The Chartered Institute of Taxation

Advanced Technical

Cross-Border Indirect Taxation

November 2023

Suggested solutions

ANSWER Q1 - OPFYL LTD

The question is whether Opfyl is required to be registered for the Fulfilment House Due Diligence Scheme (FHDDS) and if so, the consequences of not having registered.

It is required to be registered where three conditions are met:

- It stores goods that are imported.
- Those goods are owned by (or stored for) non-UK established persons; and
- The goods are being offered for sale, not having previously been sold in the UK

99YP is a UK established company, and although the server is not located in the UK, this does not make the company non-UK established. There are not any staff outside the UK concluding contracts. Therefore, the second condition is not met, so the goods do not fall within the scheme.

The goods stored for Fuz87 Sarl do fall within the scheme. The goods are imported; Fuz87 Sarl is a non-UK established entity as it is based in France; and does not have any staff or technical resources in the UK to conclude sales. As a non-UK trader, it does not have the advantage of the UK VAT registration threshold (under Sch 1A VATA 1994) and should have been VAT registered from its first sale in the UK.

In order to decide whether the service provided to GRitZ is within the FHDDS, it needs to be determined as to whether the company is UK established. If it is UK established, then it does not fall within the scheme as the second condition is not met. 'Established' is a decision based on the facts of each case. HMRC would look at where the central administration is carried out. This involves looking at who makes the essential management decisions, where the registered office is, and where management meetings take place.

Looking at the two directors, the UK resident director, James, runs the business side of the company, and Lottie, is a mere passive director. The sales are concluded from the UK on a day-to-day basis and the company is established in the UK for VAT purposes. This means that it does have the benefit of the VAT registration threshold and is (correctly) not UK VAT registered at the present time.

GRitZ is therefore also not within the scope of the FHDDS as the second condition is not met.

As Fuz87 Sarl is within the scheme, then Opfyl should have registered for the scheme before it commenced its fulfilment business. It should notify HMRC immediately and complete a belated application. This will help to stop the accumulation of late notification penalties (see below).

Late registration could potentially result in a £10,000 fine and a criminal conviction but it is more likely in these circumstances that a £500 late application penalty would be charged, with the possibility of £500 per month for each month it is late. As Opfyl should have applied by 1 September 2023 then assuming it completes its application soon it could face £1,000-£1,500 for being two to three months late. HMRC can reduce a penalty where Opfyl can show 'special circumstances', which means Opfyl has a reasonable excuse. For example, HMRC's guidance says that it did not know or have reasonable grounds to suspect that it needed to be registered. On the face of it there is no indication that this will apply.

Opfyl must write to Fuz87 Sarl to question why it is not UK VAT registered and advise it of its obligations to register. If Fuz87 Sarl refuses to register for VAT in the UK, then Opfyl must not continue to carry out its service for the company. Opfyl should stop carrying out its services for Fuz87 Sarl within 60 days of suspecting that Fuz87 Sarl is not meeting its obligations. Opfyl must also write to HMRC within 30 days of discovering the alleged contravention.

Opfyl must also be aware of its ongoing regulatory obligations generally. For example, if it takes on new clients then it should carry out due diligence on them to check whether they fall within the scheme and if so are correctly registered for UK VAT. Where Opfyl starts to trade with a new entity, it must, within 30 days of starting to trade with them, send them a 'Notice of UK obligations' form which details VAT and duty obligations for the seller. It should also keep records about the overseas customers, for six years, containing their VAT numbers, the goods stored and import entries and the notice given to them about compliance with their UK tax and duty obligations.

