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The Chartered Institute of Taxation

Advanced Technical

Cross-Border Indirect Taxation

November 2022

Suggested solutions

1. Under the Northern Ireland Protocol, Northern Ireland (NI) remains a part of the EU Single Market and Customs Union after Brexit. This means that for supplies of goods, EU VAT rules continue to apply. This will cover Organic Ices because it is based in NI.

Republic of Ireland

The B2C sales in the Republic of Ireland will be regarded as “distance sales”, since Organic Ices is responsible for delivery. From 1 July 2021, the EU set a distance-selling threshold of €10,000 per annum. Once this limit is exceeded, the supplier must account for VAT in the country of delivery.

Organic Ices can either register for VAT directly in the Republic of Ireland or use the HMRC One Stop Shop (“OSS”) facility to account for the local EU VAT on EU distance sales.

Organic Ices should apply UK VAT to its Irish sales in the first year. However, once it exceeds the distance selling threshold it will need to apply the local Irish VAT rate to its B2C sales. It will probably be quicker and easier to use the OSS return to pay this VAT over to the Irish tax authorities via HMRC’s gateway. The OSS account needs to be applied for separately, but this is relatively easy to do.

Le Shopping

This agreement will require Organic Ices to hire warehouse space (probably incurring French VAT) and incur transport charges in France. Without a French VAT registration, Organic Ices can only reclaim this VAT via the EU VAT refund scheme, which is slower and more restricted than via a VAT return.

Renting of warehouse space will not, of itself, be regarded as an establishment in France.

Organic Ices Ltd could consider using the call-off stock arrangements to supply Le Shopping if it wished to avoid registering for VAT in France. However, the call-off stock rules are very strict, and would mean that:

- A call-off stock agreement, including specifying that Organic Ices will move the stock to France, and it will be located there when called off by Le Shopping will be required
- Detailed records of the movements of the goods would need to be kept by the company
- Supplies could only be made to Le Shopping, which would rule out the use of the same stockholding to service other French customers (including Eisundsachen’s). It would also prevent selling to B2C customers from the same stock
- The stock could only be held for a maximum of 12 months under this arrangement. This is unlikely to be relevant given that the company is selling food products

Any future B2B supplies would require registration in France under the consignment stock rules unless the call-off stock conditions could be met for each customer.

If Organic Ices does undertake B2C sales made from the proposed warehouse in France, these would not be “distance sales” and so could not be reported via the OSS. They would also not contribute to the €10,000 distance-selling threshold. Instead, they would be domestic French sales, and as Organic Ices is not established in France, would require VAT registration from the first euro of sales.

Consequently, it may be simpler to accept registering for VAT in France. This would allow Organic Ices to treat the movement of goods from NI to France as an EU acquisition. Any onward sales to French customers (B2B or B2C) would be domestic sales for VAT purposes. It would also allow the company to reclaim the input VAT on costs on its French VAT return.

With regard to the freezers, a “movement of own goods” is a deemed acquisition under EU VAT rules. It is worth noting that this would require French VAT registration in any event but would also allow the company to zero-rate the transfer of the freezers, if needed, and to record the movement of own goods on the EC Sales List.

Eisundsachen

Sales delivered directly to Eisundsachen's warehouse in Munich should fall under the EU acquisition rules, and so can be zero-rated by Organic Ices. The conditions for an EU acquisition must be met, including:

- Obtaining and confirming the customer's EU VAT number and showing it on the invoice
- Shipping the goods from NI to Germany and retaining commercial evidence of this
- Accurately reporting the movement of goods on the EC Sales List

The sales to Eisundsachen's customers in Belgium and Spain can potentially be handled under the triangulation simplification. Triangulation would allow Eisundsachen to avoid having to account for acquisition VAT in the country of delivery as the "intermediary supplier", as such supplies are effectively ignored for VAT purposes.

Under triangulation, Organic Ices Ltd would still issue an invoice to Eisundsachen as an EU acquisition, while shipping the goods directly to the end customer.

