The Chartered Institute of Taxation

Advanced Technical

Cross-Border Indirect Taxation

May 2022

Suggested solutions

ANSWER 1

As ConfCo is organising the event in its own name and will therefore incur the costs and own the revenues, the VAT liabilities, including any UK VAT registration liabilities, will rest with ConfCo. The Dubai client will simply incur a cost from ConfCo, being the event management fee.

The following VAT place of supply rules apply for an event taking place in the UK:

Delegate entrance fees

Fees for entrance to an event of this nature are subject to VAT where the event takes place, regardless of the status of the delegate. Consequently, the place of supply is the UK, and ConfCo would be required to register for UK VAT to account for VAT due on these revenues. The UK VAT registration threshold does not apply in this scenario as ConfCo is established overseas. Where the delegates are UK established businesses, the UK VAT due should be accounted for by the B2B delegate under the reverse charge. UK VAT will need to be charged by ConfCo to B2C clients. In practice, as it may be onerous for ConfCo to determine the place of establishment of B2B delegates, ConfCo could charge UK VAT to all delegates.

Sponsorship

This is marketing/advertising revenue for VAT purposes and the place of supply when received from B2B customers is where the business customers are established. They will self-assess any reverse charge VAT due in accordance with their local rules. ConfCo is not required to report this revenue on its UK VAT return as it is established in Dubai and makes the supply from there.

Gala Dinner and Excursions

Revenues from these sources are subject to VAT where the dinner or excursions take place, ie the UK. ConfCo will be required to charge UK standard rated VAT to all delegates for these services.

Conference Organising and Management Fee

ConfCo is acting as a principal rather than a disclosed agent in relation to the event. These revenues are therefore not intermediary revenues. They are not treated as being supplied where the event takes place, nor are they 'ancillary to the admission' to the event (as they relate to more than just the 'admission' itself). Instead, they fall under the general VAT rule which means they are outside the scope of UK VAT when charged to a Dubai business client. The Dubai client would need to consider whether it is required to account for any reverse charge VAT in Dubai under local rules

UK VAT Registration Position

Based on the above, ConfCo will require a UK VAT registration. The VAT registration threshold does not apply as ConfCo is an overseas established business. The registration would be required from the point ConfCo anticipates receiving delegate revenues and they would be registered via HMRC's Non-Established Taxable Person's Unit (NETP). However, it would be worthwhile considering the benefit of having a voluntary VAT registration in advance of this under the 'Intending Trader' provisions to enable ConfCo to recover the VAT it will incur on deposits paid for venue hire etc (assuming valid VAT invoices have been obtained in ConfCo's name for these). This would reduce the cashflow disadvantage ConfCo might otherwise face in incurring costs before revenues are generated. This would need to be weighed up against the cost of filing additional VAT returns.

Importation of Goods

ConfCo will need a GB EORI number to import the goody bags for delegates and any other conference related goods.

The question arises as to whether import VAT and Customs Duty is due on the importation of the goody bags. There is an import VAT and duty relief for promotional items that are distributed free of charge at events so it should be feasible to make use of this to prevent import VAT and duty being due. If import VAT were due, it would be fully recoverable by ConfCo on its UK VAT return. Any Customs Duty would form a cost. If the delegates take the goody bags outside the UK after the event, there are no UK import VAT/Customs Duty implications for ConfCo.

The other conference related goods returning to Dubai after the event could be imported into the UK under the Temporary Admission customs relief so that no import VAT or duty is payable. ConfCo would need to retain proof of export back to Dubai to discharge the customs relief.

VAT Recovery on Costs

Standard rated VAT will be incurred on the venue hire (assuming the venue is opted to tax) catering costs, and the excursion. For the hiring of the equipment, the UK supplier will need to charge UK VAT on the basis of the use and enjoyment rules, which override the general rules. As ConfCo is liable to be VAT registered in the UK any UK VAT incurred by ConfCo in relation to the event can be recovered subject to ConfCo having valid VAT invoices in its name. The UK's overseas VAT refund mechanism cannot be used to claim the VAT incurred.