MARKING GUIDE

TOPIC	MARKS
Basics of the FHDDS	
Identifying the scheme and why it might apply to Opfyl Ltd	½
Three conditions of the scheme	1½
Application to each customer	
99YP Ltd not in the scheme and why	1
Fuz87 Sarl in the scheme	½
Fuz87 Sarl reasoning, imports, non-UK established	1
GRitZ Ltd not within the scheme	½
GRitZ Ltd reasoning – discussion of 'UK established' and conclusion that it is	2
Advice for Opfyl Ltd	
Need to register immediately	½
Correct date for when it should have registered	½
Avoid penalties accruing	½
Consequences of late registration – may not trade, criminal penalties £10,000, more likely £500 per month, mitigation	1½
Ongoing obligations once registered	
Checks to be done on Fuz87 Sarl	1
What happens if Fuz87 Sarl does not comply, stop services, notify HMRC	2
New client checks to be done	1
Records to be kept for 6 years including notice to customers	1
TOTAL	**15**

ANSWER 2 - 53APPS LTD

Supplies of apps and props

53APPS Ltd is making two different supplies: an electronically supplied service (ESS), being the gaming app; and the optional extras, which are physical supplies of goods. This is not a single combined service as the accessories and props are separate purchases dependent on whether the customer wishes to buy them later. The games can be played without the extra purchases.

Supply of apps - VAT

As the UK does not follow EU rules on the supply of services for VAT, it will not make a difference for VAT purposes whether the Northern Ireland (NI) location or the Great British (GB) location supplies them. The place of supply will be where the recipients belong. This means that supplies to UK and NI individuals will be made in the UK and 53APPS Ltd will account for UK VAT on these supplies on its UK return.

Supplies of apps to individual customers in the EU will present 53APPS Ltd with two choices:

1. VAT register in each member state in which the recipients are based, and account for local VAT on these returns.
2. Sign up for the EU One-Stop-Shop (OSS) and account for local VAT on a single return, which is submitted to the member state of 53APPS Ltd's choice.

There is no registration limit for non-EU entities so registration will be required before the first supply is made. The OSS return is completed quarterly and submitted by the end of the month following the quarter.

Supply of props

Goods imported to GB for onward dispatch to EU

CD

If goods are imported into GB, they will be cleared here for Customs purposes and import duty paid where the bulk consignments are over £135. They would not be eligible for temporary admission relief as the consignments are unpacked in the warehouse and exported in smaller packages. 53APPS could, however, apply for inward processing, as simple re-packaging is an eligible 'process' and therefore no import duty would be due on the consignments exported to the EU.

When the goods are subsequently imported to the EU, they will not be of UK origin according to the Trade and Cooperation Agreement (TCA), so would potentially incur Customs Duty in the EU on entry there. However, as the value of the goods is a maximum €50 and the threshold is €150, no Customs Duty is due on entry to the EU.

VAT

As the accessories and props moving from GB to the EU are within the €150 threshold, import VAT is not due in the member state of receipt but instead it is treated as a domestic sale. This would mean that if 53APPS Ltd was VAT registered in each member state (for the electronic sales above), then the VAT would be accounted for on its local VAT returns. If 53APPS Ltd uses the OSS instead to account for VAT on the services above, then supplies from GB to the EU would require it to register for Import-One-Stop-Shop (IOSS) to account for the VAT on the imports. It would be advisable to register in a member state that uses English.

The IOSS is a single monthly return used to report VAT on sales to individuals across the EU within the €150 limit. It is submitted by the end of the month following the month of import. Sending goods from a GB warehouse to the EU should not require extra administration or freight agent costs in this case as they are not treated as an import although they will still need to declare exports from the UK.

Goods imported to NI for onward dispatch to EU - CD

Where the goods are imported into NI, as NI still follows the EU rules on duty and the goods are at risk of moving to the EU, the EU Tariff will apply in order to determine the duty on entry to NI. An EORI with an XI identifier will be needed. However, in this case no Inward Processing Relief authorisation would be needed as goods are deemed to be in free circulation between NI and the EU and goods can move across to the EU with no further duty implications. They would be a dispatch.

VAT

As the OSS would be needed for the ESS (as above), this can also be used for distance sales of goods from NI to the EU. (There is a €10,000 de minimis limit before VAT has to be accounted for in the country of receipt, but the supplies will go over this limit, looking at the total level of supplies, in the first year.) This means that the single OSS registration would be used to report both sales of apps services and goods from NI.