However, because triangulation requires three different EU member states to be involved in a transaction, supplies to Eisundsachen's French customer could not qualify if they were met from the French warehouse. Unless Organic Ices shipped the goods directly from Northern Ireland to the French customer, Eisundsachen would be regarded as acquiring goods in France and making an onward domestic French supply. This would require it to register for VAT in France. Organic Ices should therefore discuss the commercial impact of this situation to work out what is best for its customer.

As noted above, moving the freezers would be a deemed acquisition under EU VAT rules.

However, the fact that Organic Ices Ltd will be leasing the freezers to Eisundsachen means that it will be making a supply of services in Germany. This means it may be able to use a simplification to avoid registering for VAT in Germany. Organic Ices will need to show that:

- It does not have a place of business in Germany
- It has a specific contract to fulfil; and
- It intends to return the freezers to NI within two years.

It seems possible to meet all these conditions, and so VAT registration in Germany can be avoided provided the freezers return to Northern Ireland within the two-year period.

MARKING GUIDE

TOPIC	MARKS
NI Protocol – brief comment on EU VAT system and NI	0.5
Rep of Ireland	
Distance selling in ROI – below and above distance-selling threshold; possibility of using OSS, etc. Conclude OSS is better	2.5
Le Shopping	
Warehouse costs French input VAT; easier to reclaim via VAT return	1
Possibility of call-off stock; set out conditions for same	3
Comment on consignment stock for other B2B sales unless call-off stock met	1
Conclude direct French registration works better and that holding stock in France entitles to VAT registration there	1.5
Confirm distance selling rules will not apply to stock sold from French warehouse	1.5
Movement of own goods and EU acquisition for freezers; would require registration anyway	1.5
Eisundsachen	
EU acquisition on direct sales to Munich, including conditions for EU acquisition	2
Triangulation open for shipments to Spain and Belgium	1
Organic Ices Ltd will be first supplier in triangulation so still EU acquisition, effectively	1
Triangulation cannot apply to French stock, but could if goods were shipped directly from NI	1.5
Simplification to avoid German VAT registration where the freezers are held for hire to the customer – set out rules and impact	2
TOTAL	20

2. ZXYdata is making a mixed supply of construction services and specialist equipment goods to its customer, Buchkeeper, in the UK, and of construction services only in the Netherlands.

UK Construction Services

These construction services will be regarded as land-related and so will have a place of supply where the land is situated, as per VATA 1994, Sch 4A, para 1. The building materials supplied by ZXYdata form part of an overall single supply of construction services.

The case of *Muster Inns Ltd v HMRC [2014] UKFTT 563 (TC)* suggests that ZXYdata's management of the project in the UK will not, on its own, amount to a fixed establishment. Moreover, the project manager for both sites is based in the Netherlands.

Accordingly, ZXYdata does not appear to have the "permanent human and technical resources" (see *Berkholz (Case C-168/84)*) sufficient to amount to an establishment in the UK. Buchkeeper, however, does appear to have a fixed establishment in the UK, because it has more than just a property there (*Titanium (Case C-931/19)*). This means that ZXYdata is a non-established person for VAT purposes, whereas Buchkeeper belongs in the UK. This affects the VAT registration and accounting position as discussed below.

The reverse charge applies to land-related services which are provided by a non-UK supplier to a customer which is VAT-registered, and which belongs in the UK.

Construction industry VAT reverse charge

An important additional element for ZXYdata to consider is the construction reverse charge scheme. ZXYdata's supplies to Buchkeeper should not fall within the scheme because of its end-user status. Instead, the reverse charge rules noted above will apply.

However, with respect to the construction services **it is receiving** from its suppliers will fall under the construction reverse charge scheme. This will not mean, however, that ZXYdata will need to register for UK VAT, under art 10, SI 2019/892. However, its supplies of equipment would require UK VAT registration (see below), and therefore the reverse charge scheme will apply.

Under the scheme, the company will not be charged VAT by its suppliers but will instead charge itself the VAT and simultaneously reclaim it. The place of supply of these services will be the UK, as they are also land related.

