



Application and Professional Skills

VAT and Other Indirect Taxes

(Ensure this number matches your candidate number on your desk label and on your candidate attendance form)

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Centre Code

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Date of Examination

Tick box if you have answered in accordance with Scots Law

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To: m.morris@fiscatorium.com
from: taxmanager@fiscatorium.com
subject: Etiou Corp Inc
date: 6 November 2019

Hi Minerva

Please find attached a draft report for your review. This includes all queries raised by Phil's client, Edward A Lerner at Etiou Corp Inc.

I would like to point out that as part of my report I am advising on the purchase of property which is currently being sold by Propmax PLC. Propmax is also a client of Phil's and so I want to ensure the required safeguards are in place should we also be advising ^{Propmax PLC} on the sale of ~~the~~^{its} property ~~by Propmax~~. In addition to our advice to Etiou Corp Inc.

Kind Regards, Tax manager.

DRAFT REPORT

[For review by Minerva Morris]

TO: EDWARD LERNER, ETIOLI CORP INC

FROM: MINERVA MORRIS, FISCATORUM LLP

DATE: 6 NOVEMBER 2019

SUBJECT: ETIOLI CORP EXPANSION INTO
UK & EUROPE

Scope of Report.

This report is for Etioli Corp Inc regarding the following:

- phases 1, 2 & 3 of its expansion into UK & Europe
- purchase of London property.
- tax concerns regarding royalties and losses.

This report should not be shared with a third party without prior permission granted by Fiscatorium LLP

Executive Summary

The purpose of this summary is to highlight our recommendations with more detail following in the report.

We would recommend setting up a UK subsidiary of Etioli Corp Inc for the activities in UK. This will provide the required protection to minimise commercial risk to Etioli from its activities in the UK. It should also prevent some double taxation issues on UK profits attributable to the UK.

We would recommend you set this subsidiary up during Phase 1 of the market research. Phase presents a risk of a permanent establishment and so a branch of Etioli Corp Inc in the UK which

expose Etiolu Corp Inc to risks of the UK activity. It is possible to ~~turn~~^{convert} a branch into a subsidiary at a later date should this occur.

I would recommend a voluntary registration ~~of~~ for VAT as ~~soon~~ soon as you intend to make taxable supplies. This will allow you to recover input tax and as your first customers will be businesses it will not be an additional cost to them.

I recommend that you charge UK VAT to all ^{business} customers of the London conference and make it clear the tickets price includes park and refreshments to allow full input tax recovery.

I recommend that you register for Irish VAT as soon as you

intend to run a conference in Dublin
This will allow you to charge
require Irish VAT on admission
and make Irish VAT recovery.

¶ We recommend you register
for VAT in each country you
supply distance teaching to
private individuals. You will
need to charge local VAT
but will allow you to recovery
should you incur any.

We would advise you buy the
property in the company to
save on the Stamp Duty Land
Tax.

We would also advise that
you notify HMRC of an option
to tax on this building. Charge
VAT on rentals to both yourself
and third parties to protect

input tax recovery on the costs associated with the building.

Any royalties you pay for should be reverse charged on you UK VAT return.

Losses can be utilised within the sub against profit to reduce corporation tax. There may be scope to use these losses within the group.

Phase 1 - market research

A team of secondees, head up by Bernie Capaldi will work in London to conduct market research on the viability of the new venture.

In the early days this will create costs for ~~of~~ Etioli Corp Inc. The individual will remain employee of Etioli Corp who will also pay their wages.

This creates a risk of creating a branch or permanent establishment in the UK for corporation tax. You have indicated that this phase should take up to 3 months.

A permanent establishment requires people, technology and is likely to be in operation for 6 months or more. This shouldn't cause you

concern in the early days as this can be completed under the US corporation.

I shall go on to discuss the options of setting up a branch or UK subsidiary later in the report. I believe you should consider the structure early on in your plans and include it in Phase 1.

Until you make ^{or intend to make} your first taxable supplies you will not be able to register for VAT. You will however be incurring costs which include VAT. Prior to a UK or European VAT registration you will only be able to recover the VAT via a 13th directive reclaim.

This reclaim method is made by completing the relevant form and including documentation and apply direct to HMRC, the tax authority

in the UK.

