm hotel VAT is not 'blocked' as entertainment.

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A refund claim must be made electronically by 30 September of the year following (i.e. 30 September 2018). There will be a minimum annual claim of €400. Italy must process this within 4 months.

### Temporary Movement of goods

The printer should qualify as a temporary movement of goods, provided

- you have no establishment in Spain;
- they are moved only for this specific purpose;
- you intend to return them to the UK as you state.

You will not need to account for VAT or make any EC sales list or Intra-stat entries but must keep a register for HMRC to inspect of moved goods.

### Dublin Recharge

As the Dublin branch is part of

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the same legal entity this is not a supply for VAT purposes and should be disregarded'.

This principle was confirmed in the FCE Bank case.

### Empower Co arrangement

Normally, I would expect the place of supply of a 'B2B' electronic service to be where your customer belongs and you would hence charge UK VAT.

However, special provisions exist under paragraph 9 of Sch 4A to the VATA 94 which say that such services where 'used and enjoyed' outside the EU are not in the scope of UK VAT.

I have therefore calculated the amount of transactions to include

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UK VAT on below:

$$\text{UK VAT} = 5,789 \times £10.49$$

$$= £60,727$$

$$\text{@ } 20\% = \underline{\underline{£12,145}}$$

Outside scope

$$= 5,040 \times £10.49$$

$$= £52,870$$

You must maintain evidence of 'use and enjoyment' which may come in the form of two corroborating pieces of evidence such as:

- the employee's IP address
- the registered address of the employee with EmpowerCo.

I trust the above is helpful.

Kind regards,

Samuel

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Memorandum

TO: Alan Adair

From: D Jenkins

Subject: UK VAT

### Goods donated from Canada

The goods donated from Canada free of charge ~~as they~~ will not be subject to import VAT being zero-rated as goods donated to a charity under group 15 of Sch 8 to VATA 94.

Similarly the onward sale of these goods by KBY UK should be zero-rated under the same group.

### Free of charge / Cost covering yoga classes

The yoga classes provided free of charge are likely to represent a non-business activity for the charity and are outside the scope of VAT.

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The discounted classes - following the decision in Longridge of the Thames - are likely to be a business activity and subject to the standard-rate of VAT (see also Keeping Newcastle Warm case).

### Hotel & Staff - Ireland

There appears to a better transaction with KLY Ltd in Ireland being the supply of hotel accommodation in return for staff.

KBY must account for UK output tax on the value of the staff

as it is making a supply of a land-related service per paragraph 1 of Sch 4A.

It must also account for the reverse charge on the staff provided by Ireland as this is a business to business supply of services

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Since KYB UK is in business in the UK and receiving services per s 8 of VATA 94.

### Goods donated from Germany

The goods donated from Germany are a ~~deemed~~ supply in Germany as the goods leave Germany.

Usually KYB would account for acquisition tax but since it is a zero-rated supply there is no entry required in Box 2 of the VAT return.

A movement of goods may need to be recorded on an intrastat arrival SD subject to the £250,000 threshold for arrivals.

The donated goods sold will once more be zero-rated, whilst those given away will be a deemed supply at the zero-rate.

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### The diagnostic equipment

This is a UK to UK supply within the scope of UK VAT as the goods never leave the UK when purchased from power pulse.

However, the zero-rate should apply and no VAT will be payable as it is a supply to a charity of medical equipment.

The onward 'lease' free-of-charge is otherwise than for a business purpose and may result in a deemed output charge at cost but should be zero-rated as well.

### Imports

The books will not be subject to import VAT being zero-rated by

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dent of group 3 of Schedule 8 -  
provided they are not excluded, e.g.  
adult colouring books.

The gifts, maple syrup and yoga  
mats will be subject to import VAT  
at the point of entry (unless duty  
deferral is operated).

Input VAT on maple syrup will  
be recoverable as it is sold in the  
shop but VAT will be charged on the  
sale.

There are likely to be restrictions to  
recovery on the other items.

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Philip Jones  
Evo More Clothing Ltd  
Chapel House  
31 Whitegate St.  
Birmingham  
B32 1ZA

D JENKINS  
Tax Advisor  
72 Mulberry  
Grove  
Birmingham  
B31 1YZ

3 May 2017

Dear Philip  
VAT Matters

Many thanks for your letter, I have responded to the issues raised below.

I have started by preparing a calculation of import VAT due on the first consignment.

Please note that no import VAT is due on the children's clothing as this is zero-rated in the UK.

P.T.O

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65,000 - Men's clothing  
exclude prompt payment discount  
exclude free of charge haulers  
7,800 -- Duty @ 12%  
72,800  
14,560 VAT @ 20%.

Note that import VAT is due on the duty inclusive sale.

The trade incentive is excluded from the calculation as is the prompt payment discount.

Whereas currently you account for acquisition tax on your return in relation to supplies from Germany and Poland you will now be charged import VAT at the point of entry.

~~It may be worth~~ I recommend exploring duty deferral or

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Simplified Import VAT Accounting to defer the duty and VAT until the 15 day of the month following import.

