Institution **CIOT - ATT-CTA - 2020 November Exams**
Printed on November 13, 2020

Course **CTA Adv Tech Cross-Border Indirect**

Event **NA**

Exam Mode **OPEN LAPTOP + NETWORK**

Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**456**	**2103**	**2540**
Section 2	**962**	**4494**	**5426**
Section 3	**817**	**3804**	**4589**
Section 4	**677**	**3229**	**3957**
Section 5	**1042**	**5213**	**6212**
Section 6	**382**	**1806**	**2172**
Total	**4336**	**20649**	**24896**

Answer-to-Question-_1_

Memo

To: Gerry Kray, Partner
From: Delia Gibb, CTA
Subject: Netherclean Ltd
Date: 13 November 2020

Dear Gerry

Thank you for your email dated 28 October 2020. Please see my comments below on the various VAT issues that you have raised.

Leasing

The VAT treatment of leasing servives was considered by the Court of Justice of the European Union (CJEU) in *Eon Aset Manidjmunt OOD v Direktor na Direktsia (C-118/11)*. This case concluded that a finance lease could be a supply of goods where the lease instalments equal the value of the assets and the risks and rewards relating to the asset transfer to the lessess. However, the UK has not amended the VAT treatment of finance leases following this case.

In the UK, leases that explicitly provide an option for the customer to purchase the leased asset are treated as supplies of goods. Where no option exists there will be a supply of services. The advice below considers the current UK VAT treatment, although if the tests in *Eon Aset Manidjmunt OOD* are met, the leases supplied by Netherclean may be treated as supplies of goods as UK VAT law must give effect to EU law (as per the case of *Marleasing SA (C-106/98))*.

Netherclean supplies

As the supplies by Netherclean contain no option for transfer of ownership, these would be regarded as a supply of services. The general rule for the place of supply of services would be where the recipient belongs as the recipient is a relevant business person. Therefore, the place of supply is Jersey and the supply is outside the scope of UK VAT. No UK VAT will be charged but the net amount should be included in Box 6 of the UK VAT return.

As the supply is a continuous supply of services, the earlier of the payment and invoice is the taxpoint.

Cleanbean supplies

The supplies by Cleanbean are cleaning services of a building which are regarded as land related services and therefore, the place of supply is where the land is located.

The place of supply for cleaning the London office will be the UK. This will not impact on the place of supply for Netherclean.

Non-business charity

The supply of cleaning equipment to a non-business charity will be regarded as a B2C supply as the recipient is not a relevant business person. Therefore, the place of supply will be where the supplier belongs. Therefore, the place of supply will be the UK. As a result, UK VAT will be charged on the lease of equipment. This sales will be included in the UK VAT return in Box 1 and Box 6.

If you have any further questions, please do not hesitate to contact me.

Kind regards
Delia

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

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

Answer-to-Question-_2_

To: Jlatour@marche.net
From: t.une@marche.net
Subject: Changes to Group Operations - VAT aspects
Date: 13 November 2020

Dear Jules

Thank you for your email dated 27 October 2020. Please see my comments below on the various VAT issues that you have raised.

Sale of paper magazines

The changes to selling paper magazines to customers via our website directly to customers in the UK, Ireland and France will change the VAT treatment. These sales would fall under the distance selling rules. This is where a taxable person in one EU Member State supplies and delivers goods to a customer in another Member State who is not registered for VAT.

The company should charge the VAT in the country of dispatch until the point the distance selling threshold is breached. The distance selling threshold varies between EU Member States; it is either €35,000 or €100,000. The UK has gone for the higher limit and in sterling this equates to £70,000. This test is on a calendar year basis. The threshold in France is €35,000.

Once the distance selling threshold is breached, the company will be required to register for VAT in the Member State where the customer is located. At this point, the company will cease to

charge VAT in the country of disptach and will instead charge local VAT in the Member State where the customer is located.

The registration will be effective from the date the liability to register arose. The Tax Authority in the relevant Member State must be notified within 30 days of the liability to register.

