

# THE CHARTERED INSTITUTE OF TAXATION

## ADVANCED TECHNICAL

### Cross Border and Environmental Taxes

#### Sample Paper 2025

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TIME ALLOWED

3 HOURS 30 MINUTES

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- 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 2024/25 legislation (including rates and allowances) continues to apply for 2025/26 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.
- Additional marks may be awarded for presentation.
- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. LeasecoDE GmbH, a company established in Germany, is planning to start leasing 3D printers to UK business customers from June 2025. The printers are manufactured in Germany and will be shipped from there to customer sites in the UK. LeasecoDE GmbH will retain ownership of the printers throughout the two-year leasing contract. Once the contract ends, the printers will either be shipped back to Germany or will be sold for scrap in the UK. LeasecoDE GmbH has a UK VAT registered subsidiary, SupportcoGB Ltd, which will provide support services in relation to the leasing contract. These will consist of on site and remote repair and maintenance work. There is an intercompany agreement in place between LeasecoDE GmbH and SupportcoGB Ltd to remunerate SupportcoGB Ltd for the services to be provided.

**Requirement:**

**Explain the VAT implications of this scenario, including the import process, and also the Customs Duty position.** (15)

2. URock University is a for-profit Canadian university based in the Rocky Mountains. It offers accredited five-year Doctor of Dental Surgery graduate-entry degrees in dentistry to its students. The degree is offered both to students who attend URock University's Canadian campus, but also to international students who can choose to carry out some or all of their degree from one of a number of international centres.

As part of its plans for growth, URock University has now received accreditation from the UK authorities to provide an equivalent graduate degree (Bachelor of Dental Surgery) in the UK from the academic year beginning in September 2025. It is intended that the course will be open only to non-UK students who have chosen URock University for its international reputation and who want to experience life in the UK.

It has been agreed that students will pay £20,000 per year and in return they will receive a "bundle" which includes:

Lectures and testing

In-person training sessions for the practical part of the degree

Final examinations

In order to provide the course in the UK, URock University has made arrangements with the University of Darent in Kent whereby URock University will pay an agreed fee per student and the University of Darent will provide all of the necessary staff and other facilities for lectures and examinations. The agreement between the two universities will be financially beneficial to both parties owing to the higher income earned from international students.

For the practical training element of the degree, the University of Darent will find suitable patients. URock University has arranged for a number of dentists working at a large local dental practice to provide this training to the students. It has been agreed that, while the dentists will come under the control of the University of Darent, URock University will recompense the University of Darent by way of an adjustment to the agreed fees calculated quarterly.

It has also been agreed that URock University will procure the purchase of dental prostheses and similar materials in the UK to be used in the training up to a total of £10,000 for each academic year. Over that limit, the University of Darent will be responsible for obtaining the materials, though it will have the option of buying more via URock University. These materials will all be consumed as part of the training course.

URock University has also agreed to upgrade the training premises at the University of Darent. This will include the latest dental equipment, such as dental chairs, etc. It is agreed that URock University, will own this equipment, and that the University of Darent will pay a rental charge for use of the equipment to train its own domestic undergraduate students. This is expected to be approximately 65% of the total use.

The specialist equipment is manufactured in Germany. The University of Darent is responsible for the costs of fitting the equipment safely at its premises. URock University needs to establish who should act as importer.

At the end of three years, URock University intends to sell off the older equipment and to replace it. It is happy to sell to the highest bidder, whether the purchaser is based in the UK or elsewhere but is unsure of the VAT treatment of such an arrangement.

Finally, URock University needs to decide whether it should employ staff in the UK or manage the arrangements from Canada and how this interacts with its UK VAT obligations.

**Requirement:**

**Explain, with reference to case law, URock University's UK VAT position under the proposed arrangements and also steps that may be taken to minimise VAT costs. (20)**

3. Dokker Trucks UK Ltd is a UK subsidiary of a Canadian parent company and has been established in England for several years. It is the only Dokker Trucks manufacturing subsidiary in Europe and operates out of one site in Birmingham.

Dokker Trucks UK Ltd manufactures large 'dumper' vehicles for off-highway use. These dumper trucks are normally used in large infrastructure construction projects such as motorway construction. All of Dokker Trucks UK Ltd's competitors are located outside the EU.

Dokker Trucks UK Ltd sources its component parts from EU manufacturing companies and non-EU companies. When sourcing from the non-EU companies, Dokker Trucks UK Ltd buys through a related company based in China, Dokker Asia, which sources the parts from China and Bangladesh and arranges the shipment direct from the manufacturer to Dokker Trucks UK Ltd. Dokker Asia invoices Dokker Trucks UK Ltd at cost plus a mark-up for this service. Dokker Trucks UK Ltd uses the Dokker Asia invoice when clearing the parts at import into the UK. Parts incur a 4% duty rate and a preferential rate of 2%. Finished dumper trucks have a 0% rate.