NEW VENTURE SET UP

In your letter you have stated that you wish to limit your exposure to UK tax and minimise the commercial risk to Etioli Corp Inc.

Within phase 1 plans there is potential for the activity you are undertaking to create a UK branch of ~~the~~ Etioli Corp Inc. This would ~~be~~ be the same legal entity as Etioli Corp and so would place Etioli Corp within the UK tax regime. Any profits of Etioli Corp which are attributable to the branch will be subject to UK corporation tax.

You will be required to file Corporation tax self assessment forms and make

payments to HMRC. You will also be required to file consolidated accounts for Etion Corp with companies House which will be publically available.

Branches are easy to set up within the UK and also easy to wind up should you decide to withdraw from the UK market.

As a branch is considered an establishment you will have to register for UK VAT when your taxable supplies from the branch reach the threshold which is currently set at £85,000 in 12 months. You are also able to register voluntary should you intend to make taxable supplies in the UK or supplies which would be taxable if made in the UK.

The alternative is to set up a UK subsidiary of Etioli Corp Inc. This has the advantage of being a separate legal entity to the US parent and so the US parent will not be liable for any losses.

The UK sub will be liable to UK Corporation tax on its worldwide profits and will have to file ~~corporate~~ accounts with Companies House.

Unlike the Branch which could suffer from double taxation on UK Corporation tax and US Corporation taxes on the US profits attributable to the branch. The subsidiary is likely only to be taxed in UK. ~~to~~

It is relatively simple to set up and register with Companies House. We would be happy to assist should you wish.

With your requirement to minimise the commercial risk to this venture. I would recommend setting up a UK subsidiary early on in phase 1 of your plan.

SECONDONES AND UAT COSTS

As you have an intention to make supplies within the UK. Once you have set up a UK subsidiary I would recommend registering for UAT.

This will allow you to reclaim the ^{input tax} costs incurred for the market ~~research~~ research completed. Pre-registration input tax reclaim is available for the UK subsidiary which allows input tax to be reclaimed on services 6 months prior to registration and for goods 4 years where still on hand.

Any staff which remain under the

employ of the ~~the~~ US entity, EROI Corp should be invoiced to the UK sub. Under its VAT registration these invoices should be reverse charged as services received from outside the UK. This would involve charge yourself UK VAT and reclaiming it in the same VAT return.

This would not be required for a Branch set up as under recent case law these are the same legal entity and so do not have to account for VAT between themselves.

MANAGEMENT FEES AND PROFIT EXTRACTION

You are already familiar with supplies between a parent co and subsidiaries

There are multiple cases around passive and active holding companies

input tax reclaims.

To maximise input tax reclaims you ~~see~~ should ensure that Etioli Corp Inc is an active holding company for a UK sub, should you wish to set it up.

I would recommend that you document your intention to provide management services, make charges and invoice for them and receive payments. This ~~should~~ will ensure the HMRC can evidence that management services have taken place.

This can be a method of profit extraction but I would recommend caution. The UK tax authorities have put into place anti-avoidance measures to prevent profits made in the UK being moved offshore.

to avoid CILK corporation tax,
Transfer Pricing.

TRANSFER PRICING

Transfer pricing is used to ensure connected corporate entities operate at arms length.

It would seem that you are a medium sized enterprise and exempt from transfer pricing. To establish size HMRC will look at the entire group.

As a medium enterprise HMRC can give notice that you should use Transfer pricing and you may also volunteer to use it. You are able to agree transfer pricing in advance with HMRC and this certainty may offer some comfort.

DIVIDENDS

The other method of profit extraction is dividends to the parent company Ethoil Corp. This is paid with the post taxation profits and is unlikely to be taxed again on the ~~use~~ US corporate.

PHASE 2 - ONE DAY CONFERENCES

These conference are planned to be held in the UK at first in London and then outside the UK in Dublin. The delegates will be ^{from} a businesses.

Conferences are a taxable supply in the UK and we will need to consider the place of supply to determine if UK VAT should be charged.

UK VAT Registration

If you haven't registered previously, you will need to once your taxable supplies reach the registration threshold, currently £85,000, in 12 months or you suspect you will breach the threshold in the next 30 days.