Hotel Accommodation for Delegates

If ConfCo purchases the hotel accommodation for delegates from the hotel in its own name and makes an onward supply to the delegates with a mark-up, it will incur UK VAT on the cost and will need to account for UK VAT on the margin under the UK's version of the Tour Operator's Margin Scheme (TOMS). Under this scheme, input VAT cannot be recovered on costs and standard rated VAT is due on the margin, being the selling price to the delegate minus the VAT inclusive cost of the designated services.

Crucially ConfCo would not be able to provide a VAT invoice to the delegate for the TOMS activity so the VAT incurred on the accommodation will form a cost. This is unnecessary as B2B delegates would be able to recover VAT on the hotel accommodation via the UK's overseas refund mechanism. It would therefore make sense for ConfCo to contract as a disclosed agent with the hotel so that the hotel is contracting directly with the delegate for the accommodation and can provide a valid VAT invoice to the delegate (either using the normal invoicing rules or the industry concession referred to as the 'hotel bill back' arrangement).

ConfCo could be remunerated by charging a commission to the hotel. As ConfCo is not UK established, it would not charge UK VAT to the hotel and the hotel instead would self-assess UK VAT on the commission under the reverse charge.

MARKING GUIDE

TOPIC		MARKS
1. Place of Supply and VAT liability of Supplies	Event entrance	2
	Sponsorship	1
	Gala dinner and excursion (not TOMS)	2
	Conference organising/managing	2
2. UK VAT registration liability	Mandatory UK registration	1
	Consider Intending Trader Registration to recover input VAT on deposits paid, valid VAT invoices required	2
3. Imports of goods	Import of goody bags into UK – use of relief for promotional items	1
	Import VAT recovery on VAT return if relief not used	1
	Temporary Admission relief for import of other conference goods	1
4. VAT recovery on costs	UK VAT on venue hire, catering, excursion, AV hire and use and enjoyment rules	2
	13th Directive not feasible	1
5. Agent v Principal/TOMS	Contracting for hotel as principal versus disclosed agent	3
	VAT treatment of commission	1
TOTAL		**20**

ANSWER 2

Where a business acts in a financial intermediary capacity, its revenues are exempt from VAT. The key question is whether the activities carried out by IFA LLP qualify for VAT exemption as an intermediary. The UK VAT legislation (VATA 1994, Sch 9, group 5, item 5) and HMRC guidance stipulate that the intermediary must bring together two parties to a transaction in shares. It is not necessary to play a 'preparatory role' in effecting the contract where a trade in shares is being arranged as is the case with other financial transactions, it is sufficient for the intermediary to introduce the two parties. As IFA LLP is instrumental in instructing another broker or an electronic platform to purchase or sell shares on behalf of its clients, VAT exemption will apply.

Where, on the other hand, IFA LLP is simply providing more general investment advice and devising a strategy with its client or carrying out an annual health check, the VAT exemption does not apply, as an actual transaction in shares is not effected. The exception to this is where the advice leads to a financial transaction in shares and the advice is regarded as being ancillary to the intermediary activity (in which case the advisory fees can also be VAT exempt). The key tests for determining whether something is ancillary for VAT purposes are set out in the CJEU decision in *Card Protection Plan* (C-349/96).

IFA LLP appears to have a combination of these two types of revenue, and it is likely it is partly exempt, i.e., it has exempt revenue from acting as intermediary and taxable revenue from advisory services.

B2C intermediary fees and advisory fees fall within the exceptions to the general VAT rule and are taxed under VATA 1994, Sch 4A, para 16 where the recipient belongs/where they are habitually resident. The intermediary services are VAT exempt regardless of the location of the client.