You will also need to keep a copy of your C79 import document to support recovery of import VAT which will be included on Box 4 of your return.

### Bon Apparel SA

In relation to ~~the UK sourced goods~~ sold to France and delivered to France goods, I anticipate that you have zero-rated the supply under s. 30 of VATA 94 on the basis that you had your customer's EU VAT number and the goods left the UK.

You should ensure you have adequate evidence to support this including transport documents and have verified

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The VAT number on the European Commission website.

You will include this sale on box 6 of your VAT return but no VAT entry will be made.

If sales are greater than £35,000 to Europe annually you will need to complete an EC Sales List.

There may also be a requirement to submit intrastat returns depending on whether you do already.

The goods delivered to Switzerland will be an export, there is no need to gather and quote the VAT number however you must hold satisfactory evidence of export if you want to benefit from zero-rating.

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As you are directly exporting by road you require:

- commercial or official evidence which might be a goods departed message or consignment note;
- supplementary evidence such as your customer order or sales contract.

In relation to defective goods sold you can issue a credit note in part reducing the fee which should allow your customer to deal with the local implications.

In terms of goods returned unsold these should benefit from Returned Goods Relief.

This should be claimed at the time of re-import. It is necessary to ensure that the goods are returned in the same state that they left

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the UK. As such no import VAT will be due on return from Switzerland.

As such no import VAT will be due on return from Switzerland.

Given that some of the goods are to be re-exported I recommend you consider customs special procedures and in particular inward processing.

Under inward processing import VAT can be suspended when processing in the UK - for example the overprinting - and therefore if you re-export and do not release the clothing to free circulation there is no VAT due.

You would require authorisation and there are conditions which must be met including keeping detailed records available for HMRC inspection.

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If inward processing is not used  
then goods imported from anything  
clothes will be subject to import  
VAT at the point of entry as above.  
subject to any deferral arrangements.

Yours sincerely

D Jenkins

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To: Joachim Sommer  
From: A tax manager  
Subject: UK VAT  
Date: 3 May 2017

Dear Joachim,

Thank you for your email. I have responded below:

Firstly, I think it merits covering the distance-selling rules.

Where you sell goods over the internet to the UK initially the place of supply is Germany and you are correct to charge German VAT.

However, once the sales to private individuals meets the distance selling threshold of £70K in the UK the place of supply changes and you have an obligation to register for and

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charge UK VAT.

The test for turnover is a daily test and must be considered by reference to the calendar year (i.e. starting 1 January).

I have included calculations below:

Cumulative sales (UK P individuals<sup>\*</sup>)

\* Please note distance selling is unaffected by your business to business sales to UK customers.

May 16	15,464
June 16	32,012
July 16	46,660
Aug 16	66,203
Sep 16	82,188
<del>month</del>	

It appears that you breached the threshold in September 16 and did not register in time.

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You are obliged to notify HMRC within 30 days of exceeding the threshold.

I recommend that we register now using form VAT 1A for distance selling.

Your VAT liability will be calculated, by reference to the difference between the German and UK rates and any penalty - which would be a maximum 30% of tax due for careless conduct - would also be by reference to this. I have estimated this below assuming registration from 1 September 2016:

~~15/9/16~~

Total turnover = 171,358

UK VAT @ 20% =  $\frac{1}{6} \times 171,358 = 28,559$

Gr VAT @ 19% =  $\frac{19}{119} \times 171,358 = 27,360$

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Difference due = £1,199

Potential penalty @ 30% = £360

It should be possible to mitigate this penalty by cooperating with HMRC.

In relation to the costs incurred you can recover these through your UK VAT return once registered

In fact we should be able to reduce the liability and penalties with these credits.

Please note however that VAT was incorrectly charged on advertising services which are business to business supplies and subject to a mandatory Article 196 reverse charge. You should request that your supplier credit the invoice and re-raise without VAT.

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The net effect

£ 1199	(difference)
(180)	
(840)	
<u>£179</u>	

Penalty = £54

Therefore any effect ought to be negligible but I recommend you confirm that you have supporting invoices behind the costs and that the hotels were strictly for business purposes by employees.

Structuring going forwards

You also asked whether a branch or subsidiary would be preferable going forwards

Any charges in between branches for services will be disregarded as

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you are the same legal entity.  
However, you would still need to account for acquisition tax when moving the goods into the UK as this will be a movement of own goods and a deemed supply.

If you sell goods to a subsidiary the effect will be similar and the UK company would need to account for acquisition tax on the purchase of goods from Germany.

The major difference would be that services are not disregarded and you would have to self-account for UK VAT on any management charges for example but again this is administrative given your recovery entitlement.

In relation to agencies the treatment will depend on whether Mr. Anson

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acts as disclosed or undisclosed agent when selling your products.

If Mr. Anson acts as undisclosed agent then he is seen as acting as principal buying and reselling the goods under UK VAT law.

Therefore going forwards you would not need to ~~be~~ be registered (subject to whether distance sales continue) as Mr Anson would account for acquisition tax in the UK on the net purchase price.

If you engage Mr Anson as disclosed agent then your supplies carry on as present. Distance sales will be subject to UK VAT and the sales to UK businesses will be exempt with credit intra community transfers on which you and customer account for acquisition tax.

