The Chartered Institute of Taxation

Advanced Technical

Cross-Border Indirect Taxation

May 2021

Suggested answers

ANSWER 1

Kitchener Ltd

Recyclable Glass

The purchase of unsorted recyclable glass to be removed from France to the UK should be invoiced to Kitchener Ltd ("Kitchener") from the seller, without a VAT charge. Kitchener will need to provide the seller with its UK VAT registration number. It will then need to account for acquisition tax when the goods are brought into the UK – this will not delay the goods at the port as it is an entry that can be included in the UK VAT return. There may be a UK Intrastat reporting requirement as well, which will require full details of the goods, such as their value, date of arrival and an accurate description.

In the event that a French business is engaged to sort the glass before leaving France, it will not incur French VAT because the sorter will be able to charge the value of their supply to the UK company under what are called "reverse charge" arrangements. This will require Kitchener to enter the value of the supply on its VAT return, but it will not need to pay any additional VAT to the sorter. Alternatively, if the sorting is performed by a third party in the UK, Kitchener can expect to be charged UK VAT and will be able to recover that through its VAT return.

If some of the glass is to be shipped from France to a customer in Germany a different arrangement will apply. This will require the French supplier to invoice the goods to Kitchener. The French supplier will not need to charge VAT if its invoice displays Kitchener's VAT number and it has evidence that the goods leave France for Germany. Kitchener will then invoice those goods to the German customer, without charging UK VAT under arrangements called "triangulation". These arrangements are dependent upon all three parties being VAT registered in each of their member states.

Kitchener will need to endorse the invoice raised to the German customer displaying its VAT registration number and making it clear that the goods are subject to triangulation and that acquisition tax will be due in Germany. The value of the triangulation transaction will need to go on an EC Sales List under code 2 denoting triangulation. The details of the triangulation transaction will not be entered on the UK VAT return since the goods have not entered the UK and the transaction is not within the scope of UK VAT or Intrastat reporting.

In summary therefore, whilst there are some additional reporting requirements, each of the above options can be handled without an additional VAT cost.

Label design query

Artwork services supplied by Kitchener which relate to the production of labels being exported from the EU will not attract VAT whether the arrangements are viewed as a single supply of goods or separate supplies of exported goods and artwork services. Any VAT incurred on the production of that artwork will be recovered in full.

To be able to zero rate its supplies Kitchener will need to ensure that it holds evidence to show that:

- the goods leave the UK, and
- the recipient of the artwork and labels is established outside the EU.

Any similar arrangements with EU business customers will not require a VAT charge providing:

- The customer is VAT registered in their member state, and
- Kitchener holds at least two items of non-contradictory evidence of removal of the goods from the UK or a written statement from the acquirer containing specified details.

The above conditions should not be difficult to satisfy, and Kitchener can rely on commercial documentation such as the customer's order, carrier's consignment note, freight charge bill displaying shipment details, a certificate from the customer's fiscal authority or a letterhead or invoice to evidence where it is established. Kitchener will need to retain the evidence provided as part of its records.

Overseas customers who chose a UK third party artwork supplier (as opposed to Kitchener) will be able to receive the artwork service without incurring a VAT charge as it will be outside the scope of UK VAT. Unfortunately, there is therefore no VAT advantage in appointing the UK company as artwork supplier since in both cases the overseas customers will not be charged UK VAT.

In cases where the customer choses to appoint a third party to perform label artwork and consequently appoints Kitchener as its agent under contract, there will be a combined payment for agency services as well as those of the third party. This will be treated as outside the scope of VAT providing that the client is established outside the UK and is in business i.e. meets the definition of a “relevant business person”. If Kitchener acts as agent for a UK customer, it will be required to charge UK VAT on the full amount received. It is therefore important to correctly identify where customers are established in circumstances where the agency arrangements apply.

The place of business establishment is generally identified as the place where the businesses “headquarters” or main functions of central administration are carried out and is usually where the essential day-to-day decisions concerning the general management of the business are taken. If however the customer/client is established in the UK there will be a need to account for VAT on this agency income.

Payments made to UK based artwork providers will include VAT. Kitchener will be able to recovery this as input tax. If the provider is established outside the UK, Kitchener will need to account for VAT under the reverse charge procedure.