It should not matter where the point of dispatch is as these rules apply to all EU member states. I would recommend that the point of dispatch is in France, as it has a lower threshold than the UK and therefore the registration obligation in the UK would likely happen later. This may help from an administartive standpoint.

The sales should be recorded on an Intrastat dispacth return if the threshold is exceeded (£250,000).

Magazines

The sale of an electronic magazine would fall under the rules for electronically supplied services involving minimal human intervention and delivered using the internet or an elctronic network. This includes the supply of images, text and information which is the contents of a magazine.

Under these rules, the business will be required to account for VAT in the customer's EU Member State due to the fact that the place of supply is where the customer belongs. There is no issue here for sales to customers in France and the UK as the establishments are registered in these countries.

However, the sales to customers in Ireland will create a VAT registration obligation in Ireland. An alternative to this is for the company to register for Mini One Stop Shop (MOSS). The company will register for this in the EU Member State that it is established (i.e. France) and account for VAT due in other Member

States (at this stage just Ireland) using a single MOSS return.

The company will charge the customers the local VAT rate (i.e. Irish VAT to Irish customers). The MOSS does not have any facility for recovering VAT incurred. In order to recover any input tax incurred we would need to submit an electronic cross border refund claim.

The company will be required to register for MOSS by the 10th day of the month following the month of first sale. MOSS returns must be submitted electronically on a calendar quarter basis within 20 days of the quarter end.

The sale of regular magazines will continue to be treated as normal.

UK Advertising Agency

The UK advertising agency acts as a disclosed agent which means that they do not play a part in the supply chain. They simply introduce our company too potential customers. The only supply made by the agent is the provision of their services to our company.

The general place of supply rules for services under s.7A VATA 1994, is a supply of services is made:
- in the case when the recipient of the services is a relevant business person (B2B), in the country in which the recipient belongs; and
- in any other case, in the country in which the supplier belongs (B2C)

A business belongs in the country where it has a business establishment or some other fixed establishment. Our company has a business establishment in France as this is our principal place

of business and where the head office is loacted. The presence of our UK Branch creates a fixed establishment in the UK.

As the supply of services by the agency will be a B2B supply, the establishment that the services are supplied to will determine where VAT is accounted for.

If the supply is made to the UK Branch, the place of supply will be the UK and therefore UK VAT will be charged. This will be recorded in the UK VAT return and the VAT incurred will be recoverable.

If the supply is made to the head office in France, the agency will not charge UK VAT and instead we will have a reverse charge obligation in France.

From a VAT perspective, as the business is fully taxable, there should be no real difference in whether the supply is made to the French or UK establishment. From a cash flow perspective it may be better for the liason team to be loacted in France as there will be no actual payment of VAT as the amount will be included in the VAT return. If in the UK, the VAT would be paid over at the time the services are recived and could not be recovered until the VAT return is submitted.

If you have any further questions, please do not hesitate to contact me.

Kind regards
Terri

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

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

Answer-to-Question-_3_

To: NKrasse@walviss.nl
From: Cheryl.Joyce@BWVAR.co.uk
Date: 13 November 2020
Subject: UK VAT Queries

Dear Niels

Thank you for your email. Please see my comments below on the various VAT issues that you have raised.

Outside UK

The turbines that are loacted over 12 nautical miles from the UK shore, will not be deemed to be loacted in the UK. Therefore, supplies that relate to these turbines will be outside the scope of UK VAT.

Movement of own goods

The movement of goods from the Netherlands to the UK will be treated as a movement of own goods. This is a deemed supply for VAT purposes and is liable to VAT under the normal arrangements for intra-EU movements of goods.

Therefore, the company is liable to account for VAT in the UK on the acquisition of the goods. It will likely need to register for

VAT in the UK both to meet its obligations there and to use an overseas VAT registration number to support zero-rating of the deemed supply when the goods leave the Netherlands.

An EC Sales List will need to be submitted to record the movement of goods.