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Any commission then charged by Mr. ANSON would be a supply of services under Article 44 and subject to a reverse charge in Germany.

Ultimately with either a UK branch or subsidiary there will be a UK registration requirement and you will charge UK VAT on sales to UK customers.

The branch may be advisable as it is less administratively burdensome but other considerations will be appropriate.

Kind regards.

Andy.

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Meeting notes

- Suspension is now the only way to operate IP (Inward Processing) as drawback is no longer available.
- To operate after 1 May <sup>2016</sup>, a guarantee is required.
- The guarantee is the maximum amount of customs duty applicable to the goods held in the regime at any one time.
- It may be worth becoming an AEOC as the authorisation is required to cover the payment of actual debts.
- The AEOC status should still allow you to benefit from a waiver or reduction to the guarantee in respect of potential debts.

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- The authorisation should still be valid until 31 December 18 and you will not need to re-apply for re-authorisation.
- AEOC status means you benefit from 0% guarantee for potential debts and a 30% in relation to the deferment account.
- CFSP ~~and~~ temporary storage authorisations will still be valid and re-approval must only be completed by 30 April 2019.
- Measures are expanded under the UCC and there is a mandatory guarantee as above.
- Goods can now be moved under temporary storage rather than ~~RESIP and there is now~~ CFSP.

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- There is an extension to a 90 day storage period.

- This period resets from 1 May 2016.

- Recommend - seek guarantees where mandatory, discuss utility of expanded temporary storage.

- Discuss AEOC application and in particular new criterion covering competence or professional qualifications which is still under discussion.

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To: Patty Williams  
From: Reg. Tax Advisor  
Subject: Customs Duties  
Date: 3 May 2017

Dear Patty,

Thanks for your email, I have addressed the points raised below.

The queries revolve around the valuation of goods for customs purposes. As you may be aware there are six methods for valuing goods for customs purposes.

The methods are hierarchical and must be considered in turn with the exception of methods 4 and 5 which can be switched at the taxpayer (i.e. you) request.

The first method looks at the transaction value but includes certain cost which

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must either be added in or excluded.

Method 2 is the value of identical goods sold for export.

Method 3 is the value of similar goods.

Method 4 is the sales minus method and method 5 is the cost plus method.

Method 6 applies where no other method is suitable and involves determining a value by any reasonable means.

### Cookware

Turning first to Cookware you are correct to include the value of freight and insurance in addition to the transaction value code

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Method 1.

However, this has parallels with a similar case where Asda provided coat hangers free of charge and were found to have to include their cost in the import value.

In this instance you must include the packaging cost to you in the value of the import per Article 71 which stipulates that containers and packing are added to the transaction value.

Therefore I recommend that you notify HMRC of this arrangement as soon as possible and make a backdated disclosure of duty.

Please note for duty purposes errors should only go back 3 years so errors beyond this point do not need to be disclosed.

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## Commission Arrangements

When valuing under Method 1 above commissions must be added to the customs value with the exception of buying commissions.

Mr Zhang appears to be paid a buying commission as he is engaged by you, working for you, negotiating sums on your behalf and billing you.

As such, I recommend that you exclude Mr Zhang's commission from your customs valuation. It should be captured separately under the reverse-charge mechanism for VAT.

In relation to Yang she appears to be a selling agent. Although she bills you she seems to provide her services to her father's company.

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This is indicated by his exclusive representative arrangement, negotiating on his father's behalf and status within the business.

The value of this commission must be included in the customs valuation under Method 1 per Article 71 of the VCC.

### Coffee Machines

Method 1 is not appropriate, where part of the value subsequent resale accrues to your supplier per Article 70 of the VCC (i.e. the 10% criteria on resale that you have agreed).

As a consequence you must consider Article 74, 2(a) which looks at the value of identical goods <sup>sold</sup> for export.

Given that you only pay 75% of the price that other UK importers pay for the

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same goods I would suggest it would be appropriate to adjust the value to 100% for valuation purposes.

### Prior Sales

Under the old customs rules there was indeed a criteria which allowed you to value the goods on the prior sale.

Since you knew the price of the sale from Roasting to Kova and this was a 'sale for export' this value - which is lower - could be taken as the customs value re method 1.

This would not have extended to the ~~the~~ coffee imported from Guatemalan Coffee Roaster since these goods were not sold for export

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rather the raw beans required processing prior to the sale; the prior sale rule hence did not apply.

Under the UCC it is not possible to benefit from the prior sale rule and instead you are required to use the ~~prior~~ sale value immediately prior to export and hence the full transaction value from both Korea and Guatemala.

In relation to the Wong contract, transitional rules have been introduced where you are bound in a contract at the 18<sup>th</sup> January 2016 where you were using prior sale rules.

Provided the contract remains in force the sale rule can be used until 31 December 2017.

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As your contract with Wong was entered into after this date you will not benefit from these transitional arrangements.

Therefore I advise you to account for customs duties on the full value of the sale by Wong Electricals.

Kind regards

Reg Taxadviser

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