The Chartered Institute of Taxation

Advanced Technical

Cross-Border Indirect Taxation

May 2023

Suggested solutions

Answer 1

As LeaseCoDE retains title to the printers throughout the term of the lease, there is a supply of leasing services rather than a supply of goods. Schedule 4 para 1(B) sets this out, stating that the transfer of possession (as opposed to ownership) of goods is a supply of services. This applies unless the contract envisages title passing at the end of the lease.

Following EU VAT principles LeaseCoDE should not charge German VAT to the UK business customers – the B2B customers are outside the EU and the services are not used and enjoyed in the EU, they are used in the UK. The question is whether UK VAT is due under the reverse charge mechanism. Leasing services like this are taxed under the UK's equivalent of the EU's 'general VAT rule' **–** they are subject to VAT where the B2B customer belongs, being the UK, and therefore UK VAT is due under the reverse charge. This can be recovered in accordance with the customer's VAT recovery profile. As the liability to account for UK VAT lies with the UK customer, LeaseCoDE is not required or able to VAT register in the UK as it has no UK establishment - SupportCoGB is unlikely to create a UK fixed establishment of LeaseCoDE as it is a separate legal entity and may have other revenue streams outside of this. In addition the contract is with LeaseCoDE

For the import of goods into the UK, as LeaseCoDE retains title to the goods, only LeaseCoDE can recover the import VAT incurred – the lessee would be unable to do this. LeaseCoDE should therefore be the Importer of Record and will need a GB EORI. Given however LeaseCoDE is not required or able to VAT register in relation to the ongoing leasing charges, it must file an overseas refund claim to recover the UK import VAT incurred. To support the claim, it will need to submit copies of the import entries (C88 forms) as importer of record. A Certificate of Taxable Status will also be required**.**

For customs duty, the correct tariff code needs to be identified. Given the printers are manufactured in the EU, a zero rate of duty would apply on import to the UK due to the Trade and Cooperation Agreement with the EU. Despite this however the appropriate value still needs to be determined for the import value. There are special customs valuation rules for leasing transactions. As there has been no sale of the goods from LeaseCoDE to the UK customer, it is unlikely valuation method 1 would be appropriate. The remaining valuation methods therefore need to be considered in turn. Methods 2 to 4 require the identification of the same or similar goods imported under the same circumstances so that the same value can be used. If such a value is not available, method 5 is a method using the cost of producing the goods plus any profit. In many cases method 6 is used for leasing transactions such as these. This is the 'fall back' method which requires the use of a fair and reasonable approach to arrive at the customs value, taking account of the commercial circumstances. A common approach would be to multiply the annual leasing cost by the expected economic life of the goods.

If at the end of the leasing contract the printers are re-exported to Germany, LeaseCoDE would need to use its GB EORI to export the goods from the UK. A UK VAT registration liability would not be triggered on the basis the export movement of own goods is not considered a supply for VAT purposes**.** Import VAT and customs duty may be due on re-import to Germany. Alternatively, they are sold in the UK (including sales for scrap), a UK VAT registration liability could arise regardless of the value as the UK's VAT registration threshold of £85,000 would not apply to LeaseCoDE, a non-established business. Output VAT would be due from the sales proceeds (which would either be VAT inclusive or VAT exclusive depending on the commercial Agreement with the purchaser) and any VAT incurred on costs relating to the sale could be recovered on the VAT return. LeaseCoDE could then deregister from UK VAT if it had no remaining assets in the UK or could retain the registration and file nil returns until such time as further printers were imported or disposed of within the UK**.**

With regard to the intercompany charge from SupportCoGB to LeaseCoDE, this is a B2B supply of 'general VAT rule' services, which means no UK VAT is charged to LeaseCoDE and LeaseCoDE will self-assess German VAT under the reverse charge mechanism. This VAT should be fully recoverable subject to German VAT rules.