Once the parts and components are imported into the UK they are held by Dokker Trucks UK Ltd in its storage facility in the UK. Some of these parts can be held for up to three years, depending on the orders received for each vehicle type. In addition, some of the parts will be sold as spare or replacement parts rather than being used in production.

Of the imported parts, 60% of them will be used to manufacture dumpers at Dokker Trucks UK Ltd's UK facility. 20% of the imported parts will be sold into the UK or EU market as spares/replacements. The remaining 20% will be exported outside the EU as spares/replacements.

Of Dokker Trucks UK Ltd's production, approximately 65% is exported directly outside the EU and 35% is sold to EU customers.

**Requirement:**

**Explain the Customs Duty issues arising from the above and advise how Dokker Trucks UK Ltd can reduce any Duty payable. (20)**

4. AlcoWa Ltd is a newly incorporated UK company with a warehouse and offices in both the UK and France. Its trade, which is planned to commence in about four months' time, will be the sale of alcohol and cigarettes, which will be obtained from producers in France, Italy and the US. Sales will be to UK wholesalers and are projected to be £2 million in the first year.

Goods originating from EU member states will be delivered to and stored at the French warehouse, which is authorised as a tax warehouse, before being delivered to the UK. Goods from outside the EU will be delivered direct to AlcoWa Ltd's UK warehouse. AlcoWa Ltd will draw down stocks from France as and when necessary. AlcoWa Ltd has not yet registered for any taxes.

**Requirement:**

**Discuss the UK VAT and Duties chargeable on the goods and any planning to reduce or defer these.** (15)

5. Landphyll Ltd has been a haulage contractor with a fleet of lorries. It owns a 10 acre site on which there is a commercial building used as offices and also as a garage and repair facility for the company's vehicles.

It now intends to expand its activities by setting up a landfill site. It will receive all forms of waste some of which can be recycled for the construction industry eg soil, stone, quarry waste, old bricks, road scrapings, ash, slag etc. Materials will be segregated on the site and will be graded/sorted as necessary for re-sale to independent customers or as non-recyclable waste which will be landfilled. Some of the more valuable materials will be purchased for re-sale, other materials will be accepted on site on payment of a £50 per tonne tipping charge plus the appropriate amount of Landfill Tax.

Landphyll Ltd intends to use some materials to create a road through the site. It will also use some of the materials received to provide a barrier/cap which will cover landfilled waste at the end of each day. Some of the materials used to cap the waste at the end of the day might be subsequently removed and sent off for recycling elsewhere.

As this is a new line of business, the haulage manager is hoping to attend a course on waste management health and safety which is being held in Dublin, Ireland. If the dates are not convenient, the course is recorded and can be watched afterwards for a reduced fee.

**Requirements:**

- 1) **Explain the Landfill Tax consequences of the above proposals. Do NOT discuss registration or returns.** (15)
- 2) **Explain the VAT issues arising in respect of the waste management course.** (5)

Total (20)

6. Aggricor Inc, a global construction company which also trades in aggregates, has recently started trading in the UK through its new subsidiary, Rockzz Ltd. Rockzz Ltd has registered for VAT as an intending trader. It has purchased a quarry site with a weighbridge and has three customers so far.

Its first customer is the local football club, Loftis United. Rockzz Ltd is to create a new football pitch for it, including laying drainage pipes and power cables for the pitch lighting. Rockzz Ltd expects to remove about 280 tonnes of sand and gravel from the site of the pitch in total. A further 20 tonnes will come from digging out for the foundations of a new souvenir shop and fan complex.

The second customer is a local golf club where Rockzz Ltd will be paid to remove sand and gravel from a lake and two rivers on the grounds.

The third customer is its parent company in the US. It has an agreement to export 150,000 tonnes of gravel per annum from the quarry to its parent company.

**Requirement:**

**Explain the Aggregates Levy implications of Rockzz Ltd's activities.**

(10)

## Answers

1. As LeaseCoDE retains title to the printers throughout the term of the lease, there is a supply of leasing services rather than a supply of goods. Schedule 4 para 1(B) sets this out, stating that the transfer of possession (as opposed to ownership) of goods is a supply of services. This applies unless the contract envisages title passing at the end of the lease.

LeaseCoDE should not charge German VAT to the UK business customers – the B2B customers are outside the EU and the services are not used and enjoyed in the EU, they are used in the UK. The question is whether UK VAT is due under the reverse charge mechanism. Leasing services like this are taxed under the UK's equivalent of the EU's 'general VAT rule' – they are subject to VAT where the B2B customer belongs, being the UK, and therefore UK VAT is due under the reverse charge. This can be recovered in accordance with the customer's VAT recovery profile. As the liability to account for UK VAT lies with the UK customer, LeaseCoDE is not required or able to VAT register in the UK as it has no UK establishment.