MARKING GUIDE

TOPIC		MARKS
1. Purchase of recyclable glass	Standard arrangements for zero rated supply by providing UK VRN to supplier and account for acquisition tax on VAT return	1
	Potential Intrastat reporting requirement for arrival	1
2. Sorting options	If in France – B2B reverse charge supply	1
	If done in UK after arrival – standard UK VAT charged to us recoverable on our VAT return	1
3. Triangulation to Germany	Conditions require all parties to be VAT registered in their member states and invoices to be appropriately endorsed	1
	French business will need to invoice Kitchener plc showing UK VRN and hold evidence of removal from France to Germany	2
	UK business will need to issue invoice to German customer with DE VRN and narrative describing that goods are subject to triangulation	1
	EC Sales List requiring code = 2 transaction for triangulation	1
	No entry to go on UK VAT return as triangulation is not within scope of UK VAT	1
4. Enquiry from non-EU customers.	Dependent on contract terms, can be seen as a single supply of exported goods providing conditions are met, or separate supplies for which the service element can be zero rated providing customer belongs outside the EU (whether in business or not). In any event no VAT charges to non-EU customers if separate supply of services.	2
5. Comparisons between using third party artwork providers and our services	No effect tax advantage of using our services since both can be treated as zero rate whether provided by us or third party.	1.5
6. Acting as agent for third party artwork suppliers to UK and overseas customers	Agency income from non-EU customers will be OSS provided that the customer is in business (RBP) and goods leave the UK. If EU established it will be PoS where RBP customer belongs. If customer established in the UK standard rate VAT will apply.	2
	Supplies to any future EU customers will not be subject to UK VAT if conditions regarding transportation and reporting are met.	1.5
7.Label design payments	Payments made to label design providers subject to VAT according to where the provider of services is established, if UK- VAT will be charged to us and recoverable, otherwise not and the reverse charge mechanism will apply	2
PHS		1
TOTAL		20

ANSWER 2

Globalgend Ltd

Goods on hire to Romania and Turkey

Leasing generating equipment to business clients in Romania and Turkey will be regarded as a supply of services and will not be subject to UK VAT because the place of supply is where the client is established. However, because Romania is within the EU there will be an obligation upon the lessee to account for domestic VAT under the reverse charge arrangements. Globalgend Ltd ("Globalgend") will also be required to enter the value of the transaction on an EC Sales List (ESL) showing the client's Romanian VAT registration details so it is important that it obtains these in advance of entering into the lease.

There will not be an ESL reporting requirement for leases with the Turkish client because Turkey is outside the EU, however local tax requirements may impose other reporting conditions upon the client for leasing and disposal – this of course is a matter for the client. The temporary movement of generators to Romania will require entry in a temporary movement of goods register and retention of evidence of movements from/to the UK.

Equipment for use in humanitarian operations.

A French based charity performing aid operations is unlikely to be recognised as a relevant business person within the meaning of s7A VATA 1994 if it is not undertaking business activities. This will mean that under the general rule the place of supply will be the UK where Globalgend is established and will require it to charge standard rate VAT unless a specific relief applies.

Paragraph 7(1), Schedule 4A, VATA 1994 however causes the place of supply to be the Middle East under the use and enjoyment rule and consequently no VAT needs to be charged.

The handing over of the goods at Southampton will not affect the place of supply of services treatment.

Swiss Charity - generation of electricity

Where Globalgend uses its own generators to produce electricity when the equipment is located in Sudan there will be a supply of goods because electricity is treated as a supply of goods under para 9 VAT (Place of Supply of Goods) Order 2004.

Because the place of supply for electricity is where the recipient of the supply has effective use and consumption of the goods, it will be outside the scope of UK VAT.

In these specific circumstances it is irrelevant where the purchaser of the electricity is established or whether it is in business (para 11 as above).

Donation of generator

The donation to a charity of an asset belonging to Globalgend Ltd will be regarded as a deemed supply of goods for VAT purposes.

VAT would normally be charged at the standard rate based on the replacement cost of purchasing the generator at the time of the donation. In this case however, the generator is to be exported to Sudan and providing it retains evidence of export and remove the generator from the UK within 3 months of making it available to the charity, no VAT will be due.