Note that the construction reverse charge scheme does not apply to professional services.

ZXYdata will also be purchasing building materials in the UK. Where these materials are provided together with construction services by a supplier, then the construction reverse charge scheme would also apply to the materials element, unless the services element is less than 5% of the overall charge for the contract in question.

Where the company buys the materials directly, it will be charged UK VAT as a domestic supply. ZXYdata should not have difficulty reclaiming this input VAT on its UK VAT return.

Accordingly, ZXYdata should issue invoices without VAT in respect of the UK element of the project, and state that its supplies are subject to the reverse charge. The £1 million upfront payment should be apportioned between the two projects and VAT accounted for appropriately.

Supplies of Equipment

ZXYdata will also be importing specialist equipment from the US. Import VAT may only ordinarily be reclaimed by the owner of the goods. If ZXYdata does not own the goods at the point of import, therefore, it could face irrecoverable import VAT.

However, where there was an agreement with Buchkeeper that ZXYdata would act in its own name in respect of the imported goods as an "undisclosed agent", then the provisions of s 47(2A), VATA

1994 would apply. Under these provisions, there would be a deemed import and onward supply by ZXYdata. The import VAT could be accounted for under postponed import VAT accounting and would be eligible for recovery. The onward sale would be a domestic UK supply and VAT should be accounted for as normal. As noted above, the onward supply of goods will require UK VAT registration. This will not change the fact that the reverse charge will apply to the land-related services.

Kate Wong

The supplies made by Kate Wong in respect of the Dutch site are outside the scope of UK VAT. Accordingly, HMRC will refuse a reclaim of this "input VAT", since it has been incorrectly charged.

ZXYdata should therefore refuse to pay the VAT element on the supply, as it takes place in the Netherlands. She is likely to be liable to register for Dutch VAT, which should then be recoverable via the Dutch VAT return, subject to local advice.

MARKING GUIDE

TOPIC	MARKS
Construction Services	
Identify land-related services, including reference to legislation	1
Identify supplies of both goods and services in the UK	0.5
Comment on fixed establishment; and conclude both that Buchkeeper AG is established in the UK and that ZXYdata Inc is not established in the UK. <i>No need to mention case names to get full credit</i>	3
Identify extension of reverse charge for land-related services and state that the customer will need to account for the VAT on this element of the supply	1
Supplies of materials and 5% de minimis under construction reverse charge scheme	1.5
State that construction reverse charge scheme will not itself require registration for VAT in the UK but that the equipment sales will, and so ZXYdata can reclaim input VAT accordingly per para 10 HMRC technical guide [<i>no need to quote reference for marks</i>]	1.5
Reverse charge scheme will not apply to professional services	0.5
Construction services being received in UK will be subject to UK VAT but also the construction reverse charge scheme	1
Correctly state that UK VAT registration of ZXYdata Inc will not affect the reverse charge on the bulk of the services	1
Comment on apportioning £1 million payment between two projects	0.5
Supplies of Specialist Equipment	
Agency agreement and reference to s 47(2A) VATA 1994	1.5
Onward sale of equipment will be domestic UK supplies and require UK registration	1
Inputs: Services	
Kate Wong input VAT incorrectly charged; seek reissued invoice subject to Dutch VAT	1
TOTAL	15

3. Bruxelles Teddies sells goods to Luculia with the customer acting as the importer. From the partnership's perspective, therefore, it is making a zero-rated export from Belgium to the UK.

Bruxelles Teddies will be dispatching its goods from Belgium. Accordingly, at the point of sale, the goods are always outside the UK.

Diosma Sales

Diosma is an "online marketplace" ("OMP") for VAT purposes. In signing up with Diosma, the partnership will now be making three different kinds of supply.

1) Value below £135: B2C

B2C sales are treated as domestic UK supplies for VAT purposes. Diosma will be responsible for accounting for the UK VAT on these sales. There will also be a deemed supply by the partnership to Diosma which takes place outside the UK.

