Institution **CIOT - ATT-CTA**
Course **CTA Adv Tech Cross-Border Indirect**

Answer-to-Question-_1_

Following the UK's exit from the EU in December 2020 from 1 Janurary 2021 the UK has lef tthe EU, however due to the NI Protocol NI remains in the EU for goods, yet still operates under the UK VAT system, and is part of the UK for services.

Sales of ice cream in UK will be subject to VAT at the standard rate due to the ecepted items listed in VATA 1994 sch 8 group 1.

Distance selling thresholds have been removed in the EU. Instead an intra-EU wide threshold applies of 10,000 Euro, £8818. As NI remains in the EU for the movement of goods for VAT purposes, NI will be subject to this threshold. This means in Year 1 as the sales are below this threshold to consumer in Ireland, UK VAT will be charged. In year 2 however, they will surpass this threshold and will therefore be obligated to charge Irish VAT at the applicable rate, Irish VAT advice should be sought on what this is. Instead of registering for VAT however, they may wish to sign up for the union OSS, this would be benefical if they intend to sell goods in more EU countries. This allows for a single VAT registration for distance sales to all EU countries and VAT can be paid on a single quarterly VAT return. The amount will be paid to HMRC who will in turn pay it over to the appropate member states. ORanic should register with HMRC cia their Government Gateway and should be done by the tenth day after the first elible supply. They will, or at least should, have their XI

prefix. The return must be submitted by the end of the month following the quarter and payment is made at the same time the return is due, however may extened 7 days where paying electonrically. Records should be retained for 10 years. Information included in the return should include the country of consumption, the date of supply, taxable amount and currency, VAT rate appied, information shown on any invoices and information used to work out where the consumer is based, e.g. IP address when bought online.

Sales to France

Firstly, VAT incurred in France should be reclaimed under the 13th Directive, as the Electrnoic Cross Boarder Refund System is not available as NI has left the EU for services and rent and transport are services, if it is not VAT registered in France,

Retailer

The movement of goods from NI to France, again becuase the NI remains in the EU for goods for VAT purposes, would usually create a deemed supply of the movement of own goods, in which case Organic would need to register in France in order to zero rate the dispatch and account for acquisition VAT. However, there is a call off arrangement whereby it can eliminate the need for Organic to register in France. Under PVD 17a(1) the intial movement under the call of stock simplication is not considered a movement of goods. Meaning no registerion. When the French retailer subsequently purchases the goods the dispatch from NI to

France and acqusition in France will be triggered PVD 17a(3). Thus meaning there will be a zero rated disptach to France provided they obtain the French VRN and can evience that the goods have left NI to France. If the goods are not called off within 12 months howver there will be a dispatch and acquistion in which case Organic would be reuiqred to account for the deemed supply. The intial movement is not required to be included in the ECSL or Intrastat (where applicable) under the goods are called off. However a movement register should be maintained by Organic.

Consumers

The simplification does not extend to cuonsimers as they will not have a VAT registration. This will mean that goods which are moved to France will create a deemed supply. In which case the call off arrangements as above will not be valid as they will be required to have a French VAT registration. The goods may be zero rated on movement to France as Organic will have a French VAT registration and there will them be a onward domestic supply in France. Organic would then be able to reclaim French VAT in their French VAT return. Organic would be better moving goods directly from NI to French consumers where instead they may account for French VAT in their OSS return, as above. Note the OSS system is for payment only and VAT can not be reclaimed on this return.

German sales

Directly to Munich.

This will be a zero rated disptached and should be included in

the ESCL and INtrastat where htresholds are met. This is allowed as the German company has a German VRN and is an intra community disptahc. Evidence of trasnport should be retained to allowed zero rating.

To customers in Belgium France and Spain from NI
There is a simplification of trinagulation which should be availed of. This is the term used to desribe a chain of supplies of goods involcing three aprties where goods are moved directly from the first party to the last. It occurs where there are three EU member states involved in the transaction, as is the case here. It means that it will avoid the obligation for Organic to register for VAT in another member state. The sale can be zero rated as an intracommunity dispatch provided they obtain the EU VRN of the customers and they will still be required to report the sale in the ECSL. Where values to be included in ESCL exceed 35,000 they will be required to report monthly.