Globalgend will be able to recover full input tax incurred on its purchase of the generator on the grounds that it has made a taxable supply.

Transportation costs

The road transportation costs and loading onto the ship are not supplies to Globalgend and so in the event of VAT being charged it would not be able to recover this, even though it paid the costs.

The good news however is that the road transportation costs for the removal of the generator from Birmingham to Tilbury, is entirely within the UK but will not be subject to UK VAT as it relates to the removal of goods for export (para 5, Grp 8 Sch8 VATA 1994). The loading of export cargo can also be zero rated and will not attract UK VAT (para 6, Grp 8 Sch8 VATA 1994).

The arrangement of the export will also be zero rated and is unaffected by whether the party exporting is a charity or not.

Sponsorship

Sponsorship payments in return for publicity by displaying the sponsors' names on the generator will be treated as supplies of advertising services. The place of supply for the UK business partner will be the UK and consequently VAT will need to be charged.

The US and German business partners are established in those countries so the sponsorship supplies to them will be outside the scope of UK VAT and no VAT will be chargeable.

It would be prudent to check that these US and German entities do not have a UK office or fixed establishment closely connected with the sponsorship arrangements as this could result in the supply being subject to VAT.

TV advertising

The VAT treatment of our intended purchase of TV coverage of the handover event in the UK will be dependent upon where the supplier of the TV coverage belongs or is established. If it is a UK company, it will be required to charge Globalgend UK VAT. Globalgend can recover this against the taxable supply of the donated equipment to be exported.

If TV coverage is purchased from a supplier established within the EU, it would not be expected to charge Globalgend VAT providing they provide evidence of being in business such as UK VAT number is quoted to the supplier. If this is the case, Globalgend will need to account for the VAT due on the purchase under the "reverse charge" mechanism but there will not be any additional cost to the company. For suppliers outside the EU, Globalgend would still operate the reverse charge.

MARKING GUIDE

TOPIC		MARKS
1. Hire of generators to Romania and Turkey	Leasing is a supply of services with place of supply where client established.	1
	Romanian hirer requires ESL reporting but not for Turkish hirer (outside the EU)	1
	Temporary movement of generators to Romania will require temporary movement of goods register record and transport records.	1.5
	Export of generators to Turkey treated as export and C88 required. Evidence of scraping in Turkey to be retained	1.5
2. Equipment used in humanitarian aid operations	French charity unlikely to be recognised as a relevant business person within s7A. Consequently place of supply is UK under general rules.	2
	Overridden by use and enjoyment rules para 7(1), Sch 4A VATA as Middle East location for hire. Handover location irrelevant.	1
3. Electricity generation	Place of supply determined by VAT (Place of supply of Goods) Order 2004 – electricity being goods with PoS outside UK	1
4. Generator donation	Donation to charity of a business asset is deemed supply of goods with VAT normally due.	1
	Export allows zero rating if evidence retained and goods removed within 3 months of donation.	1
	Input tax incurred on purchasing the donated generator will be recoverable as it relates to the zero rated export supply	1
5. Transportation costs	Birmingham to Tilbury not within scope of UK VAT as the supply relates to the export of goods. Similarly, the provision of loading cargo onto a ship for export is zero rated under Grp 8, Sch 8, VATA '94	2
	Charity status not influential to the ability to zero rate transport services made in connection with goods for export. Such transport services can be zero rated to all customers.	1
6. Sponsorship	Place of supply is UK for the UK business partner and VAT needs to be charged.	1
	For non-UK business partners OSS providing that there is no UK fixed establishment involved in the sponsorship arrangements.	1
7. TV advertising	Dependent on where TV advertising supplier established – if UK VAT applies and input tax recoverable; if non-UK reverse charge	2
PHS		1
TOTAL		**20**

ANSWER 3

Insuranceworld plc

Neckcrop Ltd

It appears that the supply of insurance through an intermediary is properly treated as being made by Neckcrop Ltd, the underwriter, despite the fact that the intermediary introduces the client to Neckcrop Ltd. The place of supply of insurance follows the general place of supply rules so assuming the insured parties are non-taxable persons, the place of supply will be Guernsey where the insurer belongs.