Recommendation

The NI warehouse should be used. If the GB warehouse supplies the goods, the IOSS would have to be used for the goods and inward processing used on entry of the goods to GB, for duty.

Administration would be greater than for supplies from NI As services and goods can both be reported using the single OSS registration.

Recovery of EU VAT on exhibition

Recovery of EU VAT in relation to the exhibition services will depend on what option 53APPS Ltd takes up for EU VAT registration. If it decides to register in each member state for the ESS, then recovery of VAT in each member state will be via that member state's VAT return. If the OSS is chosen, then VAT incurred in the EU in relation to the exhibition services would need to be reclaimed via a 13th Directive reclaim. Each member state has their own system for the recovery of VAT.

If EU VAT is incurred in relation to goods, then for NI the Electronic Cross Border Refund Scheme (ECBRS) can be used. For GB, it would still be a 13th Directive reclaim. The recommendation stays as above for NI to make the supplies so that the ECBRS can be used for goods for NI.

MARKING GUIDE

TOPIC	MARKS
Apps and props	
Identifying the supplies and that we have separate goods and services	1
Services (apps)	
UK does not follow EU rules on services – so location of supply does not change VAT treatment. POS where recipients belong. UK customers charged UK VAT (account for on UK return)	2
Apps supplied to EU customers mean two choices. Register in each Member State or use the OSS	1
Explanation of OSS – single return in one MS, No limit for supplies, Quarterly returns – submit end of month following	2
Goods	
NI follows EU rules and GB follows UK rules. Goods not in free circulation after import into GB and onward movement to EU	1
Coming into GB then onto the EU - CD	
If goods are imported to GB, UK duty due, unless inward processing authorisation	1
Moving to the EU, it will be an EU import but under the €150 threshold, so no Customs Duty is due	1
Coming into GB then onto the EU - VAT	
No Import VAT for goods within the €150 threshold but domestic VAT instead. Consequences are VAT registration in each MS or use the IOSS	1
IOSS explanation – monthly return in member state of registration, submit end of month following the month	1
GB to EU should not result in extra freight agent costs, clearance admin as they are not imports	1
Goods coming into NI then onward to the EU - CD	
Import into NI as above for duty, but no need for Inward Processing as NI goods are in free circulation, so no duty into EU. No need for both an OSS and an IOSS if goods come from NI, unlike GB	1
Goods coming into NI then onward to the EU - VAT	
VAT will be domestic VAT on the distance sales but can be accounted for on the OSS. (10,000 limit won't apply.)	1
Conclusion and recommendation	
Based on above NI to makes sales of goods and services – single OSS return. Reason for recommendation	2
Recovery of EU VAT	
Whether NI or GB does not matter for VAT in relation to services	1
Both would result in 13th Directive reclaim – each member state has their own rules	1
For goods – NI use ECBRS but GB still 13th Directive	1
Recommendation – NI to make all supplies – as above easier admin for OSS and if there is VAT in relation to goods, then it can use the ECBRS	1
TOTAL	**20**

ANSWER 3 - ELORDY

Carrying out Elordy's business from England

VAT

Elordy will be making a single supply of finished goods. It will not be two separate supplies consisting of jewellery design services and goods. This is based on case law *(Card Protection Plan C-349/96)* where the essential feature of the supply, from the customer's perspective, is a finished piece of jewellery. A single price is quoted, and it would be artificial to split out the design service from the physical product. There is no option for the customer to purchase the design alone as it is an integral part of the finished goods.

When the jewellery is made in GB and sold to GB customers then this be a UK supply for VAT.