2) Value below £135: B2B

As the £135 value relates to the total consignment that is imported, not the separate value of the individual items within the consignment, most business sales are likely to exceed this value. However, some may fall below that level.

Again, Diosma will be responsible for the UK VAT position. However, if the B2B customer is VAT-registered, Diosma does not need to charge VAT where:

- It obtains and checks the customer's VAT number,
- It provides the customer with an invoice including narrative such as "reverse charge: customer to account for VAT to HMRC", and
- It provides Bruxelles Teddies with details of the supply and the customer's VAT number

The customer will then account for the VAT under a reverse charge mechanism. It will be able to reclaim this VAT according to the normal rules.

3) Value above £135

The most expensive teddies have a value in excess of £135, as may consignments of multiple lower value bears, and so will be subject to normal customs and import VAT rules, If Bruxelles Teddies acts as the importer, that is, it sells on a "Delivered Duty Paid" ("DDP") basis, it will need to register for UK VAT. This will allow it to use "postponed import VAT accounting" ("PIVA") at the point the goods clear customs. This import VAT can be reclaimed on its UK VAT return provided the partnership has a postponed import VAT statement. If the partnership does not use PIVA, it will need to pay import VAT upfront and obtain C79 certificates to recover the import VAT.

The partnership would also be liable for customs duties on the imports, and this should be reflected in the cost of the items, though a tariff preference claim may be available. The partnership would also need a UK EORI number, though this is relatively easily obtained.

The sale to the end customer will be subject to UK VAT as a domestic supply and should be accounted for on the partnership's UK VAT return.

It is open to the partnership to allow the customer to account for any VAT and duties on the sale, but for B2C sales in particular, this is very unattractive and could cause loss of business.

Services supplied by Diosma

Diosma will be charging Bruxelles Teddies for its services. These services should fall under the B2B general rule for place of supply purposes, and so will be taxable where the customer belongs, that is, in Belgium. Accordingly, Bruxelles Teddies will be receiving services from abroad. It should

account for the VAT due under the reverse charge on its domestic VAT return, and reclaim the input VAT subject to the normal rules.

Northern Ireland (NI)

A sale to the chain of toy shops in NI would potentially fall under the Northern Ireland Protocol.

The sale would qualify as a zero-rated EU dispatch where the goods were shipped directly from Belgium to NI.

However, if they travel across the Great Britain land-bridge, they will need to clear customs both in Great Britain and again on entering NI. As the goods will have EU origin, they will not be eligible for a preference claim on entry to NI, and so could be subject to customs duties in both Great Britain and NI.

If Bruxelles Teddies acted as the importer, then the administrative points noted above would also be relevant.

However, if the goods were shipped under the Transit customs procedure, which the partnership could arrange with a freight carrier, then the goods would not have to clear customs in Great Britain. They would not lose their EU customs status.

Ultimately, the partnership will need to weigh the commercial costs of each route, and also of paying for Transit, in deciding which is the best approach.

MARKING GUIDE

TOPIC	MARKS
Identify current position re exports and Luculia with customs and VAT obligations	1
Diosma Sales	
Correctly identify Diosma as an online marketplace	0.5
Identify importance of £135 threshold for VAT treatment	1.5
Outline B2C treatment for OMP sales <£135	2
Outline B2B treatment for OMP sales <£135	2.5
State that normal VAT and customs rules apply over £135 and so the partnership will need to decide if, commercially, it wishes to supply DDP, and register for UK VAT. Also EORI number	2.5
Impact of import VAT and postponed VAT accounting; C79 certificates	1
Commercial impact of not selling DDP on B2C sales in particular	0.5
Services supplied by Diosma	
Reverse charge will apply on overseas services	0.5
Northern Ireland	
Possible EU acquisition where sent direct Belgium to NI	0.5
Loss of EU status and second customs declaration required at point of entry into NI; no possibility of preference claim; decision required on importer of record; UK VAT registration possibly required, reference to UK admin	1.5
Possibility of using transit procedure (or other applicable reliefs)	1
TOTAL	15

4. **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 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 the underlying educational activities.