In *Hastings Insurance Services v HMRC [2018] UFTT 27,* HMRC were unsuccessful in arguing that the offshore insurer had a fixed establishment in the UK through the human and technical resources of the intermediary. Hastings' resources in the UK were held not available to the offshore insurer with a sufficient degree of permanence for them to constitute a fixed establishment for the offshore provider. If HMRC had been successful, the intermediary's supply would have been exempt as a UK to UK supply and no input tax recovery would have been possible. At the time Hastings Insurance were relying on s.26(2)c VATA 1994 and SI 1999/3121 to recover input tax on their exempt insurance intermediary services to a non-EU person.

Prior to 1 March 2019, the input tax incurred by Remindon Ltd in making supplies to Neckcrop Ltd was recoverable because Remindon's supplies of intermediary services fell within the VAT (Input Tax) (Specified Supplies) Order 1999 (SI 1999/3121) which allowed for the recovery of input tax in relation to the provision of intermediary services within item 4 Group 2 Sch 9 VAT Act 1994, when made to a person who belongs outside the EC eg Guernsey. From 1 March 2019 Para 3A was added to SI 1999/3121 which only allows input tax recovery under s.26(2)c VATA 1994 where the insured person is outside the UK. As the insured persons are in the UK input tax is no longer deductible.

Dowsett Ltd

The sale of a bundle of insurance contracts, along with staff and other assets could potentially be a Transfer of a Going Concern (TOGC) if collectively they represent part of a business capable of being run independently and other conditions are met. However the purchaser, Crodos Ltd does not intend to continue operating the business because of its onward sale to a Luxembourg company. It is also not a taxable person or likely to become a taxable person as a consequence of the transfer.

These features will preclude TOGC treatment as a non-supply and will result in the sale being treated as supplies of mixed assets to Crodos Ltd. Similar arrangements were considered in Winterthur Swiss Insurance Co. [2006] BVC where it was held that the appellant had no intention of operating the business that previously had been operated by Prudential.

In the court's view, the appellant did not become a taxable person and so could not satisfy the going concern condition that the transferee must be, or immediately become, a taxable person.

Commission post completion

The arrangements between Dowsett and Crodos (and its successor Bevos) will allow Bevos to benefit from receiving customer details to enter into new and renewed insurance contracts.

The question concerning Dowsett's supplies is whether they are a TOGC; exempt as the services of an insurance broker or agent, or something else.

With respect to the payments made by Bevos, it is not receiving a business for the purposes of the TOGC, and therefore the payments made to Dowsett by it, - solely for data, cannot be viewed as further consideration for a transfer of assets, and so TOGC treatment doesn't apply.
For the subsequent insurance related transactions to be regarded as exempt there is a requirement for Dowsett to take an active role in concluding insurance contracts by engaging with the insured

or the insurer. However, it is not doing this and has merely provided customer data and is providing access through its website for Crodos/Bevos to gain referrals from potential customers. In *Royal Bank of Scotland [2012] EWHC 9 (Ch)* it was held that the role of the party passing customer data and allowing “click throughs” was a mere conduit. It did not meet the level of involvement in bringing about an insurance contract required of a broker or agent.

The case of *HMRC v InsuranceWide.com Services Ltd; [2010] EWCA Civ 422* which also featured “click throughs” was distinguished as in that case the agent provided premium comparisons and matched enquirers to insurers.

As a consequence, the supplies by Dowsett will be regarded as taxable (when made to an EU counterparty) and Crodos/Bevos are likely to bear irrecoverable VAT when each reverse charge calculation is made following payment or invoice whichever is earlier.

I hope these comments are helpful; please contact me if I can be of further assistance.