If Elordy has a UK establishment she does not have to register for VAT until her supplies breach the threshold. This means she has a 'business establishment' (or some other 'fixed establishment' in the UK, being the place where essential decisions are made. Generally, a person only has one business establishment, and for Elordy, this would be the UK, if her accounting records, purchases of materials and press are located in the UK. Even if Elordy's establishment was not in the UK (see below), by carrying out design work in the UK and liaising with the customers from the UK, Elordy has the necessary human and technical resources to make supplies, and therefore has a fixed establishment in the UK.

The purchase of the press will incur UK VAT, which she will not be able to recover until she registers for VAT.

Customs Duty

Elordy will not be responsible for the clearance of the press in the UK, nor the payment of Customs Duty and Import VAT, as the UK seller will be the importer.

Carrying out Elordy's business from France

VAT

Where Elordy makes the jewellery in France and then posts it to the UK customers, her supplies will be a single supply of finished goods, as above.

The place of supply will be the UK under s.7(5B) VATA 1994. They are an imported consignment where the goods are not more than £135. Consequently, they do not incur Import VAT, but domestic VAT instead.

Where Elordy carries out none of the work from the UK and keeps no records here, she would have to register for UK VAT immediately as she would not have a UK establishment, or a fixed establishment in the UK for VAT purposes.

Customs Duty

Elordy would need to check that there are no prohibitions or restrictions on the movement of the ashes into France. They would be an export by the customers with no tax implications. On entry to France, they would not incur duty as they are within the €150 small consignment limit but might incur a VAT charge. Being within the duty limit, they would not incur import VAT, but French domestic VAT could be due instead. The ashes are unlikely to have a significant value attached to them on entry into France. Elordy's customers will be the exporter and re-importer to GB. On return to GB the VAT would be due on the price the customer will pay Elordy for the item.

There would be costs with moving the press to France. Ordinarily, the seller would clear the press into England and pay UK Duty and Import VAT. The seller could, however, use transit when the goods arrive in GB and clear the goods in France. The seller would need to register the movement under the common transit regime and will need a guarantee for the taxes due. The movement needs to be

registered through the electronic NCTS. A 'transit accompanying document' (TAD) will need to be raised. The seller must ensure they have a GB and EU EORI. On arrival into France the import would incur French Import VAT and Duty and the TAD will need to be discharged by the seller, using France's electronic system. These costs, as well as freight charges, are going to be passed on to Elordy. Elordy would need to calculate the additional costs, to see whether the £300 saving on the machine might be wiped out by the extra costs for moving the machine to France.

It would be simpler for the seller to arrange with its Chinese supplier to deliver the press direct to France. This would save Elordy additional costs and will be quicker.

Future customers

Where Elordy's customers are based outside the UK, if the goods are made in GB, then they will be zero rated exports. Goods made in France and sold to non-UK customers will have no UK VAT implications.

Conclusion

To benefit from the registration threshold, Elordy either needs to set up her entire business from the UK or ensure that preparatory design work and liaison with customers takes place in the UK. She can then decide on the factors above as to where to locate the press.

MARKING GUIDE

TOPIC	MARKS
Supplies from England - VAT	
Identifying the supplies and that we have a single supply of finished goods, reference to case law and tests	2
Supplies in the UK never leave = UK supplies	½
Need to see if she has the registration threshold	½
‘UK establishment’ or ‘fixed establishment’ discussion	2
Duty – seller responsible for duty and VAT, not Elordy	½
Supplies from France	
Same principle for types of supplies ie goods	½
Place of supply under s7(5B) VATA 1994 – domestic supply	1
Discussion of NETP and no threshold, but ensure some work is carried out in the UK to get threshold	1
Moving ashes – Duty	
Need to check no P&R	½
Export from UK – no tax implications for private customers	½
Entry to France – duty free under €150 limit	1
Check VAT charge – domestic not Import	½
Discussion of taxes on re-import into GB - VAT on sale price agreed with customer, no CD	1
Moving the press to France – Duty	
Avoid GB duty and VAT by declaring to transit	½
Transit explanation and why use it, GB/EU EORI, Raise TAD, discharge when in France	2
Suggest clear direct in France from China to reduce costs, and set up in England	½
Conclusion to ensure some work carried out in the UK to obtain threshold	½
TOTAL	**15**

ANSWER 4 - NIGAGRI LTD

Party receiving the services

This is a B2B supply, as the contract is with the employer and is received for business purposes. The general rule is that the place of supply is where the recipient belongs, but an override might apply – see below.