The taxable advisory services are subject to UK VAT when provided to UK clients and are outside the scope of UK VAT when provided to clients outside the UK. With regard to the client with 2 residences, one would consider them as belonging in the country where the establishment most directly concerned with the supply is located. This may be difficult to establish for an individual. Accordingly, the personal tax position could be considered to determine the place where this client is habitually resident. If a decision is taken that they reside in the US, no VAT would apply, but care must be taken to ensure that there is no risk they could be deemed to be resident in the UK when the advice is provided as this would mean UK VAT would be chargeable. Obviously, the agreement with the client should allow for VAT to be charged if it is found to be due.

Donations

Freely given donations are outside the scope of VAT. However, where they are a condition of a wider business arrangement, they are taxable. Therefore, in order to maximise the value of the donation ultimately provided to the charitable organisations, it would be advisable for IFA LLP to make it clear in its terms and conditions with clients that the donation is freely given and that clients are able to opt out. In this way the donation can be given freely to IFA LLP who can then match this sum and onward donate the total value to the charitable organisations on behalf of itself and its clients without VAT being due by IFA LLP. However, the risk of a loss of donations if they are optional must be weighed up against the potential VAT cost of making them mandatory.

If the donation remains mandatory, IFA LLP is likely to be deemed to have received the donation in its own name in the first instance and would therefore be liable to account for VAT on it. This would reduce the amount of donation available to the charity.

VAT Registration and Costs

The lead generation and information database services purchased from overseas will trigger a liability to account for reverse charge VAT in the UK and so a liability to register for VAT in the UK assuming the value of the services exceeds £85,000 per annum, also taking into account the value of the taxable

advisory services. The service providers should not charge Irish VAT to IFA LLP as IFA LLP is receiving the services for business purposes.

On the commission, as IFA LLP is the lead broker, the Jersey broker will presumably invoice IFA LLP for its share. If it is carrying out the same type of activities as IFA LLP i.e. intermediating between the investor and the owner of the shares being traded, the broker's fees qualify for VAT exemption. Accordingly, IFA LLP is not required to account for UK reverse charge VAT on these commission charges and the value of these costs will not count towards the VAT registration threshold.

Consideration needs to be given as to whether IFA LLP has an establishment for VAT purposes in Switzerland meaning a VAT registration could be required. A local advisor should be contacted to assist with this.

Since 1 January 2021, VAT on costs relating to all non-UK clients is recoverable which means VAT recovery would increase. IFA LLP would need to calculate its historic VAT registration position taking into account the pre and post Brexit VAT recovery rules to determine how much VAT (if any) is due. In the first instance the standard partial exemption method, based on revenues, should be used to determine how much VAT can be recovered on overheads. VAT relating to UK exempt revenues post Brexit and UK and EU revenues pre-Brexit cannot be recovered. If commissions are based upon a percentage of the share trades undertaken, these values can be significantly higher than an hourly rate based fee for advisory services, and so the standard partial exemption may not be appropriate. A partial exemption special method should therefore be considered

MARKING GUIDE

TOPIC		**MARKS**
1. Place of Supply and VAT liability of Supplies	Exempt intermediary and taxable advisory services	3
	Place of Supply rules for both	2
	Place of establishment dual residence client	2
2. Donations	Donations	3
3. UK VAT registration liability	Value of advisory services	2
	Reverse charge services	3
	Swiss VAT registration liability	1
4. VAT recovery on costs	Specified supplies	2
	Partial exemption calculations	2
TOTAL		**20**

ANSWER 3

MakeUp Inc will be responsible for selling the products to customers as principal. Freman SA is providing services, it does not purchase or sell the goods.

Since 1 July 2021 the EU's One Stop Shop (OSS) system has been in place within the EU for B2C sales of goods, where the goods are shipped from the EU. As the product is manufactured and stored in France and the off-the-shelf products are imported to France and sold from there, MakeUp Inc will have a VAT registration liability under OSS from the date this activity commences.