MARKING GUIDE

TOPIC		MARKS
1. Insurance supplies	Identify Neckcrop as supplier of insurance	1
	Place of supply of Insurance where supplier belongs if recipient is non-taxable person. i.e. Guernsey	1
	Input tax recovery not allowed to Remindon and reasoning of SI 1999/3121 Para 3A	2
	Hastings case analysis and outcome	1
2. Sale of re-insurance contracts	Potential for TOGC and conditions required to be met	1
	Dowsett sale fails TOGC on counts i) intention to carry on business and ii) purchaser not a taxable person	2
	Comparison with Winterthur Swiss Insurance case	1
3. Post completion commission	Commission gained through agreement not attributable to insurance intermediary supplies as Dowsett no longer introducing insurer or insured.	1
	Supply more akin to marketing services to Crodos/Bevos and therefore taxable (albeit reverse chargeable in this example) rather than TOGC or exempt. Irrecoverable input tax likely to arise to recipient.	1 1
	"Click through" aspect distinguished from Insurancewide due to Dowsett acting as mere conduit rather than broker or agent. *HMRC v InsuranceWide.com Services Ltd; Trader Media Group Ltd [2010] EWCA Civ 422*	1
	Analysis supported by *Royal Bank of Scotland [2012] EWHC 9 (Ch)*	1
PHS		1
TOTAL		15

ANSWER 4

Oegn AG

Re Changes to European structure

Preparation

In preparation for the restructuring it will be essential that Oegn GmbH becomes registered for VAT as it will need to account for VAT on sales of goods made in the UK and to enable the recovery of input VAT on the importation of raw materials and all other supplies made to it in the UK. There is no VAT registration threshold for a non UK established entity.

To move goods into or out of the EU it will need to apply for a European Operator Registration and Identification (EORI) number from HMRC. It will not be able to be the "declarant" on Customs entry declarations or obtain a deferment approval account which will allow it to clear goods at importation without needing to make immediate payment of VAT and Duty at the port. This is because the Swiss entity is not established in the EU.

It will need to appoint an agent working as an Indirect representative who would make the declarations in its name but on Oegn GmbH's behalf. The agent will pay the Customs debt (including VAT) using its deferment account and Oegn Gmbh will then be able to settle its liabilities with HMRC monthly, via the agent. The appointment of an indirect representative is likely to increase costs as the agent will be taking some additional risks, such as being jointly and severally liable for any Customs debt. Alternatively, Oegn GmbH may appoint a fiscal agent or seek to deal directly with HMRC themselves.

If there is no on-going requirement for Oegn (UK) Ltd to import goods, it should close any deferment account it has or look to reduce the guarantee to reflect any reduction in throughput.

In advance of introducing new arrangements it is necessary to ensure that hauliers and warehouse providers are aware of the changes as they will in the future be supplying services to a Swiss established entity and the place of supply for transport entirely within the UK will be Switzerland, even though the haulage takes place on UK roads.

Providers of designated warehousing space in the UK will need to continue to charge VAT because providing designated warehouse space is a land related service for which the place of supply is where the land is located; any VAT charged will be recoverable in the UK by Oegn GmbH.

Implementation

When completed goods are made available for collection they will remain in the ownership of the Swiss principal until sold to a UK or EU customer. For UK sales - VAT will be chargeable on goods located in the UK at the time that title passes, to be accounted for by Oegn GmbH. When goods are sold to an EU customer and transported to an EU destination no UK VAT will be due if the customer is registered for EU VAT and two non-contradictory items of evidence of removal are held. There will be a requirement to complete EC Sales lists; and possible Intrastat reporting obligations if annual sales to EU destinations exceed £250,000.

The charge for processing services raised by Oegn (UK) Ltd to the Swiss principal will be outside the scope of UK VAT as the recipient is in business and established in Switzerland.

Potential challenges

It will be important to ensure that all parties strictly adhere to contracts as there is a risk that Oegn GmbH could be considered to have acquired a UK fixed establishment through the presence of staff and technical resources in the UK or through Oegn (UK) Ltd acting on its behalf. Consequently, UK suppliers including Oegn (UK) Ltd who provide reverse charged haulage and other services could be found liable for VAT by supplying a UK fixed establishment. This could

create a VAT liability for suppliers and result in VAT being applied to past and future supplies incurring additional costs as well as reputational damage.

The parties can safeguard against such a challenge by HMRC by ensuring that all arrangements are implemented as required by contracts, Oegn GmbH has no physical presence in the UK and Oegn (UK) Ltd doesn't undertake activity on its behalf when dealing with third parties.

It may however be possible to reduce the risk further by having suppliers continue to charge VAT on services supplied to Oegn GmbH. Although this is technically incorrect based on the current proposals it would remove the possibility of suppliers being placed in a position where they could be assessed, and shifts any residual risk to Oegn Gmbh.