Marking guide

TOPIC	MARKS
Supply of Goods or Services	1 mark
Place of Supply of leasing services inc impact of Use and Enjoyment rules	2 marks
Party responsible for accounting for UK VAT	1 mark
Importer of record, EORI	1 mark
Recovery of Import VAT	1 mark
Customs valuation method	2 marks
Customs origin and classification	2 marks
VAT treatment of re-export of goods	1 mark
VAT implications of UK disposal of goods	2 marks
Deregistration from UK VAT	1 mark
VAT treatment of maintenance services provided by SupportCoGB	1 mark
TOTAL	**15 marks**

Answer 2

In accordance with the CJEU decision in *Card Protection Plan* (C-349/96), and VATA 1994 s.7, supply and installation contracts where the goods are fixed to the land or fabric of the building, are supplies of goods for VAT purposes with ancillary installation services. Consequently, the VAT treatment of the installation service provided by Dollivard follows that of the goods.

As title to the goods therefore passes in the UK, when successfully installed, the place of supply is the UK. The question then arises as to whether Dollivard is required to VAT register in the UK or whether the UK customer can/should account for the UK VAT due.

As the UK does not have a domestic reverse charge for supplies of goods by non-established suppliers such as Dollivard, it will need to register for UK VAT and charge UK VAT to the UK customer on the full value of the contract. The registration threshold does not apply as it is not UK established. The import VAT incurred will be recoverable through the VAT registration – an overseas VAT refund claim cannot be filed by Dollivard as it has a VAT registration liability.

As the machinery is being shipped from France to the UK, there will be an import into the UK with import VAT and potentially customs duty (depending on the tariff code and customs origin of the goods) being due. An import entry will need to be completed – usually by a customs agent on the importer's behalf. If the goods are of EU origin i.e., if they were manufactured in France or elsewhere in the EU, (or in another location with a preferential Trade Agreement with the UK), no customs duty would apply.

As Dollivard retains title to the goods until they have been installed in the UK, it is the only party entitled to recover import VAT. Dollivard should therefore be the importer of record. It will need a GB EORI as the EU EORI used for export cannot be used to import to the UK. An appropriate method needs to be used to value the goods for customs purposes – this could be based on the relevant proportion of the sales price/invoice to the customer as relates to the goods. The value of the installation services can be omitted from the customs value at import provided it is separately identified in the contract/invoice.

Nowak will provide installation services to Dollivard and these are 'land related' services given the machinery will be fixed to the fabric of the building i.e. the machinery being installed will be 'immovable property'. The place of supply is where the land is located, being the UK. Nowak is not required to UK VAT register however if it is not UK established and instead Dollivard will be required to self-assess UK reverse charge VAT on the installation services. This VAT will be fully recoverable by Dollivard. Nowak would only be regarded as established in the UK if it were deemed to have a fixed establishment in the UK. This could happen if it was to use serviced office space or more likely a dedicated office space on site /portacabin clearly for use by Nowak staff. This would need to go beyond simply being a location in which the Nowak staff could have e.g., daily project status meetings and breaks. It would need to be a location with an address at which Nowak could receive correspondence relating to the contract and potentially the address in the contract with Dollivard. On balance, for work of this nature it is more likely that it would not be regarded as UK established given the temporary nature of their project work and the fact it would be unlikely to continue occupying any site office space once the project concluded.

The VAT Nowak 's staff will incur on expenses such as travel whilst they are working in the UK will need to be recovered via an overseas VAT refund claim as Nowak is not entitled to UK VAT register. The claim needs to be supported by a Certificate of Taxable Status and original valid VAT invoices for the VAT being claimed. Claims can be filed more frequently than annually provided the VAT being claimed is more than £130. Otherwise claims can be filed annually.

As Dollivard is not UK established, the place of supply of the software licence by Parsons will be in France and no UK VAT will be chargeable. Dollivard will likely be required to self-assess reverse charge VAT in France.

Marking Guide

TOPIC	MARKS
Supply of Goods v Services	1 mark
Place of Supply of Installed goods	2 marks
UK VAT Registration position Dollivard SA	2 marks
Importer of Record	1 mark
Customs Duty position – rate applying, valuation, origin	2 marks
Import VAT payment and recovery process	1 mark
Nature and Place of Supply of Services by Nowak	2 marks
UK VAT registration position Nowak inc establishment point	2 marks
VAT recovery for Nowak 's staff expenses	1 mark
Place of Supply of software supplied by Parsons LLC	1 mark
TOTAL	**15 marks**

Answer 3

TravIns is based in Northern Ireland but given it supplies services rather than goods, the UK rather than EU VAT rules apply. The Swedish and Spanish branches will be providing marketing and promotional services to the UK HQ. Alternatively, they could be regarded as acting as an insurance intermediary if, rather than conducting broad advertising campaigns eg on TV, they introduce actual potential customers to TravIns and negotiate the sale of the insurance products. Regardless, both of these are services subject to VAT where received for UK VAT purposes. Consequently, the services would be subject to reverse charge VAT in the UK.

