THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Cross-Border Indirect Taxation

May 2022

TIME ALLOWED

3 HOURS 30 MINUTES

- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should indicate this where relevant.
- Scots law candidates may provide answers referring to Land and Buildings Transaction Tax rather than Stamp Duty Land Tax.
- Unless otherwise indicated by the provision of additional information in the question, you may assume that 2021/22 legislation (including rates and allowances) continues to apply for 2022/23 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.
- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. ConfCo, a Dubai based conference organiser will be organising and operating a UK technology conference in its own name for a third-party Dubai based client. The event will take place in February 2023.

Delegates from UK and overseas businesses and from some UK based not for profit organisations with no commercial activity will pay an entrance fee to attend. ConfCo will also have revenues from sponsorship, from arranging hotel accommodation for delegates and from optional extras available to delegates such as a gala dinner on the final evening and walking tours in London.

ConfCo will incur all costs in its own name, including venue hire (a deposit will be paid shortly), equipment hire from local UK suppliers, and catering. It will put together goody bags in Dubai for delegates containing promotional items such as pens, USB sticks and leaflets which will be shipped by ConfCo to the UK. Delegates may take these home with them after the event. Marketing banners and conference stands will also be imported, and these will be returned to Dubai afterwards.

In addition to retaining any profit made on the event, ConfCo will charge an event management fee to its Dubai client.

Requirement:

Explain the VAT and Customs Duties implications of the proposed conference, with appropriate recommendations to minimise VAT costs where possible. (20)

2. IFA LLP, a firm of Independent Financial Advisors, provides financial advice on investments to private individuals. It is not VAT registered.

The firm has been operating from an office in London since 1 July 2020. It has also had an employee in an office in Switzerland since September 2020 responsible for identifying potential new clients in Switzerland, but all client and supplier contracts are signed by IFA LLP in the UK and all advice/instructions to trade come from the UK office.

IFA LLP has clients in the UK, Switzerland and Germany, and it also has one client who splits their time between their residences in the UK and the US. In terms of the firm's revenue streams, these are fixed fees from providing advice on the recommended investment strategy for a client and annual reviews. In addition, they receive commission from acting as a broker in relation to share investments made by their clients.

As part of their corporate and social responsibility policy, the firm requires all clients to make a donation of £1,000 per annum, which is matched by IFA LLP and the total is donated to global charities.

Key costs incurred by the firm include the rental of the offices in the UK and Switzerland, client lead generation costs from a global search engine company based in Dublin, and subscription costs to a global database of financial information. The lead generation services and database are used by UK staff. In addition, they have a commission sharing arrangement with an independent broker based in Jersey who works with clients locally in the Channel Islands and routes the instructions to trade in shares through IFA LLP which then acts as the lead broker in the transaction.

Requirement:

Discuss the VAT treatment of IFA LLP's activities including any UK VAT registration requirements. You are NOT required to consider penalties or interest. (20)

3. MakeUp Inc, a US based manufacturer of customised make-up, sells mainly to private individuals through its own website. The customer has the option of submitting their photo via the website and completing a questionnaire to enable them to be accurately matched to makeup suiting their specific skin tone. They can then go on to purchase customised makeup. Alternatively, they can simply purchase off-the-shelf makeup.

A charge of US$20 is made for the optional matching service and the customer receives a portfolio of digital images by email showing a range of makeup options to select from. Both the customised and off-the-shelf products are manufactured in the US.

Until now, the manufacturing and customer base has been solely in the US, but there are plans to carry out a major marketing campaign in Europe to target European private individuals and manufacture the products locally. The current intention is to set up a UK subsidiary, MakeUp UK Ltd, with a team of five staff responsible for sales and marketing and managing the European website and customer queries. It will not make sales to customers, but just provide back office support to MakeUp Inc. Freman SA, a French contract manufacturer, may be used to manufacture the customised make up to customer order, and orders will be despatched to the customer from France. An alternative option of using a UK based contract manufacturer is being explored.

The US entity will remain the vendor of record for the customised make up and will ship raw ingredients/packaging and the off-the-shelf products to Freman SA. The US entity will retain title to these. Freman SA will invoice the US entity. The digital image matching service will be provided using software, technology and staff located in the US.