For the import of goods into the UK, as LeaseCoDE retains title to the goods, only LeaseCoDE can recover the import VAT incurred – the lessee would be unable to do this. LeaseCoDE should therefore be the declarant and will need a GB EORI. Given however LeaseCoDE is not required or able to VAT register in relation to the ongoing leasing charges, it must file an overseas refund claim to recover the UK import VAT incurred. To support the claim, it will need to submit copies of the import entries (C88 forms) as declarant. A Certificate of Taxable Status will also be required.

For customs duty, the correct tariff code needs to be identified. Given the printers are manufactured in the EU, a zero rate of duty would apply on import to the UK due to the Trade and Cooperation Agreement with the EU. Despite this however the appropriate value still needs to be determined for the import value. There are special customs valuation rules for leasing transactions. As there has been no sale of the goods from LeaseCoDE to the UK customer, it is unlikely valuation method 1 would be appropriate. The remaining valuation methods therefore need to be considered in turn. Methods 2 to 4 require the identification of the same or similar goods imported under the same circumstances so that the same value can be used. If such a value is not available, method 5 is a method using the cost of producing the goods plus any profit. In many cases method 6 is used for leasing transactions such as these. This is the 'fall back' method which requires the use of a fair and reasonable approach to arrive at the customs value, taking account of the commercial circumstances. A common approach would be to multiply the annual leasing cost by the expected economic life of the goods.

If at the end of the leasing contract the printers are re-exported to Germany, LeaseCoDE would need to use its GB EORI to export the goods from the UK. A UK VAT registration liability would not be triggered on the basis the export movement of own goods is not considered a supply for VAT purposes. Import VAT and customs duty may be due on re-import to Germany. Alternatively, if they are sold in the UK (including sales for scrap), a UK VAT registration liability could arise regardless of the value as the UK's VAT registration threshold of £85,000 would not apply to LeaseCoDE, a non-established business. Output VAT would be due from the sales proceeds (which would either be VAT inclusive or VAT exclusive depending on the commercial agreement with the purchaser) and any VAT incurred on costs relating to the sale could be recovered on the VAT return. LeaseCoDE could then deregister from UK VAT if it had no remaining assets in the UK or could retain the registration and file nil returns until such time as further printers were imported or disposed of within the UK.

With regard to the intercompany charge from SupportCoGB to LeaseCoDE, this is a B2B supply of 'general VAT rule' services, which means no UK VAT is charged to LeaseCoDE and LeaseCoDE will self-assess German VAT under the reverse charge mechanism. This VAT should be fully recoverable subject to German VAT rules.

## Marking guide

<b>TOPIC</b>	<b>MARKS</b>
Supply of Goods or Services	1
Place of Supply of leasing services inc impact of Use and Enjoyment rules	2
Party responsible for accounting for UK VAT	1
Importer of record, EORI	1
Recovery of Import VAT	1
Customs valuation method	2
Customs origin and classification	2
VAT treatment of re-export of goods	1
VAT implications of UK disposal of goods	2
Deregistration from UK VAT	1
VAT treatment of maintenance services provided by SupportCoGB	1
<b>TOTAL</b>	<b>15 marks</b>

## 2. URock - Services Supplied

The supply being made by URock is a single “complex supply” of services of organising education for students in the UK, rather than education or vocational training. Importantly, therefore the place of supply is different from what it would have been if the university was making educational services, even though the place of supply rule is the same for both kinds of services.

This principle was established in *St George’s University Limited [2021] UKFTT 13 (TC)*, wherein the Tribunal held that the correct test was to examine where the organising activities took place, rather than where the students physically studied.

Accordingly, the place of supply of URock’s services will depend on where they are organised, rather than where the education and training is physically carried out. So, if URock used staff in the UK to organise the course, it would have a UK place of supply.

The education exemption does not apply to a for-profit overseas university unless it is a college or other similar body belonging to a UK university. There is no suggestion that URock will be a college of the University of Darent (“Darent”), and so it seems likely that, if its supplies did fall within the scope of UK VAT, they would be subject to VAT.

The commercial impact of this position is therefore clear. The agreed fee is £20,000, which would be deemed VAT inclusive as URock has not made the agreement VAT exclusive. Consequently, it would be sensible to avoid having to charge VAT if possible. This would rule out using staff based in the UK to handle the main supply of organising dental education in the UK. URock should therefore ensure that the crucial decisions and administration in respect of organising educational services will take place in Canada.

### Services Received

Darent is a UK university and so its supplies will be exempt from VAT. Consequently, URock will not be charged VAT in respect of the lectures, training and other closely related items.