As the services are subject to VAT where received, the question arises as to whether reverse charge VAT applies as this is a transaction between establishments within the same legal entity, – based on the initial intention to set up branches rather than separate legal entities. Transactions in services between different establishments of the same legal entity are not supplies for UK VAT purposes. However, the position is more complex where there is a VAT group, as some EU countries take the view a VAT group is a single taxable person that creates a new or separate 'entity/being' for VAT purposes, and therefore a transaction between the Swedish and Spanish branches and the UK VAT group of which TravIns is a member is deemed to be a supply between different legal entities/beings for VAT purposes. These principles were discussed in the CJEU decisions in the cases of *Danske Bank A/S (C-812/19) and Skandia (C-7/13).* The key question is whether the VAT group changes the 'status' from being regarded as the same legal entity to effectively becoming a separate legal entity/being for VAT. The CJEU in both cases determined that there is a supply for VAT purposes in such circumstances. The UK however considered the decisions did not require a change to the UK VAT position as the overseas establishments are also within the VAT group.

As transactions between VAT group members are disregarded for VAT purposes, there is no supply for UK VAT purposes when the Swedish or Spanish branches make the cost-plus charge to the UK HQ. As a consequence of this UK VAT is not due under the reverse charge on the value of the cost-plus charge. However, S43(2)(a), requires TravIns to account for reverse charge VAT on the element of the transfer pricing charge that consists of 'bought in' costs (excluding those subject to VAT locally e.g. rent) which are passed back to the UK via the transfer pricing charge. This legislation ensures that certain services are not purchased overseas with entitlement to VAT recovery overseas and recharged to the UK without VAT being due in the UK.

TravIns is likely to be partly exempt for VAT purposes as it will be selling VAT exempt insurance policies to UK and overseas customers. It will be entitled to partial VAT recovery as the supplies to non-UK customers will be treated as taxable under the Value Added Tax (Input Tax) (Specified Supplies) Order (SSO) 1999 post Brexit. It needs to attribute the reverse charge VAT due under S43(2)(a) to supplies where possible, and if it is attributable to customers in those countries only, would be fully recoverable. If it relates to brand raising activity more generally, it would be overheads so under the standard partial exemption method, the VAT would be recoverable at the overhead rate which would also take account of the fully taxable revenue of the other VAT group member. If the VAT group has a special partial exemption method (PESM), this will determine how recovery is calculated. As the Spanish and Swedish costs are reasonably likely to relate to generating new business from clients in those countries rather than the UK, it is possible a PESM could see the costs being directly attributable to what is effectively a fully taxable revenue stream under the specified supplies order). The VAT group should consider whether there is a requirement to notify any changes to its business activity in the context of the PESM – arguably not as the changes result in new costs being incurred rather than new revenue streams.

As the Swedish and Spanish branches, are providing marketing and promotional services and insurance intermediary services to the UK HQ they would ordinarily be able to fully recover VAT. However, consideration needs to be given to the impact of the CJEU case *Morgan Stanley (C-165/17)* which determined that, where a country takes the view there is no supply for VAT purposes within the same legal entity, the VAT recovery position of the branches mirrors that of the HQ location. Therefore it is possible the branches would be required to partly restrict VAT recovery on costs, even though they are not directly involved in making the exempt supplies of insurance products to

customers. This would be further complicated by the fact that some of the branch activities could be regarded as VAT exempt insurance intermediary services. This would however depend on local rules.

If TravIns were to establish subsidiaries in Sweden and Spain rather than registered branches, there would be an additional VAT cost in the UK as reverse charge VAT would be due on the full value of the cost-plus transfer pricing charge whereas with a branch structure, as above, it is only due on part of the costs. However, the overseas offices may have increased VAT recovery as the Morgan Stanley decision would no longer apply, and as some of the supplies made by the Spanish and Swedish offices are taxable, there would be increased VAT recovery. This would depend on the proportion of exempt insurance intermediary income, however.