MARKING GUIDE

TOPIC		**MARKS**
1. Preparatory arrangements	VAT registration of Swiss principal in anticipation of making supplies of goods in the UK and to recover input tax on UK goods purchases and imports against C79.	1 1
	Apply for EORI for movement of goods to/from EU	1
	Apply for deferment account through agent – ineligible for own account as not established in UK. Agent will incur Customs debt as indirect agent.	2
	Close or reduce guarantee on Oegn (UK) Ltd deferment account if volumes of imports likely to cease or reduce	1
2. Implementation	Ensure hauliers supply and invoice principal as OSS transactions	1
	Warehouse providers will continue to charge VAT for recovery against NETP registration	1
	Supply of processing services from UK entity to Swiss principal OSS so no VAT chargeable	1
	Sales to UK customers liable to standard rate VAT	1
	Sales to EU customers not chargeable if conditions met and EC Sales lists completed	1
	Possible Intrastat reporting obligation by Swiss entity	1
3. Potential challenges	Potential challenge if fixed establishment created in the UK by Swiss entity through presence of human & technical resources or related party agency arrangement. If contractual arrangements adhered to and implementation made in accordance with contracts unlikely to be challenged, per Hastings FTT case	1.5
	Reduce risk to suppliers by treating as VATable to Oegn Gmbh	0.5
PHS		1
TOTAL		15

ANSWER 5

Teram Ltd

HMRC could still issue Teram Ltd with a Civil Penalty or a Civil Evasion Penalty by way of further action. These work in similar ways but the implications are significantly different. They may only issue one type of penalty per "error", so if they issue a Civil Penalty, they are prevented from issuing a Civil Evasion Penalty.

[1 mark]

A Civil Penalty may be issued where Teram Ltd has breached a "relevant rule"; in other words not obeyed the law. Civil Penalties usually start at £250 in addition to paying the Duty due; and the maximum penalty for submitting incorrect declarations is £2,500.
[1 mark]

The limit applies per declaration, but where there are many declarations HMRC are unlikely to issue a penalty for each one. The total penalty could therefore be higher than £2,500.

[1 mark]

A Civil Evasion Penalty is issued where HMRC believe that there has been conduct that involves the dishonest evasion of Customs Duty. They are used as an alternative to criminal prosecution. This would only become public, which could cause reputational damage, if the company challenged the penalty at Tribunal.

[1 mark]

If HMRC were to issue a Civil Evasion Penalty, the starting point would be 100% of the amount evaded or sought to be evaded. HMRC could reduce the penalty in recognition of Teram Ltd's behaviour once the breach was detected e.g., if Teram Ltd helped to establish that there are no more errors.

[1 mark]

Neither penalty is automatic, HMRC can decide to mitigate the penalty or to issue a warning letter instead.

[0.5 mark]

HMRC may decide not to issue a penalty if the company has a "reasonable excuse" to explain the failing. There are several reasons that are excluded by law as a "reasonable excuse" to avoid or reduce either type of penalty:

1) Not having the money to pay the Duty;
2) Reliance on a third party to perform a task;
3) The contravention was the result of actions by someone that was relied on to perform a task;
4) The amount of tax lost was not significant; and
5) The company acted in good faith.

[0.5 for saying that there are exclusions - 1 mark - for any three excluded "excuses"]

Teram Ltd acknowledges that it was told to include values of freight and tooling in the past so it is hard to see what reasonable excuse it could have so a penalty is very likely. A Civil Evasion Penalty can only be issued where dishonesty is involved. It does not follow that just because the company had been told to declare these amounts in the past, that the omission was deliberate. If the company can demonstrate that these were omitted due to system errors or staff failing to follow instructions, this may help to make a Civil Evasion Penalty less likely. In Teram Ltd's case, a Civil Penalty is the most likely outcome.

[1 mark – any reasoned argument why Civil Penalty is more likely than Civil Evasion Penalty]

HMRC must issue either penalty within two years of them becoming aware of the facts which are sufficient for them to issue a penalty. Establishing when that date is may not be easy, as HMRC may still ask further questions about the breaches to try to find evidence of the breach being deliberate, which would keep the window in which they may issue a penalty open.