URock has arranged for local dentists to come to Darent and train the students. Where the dental practice provided the dentists as a supply of staff, this could require the practice to register for VAT and could lead to irrecoverable VAT for Darent. As URock has agreed to cover the cost to Darent, it should try to avoid this if possible.

It would be more advantageous to have the dentists seconded by the dental practice to Darent. As Darent will control the dentists, this should be quite easy to confirm. Whilst there remains a possible argument that there is a supply of staff to URock, the fact that the University of Darent supervises the dentists on a day-to-day basis would weaken that argument.

The quarterly adjustment to the fees paid to Darent by URock should also be exempt, as the fee should be regarded as additional consideration for the overall exempt supply of education.

### Goods Purchases

#### Dental prostheses etc

The £10,000 worth of dental prostheses and other goods URock has agreed to provide to Darent will, in principle, be a taxable supply of goods in the UK. It will also mean that input VAT suffered on the purchase could be recovered in full.

As stated, it is important for the place of supply of its organising services that URock does not employ any staff in the UK.

Since URock would not have the necessary “technical and human resources” physically in the UK to make supplies (see *Berkholz (Case C-168/84)*), it would not be established in the UK. Accordingly, any supply of goods of any value would require URock to register for UK VAT under VATA 1994, Sch 1A.

URock would be registering as a “non-established taxable person” and so would have the choice of managing its VAT affairs itself; appointing an agent; or appointing a tax representative.



As URock is based in Canada, it is likely to be impractical to handle its VAT registration and other obligations itself.

Accordingly, appointing a local firm of accountants to assist is a good idea. Note that acting as a tax representative would impose joint and several liability on the accountants, as well as the obligation to keep URock's VAT records and account for its UK VAT. This is commercially unattractive and would be very expensive for URock.

It would be preferable to appoint the accountants as its agent for VAT purposes to handle the registration and to meet all of its legal obligations as a UK taxable person. Importantly, acting as agent requires only that a letter in the form suggested in para 11.7 VAT Notice 700/1 is sent to HMRC with form VAT 1, and does not impose joint or several liability on the agent.

### Imports of equipment

Import VAT may only be reclaimed by the owner of the goods. Where URock, as an overseas lessor, acts as importer, this would mean that the lessee (Darent) would be unable to reclaim the import VAT.

Because URock would already have been required to register for VAT in the UK, it should be able to request "postponed import VAT accounting" in respect of the goods. This would allow it to account for the import VAT and reclaim the related input VAT on its VAT return.

A B2B supply of leasing of equipment without an operator falls under the general rule for place of supply of services, meaning it would be outside the scope of UK VAT. Thus, URock would not have to charge VAT on the lease payments to the University of Darent.

However, as this would be a taxable supply if it were made in the UK, the related import VAT should be recoverable in full. Potentially however if Darent is VAT registered, it would have to account for a reverse charge on the leasing charges.

UK VAT registration would enable URock to sell the equipment on at the end of three years either within the UK as a domestic supply, or to sell them elsewhere as a zero-rated export.

[Word count 1,000]

## MARKING GUIDE

TOPIC	MARKS
Identify similar to <i>St George's University</i> , and the key principles. Don't need to name case for credit	1
<u>Services Supplied</u>	
Correctly identify single complex supply of services of "organising education"	1½
Identify that the place of supply rule is the same for both the organising services and the underlying services of education	1½
Correct test to apply is the place of organising activities	½
State that place of supply will therefore be where the organising services take place, not where the actual education takes place	1
State that overseas for-profit university will not benefit from education exemption; refer to "college of a UK university" test as well	2
Correctly conclude that using UK staff/establishment to carry out the organising activities would lead to UK place of supply and therefore VAT on the fees from students; commercially advantageous to use URock's HQ in Canada	1½
<u>Services Received</u>	
University of Darent will be making exempt supplies of education	½
Dental practice could end up making taxable supplies of staff	1
Suggest secondment arrangement to avoid VAT-able supply of staff	1½
State that consideration for cost of dentists should be exempt	½
<u>Goods Purchases</u>	
State that UK taxable supply is being made of the dental prostheses, allowing input VAT recovery	1

State no fixed establishment in the UK because of way arrangements are structured and that this is beneficial commercially for services element; requirement for registration as NETP on first pound of sales	1½
Using UK accountant to act as agent in respect of its VAT affairs; reference to letter; no joint and several liability; address question of tax representative and doing VAT itself	2
Where URock acted as importer and took title to the goods, it could reclaim the import VAT and would be making an onward taxable supply of leasing; leasing B2B general rule, so no VAT	2
Correctly identify UK domestic sales or exports for the sale of the equipment at the end of the 3-year period by URock to keep intention to make taxable supplies	1
<b>TOTAL</b>	<b>20</b>

### 3. Sourcing component parts

When Dokker Trucks UK Ltd (DTUL) sources component parts from EU manufacturing companies, provided the origin rule in the Trade and Cooperation Agreement (TCA) is met, the parts would not incur duty. DTUL should ensure that the relevant declaration is made on the import entry.