Turbines from Norway

As Norway is not part of the EU, the turbines delivered from Norway are treated as an import in the UK. On the assumption that it is Walviss who will be the importer of record, they will be responsible for paying the import VAT due. This import VAT will be recoverable through the UK VAT return provided a C79 is available as evidence for VAT recovery.

Import VAT will be payable on the cost of the turbines (£42,500,000), incidental expenses such as commission, packing, transport and insuarnce costs, up to the first destination of the goods in the UK (£289,000) and all taxies, duties and other charges levied outside or, by reason of importation within the UK.

Gearboxes

Where the supply of goods involves their installation, they are treated as supplied in the country where they are installed. Therefore, the place of supply for the gearboxes will be the UK and Wale will have to register for VAT in the UK as it is an overseas business and therefore, there is no VAT registration threshold available. As a result, UK VAT will be charged on this supply.

There is a simplification procedure availble where, Wale could

opt to have Walviss account for the VAT due in the UK on its behalf as Walviss will be UK VAT registered due to the reasons outlined above. If Wale wishes to take advantage of the simplification procedure and avoid registering for VAT in the UK, they must notify HMRC and Walviss in writing with the intention to do so. The notification must include:

- Wale's name and address
- Wale's VAT registration number (including DE)
- the date upon whihc the installation of the goods commences; and
- Walviss' name, address and UK VAT registration number

Hval Inspection

This is a supply of services that relates to land as it is in relation to turbines that cannot be easily moved. Therefore, the place of supply is where the land is loacted i.e. the UK. UK VAT will be charged on this supply and Walviss should include this in its UK VAT return. Hval will have a UK VAT registration obigation.

Installation of solar panels and air source heat pumps

The delievry of the solar panels and heat pumps is an intra-community acquisition. Walviss will be required to account for the acquisition VAT in the UK through its UK VAT return in Boxes 2 and 4 for the VAT amount and Boxes 7 and 9 for the net amount. This should also be recorded on an ESL and potentially Intrastat arrivals.

The supply of services provided by local subcontractors is a supply of services that relates to land as it is in relation to the maintenance, renovation and repair of a building. Therefore,

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the place of supply is where the land is loacted i.e. the UK. UK VAT will be charged on this supply by the subcontractors and should be included in Walviss' UK VAT return.

Advertising

The supply of advertising services falls under the general rules and therefore, where they are supplied to a business, the place of supply is where the recipient belongs.

As Walviss belongs in the Netherlands, the supply will be outside the scope of UK VAT and no UK VAT will be charged. Walviss will be responsible for accounting for the VAT in the Netherlands using the reverse charge mechanism.

Other Fees

Legal fees related to planning permission and planning applocation fees are regarded as land related services. Therefore, the place of supply is where the land is locatedi.e. the UK. UK VAT will be charged on this supply and should be included in Walviss' UK VAT return.

If you have any further questions, please do not hesitate to contact me.

Kind regards
Cheryl

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

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

Answer-to-Question-_4_

Gayan Udawatte
Chartered Tax Adviser
Console'R'US Ltd
1 CTA Road
1 Console Street
London
London

13 November 2020

Dear Gayan

Thank you for your time at the meeting last week. Please see my comments below on the various VAT issues that we discussed.

Missing Trader Intra-Community Fraud (MTIC)

The scenario that we discussed appears to suggest that HMRC have issued a notification of joint and several liability due to MTIC in your supply chain.

A joint and several liability notice is one of HMRC's methods for combating MTIC. Where:

a) a taxable person receives a taxable suppy of 'relevant goods and services',
b) at the time of the supply he knew, or had 'reasonable grounds to suspect' that some or all of the 'VAT payable' on that supply, or any previous or subsequent supply of those goods or services,

would go unpaid to HMRC, and
c) HMRC have served on him a notive of liability under these provisions

that person, and the person otherwise liable for the amount specified in the notice, are jointly and severally liable to HMRC for the 'net VAT unpaid' on those goods or services (VATA 1994 s.77A).

Relevant goods and services

The provisions apply to 'relevant goods and services' whihc fall within any one or more of the following descriptions.