MakeUp Inc will also require a French VAT registration in order to import or acquire any raw material to France in its own name and to import the off the shelf products from the US. MakeUp Inc will require an EU EORI to import to France and to make export sales from France eg to UK customers.

Sales to French B2C customers and to any B2B customers will be made through the normal French VAT registration. The OSS registration will be held in France and it will report sales to EU B2C customers in other member states outside France, with the VAT rate applying in the customer country being declared.

If MakeUp Inc has UK customers, if it wants to sell the goods with all import VAT and duty paid, using DDP Incoterms, it will need to VAT register in the UK to import the goods and on sell these. If the value of individual sale is more than £135 excluding shipping, import VAT and Customs Duty will be due. The import VAT can be accounted for and paid and claimed on the UK VAT return via Postponed Import VAT Accounting. VAT will then be due on these sales. If the value of the sale is less than £135, no import VAT and Customs Duty will be due and instead output tax only is due.

Alternatively, consideration could be given to MakeUp Inc selling the products for UK customers to MakeUp UK Ltd – this would be a zero-rated export from France and the UK entity could act as an undisclosed agent or principal and buy and sell the goods in its own name. MakeUp UK Ltd would be importer into the UK and then sell to UK customers with UK VAT. This would mean MakeUp Inc would not need a UK VAT registration in relation to the sale of goods but see below regarding matching service.

The digital image matching services are provided from the US for VAT purposes as the software and technology used in the process are located there. These are electronic services and as a result a non-Union OSS EU VAT registration will be required for MakeUp Inc so that VAT can be accounted for on sales to EU B2C individuals. Where they are sold to UK customers, a UK VAT registration will be required so that UK VAT can be accounted for on revenues.

Assuming a decision is taken for MakeUp Inc to sell to UK customers, as the UK entity does not have any revenue from third party customers it should have an intercompany agreement in place with MakeUp Inc for the provision of sales and marketing support services. These are treated as general VAT rule services and therefore, as MakeUp Inc is established in the US, no VAT will apply on the intercompany recharge as the place of supply is the US. MakeUp UK Ltd is entitled to register for VAT in the UK voluntarily in relation to these activities provided the value of the VAT recoverable on costs makes this cost effective.

As above, MakeUp Inc will act as importer of record in France so consideration should be given to the import VAT recovery position. Freman SA will provide manufacturing services rather than goods to MakeUp Inc in the US as MakeUp Inc retains title to the raw material and finished products at all times until they are sold. The French VAT treatment of these services should be considered. If MakeUp Inc has lots of UK customers, it may be advisable for the Freman SA to apply for Inward Processing relief so that Customs Duty and import VAT are not due in France on sales of goods exported from France to the UK. This would save on the Customs Duty, though the VAT should not be an issue. In this way the cost to the UK customer would be lower than would otherwise be the case. Potentially, the EU's IOSS VAT registration system could be used for sales of less than €150 and no import VAT or duty applies in this case. Instead, local sales VAT applies at the rate in the customer country. Therefore provided MakeUp

Inc is relatively confident that all sales will have a value of less than €150, it would be feasible to have the contract manufacturing operation in the UK with minimum disruption to EU customer orders being fulfilled. This would also mean there are no import taxes on sales to UK customers.

MARKING GUIDE

TOPIC		**MARKS**
1. Supplies of Goods versus Services	Capacity in which MakeUp Inc, MakeUp UK and Freman SA act in supply chain – Make Up Inc supplies goods and digital services, MakeUp UK and Freman SA supply services	4
2. Place of Supply of Goods and VAT Registration Requirements MakeUp Inc	MakeUp Inc has the registration liabilities – normal French VAT reg, OSS or IOSS, possibly a normal UK VAT registration	3
3.Place of Supply of MakeUp UK Ltd's services	Nature of services and VAT treatment, VAT registration in UK	2
4.Place of Supply of Freman SA's activity	Nature of services and VAT treatment	2
5. Import Processes France	Raw material and off-the-shelf products - Import VAT recovery, , EORI number	2
6. Agent versus Principal	Sale of goods by MakeUp Inc to MakeUp UK Ltd who acts as undisclosed agent or principal and sells in own name B2C	2
TOTAL		**15**

ANSWER 4

Northern Ireland (NI) effectively has dual status for VAT purposes since Brexit, in that it is regarded as being part of the EU from an EU VAT perspective but is part of the UK from a UK VAT perspective.