Sourcing from non-EU companies would incur duty in the UK at 4% where the goods arrive from a non-preference country and 2% where the relevant preference conditions are met. However, the invoice being declared on import is the one from the Chinese related company and therefore it is unclear whether the correct country of origin is being declared and whether the preference conditions are met.

DTUL should check prior imports to see whether they qualified for preference. It will need to determine the correct commodity code for the parts, and the Tariff will show which countries benefit from a preferential rate. The preference conditions that need to be met will be dictated by the commodity code and DTUL should check the production process with its suppliers to determine whether they qualify. If preference has been incorrectly claimed, it should make a voluntary declaration to HMRC. For future imports, it should ensure that the correct country of origin and the correct value for duty are declared on the import declaration. The parts are not valued at the amount on the invoice from Dokker Asia. Dokker Asia is a buying agent and the commission is not included in the value for duty. DTUL may have over declared its values for duty and can look back a maximum three years to recover any overpaid duty.

#### Reducing Duty payable

There are a number of ways to reduce the duty payable. DTUL should consider Inward Processing, Customs Warehousing and the TCA between the UK and the EU.

#### Inward Processing

Parts that are incorporated into a finished product that incurs a 0% duty rate can be imported to Inward Processing and declared at the rate for the finished product. DTUL should carry out a cost benefit analysis (subject to the points below on EU sales) to decide whether the duty saving would outweigh the extra administration relating to the application process and administrative burden of completing returns and ensuring sufficient records are kept for HMRC's purposes.

An Inward Processing authorisation can be backdated by a maximum one year, so if DTUL wishes to take advantage of the relief, this should be explored. However, HMRC would look closely at record keeping in deciding whether to allow this.

#### Customs Warehousing

Some of DTUL's parts can be held in the UK up to three years. Importing into a Customs Warehouse would mean that no duty is payable at the time of import on the parts. The parts that are subsequently exported (either to the EU or non-EU) would not incur UK duty, although duty would be due in the EU as they would not satisfy the terms of the TCA, as they originate outside the UK. Parts released onto the UK market would incur duty at the 4% or 2% rate – the latter providing that the appropriate preference rules are met and documentation (such as the Form A) is held.

As DTUL does not know at the time of import exactly where the parts are destined, it would be advisable to import initially into a customs warehouse and then for parts that are used in the dumper trucks, which are subsequently released to the UK market, they could be transferred to Inward Processing, and the rate of 0% used on their release for processing.

Note that complicated processing such as incorporating the parts onto finished dumper trucks is not an allowance process to be carried out in a customs warehouse. Inward Processing would need to be used for this manufacture.

Customs Warehousing can not be carried out retrospectively. Applying for and operating its own Customs Warehouse may be costly for DTUL but is worth exploring. In the interim, it could find a local logistics company that operates a public warehouse. Whilst this would involve cost, it should be mitigated by the duty savings arising.

#### TCA

Parts removed to the EU would not benefit from the TCA as they are not manufactured in the UK. If the parts were not imported into the warehouse (or inward processing) then duty would be payable twice, once on import to the UK and again on import to the EU. Whilst there would be

benefit in shipping directly to the EU customer from the supplier and thus only incurring duty once, given DTUL holds stock for up to three years, this is unlikely unless the parts are specifically purchased to fulfil an order. DTUL would be better off financially to import the parts into the warehouse and release with no duty for export to the EU, with the customer paying duty when the goods are shipped in the EU.

For the UK manufactured finished dumper trucks which are subsequently exported to the EU, DTUL should review the EU duty rate to decide on where it wants to pay duty. For example, the dumper trucks might have a 0% rate on entry to the EU, so that it can import the parts to its warehouse, move them to IP, release to the UK market at 0% and then move the trucks to the EU at 0%. If the trucks do not have a 0% rate in the EU, then DTUL would be advised to release the parts to the UK market (paying appropriate duty at 4% or 2%) and then then finished trucks are likely to meet the origin rule in the TCA and would receive duty free entry to the EU.

### Conclusion

The use of the reliefs should be weighed up with duty and cash flow savings and compared with the additional administrative burdens. Completing returns incorrectly means that the entire bill of discharge is invalidated and duty due on all imports covered by it. This can be a costly error for a company to make.