Nature of Supply

Nigerian course

The course that takes place in Nigeria is a supply of services. The rule for the place of supply depends on what the course is. Based on case law (*Skatteverket v Srf konsulterna AB* (Case C-647/17) [2019] BVC 16) the course is likely to be classed as education and supplies to business customers take place based on the 'admission' rule so will be where the course takes place. An educational course has the features of tuition where multiple participants attend and receive the same training. This supply would therefore be outside the scope of UK VAT.

There is an alternative interpretation for the block booked courses where the course is tailor made. Where the course is block booked by a single entity, this is akin to consultancy as it is an expert providing specialist bespoke advice, rather than training. This type of service would fall within the general B2B rule, and the place of supply would be where the recipients belong. The supply would be a UK supply when supplied to GB entities and if they are VAT registered then they would apply the reverse charge. Those on the Farmers' Flat Rate scheme would not need to apply the reverse charge.

The block booked courses could also be seen as a supply related to land. However, they would need to relate to a particular site and although the activities take place on a site in Nigeria, they are performed for the purpose of using the knowledge for land in the UK. It is unlikely that HMRC would view this as a land supply as it is not single site specific.

Downloadable e-manuals

Consideration needs to be made as to whether the electronic manuals are a separate supply in their own right. A single, separate, supply in their own right would be indicated by the participants being able to buy the manuals separately to the course, and them not being an integral part of the course itself. As the manuals are intrinsically linked to the person that attended the course, then they are part of the single supply of the course above, and the VAT treatment would follow that for the course.

Accordingly, the use of the e-books in GB is not an electronically supplied service (ESS). As part of the composite supply for the course above NigAgri would have no requirement to register for UK VAT, as the supply is outside the scope of UK VAT.

Physical manuals

The physical manuals are a separate supply to the course above as they are an optional extra with a separate sum of money, wholly at the option of the participant concerned. Technically, the physical manuals would be an import into GB but import VAT and Customs/Import duties do not apply where the value of the consignment is a maximum £135. As the books have a CIF value of £130, they would be free of both import VAT and Customs/Import Duties. Even if multiple books are delivered in a single delivery exceeding the £135 threshold, the books are zero rated for VAT purposes, so there would be no import VAT. The £135 applies on a consignment basis so potentially Customs duties could be due.

Video calls

The video calls that are included as part of the course will be seen as an ancillary supply to the main course in Nigeria and not a supply in their own right. The VAT implications will be for the course above, and outside the scope of UK VAT.

The video calls that are purchased separately after the course are not an ESS. Significant human intervention means that the services are not simply automated and supplied electronically. The advice provided during these calls is specific to the recipient's own needs, and this is akin to consultancy rather than training. The basic rule would therefore apply and B2B means that the place of supply is in the UK. VAT registered farmers would account for the VAT via the reverse charge.

Chemicals sent to GB

The VAT implications would depend on whether this is part of the single supply of services of the course in Nigeria or whether it is a separate supply of goods. Looking at the following factors:

- The course fee includes the basic chemicals; and
- The basic chemicals are only provided to other farmers upon satisfying competency to use them

It is part of the single supply of the course itself, as the chemicals would not be sent to the participants without having satisfied the training requirements and they are embedded into the course fee.

This means that there would be no import VAT as they are not 'goods' for these purposes but the VAT implications would be as above for the course, outside the scope of UK VAT. Duty is due on physical products but the value of the chemicals are £100 so within the UK duty free threshold.

