THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Cross-Border Indirect Taxation

November 2024

TIME ALLOWED

3 HOURS 30 MINUTES

- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should indicate this where relevant.
- Scots law candidates may provide answers referring to Land and Buildings Transaction Tax rather than Stamp Duty Land Tax.
- Unless otherwise indicated by the provision of additional information in the question, you may assume that 2023/24 legislation (including rates and allowances) continues to apply for 2024/25 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.
- Additional marks may be awarded for presentation.
- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. Salafit Inc, based in the USA, supplies access via membership to online group exercises and customisable fitness programmes, which are pre-recorded and accessible on-demand. There are two types of membership subscriptions: “club” and “individual”. Fitness centres can project programmes on screens in their studios to provide group exercises on spin bikes and other specialised equipment, without the need for in-person instructors. Individual subscribers can use the programmes to exercise at home without any equipment being required.

Salafit Inc wishes to enter the UK market. A fitness centre buying a “club” membership will be incentivised to sign up their existing members for “individual” subscriptions, as being complementary to their gym membership, and available 24 hours a day. If a fitness centre signs up 100 members or more, it will receive a one-off retrospective 50% discount on the “club” annual subscription, by way of a refund from Salafit Inc. The fitness centres will pre-populate the Salafit Inc “individual” membership agreements using the members’ details held on their own systems, collect members’ signatures, and process the subscription payments on behalf of Salafit Inc. Taking up an “individual” subscription with Salafit Inc will be separate and additional to the existing fitness centre membership, which allows entry to the club premises and facilities.

Salafit Inc also proposes to offer nutritional coaching for individual subscribers, who wish to supplement their exercise with dietary assistance. Services of self-employed dietitians based in the UK and the USA will be advertised on the Salafit Inc website and subscribers will be able to book personal video sessions to discuss their diet and individual nutritional needs. The likely approach will be for the dietitians to contract directly with the members, with Salafit Inc receiving 20% of the fees in exchange for the use of Salafit Inc’s video facility and website advertising and a 3% fee for processing card payments from subscribers.

Requirement:

Explain the VAT implications of Salafit Inc’s proposals. (15)

2. Pachtenon GmbH is based in Germany and has no establishment in the UK. It produces bespoke robotic machinery for the food industry. Pachtenon GmbH is in final negotiations with ZBUL Ltd, for the supply of "Pax", a packing machine, which will be delivered from its site in Germany. ZBUL Ltd is based in Birmingham, and it has UK VAT and EORI registration numbers.

Pachtenon GmbH's product designer is currently visiting ZBUL Ltd’s manufacturing facility to review existing manufacturing operations and finalise the design of Pax. Pax will initially be placed on a portable platform for testing at ZBUL Ltd's facility over four weeks. If the tests are not satisfactory, Pax will be returned to Germany. If they are successful, Pachtenon GmbH's engineers will travel to the UK to permanently connect Pax, a process, which will include screwing Pax’s legs to the floor and testing its integration with the existing equipment. Pax will be sold to ZBUL Ltd as soon as this installation is completed. The supplies of packing materials to be used with Pax have been agreed with a UK based supplier.

Pachtenon GmbH will cover any manufacturing defects in the first year free of charge and it has offered to provide an extended service cover, including fast repairs or replacement of worn-out parts for an additional charge. Pachtenon GmbH's insurance provider will cover them for excessive costs should the maintenance requirements on Pax be onerous. Repair services on Pax will be undertaken by a UK-based self-employed subcontractor working directly for Pachtenon GmbH and all required replacement components will be shipped to ZBUL Ltd’s premises from Pachtenon GmbH’s warehouse in Germany.

Fees for the above have been agreed as follows: analysis of ZBUL Ltd’s manufacturing operations and re-design: £3,500, sale value of Pax: £120,000, transport to the UK with insurance, tooling and installation: £26,000. The extended service cover will be £20,000 per annum and spares will be priced individually as needed.

Requirement:

Explain the VAT implications of the above transactions. (20)

3. Supco Inc, based in the US, is a supplier of nutritional powders, specialising in customised blends of proteins and micronutrients sold exclusively to individuals through its website. All powders are designed to address a specific health or wellness concern and are used by dissolving in hot or cold liquids or mixing with food ingredients into smoothies. Supco Inc has experienced rapid growth in the US and it is planning expansion into the UK and the Republic of Ireland by introducing two of its most successful product lines: sports recovery nutrition and weight loss meal replacements. Supco Inc does not currently plan to sell to wholesale customers or sell through third-party platforms.

The sports recovery products are predominantly made of amino acids and electrolytes with vitamins and minerals. The weight loss products are made of protein with vitamins and minerals. All products are available in various flavours and packaging options. Customers can purchase a blend in a decorative plastic jar followed by refills in foil packs.

Supco Inc has negotiated a service agreement with Blendorg Ltd, a toll manufacturer based in Belfast, for the provision of blending, packaging, and transportation. As part of this contract, Blendorg Ltd will be responsible for managing the production and distribution process for Supco Inc by receiving Supco Inc's goods at its warehouse, blending and packaging and sending out completed orders to Supco Inc's customers. Blendorg Ltd will also manage all import clearances in the UK on behalf of Supco Inc.

The powder ingredients will be received by Blendorg Ltd from Supco Inc's preferred suppliers based in the US. All packaging items will be delivered from Italy. Products ordered using the Supco Inc website will be prepared and delivered to the individual buyers in the UK and Republic of Ireland by Blendorg Ltd, using a UK courier company.