Where the goods are located in France and sold to the French customer however this will create a deemed supply as the goods are located in France at the time of sale and the simplifacton can not be availed of. The sale will be subect to domestic VAT and Organic would be required to register in France. They should therefore use the triangulation simplication and move goods direct from NI.

Freezers

Where the owner is eastblished in the EU member state of disptach byt not in the country of arrival, the goods are removed for the sole purpose of being used by the owner in the course of a supply of ervices to be made by them, at the time of their removal there is a legally binding oligation to make that supply of services, and the owner intends to remove the goods back to the EU member state of dispatch when they cease to be used in making the supply, the movement of goods is disregarded for VAT purposes. Therefore, as Organic is not estbalished in Germany, will be making supplies of hiring, has a contract with the Germany company and remains in ownership of the goods and therefore would intend to bring the goods back to NI, the goods can be disregarded for VAT purposes, meaning there is no intra-community dispatch. Commerical eviedence is still requited to provide that the goods have left and later return to NI. The transfer should not be incldued in the UK return, ESCL or Intrastation provided these conditions are met, however they should include the movement in the termporary movemnts register. The supply of hiring wil have a place of supply in Germany and will be subject to the reverse charge provided they can evience that the German company is in business, the best way to do so if obtaining their VRN and check it is valid on VIES. If the goods are disposed of or sold in Germany they will create a retrospecifce deemed supply in which case they may zero rated provided they obtain the necessary evidence and VRN of the German company. If the French customer does not hire the goods, but they are used anyway, this will still be allwoed, as they are moving the goods to fufil a

contract.

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

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

Answer-to-Question-_2_

For the purposes the place of supply detemines in which country VAT will be payable. The general rule for place of supply is where it is provided business to another business the POS is where the business is estbalished. However there are exceptions in VATA 1994 Sch4a, including land rated services in part 1, in which the place of supply is where the land is siutated. This means the POS for ZZY's contrsuction services is the UK for the UK construction and will most likely be the Netherlands for the Netherlands contrsuction, however local advice should be sought after.

As the services are invluded in schedule 4a part 1 the German company should account for the VAT under the reverse charge in the UK, if they were VAT registered it would have meant ZXY would have been required to register for VAT as they made a taxable supply in the UK above the nil threshold under sch1a as an NETP and would have required to notify HMRCs NETP unit in Adberdeen within 30 days.

The design and construction works will be subject to UK VAT as

ZXY is not VAT registered in the UK and they are all land related supplies, this will give a required for these suppliers to register in the UK where not already. The services from te architects and surveryors are also land related and wilil therefore be subject to UK VAT when supplied in relation to UK land, or Netherlands when supplied in relation to the Dutch land, however local advice should be sought. However, where they are required to register for VAT in the UK (as below) ZXY will be required to account for the VAT under the reverse charge when the supplier is not estbalished in the UK (regardless of whether the suppliers are VAT registered in the UK).

The movement of goods in the UK will be an import and import duty and VAT will be payable. This does not in inself create a requirement to register for VAT however should tkae take ownerhsup of the goods only they will be able to reclaim this. Therefore it would be adviseable to import the goods as an agent for the customer and disburse the import VAT to the customer in order to recover the cost of the import VAT, and to avoid having to register for UK VAT.

The building materials are reclaimable via form 65a which should be submitted to HMRC within 6 months of the accounting persion i. e. year ending June.

The upfront cost will create a tax point, and therefore ZXY should invoice the customer with the narrative that the supply is

subject to the reverse charge and therefore ZXY should not include VAT on the supply. As the invoice relates to both Dutch and UK supplies it would be apportioned accoridnly to show the two supplies. The UK and dutch VRN of the customer should be included on the invoice.

ZXY should relaim the VAT from Kate on the VAT65a as above, which relates to the UK land. The part which relates to the Dutch land however is subject to Dutch VAT rules and is outside the scope of UK VAT therefore should not be subject to UK VAT. ZXY should let Kate know of this and ask for the invoice to be reissued. If ZXY do pay the invoice it is not reclaimable as VAT has incorrectly been charged. They may pay the invoice and at a later date ask Kate to issue a VAT only credit note and refund the amount of VAT however they run the risk of not being refunded this amount.