The extra chemicals that can be bought after the course would be an import of goods and depending on value, duty and VAT will be due when the consignment goes over the £135 threshold. Within £135, there would be no duty and domestic VAT would be due. The VAT registered farmers could supply their VAT numbers to NigAgri and account for this VAT as reverse charge. Otherwise NigAgri will need to VAT register in the UK and account for output tax on these consignments.

MARKING GUIDE

TOPIC	MARKS
Services provided to business – when services - B2B rules apply, unless override	1
Nigerian course	
Supply of services, place where the course is. Justification eg *SRF Konsulterna* principles on 'admission', features of it satisfying case, supply in Nigeria, outside the scope of UK VAT	3
Block booked course by single company – discussion of training v consultancy and why eg bespoke , general B2B, UK supply, reverse charge by VAT reg'd entities, (other alternative arguments eg discussion of alternative argument of land but HMRC guidance makes this unlikely)	2
Downloadable e-manuals	
Single v separate supply, conclusion of single with course and why, outside scope of UK VAT, not ESS	3
Physical manuals	
Separate supply of goods and why	1
Import into GB - £135 limit	1
Zero rated for VAT so no import/domestic VAT. Potentially Customs duties as £135 rule is per consignment	1
Video calls	
Integral as part of course – OTS as above for the course	1
Separate purchase – not ESS and why, B2B basic rule VAT reg'd UK entities do reverse charge	2
Chemicals sent to GB	
Included with the course – single supply of services, OTS as follows supply of course	1
Duty – none if within £135, calculation of conversion to £	1
Extra chemicals bought after – goods for import VAT – consideration of £135 threshold – IV or domestic VAT and VAT reg'd entities can give VAT number and account for UK VAT	3
TOTAL	**20**

ANSWER 5 - BSPOKIT LTD

Bspokit should consider using Inward Processing (IP) which may bring benefits, such as absolute savings of Customs Duty on re-exported goods, and possibly lower duty payments on goods remaining in the UK.

[0.5 mark]

Bspokit could use the simplified system of applying for authorisation on the import declaration. This gives most of the benefits of a full IP Authorisation but could only be used for up to three imports per year with a maximum value of £500,000 per import. Bspokit could use this whilst applying for IP or to test the benefits. Bspokit must apply in advance for a full IP Authorisation which allows an unlimited number and value of imports and has greater flexibility on throughput periods, see below.

[2 marks]

Conditions

There are a number of conditions some of which are clearly met; Bspokit is established in the UK and must have a GB EORI as it is already importing.

[1 mark]

HMRC will have to be satisfied that the administrative effort placed on them to control use of the goods under the relief would not be disproportionate to the benefit gained by the applicant. In real terms if there is an economic benefit to be gained from the relief (i.e. Bspokit will make savings though use of the relief) and the applicant is compliant this condition is likely to be met. There is no specific test to be passed, HMRC will consider this along with the other tests set out below.

[1 mark]

HMRC will consider whether allowing the authorisation would harm the economic interests of other UK businesses.

[0.5 mark]

Bspokit will have to satisfy HMRC that it can ensure that the conditions of the relief will be met. In assessing this, HMRC will consider several other tests:

[0.5 mark]

1) That Bspokit is financially solvent.

[0.5 mark]

2) That Bspokit is compliant. HMRC will consider this in two ways; firstly whether Bspokit or any of the directors or senior employees have a history of serious breaches of Customs legislation. Secondly, they will consider whether the applicant, directors or senior employees have any criminal convictions which should prevent Bspokit being granted the relief.

[1 mark]

3) Whether Bspokit's records are suitable and detailed enough to provide the information necessary to prove compliance with the rules of IP.

[1 mark]

4) Whether anyone within the organisation has either professional qualifications or an appropriate level of experience to ensure proper operation of the procedure.

[0.5 mark]

When Bspokit applies for IP it must state how long it will need to import, process and discharge (re-export or sell within the UK) the goods. This throughput period will be specified in the authorisation, HMRC can be flexible on the length of the throughput period with full authorisations but for the simplified authorisation it is set at six months.