As ToyCo's goods are shipped to B2C customers from a warehouse in NI, it will need to consider the EU's One Stop Shop (OSS) rules for sales made through its own website. Other than a de minimis limit of Euros 10,000, below which OSS reporting is not required, there is no upper limit threshold for this scheme with regard to the value of the individual sale, unlike iOSS. It is a scheme introduced on 1 July 2021 to report all B2C sales to EU customers, with the VAT rate in the customer's country being applicable.

Where the sales are made via third party marketplaces such as portal.com, as ToyCo is established in NI, which is part of the EU for VAT purposes, the 'deemed supply' provisions for sales via electronic interfaces will not apply. These rules only apply where:

i) the goods are shipped to the EU customer from a non-EU location; or
ii) the goods are shipped from an EU location, but the supplier is not EU established.

Neither of these applies here so ToyCo will also account for the sales via Portal.com through its OSS registration, with the local VAT rate in the customer's country applying. Website pricing is normally VAT inclusive so ToyCo will need to determine which rate it sets in the website software (e.g., average EU VAT rate, highest rate), to ensure it collects sufficient VAT from EU customers as part of the price.

Sales from NI to UK and NI customers are treated as UK domestic sales, with UK VAT applying on these. ToyCo will have an XI prefixed VAT registration number and these sales will be reported through the XI/UK VAT registration.

The B2B sales to the Irish customer will be treated as an intra EU sale and will be reported on the XI/UK VAT return. ToyCo will be required to follow EU VAT invoicing rules and show the Irish customer's VAT registration number on its invoice along with the relevant exemption narrative. The sale will also be reported on an EC sales list and on a dispatch Intrastat if the thresholds are exceeded.

ToyCo will need to ensure it retains proof of dispatch and export to evidence that the goods have left NI when they are sent to EU or non-EU customers.

The company will also be required to account for UK reverse charge VAT on its UK/XI VAT return in relation to the commission charges from portal.com Inc as the marketplace is located overseas. This reverse charge VAT is fully recoverable on the same VAT return. As reverse charge VAT has not been accounted for historically ToyCo will need to submit an Error Correction Notice (ECN) to HMRC to disclose this, going back up to 4 years as relevant.

Where ToyCo also owns and sells stock located in a portal.com Inc warehouse in Germany, as ToyCo is EU established, the online marketplace deemed supply provisions will not apply and ToyCo will remain responsible for accounting for VAT on the sale to the B2C customers under OSS. It will also require a normal German VAT registration to acquire the goods from NI. ToyCo will make a deemed zero-rated supply from its NI VAT registration to its DE VAT registration. Any B2B sales from the German warehouse would not fall under the OSS and would be dealt with via the German VAT return.

The sales of children's bikes will be reported through the UK/XI VAT registration. Portal.com Inc acts as a disclosed agent for the sales of toys but will act as an undisclosed agent (VATA 1994, Section 47) for the sales of children's bikes – this means that for VAT purposes portal.com Inc will buy and sell the bikes in their own name. As the bikes will be stored in the UK warehouse of portal.com Inc, UK VAT should be charged by ToyCo on the sale to portal.com Inc.

As ToyCo has developed the stuffed toy dogs, it will own the Intellectual Property (IP) rights and therefore would need to grant these to the US TV Channel to allow the channel to use the image and develop a cartoon. This is a general VAT rule service as it is supplied to a business customer. ToyCo will not be required to charge UK VAT to the US TV channel. The supply is reported on ToyCo's UK VAT return.