Marking Guide

TOPIC	MARKS
Place of Supply of marketing and insurance intermediary services	2 marks
Is there a supply between the overseas branches and the UK VAT group?	3 marks
Impact of principles of Skandia/Danske Bank CJEU cases	2 marks
VAT due under S43(2)(a)	2 marks
VAT recovery on reverse charge VAT by TravIns Ltd	4 marks
VAT recovery position of overseas branches including impact of Morgan Stanley CJEU decision	3 marks
UK VAT position if overseas offices were subsidiaries	2 marks
VAT recovery position overseas if overseas offices were subsidiaries	2 marks
TOTAL	**20 marks**

Answer 4

Tripage's existing revenue stream is a B2B commission received from the underlying travel providers. This would likely be regarded as an intermediary service, as Tripage is making arrangements for the supply of the travel arrangements by the underlying principal (e.g. the hotel) to the traveller. B2B intermediary services are subject to VAT where received in accordance with the VAT general rule. UK VAT would be charged to UK established travel providers (unless zero rated passenger transport was being arranged - Item 2c Grp 7 Sch8 VATA 1994) and no UK VAT would be charged to overseas established travel providers. The hotel accommodation is a land related supply but intermediary services relating to its arrangement are only regarded as being indirectly land related, as these are administrative in nature and not (typically) carried out where the actual land is related, hence the disconnect.

When Tripage begins charging a service fee to the travellers, the question arises as to whether this B2C service is a VAT general rule service, taxed where the supplier belongs (UK) or whether it is also an intermediary service, taxed where the underlying supply being arranged takes place in accordance with the exceptions to the general rule. This would make the supply taxable overseas where the travel is outside the UK, and subject to UK VAT in the proportion of standard rated travel elements if in the UK.

As Tripage carries out the same activities in terms of making the booking and arranging the travel as it does in order to receive the B2B commission received from the underlying travel providers, the service charge would be regarded as an intermediary service for VAT purposes. The impact of this is that UK VAT would be due on service fees for UK travel. Whilst no UK VAT is due on the service fees for travel taking place outside the UK, Tripage will have a liability to VAT register under the non-Union One Stop Shop (OSS) scheme (or in every country) to report VAT due on travel taking place in the EU Member States for UK and Dutch customers. The VAT would be reported at the rate due in the Member State where travel takes place rather than in the customer location.

The ad hoc charges potentially made later in the event a traveller makes changes to their booking would be regarded as ancillary or incidental to the service fees charged to the traveller when the booking is made. This is because the booking amendment fees have no value in their own right without the travel arrangements having been made in the first place. In accordance with the principles established in the CJEU decision in *Card Protection Plan* (C-349/96), these services are therefore taxed where the service fee is taxed, i.e., in the UK or overseas via the OSS registration.

If the new tour operating division buys in margin scheme supplies (e.g. accommodation or passenger transport) and on sells them without material alteration, this would be a tour operator's margin scheme (TOMS) supply However, post Brexit, tour operators established in the UK are only liable to account for TOMS VAT on the standard rated elements of UK travel. In this case, Tripage is planning to sell holidays in Spain and France. No UK VAT therefore be due on this travel. Furthermore, Tripage will own the hotels in Spain and France rather than buying the accommodation in, and therefore these would be deemed to be 'in house' supplies rather than 'margin scheme' supplies under TOMS. The normal VAT rules apply to in house supplies and Tripage would therefore have a VAT registration liability in France and Spain in relation to the hotel element of the holidays. VAT would be due at the appropriate rate on the revenue and Spanish and French VAT on related costs would be fully recoverable. UK VAT incurred on overhead costs would continue to be recoverable in full in the UK where Tripage is established. Under the post Brexit UK TOMS regime, the flight element of a package is now zero rated so there is no UK TOMS liability in relation to any flights offered as part of the package. Even under normal EU VAT rules international flights would be zero rated for VAT purposes so no liability would arise in Spain or France either.