[Word count 1000]

### **Marking guide**

<b>TOPIC</b>	<b>MARKS</b>
<u>Components</u>	
Components from EU, origin rule in TCA = no duty, relevant declaration on C88	1
Components from non-EU, duty at 4%/2% - latter where preference met	1
How preference is determined	1
Check country of origin being declared due to Chinese invoice being presented	1
Where preference not met, check prior imports, voluntary declaration	1
Future imports – correct country of origin and correct value declared	1
Buying commission not included in value for duty	1
If values overdeclared, make a repayment claim (max 3 years)	1
<u>Reducing duty</u>	
Consider IP, CW and TCA	1
<u>IP</u>	
Parts into finished trucks – 0% duty pay	1
Carry out cost benefit analysis – duty saving outweigh admin	1
Backdating authorisation – 1 year – sufficient records for HMRC	1
<u>CW</u>	
Relevant for parts held up to 3 years – no duty at import, only on release	1
Exported parts – no duty, duty in EU as not originate under TCA	1
Release to UK market – 4% or 2% if preference rules met and documentation	1
Advice – import into CW initially – remove to IP for those to go in dumper trucks, so 0% on removal	1
Complicated processing cannot be done in the CW – must release to IP	1
CW not retrospective – consider public warehouse while application pends	1
<u>TCA</u>	
Exports to EU – advice is to put in CW and then release to EU – duty only once in EU, won't originate for TCA	2
Dumper trucks to EU – need to weigh up difference in rates – discussion on UK duty v EU duty v TCA	
Overall conclusion	
<b>TOTAL</b>	<b>20 marks</b>

#### 4. VAT

AlcoWa Ltd (AW) should register for VAT immediately as an intending trader. It will be making sales to wholesalers who can recover VAT, and an immediate registration will enable it to ensure maximum input tax recovery on pre-registration expenses. Provided the appropriate evidence is held (i.e. a VAT invoice), VAT on services is recoverable where incurred in the six months prior to registration and it is likely AW is incurring VAT at the present time.

When registering for VAT, there is an online box to tick to say that the company will be engaged with importing and a GB EORI will be needed in order to import from France and outside the EU. Having a VAT registration number will allow AW to use postponed VAT accounting, so that import VAT does not have to be paid upfront at the time of import, but can instead be accounted for on its VAT return (and being fully taxable the output VAT and input VAT will net each other out to zero).

#### Customs Duty

##### EU goods

Customs duty should not be due on the EU goods where they satisfy the terms of the TCA. This should be declared on the import declaration. AW should engage a freight forwarder at the earliest opportunity and provide them with written instructions on how to complete the declaration. The freight forwarder is likely to act as a direct representative so that AW will be solely liable for underpayments of duty.

##### Non-EU goods

Customs duty will be payable on import to the UK. It cannot be reclaimed and is a cost to the business. AW will need to ensure that it classifies its products correctly. Imports from the USA will not benefit from a preferential rate.

Depending on the level of Customs duty due, AW should explore the use of a deferment account. This would allow it to import goods without having to pay the duty at the time of import. Instead monthly imports are amalgamated and the total duty due is taken around the 15<sup>th</sup> of the following month by direct debit. AW could use its freight forwarder's account, but they are likely to charge for it. In establishing a deferment account AW may require a guarantee. It is however possible to apply for a guarantee waiver. There are two types of waiver approval:

1. Guarantee waiver for import duty, import VAT and excise duty up to £10,000 a month.
2. Guarantee waiver for import duty, import VAT and excise duty up to a specified amount over £10,000 a month.

#### Excise Duty

Unlike Customs duty where EU goods benefit from zero rates under the TCA, excise duty is due in the country of consumption. For both non-EU and EU imports, it needs to be paid at the time of import, although it could be deferred through a deferment account, as with Customs duty above. The cigarettes will be subject to tobacco products duty at a rate of 16.5% of the retail price plus £294.72 per thousand cigarettes (or £393.45 per thousand cigarettes, if higher than the first calculation).

The alcohol will be subject to alcohol duty and the duty depends on the strength and type of product. AW could defer the excise duty by applying for an excise warehouse. AW would import the goods into the UK excise warehouse and the excise duty would only be due when the goods leave the excise warehouse. HMRC would authorise AW where it shows an 'economic need'. It will need to approach HMRC as predicted turnover in a year of £2m might not be sufficient. If it does meet HMRC's criteria AW will need to be aware that there are strict conditions and control of premises, e.g., a financial guarantee due diligence requirements etc. Excise duty would be payable when the goods leave the excise warehouse, but the duty can be suspended further if moved to another excise warehouse in the UK.

AW will also need to enrol in the Alcohol Wholesale Registration scheme (AWRS) before it starts to sell alcohol to its wholesalers. There are conditions that AW will need to meet, and it will need to carry out due diligence on its customers, as well as ensuring they are registered under the scheme. Tobacco products destined for the UK market cannot be put in a UK excise warehouse where they bear the UK fiscal mark. AW will need to ensure that the cigarettes bear the appropriate mark before they are sold in the UK.