If it begins selling the toys to US customers, it will need to consider whether it has any liabilities to register for US sales tax and take local advice. The sale from the NI warehouse to US customers will be a zero rated export.

MARKING GUIDE

TOPIC		**MARKS**
1. Place of Supply and VAT Registration Liabilities for sales	Sales to EU B2C customers through own website reported through OSS registration	2
	Sales to EU B2C customers through portal.com reported on ToyCo's OSS	2
	Sales to UK and NI customers reported through normal XI/UK VAT registration	1
	B2B sales to Irish customer reported through XI/UK VAT registration, VAT invoicing requirements, EC Sales list and Intrastat reporting	2
	Proof of despatch and export to be retained	1
	German VAT registration liability for goods located in German warehouse	1
2. Reverse Charge	Reverse Charge VAT due on Portal.com commission	1
	ECN to be submitted for historic reverse charge errors	1
3. Agent versus Principal	Supply of children's bikes to Portal.com – Portal.com acts as undisclosed agent. UK VAT charged by ToyCo	1
	Supply of Toys – Portal.com not responsible for accounting for VAT, ToyCo uses OSS to account for VAT	1
4. Nature of supply	IP rights to stuffed dog toy, VAT treatment, potential US sales tax liabilities	2
TOTAL		**15**

ANSWER 5

Intra-group Sales

Imports in this period are governed by the EU rules on valuation. The methods of determining the Customs Value of goods are hierarchical. The value declared, Method 1, is the "price paid or payable".

[0.5 mark]

This is the total amount which has been paid or is due as a condition of the purchase of the goods. There are elements that must be added by law, as well as charges which may be excluded.

[0.5 mark]

The elements that must be added, if not already included, include:

- all payments, to the seller or third parties; and
- commissions.

[1 mark – any two examples]

The elements that may be excluded, provided they can be separately identified, and values calculated, include:

- transport and insurance charges once the goods enter the EU; and
- interest charges.

Watagua should consider whether any of the charges relate to excludable elements.

[1 mark – any two examples]

HMRC may consider that Watagua has declared a valid Method 1 sale, but the Customs Value declared was incorrect as it did not include the entire amount that was "paid or payable" and so must be amended to include the monthly invoice for other charges.

[1 mark]

An alternative approach is for HMRC to say that they believe that the "relationship" between the Vancouver Pump Corporation ("VPC") and Watagua has influenced the price and so the Customs Value declared should be set aside and replaced with another Customs Value determined using another valuation method.

[1 mark]

Which approach HMRC take may be influenced by Watagua's initial explanation of what the monthly invoice for other charges is for and they may start with one approach and then switch to the other.

[0.5 mark]

Arguably, the simpler approach for HMRC is to simply state that the monthly invoices for other charges are additional invoices for the goods, that this value has been omitted from the value declared and so needs to be added to it.

[0.5 mark]

HMRC may argue that where Watagua has paid a supplier for imported goods that any other payment to the same entity must form part of that payment unless Watagua can prove that it is not or can prove it is for one of the excluded items listed above.

[1 mark]

HMRC may ask Watagua how the extra monthly payment should be allocated to the entries. In the absence of any clear instructions they may well apportion the value of the second invoice across the value of the imports in the same month.

[1 mark]

Watagua may be able to demonstrate that the monthly invoice for other charges was for matters that do not directly relate to the goods and so can be excluded from the Customs value. However, the answers given may lead HMRC to assert "price influence" which would prevent use of M1.

[1 mark]

If, for example, Watagua was paying VPC a monthly fee that was made up of a contribution towards VPC's running costs or VPC's Research and Development fund, HMRC could argue that in sales between unelated companies, these amounts would have been included in the price of all goods sold by the seller. If Watagua was making a separate payment to VPC for these amounts then HMRC may contend the price paid or payable by Watagua was influenced (was too low) and should be set aside.