[1 mark]

They may not however issue a Civil Penalty more than 3 years (20 years for a Civil Evasion Penalty) after the conduct which gave rise to the liability to a penalty has ceased.

If Teram Ltd can demonstrate that it has put a system in place (see recommendations) to ensure that its declarations include the correct amounts of freight and tooling charges then the behaviour that gave rise to the liability will have ceased, again that limits the time for issuing a penalty.

[1 mark]

Recommendations:

In order to reduce the likelihood of either penalty being issued and to reduce the amount of penalty, if one is issued, the company should:

1) Review all entries submitted since HMRC issued the C18 to check for errors and make a written voluntary declaration to HMRC with a detailed schedule of the errors and pay the underdeclared amounts;

2) Put a system in place to ensure that these errors cannot happen again and management checks in place to check entries for errors;

3) Carry out checks on areas that HMRC have not considered, e.g. classification, to check whether there are other errors that HMRC might find if they widened their checks;

4) Advise HMRC in writing of any new procedures and checks carried out;

5) Fully co-operate with requests for information from HMRC relating to this matter;

6) Teram could appeal both the imposition of a penalty to HMRC or Tribunal.

If they do invite anyone from the company for an interview to discuss evasion, specialist legal representation should be sought.

[4 marks – for any four relevant recommendations]

PHS

[1 mark]

MARKING GUIDE

TOPIC	MARKS
Civil Penalty or Civil Evasion Penalty may be issued but can only issue one type of penalty for same error.	1
Civil Penalty is for breach of "relevant rule" range from £250 to £2,500.	1
Limit applies per declaration, so could be higher than £2,500, unlikely to issue for each declaration.	1
Civil Evasion Penalty issued where dishonesty is involved, alternative to criminal prosecution.	1
Civil Evasion Penalty starts at 100% and may be reduced as a result of co-operation.	1
Penalties are not automatic; HMRC may mitigate or just issue warning.	0.5
Won't issue if company has a "reasonable excuse".	0.5
List any three that are excluded.	1
Civil Penalty likely in their case – any reasoned argument.	1
Two year limit for issuing penalty from when facts are known to HMRC.	1
Second limit is three years after behaviour ceased (20 for Civil Evasion Penalty - s31 FA 2003).	1
Recommendations	
Review entries since C18 and make voluntary disclosure; provide schedule and pay the arrears; Put system in place to stop it happening again. Management checks; Do checks in other areas; Advise HMRC of new procedures and checks; Co-operate with requests for information. Take specialist representation if invited to evasion interview.	4 (for any relevant recommendations)
PHS	1
TOTAL	**15**

ANSWER 6

Fabrics Ltd

There is a duty relief that would save Fabrics Ltd money, if operated correctly.

Fabrics Ltd should use Outward Processing (OP) which is part of the Processing Relief available under the Union Customs Code (UCC). OP allows the company to temporarily export goods for processing and then re-import them without paying Customs Duty on the full value of the goods.

[1 mark – awarded for either OP or Processing]

Fabrics Ltd may make the application to use this on Customs Import Declarations up to three entries per year, by entering certain information such as an OP Customs Procedure Code (CPC). The value of the goods must not exceed £500,000 per import. As the company will use it more regularly it will need to apply in writing to HMRC for an authorisation on form SP4.

[1 mark]

The Export Declarations will also need the appropriate codes to indicate that the goods are being temporarily exported for processing.

[0.5 mark]

Fabrics Ltd must have a suitable compliance record with Customs rules; this would include its record on operating other reliefs and what sort of Customs errors, if any, HMRC have found in recent years.

[0.5 mark]

There is also an "Economic Test" that HMRC must consider but this is deemed to be met unless there is evidence that granting OP would harm the interests of other EU businesses. As Fabrics Ltd cannot get the work undertaken in the EU, this should not be a problem and the company is unlikely to be asked for evidence of this.

[0.5 mark]

Fabrics Ltd must have suitable records to allow HMRC to verify the numbers and values of goods exported and imported. This should be relatively simple from its normal commercial records as it will re-import the same amount as is exported.

[1 mark]

Fabrics Ltd will have to agree a time limit for the exported product to be re-imported and it should add a couple of months leeway into the normal pattern of trade to allow for delays.