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.

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
Services Supplied	
Correctly identify single complex supply of services of "organising education"	1.5
Identify that the place of supply rule is the same for both the organising services and the underlying services of education	1.5
Correct test to apply is the place of organising activities	0.5
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	1.5
Services Received	
University of Darent will be making exempt supplies of education	0.5
Dental practice could end up making taxable supplies of staff	1
Suggest secondment arrangement to avoid VAT-able supply of staff	1.5
State that consideration for cost of dentists should be exempt	0.5
Goods Purchases	
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	1.5
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
Total	20

5. JUMFLES

As Jumfles is aware, the classification of the product determines the Customs Duty rate and classification can be complex. The only way to get certainty is to apply to HMRC for an "Advance Tariff Ruling".

[1 mark]

An Advance Tariff Ruling only applies to goods imported into GB. It must not be confused with a "Binding Tariff Information" ruling which now only applies to goods imported into Northern Ireland. Although technically separate, the rules are similar and both are issued by HMRC.

[1 mark]

An Advance Tariff Ruling is obtained by applying online through the Government Gateway and HMRC will provide a binding reply within 120 days.

[1 mark]

The applicant must have a GB EORI before they can apply, but as Jumfles imports into GB already it must have this.

[0.5 mark]

It must apply before the goods are imported as HMRC will not issue retrospective rulings and a ruling cannot be relied on for past imports.

[0.5 mark]

In addition it must supply detailed information about the product to be classified, this will vary depending on the exact nature of the goods but it would be worth supplying any brochures, manuals or technical specifications along with photographs of the product. It can be helpful to provide a sample of the product.

[1 mark]

Jumfles may suggest the commodity code or codes it thinks are appropriate when submitting its application.

[0.5 mark]

It is important to note that information on Advance Tariff Rulings is publicly available, including photographs, this may help Jumfles classify its goods. Jumfles must clearly mark any information that it does not want made public as confidential when supplying it.

[0.5 mark]

The ruling, when given, is binding both on HMRC and Jumfles Ltd, as the holder of the ruling, for the next three years.

[0.5 mark]

Jumfles can appeal the ruling where it believes the commodity code given by HMRC is not correct, which may be of interest if HMRC decide on a completely different commodity code.

[0.5 mark]

The ruling may also be used for goods which are similar and where any minor differences will not affect the classification, however this should be done with care as it can be difficult to determine whether variations would affect the commodity code used.

[1 mark]

The ruling can only be retrospectively overturned if it is shown that Jumfles supplied (knowingly or accidentally) incorrect information with the application.

[0.5 mark]

In practice, Jumfles clearly cannot stop importing while it waits for its Advance Tariff Ruling. It will have to decide which commodity code to use in the meantime. Jumfles could use the conservative, higher, rate knowing that it should be able to claim the difference if the ruling advises the lower rate is applicable.

Alternatively it could declare the lower rate knowing that it will have to pay the difference if the ruling shows the higher rate is correct. Declaring the wrong Commodity Code could make Jumfles liable to Civil Penalties, however these are less likely if it advises HMRC of the error.

[1.5 mark]

MARKING GUIDE

TOPIC	MARKS
Can only get certainty with Advance Tariff Ruling	1
Do not confuse with BTI which is similar but for imports to Northern Ireland	1
Apply online and will get response within 120 days.	1
Must have GB EORI to apply but as Jumfles are importing, they must have this already.	0.5
Must apply before making import. HMRC will not issue retrospectively and ruling is not binding for earlier imports.	0.5
Supply as much information as possible.	1
Can suggest Commodity Codes that might apply.	0.5
Advance Tariff Rulings and BTI is publicly available, which can help Jumfles classify the goods. Should note to mark any information they do not want published.	0.5
Rulings is binding on HMRC and Jumfles for next three years.	0.5
Ruling may be appealed by Jumfles Ltd	0.5
Ruling may be used for similar goods but this should be done with caution.	1
HMRC may retrospectively revoke the ruling if Jumfles supplies incorrect information	0.5
In practice must decide which code to use until have ruling. High one and make a repayment if needed, or low and make additional payment, if needed. Using the lower rate makes Civil Penalties a possibility.	1.5
TOTAL	10

6. Customs Warehousing ("CW")

A CW would allow indefinite storage of goods without payment of Customs Duty and Import VAT until the goods leave the CW, a particular benefit when storing goods until the next season.