- any equipment made or adapted for use as a telephone and any other equipment made or adapted for use in connection with telephones or telecommucication
- any equipment made or adapted for use as a computer and any other equipment made or adapted for use in connection with computers or computer systems
- any other electronic equipment made or adapted for use by individuals for the purposes of leisure, amusement or entertainment and any other equipment made or adapted for use in connection with such electronic equipment

Consoles would therefore fall within the descriptions of relevant goods and services.

Reasonable grounds to suspect

A person is presumed to have reasonable grounds for suspecting some or all of any VAT payable has not been paid if the price payable by him for the goods or services in question was less than the:

- lowest price that might reasonably be expected to be payable for them on the open market
- price payable on any previous supply of those goods

The goods from Gamerzon were cheaper than the goods previously received from Consolas but the price was not too dissimilar (£25 difference) and the goods from Gamerzon required more work after they were purchased before they could be sold. Therefore, there may not have been reasonable grounds to suspect.

Net VAT unpaid

This is the VAT charged on the goods or services in question (consoles) less any input tax incurred on their purchase by the person who has not paid the VAT.

Reconsiderations and Appeals

Where a business has been issued with a notice of liability, it can ask HMRC to reconsider its decision, particularly if there are facts which should have been taken into account. An appeal can also be made to a VAT tribunal against any liability arising as a result of such a notice.

HMRC will not apply these provisions on the supply of specified goods and services where:

- VAT goes unpaid as a result of genuine bas debts or genuine business failures
- goods are bought by a business for its own use, rather tahn onward sale
- a business can demonstrate that the low purchase price paid for the goods was due to circumstances unconnected with the failure

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to pay VAT; or
- a business has genuinely done everything it can to check the integrity of the supply chain

Therefore, it should be possible to have HMRC reconsider their decision.

The business will have 21 days to demonstrate that it did not know, or have reasonable grounds to suspect, that VAT would go unpaid and, where applicable that there was a legitimate reason for the low purchase price of the goods.

If you have any further questions, please do not hesitate to contact me.

Kind regards
Sian

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

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

Answer-to-Question-_5_

To: RHwaks@MilliganHomeImprovements.co.uk
From: JGeorge@CTA.co.uk
Subject: Classifying our goods
Date: 13 November 2020

Dear Raymond

Thank you for your email dated 28 October 2020. Please see my comments below on the classifying your goods for customs purposes.

Background

The classification code of a product determines the rate of duty applicable on it. The codes are all contained in the Tariff. Goods are categorised in one of 21 sections of the Tariff. Sections are sub divided into chapters. The chapter number gives you the first two digits of the classification code. Chapters are then subdivided further into headings, which give you the first four digits known as the Tariff Headings. Each heading is then divided further to add two more digits known as the 'harmonised system' cpdes. The next two digits make up the EU wide eight digit classification code, or Taric code. The remaining two digits are used where imports of certain products need distinguishing.

General Interpretative Rules (GIRs)

There are 6 rules to use when classifying goods. They are called GIRs.

Rule 1

This says " The title of sections, chapters and sub-chapters are provided for ease of reference only. For legal purposes classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided such headings or notes do not otherwise require, according to the following provisions".

Rule 1 is basically there to tell you to look at the detailed notes in the Tariff and not to rely on titles to provide all the information you need.

Rule 2

Rule 2 is split into two parts (a) and (b).

Rule 2(a) says that "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinsihed provided that, as presented, the incomplete or unfinished article has the essential character or finished article".

The important phrases are:
- the article is incomplete or unfinished; and
- has the essential charcter of the complete or finished article

Therefore, articles presented either incomplete or unfinished which have the essential character of the finised article are classified as that finished article, and complete articles that

are presented unassembled or disassembled are also classified as the finished article itself.

Rule 2(b) says "the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3".

Rule 3

Rule 3 has three parts; (a), (b) and (c).

The most important phrase from Rule 3(a0 is that specific descriptions take precedence over general descriptions. However, where sets of goods or combinatiosns of goods are concerned, each potential heading is equally specific.

The key point from Rule 3(b) is to decide what gives the good its essential character.