[1 mark]

It will also have to agree how much of the imported product is in each processed product and how this can be checked - this is the rate of yield. Manufacturing records will probably already include this information. The rate of yield will vary by product produced.

[1 mark]

Bspokit will be required to have individual financial guarantees in place for any use of IP authorised by declaration (i.e. the simplified system), but a guarantee for full authorisations for IP is at the discretion of HMRC.

[1 mark]

Benefits

The relief could benefit Bspokit in two ways. Customs Duty suspended at import and does not become payable if goods are exported within the throughput periods, returns are submitted and other rules are met.

[1 mark]

Bspokit can opt to pay Customs Duty using the value of and the rate applicable to the imported goods or the value of and at the rates applicable to processed goods for any goods which are sold within the UK.

[1 mark]

If Bspokit opts to use the "imported goods" option for any diverted goods, it will obviously make a saving on all re-exported goods and it would be no worse off for those goods that stay in the UK than it is now.

[0.5 mark]

The benefits of the "processed goods" option are less clear and may require calculations. If the finished product has a zero Customs Duty rate, then there are clearly benefits to using this approach.

However, it must be remembered that both the value of and Duty Rate applicable to the processed product are used. The value of the processed product is made up of the Customs Value of the imported IP item(s) plus the value added through processing (other components etc) in the UK. If the processed product has a lower Duty Rate than the imported parts but not a zero Duty Rate, the reduction in the Duty Rate could be negated by the increased value that the Duty Rate is applied to.

[2 marks]

These calculations could be complicated by the need to carry out various calculations where several imported components attracting different Customs Duty rates are imported into a single processed product. For some products, there may be no benefit to using IP for goods remaining in the UK.

[1 mark]

CustDecs can submit the individual application by declaration entries on Bspokit's behalf but Bspokit will have to apply for the IP Authorisation itself and in its own name. The agent will have to act as a Direct Representative for all imports to IP.

[1 mark]

Bspokit must remember to submit returns (monthly or quarterly as agreed) showing what has happen to the goods as HMRC may decide to issue a C18 Post-Clearance Demand Note to collect all suspended Customs Duty in the absence of evidence of correct disposal. It must also ensure it has properly declared the release of any goods on to the UK market and where appropriate paid the Customs Duty.

[1 mark]

IP may bring Bspokit some Customs Duty savings but there are detailed calculations to be done to determine that. Bspokit must also consider the time and cost of the calculations and the administration of operating the relief before deciding whether to go ahead.

[1 mark]

MARKING GUIDE

TOPIC	MARKS
Consider IP – could remove Customs Duty on exports and reduce on goods staying in UK.	0.5
Simplified – authorisation by declaration. 3 imports pa, £500,000 value limit. Could use whilst applying for full or to test benefits. Apply in advance for full IP, greater flexibility.	2
Conditions	
Various conditions; meet establishment and having a GB EORI.	1
The "administrative effort" test will be considered.	1
Would economic interests of others be harmed?	0.5
Bspokit must satisfy HMRC it can meet conditions of relief, through following:	0.5
Must be financially solvent.	0.5
Two-fold compliance test; company and personnel.	1
Records hold enough detail to control relief.	1
Professional competence.	0.5
Throughput period to be agreed (simplified is fixed).	1
Agree rate of yield for each product.	1
Financial guaranteed required for simplified, HMRC discretion for full IP.	1
Benefits	
1. Customs Duty relieved if goods exported and conditions met.	1
2. Pay Customs Duty at rate and value imported goods or of finished product for those that remain in UK.	1
Using "imported goods" option means there is a benefit on re-exported goods and no loss on those that remain.	0.5
Benefits of "processed goods" option unclear. May require detailed calculations. Zero Duty rate – clear benefits. But both value and Duty Rate of finished product are used, so increase in value could outweigh reduced but positive Duty Rate.	2
Could be complicated calculations especially where there are various imported components. May not always be a benefit for goods remaining in UK.	1
Agent can submit IP decs but must be Direct Rep. Bspokit must apply for full IP itself.	1
Must remember to submit returns or all goods could be deemed to have been diverted to UK market. Must ensure properly declare any goods diverted to UK market.	1
May be benefits to IP but there is work to be done to determine that. Must consider the time and cost of administering the relief and factor that in before deciding.	1
TOTAL	**20**

ANSWER 6 - JEFF

There is a “Transfer of Residence” relief that allows personal and household effects to be imported free of Customs Duty and Import VAT but there are rules on what can be imported without charges.