No UK VAT would be due on the car hire as it takes place outside the UK. For short term car hire i.e. for 30 days or less, VAT applies in the location where the customer collects the vehicle (Spain or France in this case). The use and enjoyment rules apply to car hire but as the vehicles are used in the EU the place of supply remains Spain and France. Local VAT would therefore be due in these locations on this element of the charge to the customer and input VAT incurred by Tripage would be recovered through the Spanish/French VAT return. If the car hire exceeds 30 days, the place of

supply changes to being where the B2C customer belongs. As this would likely be the UK or Netherlands the use and enjoyment rules would override this initial place of supply and bring it back to the EU for UK customers, with Spanish and French VAT being due as appropriate. Dutch VAT would be due on supplies to Dutch customers so a VAT registration obligation may arise.

When the NI company invoices Tripage for the t-shirts sent to UK customers, this is a supply of goods within the scope of UK VAT. The UK rather than EU VAT rules apply as the goods are being sent from NI to mainland UK, and this is a UK domestic purchase. If the NI company is VAT registered, UK VAT will be charged to Tripage who can recover this VAT in full. Provided the value of the t-shirts provided per booking (ie per customer) is £50 or less, no output VAT is due when the t-shirts are gifted to them by Tripage. Otherwise output VAT is due.

Marking Guide

TOPIC	MARKS
Nature and place of supply and VAT treatment B2B Intermediary services	2 marks
Nature and place of supply and VAT treatment B2C Intermediary services	4 marks
OSS registration liability	2 marks
VAT treatment of booking amendment fee	3 marks
VAT implications of new tour operating division and in house supplies	4 marks
Overseas VAT registration position	2 marks
VAT treatment of car hire and flight element of package	2 marks
VAT Treatment applying to sale of t-shirts	1 mark
TOTAL	**20 marks**

Answer 5

Valuation of items to decorate restaurants

There are a few practical options for supplying the goods to Carresflav any of which are likely to be acceptable to HMRC, there are however different practical considerations as set out below.

Option 1

Jocelyn could buy the items direct from the suppliers and ship them on to Carresflav Ltd, either individually or grouping several items together. This would avoid the issue of whether the suppliers were prepared to ship goods and could save on shipping costs.

[1 mark]

Customs Duty would be payable under Method 1 on the full cost of the goods on Jocelyn's invoices, as a principal, to Carresflav including shipping, and also Jocelyn's fee.

[0.5 mark]

Option 2

Jocelyn gets the suppliers to ship the goods direct to Carresflav with Jocelyn paying the suppliers, on behalf of Carresflav, direct for the item and shipping costs.

[0.5 mark]

If this method were used Carresflav would declare the cost as a Method 1 transaction value and add on the freight and insurance costs. Here, the "finder's fee" could be paid direct to Joycelyn as a commission for acting as Carresflav's Buying Agent. Buying commissions are not included in the Customs Value at import, if separately identifiable, and are subject to the VAT reverse charge rules so are also excluded from the value for VAT at import. Whilst beneficial, it is possible that not all suppliers may be willing to ship goods, especially in small quantities, and so may not be a practical solution. It is however worth exploring further.

[2 marks]

Under Option 2 Jocelyn would invoice the cost of the goods plus any shipping charges to Carresflav and would separately bill for her finder's fee as a buying commission.

[1 mark]

Option 3

Potentially Jocelyn could invoice Carresflav for the cost of the goods in a similar way under Option 1 plus a separate charge for her fee, claiming it is a buying commission. This would reduce the amount of Customs Duty Carresflav pay but is more open to challenge by HMRC.

[1 mark]

HMRC might check the buying commission excluded from the transaction value to establish that it is a genuine buying commission which can be excluded from the valuation. Carresflav would need to be able to evidence the amount it pays Jocelyn, which should not be an issue. She could also provide receipts to Carresflav for what she buys which would demonstrate the amounts she pays. This information, together with a properly drafted buying agency contract which sets out her responsibilities, should lead to HMRC accepting the buying commission.

[2 marks]

Carresflav may wish to consider whether the amounts involved are significant enough to warrant that level of work. It may be cheaper in the long run to have Jocelyn include the finder's fee in her goods invoice and to pay Customs Duty and Import VAT on the whole amount at import.