[0.5 mark]

Guarantee

Financial guarantees are mandatory under the UCC. However, imports of the worked ("compensating") product to OP releases the goods to free circulation. This will be an "actual debt" and would be covered by Fabrics Ltd's deferment account guarantee.

[1 mark]

Calculation of Saving

The amount of Customs Duty due at import is calculated on the Customs Value of the imported goods valued using one of the normal valuation methods, less the Customs Value of the exported product.

Effectively, this means that Customs Duty is due on the cost of the processing operation carried out overseas plus any of the normal additions to the cost of goods applied at import such as freight and insurance.

[1 mark – for explaining it in either way]

For the purpose of the OP calculation, the freight costs relating to exporting the product for processing are ignored and do not feature in the calculation.

[0.5 mark]

Duty due under OP

	£
Value of Exported Component	100,000
Cost of Processing	27,000
Insurance	750
Freight to EU border	3,500
Less Statistical Value of Exported Component	(100,000)
Customs Value	31,250
Duty Rate	8%
Duty Due	£2,500

[1 mark – for Duty Due]

Duty without OP (Likely value under Method 1 or 5)

	£
Value of Exported Component	100,000
Freight and Insurance at Export	3,000
Cost of Processing	27,000
Insurance	750
Freight to EU border	3,500
Customs Value	134,250
Duty Rate	8%
Duty Due	£10,740

[1 mark – for Duty Due]

Using OP gives a duty saving of £8,240 on this example consignment.

[0.5 mark]

Recommendations

Fabrics Ltd may use OP three times without an authorisation by applying in the Customs Declaration. It could start making duty savings immediately by claiming OP this way. If it can import less frequently, it can maximise the value of goods exported and re-imported this way.

[1 mark]

Apply for “retrospective” OP. HMRC may back date Fabrics Ltd’s OP authorisation to the date it applied for it, so it makes sense to submit this as soon as possible. If Fabrics Ltd can demonstrate that it can meet the requirements of OP retrospectively it would be allowed to amend entries made between the date they accepted its application and the date they grant the authorisation from free circulation to OP and reclaim any overpaid duty.

[1 mark]

Both 1) and 2) above should be undertaken, as Fabrics Ltd may have made more than three entries by the time the authorisation is granted.

[1 mark]

If Fabrics Ltd could demonstrate “exceptional circumstances” (meaning that it was unable to apply earlier because of a situation that was exceptional, compared to other businesses), HMRC may back date it one year before that date of the application. Simply not being aware of the relief is not enough, so this will be difficult to achieve.

[1 mark]

PHS

[1 mark]

MARKING GUIDE

TOPIC	MARKS
Use Outward Processing (OP) / Processing. Brief description.	1
Apply on the Customs import declaration three times per year up to a value of £500,000 per import.	0.5
If used more regularly must apply in writing to HMRC	0.5
Must use OP CPC on Export Declarations too.	0.5
HMRC may visit to check compliance with conditions and business must be compliant.	0.5
The "Economic Test" will be met unless there is evidence that granting OP would harm the interests of other EU businesses – as cannot get work carried out in EU, this should not be a problem.	0.5
Records must allow HMRC to check compliance with conditions – normal commercial records should do as same amount is re-imported as exported.	1
Must agree a time with HMRC within which goods need to be re-imported after export.	0.5
Guarantee:	
Re-import creates an actual debt so only guarantee needed is the deferment account guarantee.	1
Calculation of saving:	
Customs Duty is charged on value of imported goods (normal valuation methods) less value of exported goods. Effectively duty is due on processing costs and normal freight, insurance etc import additions.	1 (for explaining it either way)
Export freight costs are ignored.	0.5
Duty due under OP - £2,500.	1
Duty due without OP - £10,500.	1
OP gives £8,000 saving.	0.5
Recommendations:	
Could start using Customs Declaration OP while awaiting full authorisation; if can import less frequently can maximise benefit.	1
Also apply for OP retrospectively. Once granted can amend other entries in time frame (back to date of application).	1
Do both as may have made more than three entries by time authorisation is granted.	1
It is possible for the authorisation to be back dated beyond the date of application but is unlikely in their case – hard to demonstrate "exceptional circumstances".	1
PHS	1
TOTAL	**15**