TOPIC	MARKS
<u>VAT</u>	
Register now as an intending trader	1
Benefits of registering – recover VAT on pre reg, wholesalers not suffer VAT charged to them, be able to use PVA	1
GB EORI	1
<u>Customs Duty</u>	
EU goods – TCA, no duty.	1
Engage freight forwarder -written instructions, direct rep – no liability for debts	1
Non-EU goods – duty due in UK – cost to business, ensure correct code, no preference	1
Deferment account benefits	1
<u>Excise Duty</u>	
EU goods – UK duty as country of consumption	1
Pay at import, deferment account	1
Rate of duty on cigarettes	1
Alcohol – depends on strength and product	1
Excise warehouse possibility – tax suspension from French one, prove economic need, conditions like guarantee, security, records	2
AWRS – need to apply and check wholesalers	2
<b>TOTAL</b>	<b>15 marks</b>

## Part 1)

The rates of Landfill Tax are £3.25 per tonne for inert material, and £102.10 per tonne for other waste. The lower rate is applicable to qualifying materials listed in the Landfill Tax (Qualifying Materials) Order 2011. Mixed loads are liable at the higher rate (unless the quantities of higher rate material are incidental). Landphyll should therefore ensure that waste is sorted. This can be done prior to receiving waste at its site or in its Information Area (see below) before the tax point. Landphyll will need to weigh the waste in order to correctly calculate tax due.

The soil and stone that is received would likely be liable to the lower rate, if landfilled. This is where it is rocks and soils that are 'naturally occurring'. The soil must also be sub-soil to fall within the lower rate. Topsoil is liable to the standard rate. The type of soil needs to be determined in order that the correct liability is applied.

Landfill Tax is not payable on naturally occurring waste material resulting from commercial mining or quarrying operations. There are conditions such as it not being further processed and in the same composition as it was when in the ground.

The ash could benefit from the lower rate where it is bottom ash and fly ash from wood or coal combustion. Ash from sewage sludge or hazardous waste incinerators, for example, would be liable to the standard rate.

The road scrapings would be liable to the standard rate as they are not naturally occurring stones.

The slag would be liable to the lower rate where it is furnace slag eg from waste incineration or vitrified waste from thermal processing of minerals but not other types of slag.

Appropriate evidence needs to be kept of waste that has been declared to the lower rate. Waste transfer notes from the customers should contain sufficient detail to show the type of waste being deposited, to justify the lower rate being charged. Landphyll should be carrying out checks on its customers to ensure they correctly categorise waste. Pre-acceptance checks are recommended by HMRC and contracts concluded with customers should be prescriptive of the rules for depositing waste. If HMRC discovers that waste has been incorrectly classified, then a tax assessment will be raised and Landphyll could also face penalties. These penalties can be significant, because where incorrect returns are made, the penalty is based on the 'potential lost revenue' (PLR).

Landphyll says that some of the waste will be used to create a road through the site. If this is a temporary feature then the waste is deemed to be landfilled and liable to the tax. If however, the waste is used to create a permanent road, then it is not liable to the tax. HMRC would look at the engineering of the road to decide whether it is permanent or not. For example, if it has drainage, kerb stones and a prepared finish, then it could be classed as permanent. Permanent roads are usually constructed before landfill operations commence and remain after they cease. Landphyll would be wise to seek HMRC's agreement that the waste is not liable to the tax. This is the case regardless as to whether Landphyll bought the waste, or it was dumped. Landfill tax is due on purchased goods.

Waste which is used to cover the landfill at the end of the day (usually done as a barrier for vermin, smells, or the wind moving waste), is liable to the tax. Although it is deposited as part of the cell within which the waste is deposited, it is not part of the permanent membrane or structure of the cell itself. This needs to be weighed and the type of waste identified to determine the tax due.

HMRC are likely to insist on an 'Information Area' where waste is deposited pending recycling etc. Waste does not bear tax when deposited in the 'Information Area'. HMRC might require more than one area and will visit Landphyll to discuss its needs and specify the area(s). Although areas do not need to be fenced, there must be a clear demarcation. Landphyll will need to keep records relating to the material deposited in the area(s) so that where the materials are removed for recycling, HMRC know that the material did not get landfilled. The waste will need to be weighed and it is unclear whether Landphyll will have its own weighbridge. If it does not, then the legislation allows for three specified methods (weighing prior to deposit at the site, the maximum permitted weight of the container, and volume to weight conversions of different waste in the container). Landphyll will need to ensure that it complies with the law and keeps weighbridge tickets.