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

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

Answer-to-Question-_3_

From January 2021 an online market place that meets the definition included in s.95A of VATA 1994 is treated as failitation sales from business through them for VAT purposes. An online marketplace means a website or any other means by which information is made available over the interest, which faciliations the sale of goods through this website or other means by persons other than the opreate, the operater being the person who controls access to and the contents of the online market place. Diosma Plc meets this deinsition.

Online marketsplaces facilitation the sale are the deemed seller of the goods under s5A of VATA 1994, regardless off where the marketplace is estbalished.

The impclations are as follows:

As the goods are sold in the UK by an overseas seller of goods located overseas, where they have an intrinsic value less than £135 there will be a deemed sale by Brucelles to the OMP with no VAT charged. Intrinsic here is the value of the goods in a

consignment not includeding transport and insurance.

When the sale is to a business, the OMP will not charge VAT, instead the pruchasing business will account for it as a reverse charge, provided they are UK VAT registered, otherwsise the below applies. (note these supplies does not add to the taxable supplies subject to the VAT registration threshold of the buying business).

Where the goods are sold to a consumer, the OMP will charge VAT on the supply at the UK rate (20% for teddies) as they are the deemed seller. Bruxelles will issue an invoice to the OMP which will not include VAT as the sale is outside the scope of UK VAT.

No import VAT will be due by anyone as the import is valued less than £135 meaning they must treat the sale as a domestic supply instead. No customs duty will be charged either as it is below the £135 intrinsic value limit.

Where the goods move from Liculia, the responsibility remains with the online marketplace to charge VAT to the customer. This will apply to goods both above and below the £135 limit as the goods are located in the UK, therefore the fancy teddies are incldued in this treatment. When goods are located in the UK, the sale to consumers will be provided by the OMP who should charge VAT. Bruxelles should issue a zero rated invoice to the OMP for the deemed supply and records this in the box 6 of their return.

This will give Bruxelle an obligation to register for UK VAT under Sch 1a of VATA 1994, as this is a taxable supply. As the supply is zero rated howveer they may apply for an exemption from registration. They should notify HMRC;s NETP unit in Aberdeen wihin 30 days of the deemed supply. Where these goods, are sold to a consumer VAT will be charged, where they are sold to a VAT registered business they are subject to the reverse charge and should included so on the invoice as a narrative. Customs wil not be due as the goods are already in the UK and improted by Lucila.

Sales of goods located outside the UK to customers in the UK where the goods are above the £135 limit are subject to the normal import rules are are unaffected by these rules and incur import VAT and duty.

As GB has left the EU the movement of goods to GB will incur import VAT and duty on import into GB. The goods will then be moved to NI which willbe considered an 'import' however this is included in the UK VAT return, therefore giving rise to a requirement to register for UK VAT under Sch1a. The movement of own goods from GB to NI can be recovered by the comapny, subject to normal recover rules. The sale from Belgium will be considered an export. The duty will be subject to GB rates, and then may be subject to EU rates when moved to Norther Ireland, therefore meaning there may be double duty if certain conditions are not met and they are at risk of onward movement into the EU. The company would be required to evidence they are not at risk. This

can be avoded where transit is used which means that the goods are only travelling through GB and therefore will not incur import VAT or duty. Instead, like if the goods move directly to Northern Ireland, this will be considered an intra community disptach as NI remains in the EU for goods due to the NI protocol meaning there will be acqusition VAT payable by the customer and no duties.

It would therefore be recommened that a cost analaysis is undertaken to determine wheter the additional paper work of importing and exporting goods, or using transit, and duties is more than the cost of transport, however from a VAT and customs point of view it is more cost effecitve to move the goods directly to NI.

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

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

Answer-to-Question-_4_

VAT exemption for education and training is dependant on whether the body is in business for VAT purposes, and whether the body is an eligible body. URock is in business as it charges £20k for the services. As URock is a university, it is considered an eligble body, therefore supplies of education provided by URock are exempt from VAT, this will mean they will have no recovery on UK VAT where incurred. The exemption extends to the examinations also.