[1 mark]

The Customs Warehousekeeper must be authorised, unlike some other Customs authorisations this can not be backdated.

[0.5 mark]

Fiblem could either store goods in a public CW or operate a private CW. The pros and cons of each (set out below) must be weighed and a decision made based on cost and whether Fiblem prefers greater control of its operations, or to out-source to experts.

[1 mark]

Public Customs Warehouse

A public CW involves the smallest upfront cost, so is a good way to test the benefits.

[0.5 mark]

A public CW is run by an authorised Customs Warehousekeeper who is permitted to store goods on behalf of others, known as "depositors". The Customs Warehousekeeper has responsibility for paying Customs Duty and Import VAT where goods are lost in warehouse or where rules are broken; operating the stock system; the physical security of the building and the goods; and making appropriate declarations to Customs when goods are removed.

[1 mark]

The Customs Warehousekeeper will charge for this in addition to the normal warehousing charges so these are likely to be higher than for simply storing Free Circulation goods in a third-party warehouse.

[0.5 mark]

Using a third-party public CW to store goods until they are needed may cause Fiblem a problem with its current warehouse, as that would be holding less stock. It would have to consider the cost implications of maintaining the building and so on. Alternatively this could be an opportunity to sell or let the warehouse which could offset the costs. It would also need to consider the location of the CW and potential additional transport costs.

[0.5 mark]

Private Customs Warehouse

Alternatively, Fiblem could apply to operate a private CW. There are greater upfront IT costs as the current stock system is unlikely to have the functionality to report detailed enough information, for example it needs to report removals of each product daily and make declarations to HMRC. There will also be increased staff costs.

[1 mark]

The building used as the CW needs to be physically secure and be deemed suitable by HMRC. Fiblem could probably use its current warehouse as the CW as it will have similar concerns about security of its goods and preventing unauthorised access to its current warehouse as HMRC would when assessing the building's suitability to be a CW.

[0.5 mark]

Fiblem would have to apply to operate a CW in writing and there are various conditions to meet.

[0.5 mark]

Fiblem would have to demonstrate that it is financially solvent.

[0.5 mark]

It would have to demonstrate that it, and any individuals who are in charge of its Customs activities, have a good record of compliance with Customs and tax rules and have not committed any serious breaches of these rules.

[0.5 mark]

Applicants for a CW must be established in GB and hold an EORI, these conditions are clearly met.

[0.5 mark]

Fiblem must demonstrate that it would be able to operate a CW properly and maintain suitable records to demonstrate that all rules were complied with.

[0.5 mark]

HMRC could refuse an authorisation where they believe that auditing or controlling the CW would involve a disproportionate effort on their behalf. This is most likely to be the case where the applicant has previously demonstrated non-compliance with Customs rules.

[0.5 mark]

Since leaving the EU, a “potential” guarantee to cover the amount of Customs Duty suspended in a GB CW is not always required but HMRC may request one where they deem it necessary.

[1 mark]

Fiblem would be expected to have its own Deferment Account to account for amounts due when removing goods from its CW. The conditions for this (and a potential guarantee if required) are very similar to that for the CW authorisation but separate applications are needed.

[1 mark]

Fiblem would need a financial guarantee backed by a bank or other institution who would guarantee to pay twice the maximum monthly deferral.

[0.5 mark]

Cash flow and Customs Duty savings (both types of CW)

The following benefits are available in both types of CW but the costs differ depending upon whether a public or private CW is used.

[0.5 mark]

The Customs Duty rate used is that in force when goods are removed, a benefit if Customs Duty rates are expected to fall.