[1 mark – any argument HMRC might use for price influence]

Where HMRC wishes to set the price paid or payable aside it must give the importer an opportunity to provide detailed information demonstrating that the value declared is a true arms-length value.

[0.5 mark]

If the value is deemed to be influenced, Watagua must look at the other valuation Methods in hierarchical order. Method 2 uses the transaction value of identical goods sold for export to the EU at around the same time.

[1 mark]

Method 3 uses the transaction value of similar goods sold for export to the EU at around the same time.

[1 mark]

There is an exception to the hierarchical application at this point in that Watagua may choose to try either Method 4 or Method 5 after Method 3.

[0.5 mark]

Method 4 (sometimes split as 4a for identical goods and 4b as similar goods) uses the unit price used to sell the greatest quantity of goods to unrelated sellers in the UK. Watagua will have this data but presumably this value will be priced to take account of both charges made by VPC to Watagua Ltd, so is unlikely to be appreciably lower than the Method 1 plus extra invoice value.

[1 mark]

Method 5 is a computed value made up of the cost of materials etc in the production of the goods, the usual M1 additions and an element for profit appropriate for the industry in the country of production. Again this could end up being a value quite similar to the M1 plus the second invoice. Obviously using this method is only possible with cooperation from VPC who would need to supply detailed information; which they may not be willing to do given they now longer own Watagua.

[1 mark]

Finally there is Method 6 the fallback method which is any of the other methods applied flexibly.

[1 mark]

HMRC will most likely state that the additional invoice forms part of the M1 price. If the charge simply exists to ensure that VPC made the "correct" amount of profit it will be difficult to argue that the invoice does not relate to the goods

[1 mark – any relevant recommendation]

Royalty

The royalty should have formed part of the Customs Value as it formed part of the agreement of the sale. It should have been included at the time of import, as the amount was known. The royalty however, did not make up part of the value for Import VAT.

[1 mark]

The royalty was treated as a service, rather than part of the goods for VAT purposes and was therefore excluded from the Value for VAT.

[1 mark]

Supplies of services in the UK made by a supplier outside the UK to a UK VAT registered business were accounted for in this way as a "reverse charge".

[1 mark]

MARKING GUIDE

TOPIC	MARKS
Inter-group sales	
Customs valuation methods must be worked hierarchically. Usual method is 1 – price paid or payable.	0.5
Price paid or payable is total amount due as a condition of the sale. Law details additions and deductions.	0.5
Additions – Add if not already include any two examples	1
Deductions – Exclude if shown separately and can be calculated, any two examples.	1
HMRC may say there has been a valid M1 and the other invoice needs to be added.	1
Or, may say there is "price influence" and another method must be used.	1
HMRC's approach may be influenced by Watagua Ltd's explanation as to what the invoice is for and may change as evidence is provided.	0.5
Arguably the first is simpler for HMRC to argue.	0.5
HMRC could simply argue that where a supplier is being paid for goods, all payments to that supplier are for goods – the buyer must demonstrate this to be false.	1
HMRC may ask Watagua how to apportion or apportion by value.	1
If Watagua can demonstrate the payment is not directly for goods, it may lead them to argue "price influence" if it was for amounts (overheads etc) that would normally form part of the price of goods.	1
Running costs / R&D fund - Any reasoned argument HMRC might make for price influence.	1
If HMRC wish to set aside the declared value they must give the importer an opportunity to demonstrate that the declared value is "arms-length".	0.5
If the value is deemed "influenced" must try other methods in order. M2 is transaction value of identical goods.	1
Method 3 is transaction method of similar goods.	1
Can try M4 or M5 in either order.	0.5
M4 – value based on greatest aggregate quantity of sales to unrelated buyers. Watagua will have data but will it be very different to total of two invoices?	1
M5 is cost build-up. Again needs VPC information and would it be greatly different that the combined value of the two invoices?	1
Finally, use M6.	1
HMRC will most likely say that the extra invoice forms part of a M1 value if the charge exists just to adjust the amount of profit made.	1
Royalty	
Royalty was paid as a condition of sale so was to be included in the Customs Value but excluded from Value for VAT.	1
Royalty effectively treated as a service for VAT.	1
This was a B2B supply of services – reverse charge applies.	1
TOTAL	**20**

ANSWER 6

It is important to note that special rules apply to NI under the Northern Ireland Protocol. Where goods are 'at risk' of moving to the EU, the EU Customs rules apply (as opposed to the UK's rules). This applies to Mawked Ltd.