If you have still not been able to classify the goods under Rule 3(b), because you believe nobe if the items in it give it its essential character, then you move on the Rule 3(c).

Rule 3(c) states that "when goods cannot be classified by reference to 3(a) or 3(b) they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration".

Rule 4

This says "Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin".

Rule 5

Rule 5 is split into (a) and (b).

Rule 5(a) states certain cases and similar containers "specially shaped or fitted to contain a specific article or set of articles, suitable for long term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character".

Rule 5(b) states that "subject to the provisions of rule 5(a),packing materials and packing containers presented with the goods therein shall be classified with the goods if they are a kind normally used for packing such goods. However, this provision is not binding, when such packing materials or packing containers are clearly suitable for repetitive use.

Rule 6

This rules says that "For legal purposes, the classification of goods in sub headings of a heading shall be determied according to the terms of those sub headings, and any related sub heading notes and mutatis mutandis to the above rules on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative section and chapter notes also apply unless the conext otherwise requires".

This rule has two points. The first is that when looking at sub-headings you still use GIR rules 1-5. The second point is that you compare like with like.

Binding Tariff Information (BTI) Rulings

BTIs are rulings made by HMRC (or Customs authorities in another member state) at the request of an importer advising the appropriate commodity code for a particular imported product.

Once issued, these are valid for three years. They are biding on the customs authorities of all member states. They can only be revoked in limited circumstances: where legislation renders the decision invalid; where the Tariff evolves to make the decision invalid or the importer has failed to provide all relevant information (or it is inaccurate).

Therefore, you could apply for a BTI to get certainty over the commodity codes for your products.

It should be noted that BTIs will only be issued for future imports and therefore a BTI cannot be issued retrospectively. They can also only be relied upon by the person to whom they were issued. So, if you do not currently hold any, technically it would not be worth applying for them to support past importations. That said, if you can prove that you have been importing the same product for a number of years, a current BTI might be viewed as persuasive evidence of its past classification; so I would recommend that you apply for BTIs for any products you import.

It should be possible to go back 3 years and recover any customs duty that was incorrectly paid due to the incorrect classification of the product.

If you have any further questions, please do not hesitate to contact me.

Kind regards
John

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

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

Answer-to-Question-_6_

To: Jenny@Toy'n'Game.co.uk
From: Ron@CTAAdvisers.co.uk
Subject: Goods supplied to UCY Co
Date: 13 November 2020

Dear Jenny

Thank you for your email dated 28 October 2020. Please see my comments below on the customs and VAT issues that you have raised.

Returned Goods Relief (RGR)

RGR should be available to provide relief from customs duty and import VAT.

The conditions for relief from Customs duty are: the goods must be EU goods, which have been exported from the EU, which have not been processed or manufactured whilst outside the EU (other than maintenace and repairs) and are returned to the EU within three years.

The conditions for relief from Import VAT are the same as for Customs duty, plus the goods must not have changed ownership whilst outside the EU, any VAT must have been previously accounted for and the export is not designed to circumvent VAT rules. For the relief from import VAT to apply the goods must be reimported by the same person who originally exported them.

Therefore, TnG Wholesale will have to reimport the goods. As the companies are in a VAT group the sales could then be made by TnG Game retail after an untra-group transfer without VAT being payable on this.

In order to claim RGR export and import formalities must be carried out.

On importation to free circulation you will need to attach evidence that the product was originally exported. This could be in the form of an export declaration, or an information sheet that may have been completed at the time of export by the Customs authorities, an INF3. An INF3 may issued retrospectively by Customs. If you do not have an INF3 releif may still be given on the production of alternative evidence e.g. a bill of lading or an invoice showing the destination of the goods.

On your import declaration, the C88, it is important to ensure that you use the correct Customs Procedure Code (CPC). This will tell the authorities that you are importing the goods to RGR and therefore don't have to pay the full duty.

If these conditions are met, then you will be able to reimport the goods free of duty and import VAT.

If you have any further questions, please do not hesitate to contact me.

Kind regards
Ron