[0.5 mark]

A CW allows a single consignment to be split in the CW, so that duty is only paid on the actual goods released. This flexibility is of use where some goods remain unsold and are stored until the following season.

[1 mark]

Free Circulation or UK-produced goods may be stored in a CW provided the records demonstrate their status.

[0.5 mark]

One saving that Fiblem could make using a CW is goods held under Customs Warehousing which are no longer needed could be destroyed, with HMRC's permission, without paying the Customs Duty and Import VAT.

[0.5 mark]

The authorisation should include for the destruction of goods. HMRC require 48 hours' notice of the date and time of the destruction, along with a description of the goods and their stock number.

[0.5 mark]

Where there is no residual value to the goods, there will be total relief from Customs Duty and Import VAT.

[0.5 mark]

The company could save Customs Duty by providing evidence of the reduced price of the revalued goods. This could potentially save £17,000 (Customs Value £21,250,000 (850,000 / 4%) x 10% = £2,150,000 x 20% x 4%). Import VAT would be recoverable in any event, so a reduction would be a cashflow saving at best.

[1 mark]

Accounting For Import VAT.

Importers now have the option, for goods imported into GB, of paying the Import VAT at import and reclaiming it later (as Fiblem does now) or using Postponed VAT Accounting (PVA) in which case they would declare it as an "in" and an "out" on the same VAT return, so it is never actually paid.

[1 mark]

There is no authorisation process, Fiblem simply indicates on each Customs declaration how to account for the Import VAT. It cannot change its mind once the Customs declaration has been submitted.

[1 mark]

PVA can be used at the frontier and on removal from Customs Warehousing.

[1 mark]

MARKING GUIDE

TOPIC	MARKS
Customs Warehousing	
CW delays payment (account for) Customs Duty and Import VAT until goods are removed (as well as providing actual savings)	1
Operator must be authorised, can not be back-dated.	0.5
Two types, no “best” option – consider pros and cons.	1
Public CW	
Public warehouse has fewer upfront costs – could be a good test of benefits.	0.5
Customs Warehousekeeper takes responsibility for payment where there are breaches of the rules, and for running the warehouse.	1
Will charge for this (more than for non-CW).	0.5
Public Warehouse will likely mean Fiblem Ltd’s own warehouse is under-used.	0.5
Private CW	
Alternative – apply for own private CW. Greater upfront costs in software, staff etc.	1
Also need secure buildings but current warehouse likely to meet requirements.	0.5
Must apply in writing and meet conditions.	0.5
Must be financially solvent.	0.5
Demonstrate good compliance and no serious breaches of the rules.	0.5
GB established and have an EORI – clearly met.	0.5
Must demonstrate could operate the CW properly and maintain records.	0.5
Authorisation could be withheld if HMRC think it would involve too much work for them.	0.5
Potential guarantee may be required but is no longer an automatic requirement.	1
Would be expected to have own deferment but conditions are similar to those for CW.	1
Need Financial guarantee for twice the deferment amount.	0.5
Cash flow and duty savings (both types)	
Following benefits apply to both types but may have different costs.	0.5
Main benefit is delay in payment. Use Customs Duty rate in force on removal, so helpful if expect rates to fall.	0.5
Goods at frontier must be declared together, can remove from CW in any quantity but this must be weighed against the cost of more declarations.	1
Co-storage is allowed.	0.5
Can destroy goods in CW and not pay Customs Duty or Import VAT.	0.5
Conditions to meet for destruction, 48 hrs notice, date, time, description, stock number.	0.5
No residual value – no Import Duty or Import VAT.	0.5
Recognition of potential saving of Customs Duty on revalued goods with appropriate evidence – calculation not required for mark.-	1.0
Accounting For Import VAT	
PVA available for imports into GB. Account for VAT on return, optional.	1
No authorisation, just indicate on Customs declaration	1
Can use at frontier or on removal from CW. So regardless of CW decision, can use it immediately.	1
TOTAL	20