Requirement:

Explain the VAT and Customs Duty implications of the proposals and recommend where the manufacturing should be located. (15)

4. ToyCo Ltd is a business based in Belfast, Northern Ireland which historically has manufactured and sold children's toys to UK private customers only. Its website was very successful, but the company decided it would achieve significantly higher revenue growth if it were to start selling via a major global marketplace (portal.com Inc) in addition to its own website, as it would reach customers outside the UK. This new selling channel commenced in January 2022.

ToyCo Ltd sells to private individuals in the UK, EU and non-EU countries and the average value of each sale is projected at £30. Total sales projections for the calendar year are £3,000,000 per annum, with £2,000,000 being to EU B2C customers. ToyCo Ltd is registered for UK VAT and has been accounting for UK VAT on sales to UK customers (who are private individuals). It now also has a major VAT registered customer in Ireland.

ToyCo Ltd receives invoices each month from portal.com Inc for commission. The commission invoices are backed up with transaction reports and these indicate that some of the goods are being stored in warehouses owned by the marketplace in Germany as well as the UK. The commission invoices indicate portal.com Inc is established and VAT registered in Finland, and VAT has not been charged to ToyCo Ltd. ToyCo Ltd has not accounted for VAT on these invoices.

From 1 December 2022, ToyCo Ltd is planning to start selling children's bikes via the same marketplace. In this case however it will sell the stock to the marketplace rather than directly to the consumer and the stock will be housed in portal.com Inc’s UK warehouse in Birmingham.

One of ToyCo Ltd’s best-selling toys is a stuffed dog which it developed and manufactures. ToyCo Ltd has been approached by a US TV channel interested in acquiring the rights to the toy so that a children’s cartoon can be developed for broadcast in the US. If successful, it is likely ToyCo Ltd will begin selling the stuffed dogs online to US customers, which would be exported from Northern Ireland.

Requirement:

Discuss the VAT issues and reporting requirements facing ToyCo Ltd. You are NOT required to consider penalties or interest. (15)

5. Watagua Ltd is a GB-established business that was set up in January 2017. It supplies hoses, water pumps, timers and associated accessories to a variety of DIY shops and garden centres in England. Until November 2020 all of the goods Watagua Ltd sold (apart from the solar powered water pump referred to below) were bought from and imported from its Canadian parent company, Vancouver Pump Corporation.

Following a management buy-out in November 2020, Watagua Ltd stopped importing goods and now sources all products from within the UK.

The imports were always declared at import as Method 1 (price paid or payable) sales using the value on the invoice that accompanied the goods with the necessary adjustments for freight and insurance as calculated by Watagua Ltd's buying department.

HMRC undertook a Customs audit of Watagua Ltd's operations in April 2022 and have been looking at imports made since May 2019. They did not identify any errors from the information supplied by Watagua Ltd's buying department. However, when HMRC spoke with the accounts department to verify the amounts paid for goods, they discovered that Vancouver Pump Corporation issued a monthly invoice to Watagua Ltd for "other charges". There is no more information on the invoice but it is clear that the amount charged each month fluctuated in line with the value of goods imported in that month.

The HMRC officer indicated that they would not accept that the goods invoices represent the full value of the imports but said they would seek advice.

In June 2019, Watagua Ltd started importing a new solar powered water pump from an unrelated company, Pumpsup Inc. This contract required Watagua Ltd to pay a royalty of 2% of the purchase cost on each item bought directly to the US royalty holder, JabSup Corp. This was in addition to the amount that Pumpsup Inc charged for the goods at import. Watagua Ltd did not declare the royalty at import. Imports of this product ceased at the time of the management buy-out in November 2020.

Requirement:

1) **Discuss whether HMRC may be successful in challenging the import values of the intra group sales**. (17)

2) **Explain the Customs Duty and VAT treatment of the royalty payments on the solar powered water pumps.** (3)

Do NOT discuss penalties or appeals.

Total (20)

6. Mawked Ltd is established in and based in Northern Ireland. It imports various steel and alloy products for onward sale to customers in the EU. Many of these goods are classified in Tariff Chapter 73 "Products of Iron and Steel". These goods would attract an additional Safeguard Duty at import of 25% were the goods to originate in certain countries such as the US.

Mawked Ltd does not know whether its suppliers obtain these goods from another country nor whether these goods are manufactured or finished by its suppliers.

Mawked Ltd knows that some of the goods it imports are "finished" by its suppliers in Mexico but Mawked Ltd is not certain what this entails.

Requirement:

Explain the rules that determine where goods originate from for Customs Safeguard purposes and how Mawked Ltd can get certainty on this. (10)