Landphyll will need to submit quarterly returns for the tax. The basic tax point is the time at which the waste is land filled, although there is an alternative tax point where an invoice is issued within 14 days of the basic point. Where waste has been landfilled but is subsequently removed for recycling, then a credit for tax paid can be claimed.

Part 2)

The place of supply needs to be determined to see if Landphyll has any obligations to account for UK VAT. If the manager attends the course in Dublin, the place of supply is where the course takes place. This was established in the case of *Skatteverket v Srf konsulterna AB* (Case C-647/17) [2019]. Although no UK VAT will be due, Irish VAT will be incurred by Landphyll and would be recoverable using a 13<sup>th</sup> Directive claim.

If the manager watches the course after it has finished, this will be an electronically supplied service and the place of supply is the UK where Landphyll uses the service. Landphyll will need to account for the reverse charge on the value of the supply. As Landphyll will be making fully taxable supplies, the VAT will be recoverable in full, so will not be a cost to the business.

[Word count 1,002]

TOPIC	MARKS
Part 1)	
Rates and mixed loads	1
Soil and stone – discussion of lower rate and top soil not covered	2
No LFT on waste from quarrying/mining	1
Ash – lower rate discussion and what is not covered	1
Road scrapings and slag rates	1
Justification of lower rate and evidence needed	2
Waste used for road – discussion of temporary v permanent and features of permanent roads	2
Waste to cover cell liable to tax and explanation why	2
Information Area and conditions HMRC might impose	2
Credit for waste where tax is paid but subsequently recycled	1
Part 2)	
Place of supply of services – why important	1
Attendance at course – POS Dublin, No UK VAT	1
Recovery of Irish VAT 13 <sup>th</sup> Directive reclaim	1
ESS for watching course – place of supply UK	1
Reverse charge VAT – no cost as fully taxable	1
<b>TOTAL</b>	<b>20 marks</b>



6. As Rockzz's site has a weighbridge, it will be required to weigh the aggregate when it is subject to commercial exploitation and retain the weighbridge tickets as part of its record-keeping requirements.

Rockzz must notify HMRC (using Forms AL1 and AL1A) within 30 days of commercially exploiting or forming the intention to exploit aggregate commercially. Rockzz will need to submit quarterly returns. The due date for the return and payment is the last working day of the month following the end of the return period.

#### *Football Pitch*

From 1 October 2023 the exemption for foundations and pipe laying now refers to 'structures' rather than buildings and is not limited to the laying of pipes/cables. The 20 tonnes of aggregate won in relation to building the shop/fan complex will be exempt from the levy.

However, the football pitch would need to be a 'structure' in order for the exemption to apply. Before the law changed a football pitch was not considered to be the construction of a 'building' [*Pat Munro (Alness) Ltd (A002)*] so the 280 tonnes excavated from the site of the proposed football pitch was chargeable to Aggregates Levy (280 tonnes @ £2 = £560). However, due to the changes, the football pitch might be considered a 'structure' as HMRC's guidance says that the word 'structure' includes buildings, bridges, roads, paths, railways and embankments. There may be merit for approaching HMRC with respect to this exemption.

#### *Golf club*

Aggregate removed from the bed of a river, canal or watercourses is exempt from Aggregates Levy. It must have been dredged exclusively for the purpose of creating, restoring, improving or maintaining that water. Therefore the aggregate won from dredging the two rivers will be exempt from the levy. However, the lake, unless it flows into a river or other waterway, is unlikely to qualify as a watercourse must demonstrate a natural source of surface or underground water and flow under the action of gravity and have a reasonably well-defined channel of bed and banks.

In *HumberSide Aggregates and Excavations Limited (2004) L00021*, the Tribunal found that water did not flow under the force of gravity from one to another. It was held that the lake was not a watercourse and that dredgings from it were not exempt from aggregates levy.

#### *Exports to parent company*

Levy is due on this aggregate subject to a claim for credit. If Rockzz holds the required evidence, it may claim a credit for the Aggregates Levy at the same time as it registers the debit for the levy due.

To qualify for a relief it must obtain and hold valid documentary evidence that the aggregate has left the UK within three months of the export. The evidence required is the same as that required to substantiate the VAT zero-rating, e.g. a goods departed message on HMRC's computer system. The credit would be 150,000 tonnes @ £2 is £300,000 per year. This should be claimed as a relief in the credit side of the aggregates levy account.

[word count 500]

<b>TOPIC</b>	<b>MARKS</b>
Registration, weighbridge, returns and payment	2
Football pitch, exemption available, case law, calculation of tax due	3
Removal from water, exemption available and conditions, case law	3
Exports, exemption available, conditions to meet, calculation of credit	2
<b>TOTAL</b>	<b>10 marks</b>