Once you are registered you will need to account and declare VAT on your taxable supplies via a VAT return submitted to HMRC. You will also be able to reclaim input tax relating to cost incurred on making your taxable supplies via this VAT return.

LONDON CONFERENCES

The admission to a conference for a business customer is where the

the event takes place. Irrespective of where your business customer is based you should charge UK VAT at standard rate.

You describe the event as an inclusive supply of attendance, conference pack and refreshments. It seems clear that the principal supply is the admission and the other items are ancillary and allow better enjoyment of the admission to the conference. This therefore do not alter or require a separate VAT treatment.

It should be clear that the refreshment that you are providing are included as part of the price of admission and so charge to your ~~customer~~ customer.

Business entertainment is blocked from input tax recovery when

provided free of charge. As you will be charging for these supplies you will be able to make a full recovery.

A similar approach should be taken with the conference packs. There are limits on business gifts which prevent input tax recovery by ensuring you charge for the pack you will be able to make full recovery.

DUBLIN CONFERENCES

The Place of Supply ^{for admission} to a business customer for a conference in Dublin will be Ireland. This will require you to charge Irish VAT on the price of the delegate tickets.

This gives you an Irish VAT registration obligation and as you

will be a non-established taxpayer you will need to do this as soon as you make or intend to make a taxable supply in Ireland.

Any cost you incur in Ireland which have Irish VAT you will be able to reclaim on your Irish VAT return.

There are two more points worth mention regarding your phase 2 proposal.

Insurance is exempt from VAT but does include Insurance Premium Tax. Unlike VAT this is unrecoverable and will be a cost. It is Corporate tax deductible.

You mention delegates would provide own accommodation and transport. Should you wish to provide

those services in future. you will need to account for these under the Tour Operators Margin Scheme and further advice should be sought.

PHASE 3 - DISTANCE TEACHING

These supplies will be made to private individuals across UK and Europe.

These supplies when made to individuals have a place of supply where the individual is based. This will require multiple VAT registrations across Europe to allow you to charge and account for the customers local VAT.

There is no registration threshold for non-established entities throughout

Europe and so you will be required to register and account for VAT on the first supply ~~of~~ in each country.

The services you supply include an element of human interaction, including webinars, and interactive sessions.

Unfortunately this means it does not qualify to use MOSS, a payment mechanism for electronically supplied services across Europe. ~~You would~~

This would require no or minimal human interaction in your supplies.

As you are required to register for VAT from your first taxable supply it might make commercial sense to take a phased approach.

Making supplies to these individuals in specific countries or areas to ensure your VAT obligations are in place for each separate country.

PDF / PRINTED MATERIAL

You have described the package as having an inclusive fee of \$1500. The printed materials are part of the overall supply and cannot be carved out to allow a zero rated treatment for printed matter. To do this and then supply across Europe may also place you into distance selling ~~territ~~ although due to the nature of the supplies you should already be registered across Europe.

LONDON PREMISES

I have provided some additional calculations in the appendix to demonstrate the Tax saving Propmax PLC has indicated.

In the UK the buyer of the

a property will need to pay Stamp Duty Land Tax (SDLT). In appendix 1 I have calculated this to be £139,500

Should you purchase shares of a company which owns property the buyer would pay Stamp taxes on the value of the shares. In appendix 2 I have worked this out to be £15,500

Although the cost of the shares is greater in appendix 3 I have detail there would be an overall saving of £24,000

If the tax cost is sole motivator it is clear you should purchase the company which owns it.

It is unclear if the ~~price~~ of property has been opted to tax and so

the price includes VAT. I have assume that it has as SDLT is on the VAT inclusive cost and so if VAT is added the SDLT will also increase.

Subletting of the property seems a great way to utilise the space until your business needs it. Rental of land of this type is exempt of VAT in the UK.

This would give you an exempt income which will affect your input tax recovery. This will have the biggest affect on recovery on cost associated with the building.

I would therefore recommend that you Opt to Tax the building. You will have to charge VAT on the rentals but will be able to recover in full.

As an asset of land and property of over £250,000 of VAT bearing cost it will be a Capital Goods Scheme item. By charge VAT you ensure all VAT incurred on the purchase or refit will be recoverable.