[1 mark]

<u>Label Design</u>

If the design of the artwork were carried out outside of the UK it would be a B2B supply of services and so would be covered by the reverse charge. If carried out in the UK it would attract UK standard-rated VAT. In either case the VAT would be recoverable, but there is also an impact on the Customs Value of the imported goods to consider.

[1 mark]

Charges for artwork or design which take place outside of the UK are included in the Customs Value (but excluded from the Value for VAT) at import. However, charges for artwork or design that takes place inside the UK do not form part of the Customs Value or Value for VAT at import. Carresflav must weigh up the relative costs of the design fees from each country and the effect that would have on Customs Duty paid to determine whether that is a deciding factor.

[1.5 marks]

The cost of printing and attaching the labels outside of the UK must be added to the Customs Value, if not already included.

[0.5 mark]

<u>UK Duty Stamp</u>

Carresflav will have to register to use Duty Stamps, it can then pass on the design to whoever designs the label on their behalf so the UK Duty Stamp could be incorporated in the main bottle labels before Carrum Co ship them. Carresflav could also opt to use free standing UK Duty Stamps which it could send to Carrum Co.

[1.5 marks]

Duty Stamps must generally be fixed to bottles before they are imported but may be fitted up to 14 days after importation. They must be fixed to the bottle in such a way as they cannot be removed without damaging the stamp, so Carresflav could use free standing Duty Stamps and fix them to the bottles themselves which would give them greater control.

[1.5 marks]

It is important to note that using the bottles without proper Duty Stamps leaves them liable to forfeiture and could attract Civil Penalties.

[1 mark]

Calculation

Litres pure alcohol: 45% x 50 litres = 22.5 litres pure alcohol

Value Of Goods For Customs

	£	No of Bottles	£
Value Of Rum	4	50	200
Freight to UK			300
Customs Value			£500

Customs Duty Calculation 1

	£	/ % vol/100 litres	£
0.50 GBP / % vol/100 litres	0.5	45 x 0.5	11.25

Note: It is 45 x 0.5 as the formula is per 100 litres and the quantity imported in 50 litres.

Customs Duty Calculation 2

	£	Duty Rate	
Customs Value	500	2%	10.00
Total Customs Duty			21.25

Excise Duty Calculation

	£	Litres Alcohol	£
28.74 GBP / Litre alcohol 100%	28.74	22.5	646.65

Note: The formula is for 100% pure alcohol. So we must calculate the equivalent amount being imported i.e. 50 litres of 45% ABV = 22.5 litres of pure 100% pure alcohol.

VAT

Customs Value Of Goods		500.00
Customs Duty		21.25
Excise Duty		646.65
Inland Freight		80.00

Value For VAT	(rounded to £)	£1,248.00
VAT at 20%	(rounded to £)	£250.00

[Customs Duty – 1.5 marks, Excise Duty 1 marks, VAT 1.5 marks (1 for calc and 0.5 for inland freight)]

Marking Guide

TOPIC	MARKS
Valuation of items to “dress” restaurants	
Option 1.	
Jocelyn buys items and ships them.	1
M1 for goods plus Jocelyn’s fee	0.5
Option 2.	
Jocelyn buys and suppliers’ ship them.	0.5
M1 for goods and freight etc. Finder’s fee treated as BC. Excluded from Customs and Reverse charge for VAT.	2
Jocelyn invoices cost to Carresflav and separately bills for BC.	1
Option 3	
Jocelyn bills in similar way to 1 for goods but separately charges her finder’s fee as a buying commission. Removes her charge from Customs Value but opens it to challenge.	1
HMRC can challenge buying commission to check it is valid. Should ensure they have evidence of charges, roles and contract.	2
Carresflav should consider whether amounts saved would be worth this potential work. Is it cheaper / simpler to have Jocelyn re-invoice and pay duty on her 3%?	1
Label Design	
Design or artwork outside of UK is B2B for VAT and covered by reverse charge. If carried out in UK subject to standard-rated VAT. Recoverable in either case but consider Customs Duty impact.	1
Charges for design outside the UK are included in Customs Value but if it takes place within the UK, it would be excluded. Include this consideration in the relative costs to determine which is best overall.	1.5
Cost of printing and attaching labels to bottle outside the UK must be added to Customs Value, if not already included.	0.5
UK Duty Stamp	
Must register to use Duty Stamps and can then pass the design to someone outside UK to incorporate them on label. Could supply free standing labels to bottler.	1.5
Duty Stamps must usually be fixed to bottles before importation but may be fitted in 14 days after importation. So Carresflav could use free standing labels and fix them themselves. Must be fixed so that they cannot be removed.	1.5
Using the bottles without Duty Stamps leaves them liable to forfeiture and Civil Penalty action.	1
Calculation	
Customs Duty (11.25 + 10 = £21.25)	1.5
Excise Duty £646.65	1
VAT calculation £250	1
VAT inclusion of Inland Freight	0.5
TOTAL	**20**