Requirement:

Explain the VAT and Customs Duty implications of the above transactions. (15)

4. Wealth Corporation is a financial services company established in Canada with no presence elsewhere. It is setting up a new venture, CWealth Ltd, to supply European markets. CWealth Ltd will be a UK established company with a fixed establishment branch in Luxembourg.

CWealth Ltd will provide deposit accounts and financial advisory services to UK and EU individuals. It will also provide investment management services to funds established in the UK and Luxembourg. Some of these funds will belong to very wealthy individual customers but most will be collective funds open to retail customers. Some of the collective funds will be advertised to customers in the UK, but those funds established in Luxembourg will not.

The UK staff will focus on providing services to UK customers and staff in Luxembourg will concentrate on providing services to EU customers. Funds will be managed locally. The two locations will however provide support to each other for all of the products they provide. This will include administration and arranging the buying and selling of securities locally for funds in the other location.

Additionally, Wealth Corporation will provide a package of services to CWealth Ltd, including marketing support, software packages and a loan. Some of the software packages will be specific to the management of the collective funds. The current plan is for all the services provided by Wealth Corporation to CWealth Ltd to be covered by a single contract and recharged at cost plus 8% with a monthly invoice.

Requirement:

Discuss with reference to caselaw, the VAT implications of the above arrangements for CWealth Ltd and recommend appropriate ways of minimising the VAT costs. (20)

5. Usbric Co is a US established kitchen appliance manufacturer. It has two wholly owned GB based subsidiaries, Greabric Ltd and Kenbric Ltd, both of which were incorporated in November 2023.

Greabric Ltd imports all its goods from Usbric Co and is Usbric Co's sole customer in the UK. Greabric Ltd sells to wholesalers across GB, and to Kenbric Ltd, the group's wholesaler. Neither Greabric Ltd nor Kenbric Ltd sell to anyone based in Northern Ireland.

All goods originate in the US and attract Customs Duty of at least 1%. Greabric Ltd imports the goods to free circulation using its own deferment account with a direct representative customs agent submitting its declarations.

From November 2023 until 29 February 2024 Greabric Ltd declared and paid all Import VAT on its customs declarations. From 1 March 2024 it elected to use Postponed VAT Accounting on all import entries.

Greabric Ltd and Usbric Co have no formal agreement on how goods will be priced or on the payments Greabric Ltd will make to Usbric Co. Usbric Co issues invoices for the goods quoting a nominal value set by Usbric Co but requires Greabric Ltd to make additional payments periodically. The value of these adjustments is not agreed in advance but charges are made to ensure that an appropriate level of profit is transferred to Usbric Co.

HMRC began a customs valuation audit in October 2024 and have advised Greabric Ltd that the values declared on the import invoices from Usbric Co will not be accepted because of price influence. Greabric Ltd has agreed that these values cannot be used and in consultation with its agent have dismissed Methods 2 and 3 as alternatives as neither has any data for comparable products.

<u>Greabric Ltd's sales data for one example product: smoothie maker</u>

Import quantity per shipment	1,500 units
Transport and insurance costs to the UK border	£3,500
Transport and insurance within the UK	£1,000
Customs Duty rate	4%

Greabric Ltd sells this in the UK to unrelated customers for £75 per unit.
Greabric Ltd sells this in the UK to Kenbric Ltd for £70 per unit.
All sales are made within 90 days of the goods being imported.

Expenses incurred after importation and estimated profit for a UK equivalent business is £8 in total per unit.

<u>Usbric Co's production costs in US for same product per unit</u>

	£
Material, labour, overheads relating to production	45
Estimated export expenses and profit for this type of product in the US	14
Transport and Insurance to the UK border	3
Royalty	1

To date Greabric Ltd has declared a customs value of £20 per unit based on the invoice issued by Usbric Co.

Continued

Requirement:

1) **Discuss the rules and benefits related to the use of Methods 4 and 5 and calculate Customs Values for Methods 4 and 5.**

(Do NOT calculate a value for Import VAT.) (14)

2) **Discuss the effect the change from declaring Import VAT on the declaration to using Postponed VAT Accounting would have on any debt notified by HMRC.** (3)

3) **Discuss whether a penalty for declaring the nominal value is likely.** (3)

Total (20)

6. McHol Ltd is established in and operates a customs warehouse in Northern Ireland. McHol Ltd imports hand tools, screws and fixings from around the world.

None of the goods McHol Ltd buys qualify for preference and it is satisfied that all are correctly classified. All goods attract a Customs Duty rate of at least 4%. All are imported into its customs warehouse and are released to free circulation as orders from GB and Northern Ireland based customers are received.

McHol Ltd has received enquiries from a customer in GB, BoltenBits Ltd. BoltenBits Ltd does not operate any customs procedures and does not want to. BoltenBits Ltd has bought a chain of tool suppliers, Altool SARL, in Algeria and would like to use goods from McHol Ltd to supply them. McHol Ltd will transfer ownership to Altool SARL at the UK border but will transport the goods to Altool SARL's premises.

McHol Ltd has determined that the cheapest method of transport for the goods would be by truck to Ireland, through France or Spain and on to Algeria (using ferries where necessary).

Requirement:

Discuss whether McHol Ltd can supply these goods to Altool SARL without paying Customs Duty in the EU or UK. (10)