However should you purchase the share of the company owning the build costs associated with the purchase are only recoverable on the basis of the business activity. By opting to tax the rental business will be fully taxable both to third parties and the newly formed UK sub.

ROYALTIES

Are a supply of services for UK VAT. Therefore there are no customs considerations of charges

made by the US entity Protecting the Planet

All services received by a taxpayer in the UK are subject to UK VAT. These services will count towards your registration threshold and once registered require reverse charge on your VAT return.

BUSINESS LOSSES

Losses on business within the UK can be ~~used~~ used to reduce corporation tax liability.

The UK subsidiary will be able to use its losses. Assuming these are made within phase 3 and that the business has been operating a number of years there will be several options.

Claims can be made against current year total profits and also against prior year total profits. There is also no need to make a ~~prior~~^{current} year claim to make a prior one.

Losses may also be carried forward to be offset against future total profits. These losses are set against profits before qualifying charitable donations.

A branch may be able to set losses off its US profits.

As a group losses can be available to be used with overlapping accounting periods.

APPENDIX 1

Stamp Duty Land Tax (SDLT)

on property at £3,000,000 at
11 Aegis Court, Queen Street, London
non-residential.

$$150,000 \times 0\% = \text{nil}$$

$$100,000 \times 2\% = 2,000$$

$$2,750,000 \times 5\% = \underline{137,500}$$

$$\text{SDLT liability} = \underline{139,500}$$

3,000,000

The SDLT liability for the buyer of the property is £139,500 this will be due along with SDLT return 30 days after completion.

APPENDIX 2

STAMP TAX

on the shares of Propmax (Aegis Court)

LT valued at £3,100,000

The stamp tax rate is $\frac{1}{2}\%$

$$3,100,000 \times 0.5\% = 15,500$$

The stamp duty liability to the buy is £15,500

APPENDIX 3

Total cost of purchasing

11 Aegis Court, Queen Street, London
by way of assets:-

$$3,000,000 + 139,500 = \underline{3,139,500}$$

by way of shares:-

$$3,100,000 + 15,500 = \underline{3,115,500}$$

Potential saving:

$$3,139,500 - 3,115,500 = \underline{24,000}$$

→ ethical off working for both Propmax plc & Etioli Corp inc

Plan:-

Draft report.

scope.

Exec Summary.

② Branch Us Sub



↳ risk of phase one creating a branch.

↳ advantages of sub ring fencing UK business risk.

↳ VAT registration -

[↳ profit extraction → Transfer pricing.

[↳ financing → holdco

[↳ management services.

↳ secondment of staff for each venture

① Phase 1 - market research in London.

↳ secondment to London - Branch - Sub.

↳ employment.

↳ establishment.

↳ costs & reclaim -

↳ timing?

③ Phase 2 - one day conferences in London & then dublin.

- B2B - customer UK Corp.
 ✓ POS

- mention TMS.

→ Irish VAT registration unless at 194

- recovery.

- refreshment ⇒ ^{single supply?} business entertaining?

✓ cost reclaimable.

- insurance - IPT not reclaimable.

④ Phase 3 - distance teaching based in UK to europe to private individuals.

- B2C - POS - where individual based.
 + use & enjoyment.

- distance teaching with human interaction

- multiple European VAT registrations.

no threshold -

- pdf / printed material - distance sales?

- inclusive fee of £1,500

⑤ LONDON PREMISES

↪ Buy in Co v Land & Property.

✓ - ST & SDLT ⇒ Calc.

⇒ fitting out to requirements.

⇒ sub letting. - VAT treatment & recovery.

during phase 1 & 2

⇒ NOT TOGC - NOT current

business ⇒ OTT including VAT

⇒ pro fixtures for WDA/CAs

⇒ CGS ⇒ OTT letting exempt.

⑥ Royalties

- UK/European licence from Protecting the Planet.

- supply of services - no customs

→ reverse charge in UK on inclusive & deductible for Corp. Tax

⑦ LOSSES → assuming sub

→ trading losses used against taxable profit to save tax

→ CY, CB, CF against total.

→ branch may be able to take against US profits? against UKCT