[1 mark]

The person must have lived outside of the UK for a continuous period of 12 months or more. Jeff clearly satisfies this test.

[0.5 mark]

Some goods such as alcohol, tobacco, commercial means of transport and articles used for trade are excluded from the relief. Therefore, the wine will either have to be declared as a normal import liable to Customs Duty, Excise Duty and Import VAT, or disposed of in South Africa.

[1.5 marks]

Jeff has been buying goods to take advantage of the fact that they can be obtained more cheaply in South Africa. It is important to note that to qualify for the “Transfer of Residence” relief the goods must have been used, by the person importing them, outside of UK for a minimum of six months before they are imported. So, the recently bought articles would not qualify for the relief and would attract Customs Duty and Import VAT. However, if Jeff can delay his return until these goods have been used for six months the goods will qualify.

[2 marks]

There is flexibility on when the goods are actually shipped, they can be sent over up to six months before or up to 12 months after Jeff leaves South Africa and can be sent in more than one shipment. However, it is important to note that leaving goods in South Africa after Jeff has left would not count as “use”.

[1.5 marks]

The goods must be imported for the purpose of being used as household effects. They must be used as such for 12 months once in the UK, anything sold, lent or transferred within the first 12 months become liable to Customs Duty and Import VAT.

[1 mark]

The normal prohibition and restriction rules apply to personal effects so Jeff needs to consider whether all that he owns can legally be imported to the UK even if it is legal to own in South Africa. It may be illegal to import items such as animal trophies or artifacts, or it may only be legal with the correct import licence. Details of exactly what is intended would be needed to give precise information.

[1 mark]

Any goods found amongst the effects which cannot be entered to the relief, whether they be alcohol or, prohibited or restricted items, are liable to forfeiture. Legally the entire load, not just the ineligible items are liable for forfeiture, but this is more likely if the offence is serious.

[0.5 mark]

Jeff would only be able to challenge the seizure of goods through the Courts; the Review and Appeals procedure does not apply. HMRC may return the goods if a fine is paid or may destroy the goods.

[0.5 mark]

HMRC may prosecute importers where there are serious breaches relating to prohibitions and restrictions so great care should be taken on deciding what to import.

[0.5 mark]

MARKING GUIDE

TOPIC	MARKS
Transfer Of Residence relief allows import with Customs Duty and Import VAT relief subject to rules.	1
Must have lived outside UK for 12 months, Jeff meets test.	0.5
Certain goods such as alcohol, tobacco, commercial means of transport and articles used for trade are excluded. Wine must be sold before moving or declared as a normal import.	1.5
Jeff's recent purchases: goods must have been used for six months before import. So don't qualify unless can delay returning until meet rule.	2
Flexibility on timing of shipping; six months before or 12 months after Jeff leaves South Africa, but storage in SA does not count as "use".	1.5
Goods must be imported to be used as household effects. Must be used as such for 12 months after import, sell within that period and Customs Duty and Import VAT become due.	1
Normal P&R rules apply. Can all he owns be imported? Animal trophies and artifacts may need licences or be prohibited. Detail information and checks needed.	1
Any goods not eligible to the relief may be forfeited. Whole load could be forfeited but only likely if serious breach.	0.5
Cannot Appeal seizure, only challenge it through Courts.	0.5
Could be prosecuted where there are serios P&R breaches, so care is recommended.	0.5
TOTAL	**10**