The place of supply of Business to Customer (B2C) supplies of education is where it is phyically carried out, under sch 4a of VATA 1994 part 3. This means where VAT is chargable in the course of providing education, it will be due in the UK.

A fixed establishedment should have a suffiecently permanent presence of the human and texhnical resources necessary to receive the relevant supply, Titanium CJEU case C-931/19. Due to the fact that URock is using the staff and facilities of Darent this will not create a fixed establishment.

Whether Darent is acting as a disclosed or undisclosed agent will determine the POS of the services provided. If disclosed the fee will be subject to the standard rate when it is provided to URock, the place of supply will be Canada, as the business to business general rules apply. The supply to the customer will be POS where the education takes place as above. Where undisclosed Darent will act as princple as per breif 9/2000 meaning the supply of agency will be subsumed into the final supply of education to the customer. The agency fee will follow the POS rules of the main supply under sch 4a of VATA 1994.

The supply of dentists will be subject exempt from VAT under sch 9 of VATA 1994 group 6 if they are partners of the practice, as they will be providing private tuition. Where they are not partners but rather employees this will be a standard rated supply. The POS will be the UK under sch4a part 1. If URock is not VAT registered they may reclaim this VAT, subject to the normal rules of VAT recovery, using VAT65a which should be submitted to HMRC within 6 months of the acocunitnf period which ends 30th June.

Dental protheses will be exempt when provided by a registered dental professional, otherwise this will be standard rated.

The hire of the dental chairs will be a standard rated supply with a place of supply in the UK under Sch4a part 1 as they are used and enjoyed in the UK. This will give URock an obligation to

register for UK VAT under Sch1a. This will mean the company should charge VAT on the suply of renting the goods to Darent, as they are above the threshold in the UK, which is NIL for non estbalished taxable persons. They should notify HMRC;s NETP unit in Aberdeen wihin 30 days of the supply of the hire of goods. This is the case unless, however, Darent is VAT registered. In this case Darent may reverse charge the services, and will likely not be able to recover this due to the nature of their services, this means URock would not need to register for VAT.

The installation of equipment will be a standard rated supply with a POS in the UK under S 7(3) of VATA 1994. Darent should act as an undisclosed agent when importing the goods on an indirect baiss. This means they may recover the import VAT in the goods, subject to partialy exemption rules. Usually import VAT can only be recvered by the owner of the goods although where they are in care of by the agent they may do so.

The sale of the old equipment will be subject to UK VAT when sold to a customer in the UK. Agent Darent may act as agent. Otherwise URock will be required to register under sch1a as above. When sold to a customer in the UK this will be considered a zero rated export, in which case URock may be able to apply for an exemption from registeration as they will be making a zero rated sale.

If URock where to employ staaff in the UK this may create a fixed estbalishment moving the place of supply in some case as they

will have a place of belongig in the UK. Instead they should continue the above operations in order to avoid doing so, as well as having the permanent estalishment being in Canada.

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

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

Answer-to-Question-_5_

Other ways to help determine the classification of the goods are as follows:

They may use the Explanatory notes to the Haronized System, which are issued by the WCO. These notes give more detail about where goods are classified to the first 6 digits. However it is importatnt to note these may be outdated due as it is hard to keep up. Its also important to note these are not legally bdining and should only be used as guidance.

Another way is to ask the manufcature and they know the technical specifications, even asking for sampls and photos from them may be useful. The company could also get services from a customs consultance and use a freight agent.

Another way could be to look at previous trinubnal and court decisions using Bailii.org for example. These can be from cases where Customs have issued a ruling on exactly how certain product sshoudl be classfied. It is important that Jumfles keep up to date with what stage the case is at though.

Cases from the CJEU are also helpful using their website, in addition the Office Jounral of the UK details any amendements to the Explantoy Notes and provideds some spectific classification codes for products. Notes that GB has left the EU with effect of 1 Jan 2021 however they may be takening into consideration by the courts, although will not be binding.