Answer 6

Any penalty action is separate from the requirement to pay the correct amount.

[0.5 mark]

HMRC have the right to issue a penalty for each incorrect declaration. However, they also have the power to mitigate (or reduce) the penalty (including reducing it to the zero).

[0.5 mark]

HMRC are not legally required to issue a Civil Penalty Warning Letter before issuing a Civil Penalty but they will usually do so. These letters will contain a warning that "broadly similar irregularities" which take place in the following two years may attract a penalty.

[1 mark]

Whilst T'Wheels is unhappy about the penalty decision, the Right to be Heard letter (RTBH) gave it the opportunity to reply, which it failed to do. There is no legal provision to allow HMRC to extend the RTBH period, so an appeal on that basis is unlikely to be successful.

[0.5 mark]

T'Wheels still has options however and may still request either a Review or an Appeal of the decision to issue the penalty or the amount of the penalty.

T'Wheels may ask someone independent within HMRC to review the decision, this request should be submitted within 30 days of the decision, but late review requests may be accepted. HMRC then have 45 days, which can be extended by agreement to carry out the review.

This option is cheaper and quicker than an Appeal before a Tribunal (which should also be made within 30 days) and also gives an extra chance for the decision to be altered.

[1.5 marks]

T'Wheels could appeal direct to Tribunal or appeal HMRC's review decision, within 30 days.

[0.5 mark]

T'Wheels could also request Alternative Dispute Resolution (ADR), a form of mediation, to try to resolve the issue. However, once a decision has been issued HMRC will only consider ADR once an appeal to Tribunal has been accepted.

[1 mark]

T'Wheels has two options if it decides to use any of these routes. It could argue that no penalty should have been issued or that the amount of penalty is too high.

[1 mark]

T'Wheels should consider the costs associated with any challenge against the prospects of success and the savings made in overturning or reducing the penalty. Factors to consider include:

1. T'Wheels has already received a Civil Penalty Warning Letter for the same sort of breach, incorrectly declaring the origin of goods, so it is not a surprise that a Civil Penalty has been issued.

2. T'Wheels accepts it repeatedly misdeclared the origin of the goods that have led to the penalty being issued; and

3. HMRC have issued the lowest level of penalty.

[2 marks]

T'Wheels must consider what grounds it has to challenge the penalty in this case. The facts as presented do not suggest an obvious reason to challenge the penalty. It may prove cheaper to accept the penalty and to spend the resources that would be used in challenging this into reviewing training, processes and systems to see if errors like this can be avoided in future.

[1.5 marks]

Marking Guide

TOPIC	MARKS
Being required to pay the correct amount is not a penalty.	0.5
HMRC may penalise each incorrect declaration and may mitigate the penalties.	0.5
No legal requirement for Civil Penalty Warning Letter before Civil Penalty but HMRC usually issue them. Would contain a warning that repeat action can lead to a Civil Penalty.	1
No legal provision to extend RTBH period so an appeal on that basis is unlikely to succeed.	0.5
Can request an independent HMRC review. Can ask for a late review. Cheaper to request HMRC review.	1.5
Or can go direct to Tribunal, or Appeal HMRC's Review Decision.	0.5
Could try ADR but must have appealed to Tribunal once decision is issued.	1
Options are to argue that penalty should not have been issued or is too high.	1
Must consider costs of challenge and prospects of success particularly have been warned; error made repeatedly and HMRC have issued lowest level of penalty.	2
What are T'Wheels grounds? Not immediately obvious. Maybe cheaper just to accept the penalty. May be better to put resource in to preventing future errors.	1.5
TOTAL	**10**