[1 mark]

The test of whether goods "originate" in a country for Customs purposes differs depending on whether one is checking whether the goods qualify for preferential origin (and so attract a lower Customs Duty rate) or whether they originate for non-preferential purposes (which determines which Customs Duty rate and other Customs measures apply including Safeguard Duty). These rules have different tests, so it is imperative that the correct ones are used.

[1 mark]

For NI the basic rules of non-preferential origin are included in the EU Regulations the Union Customs Code and the Delegated Act (Commission Delegated Regulation 2015/2446/EU). There may on occasion be regulations setting out specific non-preferential rules of origin for certain goods, more detail on the goods is needed to check this.

[1 mark]

Goods which are mined or farmed in a country originate there. If a product is manufactured in a country using raw materials that themselves originate in that country then the final product will originate in that country.

[1 mark]

Where a product is manufactured using raw materials that originate in more than one territory (for example, a car manufactured from parts from several sources) or where an imported product is made into another product, the non-preferential origin comes from where the last substantial and economically justified processing took place. This is provided that processing took place in a business equipped to carry out that process and the process resulted in a new product or represented an important stage in the manufacturing process. This is referred to as "conferring origin".

[1 mark]

What that process constitutes is only specified for certain products. For products of iron and steel, processing must be sufficient to lead to a change in tariff heading of the non-originating elements to confer origin.

[1 mark]

There are certain processes which are always considered too basic to confer origin, these include operations to preserve goods during transport; cleaning, sorting or cutting up; and, packaging and labelling.

[1 mark – for any two examples]

HMRC may ignore processing in a country if, from the facts available, they consider that the purpose of the processing was to avoid any measure, such as additional duties, that are attached to the territory where the goods came from before the last processing.

[1 mark]

The best way to protect against queries over the origin is to gather evidence. Where practical and the amounts involved justify it, visiting the factory to witness and document the processing of goods is advisable. Alternatively obtaining written statements of the processes carried out and the origin of materials used from suppliers may be helpful but cannot be relied upon with certainty. Some manufacturers will be willing to provide a Certificate of Origin saying where the goods are made.

[1 mark – any two recommendations]

The only document that can give certainty though is a Binding Origin Information (BOI) certificate. Mawked Ltd must apply to HMRC and they will confirm the origin of the goods. They should note that there is a separate Advance Origin Ruling for goods that are to be imported into GB so it is important to use the correct application process although they are very similar.

[1 mark]

MARKING GUIDE

TOPIC	**MARKS**
NI is subject to special rules under the NIP. It is part of the UK but subject to EU Customs rules where goods are at risk of moving to the EU.	1
Must be sure to use non-preferential rules to determine origin, not the preferential rules.	1
Rules are set out in UCC and DA, may occasionally be specific regulations.	1
Goods mined etc originate. Goods made from wholly originating materials originate.	1
If goods are made from originating and non-originating material basic rule is that origin is conferred by last substantial and economically justified process, if genuine.	1
Exact process is not specified but DA sets out rules for some goods. Chapter 73 requires change in tariff heading.	1
Some processes are always too basic – any two examples.	1
HMRC may ignore processing if they think it is artificial to avoid measures.	1
Can visit factories. Obtain written evidence. Certificate of Origin. Any two examples.	1
Only certainty is from BOI. Apply to HMRC. Do not confuse with Advance Origin Ruling (GB only).	1
TOTAL	**10**