Binding Tariff Information Rulings, BTIs, although again GB has left the EU they could also assist anyway by providing guidance. These are were people have requested rulings from Customs and then are published on the EU website.

The best way however is to obtain an Adance Tariff Ruling ATR, on which secition 24 of the Tax Cross Border Trade Act 2018 porivdes the legal basis for. ATRs are legally binding for 3 years and HMRC have 30 days to notifiy the applicant that their application has either been accepted or refuced. If an application fails to provided further information withtin 30 days however the applcaition is withdrawn. Whereas if HMRC do not respond within 30 days they are deemed accepted, in which case the ruling should be issued within 120 days. Where HMRC do respond for more information they have 30 more days to aceept or refuced the applicaiton. Deciions of these kind cannot be retrospectively made so if Jumfles which to relcaim duty for the past 3 years they will not be able to use a ATR as the basis for the reclaim.

It is important to provide HMRC wuth all the necesary information as they can refuse an application if it isnt all provided.

To apply the ART is made online giva the Governemnt Gateway and Jumfles should quote their GB EORI. Information in the applciation includes their name ddress, the purpose of import, the evisaged classifcation code, details of the goods including photos samples and simsilar ATRs or BTIs which have been granted to others.

An ATR can be revoked where a UIK court decsion, WCO decision affects it or there is a change in the exmplnatory notes to the Harmonized system. An ATR can still be used for up to 6 months if binding ocntracts were concluded provided there is a required within 30 days of the date of revocation.

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

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

Answer-to-Question-_6_

For future, the company should use a customs warehouse which may be benefical to Fiblem. This allows an importer to postpone customs duty and import VAT and only beomce payable when the goods are removed from the warehouse into free circulation. In order to become registered for customs warehousing SP2 form should be provided with 60 days notice. Either a public (R) or private (U) can be used. There are conditions including they must be UK estbalished with an EORI number, which Fiblem should have considered they import goods. They must be financially solvent, have a goods compliance records with customers, have proven business need, be able to make declarations, which thir customs agent may do, be able to keep stock records and run the warehouse to health and safety standards. Also they should provided a gaurentee, unless they are an Authorised Economic Operate or meet the AEO conditions. The benefit of having a customs warehouse is that equaliance can be used, meaning they may store both domestic and imported goods together, provided aporoval has been granted. Retail sale are allowed but only in certain circumstances if specificed within HMRC approal. Goods may be temporiliy removed for usual forms of handling. Where sales are sold in the warehouse, ie to other warehouse users VAT is not charged. Goods

can be stored indefinately, this means large volumes can be pruchased, benefitting from economies of scale, and customs or VAT will not be payable until they are removed. This also is benefical as it means goods can be removed after a year and usuually duty falls meaning they could be subject to less duty, or even make use of new quotas. The overarching benefit which is most applicable however is the fact that goods may be detroyed with no duty becoming due.

The same is for VAT, i.e. no VAT will become due until they are removed form the warehouse. If there is a sale before entry, the value is the sale on entry, where there is a sale after entry, it is the value of same on removal.

Retrospective authorisation is not possilbe.

As the goods will be sitting in the warehouse they also do not have to worry about shipping delays.

Eligibility conditions for approval to operate a customs warehouse is provided in reg 14 of SI 2018/1249 whic says that HMRC may approve someone to use the warehouse if the officer is satifed that the premises are used primarilyy for the storae of goods, the person has a satisfactory logical system to reocrd the goods coming in and going our, there is sufficent pottential trade and there would be sufficent benefit to the applicant.

For the past imports, they may claim for a repayment or remission on goods which are rejected as they are damaged. A form C&E1179 must be submitted at least 48 hurs before the goods are packed for reexport or destruction. This is to allow HMRC the

oppurtunity to inpect the damaged goods if they wish to. A copt of the import invoice and evidecnce of the defective nature of the goods should be supplied e.g. confirmation from the supplier than a portion of the purchase price will be refunded. The delcarations must be submitted 3 years from the notification date of importation.

The VAT would have at import would have been recoverable in the VAT return, by way of box 4 either once the C79s have been recived or using Postponed Import VAT accounting therefore it will not effect the company.