The Chartered Institute of Taxation

Advanced Technical

Cross-Border Indirect Taxation

November 2024

Suggested answers

ANSWER 1

Fitness programme memberships

The paid-for access to online fitness programmes provided to UK consumers will fall within the definition of electronically supplied services in Para 9, (Sch. 4A of VATA 1994, **[0.5 mark]** with the place of supply being the UK, which is where the customer belongs 1994 **[0.5 mark]**. Salafit will need to account for UK VAT on the supplies it makes to individuals **[0.5 mark]** and it will be required to register for VAT purposes with HMRC as soon as such supplies commence as no registration threshold is available for non-established suppliers **[1 mark]**. Supplies of electronic services made to fitness centres will be subject to UK VAT reverse charge by the fitness centres **[0.5 mark].** The point at which a payment is collected from a new subscriber signing up to the Salafit individual membership, will be the tax point of Salafit's supplies and UK VAT will be due **[0.5 mark]**.

Fitness centres, who sign up their own members to the Salafit's platform membership will act as disclosed agents on behalf of Salafit with the electronic service being supplied by Salafit to the individual members, on which VAT will be charged by Salafit as above **[0.5 mark]**. Whilst the membership agreements will be issued to the new members by the fitness centres, their involvement will not alter the nature or value of the supplies made by Salafit and as such they will be acting in their own name as intermediaries **[1 mark]**. The fitness centres will advertise the benefits of the Salafit fitness programmes and recommend that their members sign up but their supplies will be of customer introductions to Salafit **[0.5 mark]** and their fee will be contingent on them signing up the required number of members. The retrospective reduction in a club subscription fee will represent the agent commission earned by that fitness centre as introducer of new members **[0.5 mark]** with the tax point being when the refund is received or invoice issued, whichever happens first **[0.5 mark]**. The fitness centres will have to issue VAT invoices as their commission is taxable however, given that Salafit is based outside of the UK no VAT will be due as the services fall within the general place of supply rules and are taxable where the customer belongs **[0.5 mark]**.

Dietitian consultations

The dietitian consultations, although provided using the online portal, will not fall within the definition of electronic services as live events delivered with human involvement and without a degree of automation are not included in Para 9, Sch. 4A of VATA 1994 **[0.5 mark]**.

Health care services are exempt from VAT under Group 7, Sch. 9 of VATA 1994, when they are provided by professionals registered with the statutory body relevant to that profession, and this includes dietitians. **[1 mark].** As determined by the ECJ in *Dr Peter d'Ambrumenil and Dispute Resolution Services* (C-307/01), for the VAT exemption to apply, the services provided must be within the scope of services provided by the profession the individual is registered with and with their primary purpose being the protection, maintenance and restoration of health **[1 mark]**. Salafit's individual customers will be engaging the services of dietitians for help with maintaining a high level of nutrition and well-being whilst undertaking weight loss diets and exercise regimes, which would appear to meet the VAT exemption requirements **[0.5 mark]**. Consultations provided by UK based dietitians, who are not included in the statutory register in the UK, will not qualify for the VAT exemption **[0.5 mark]** and UK VAT will be due unless they are trading below the registration threshold **[0.5 mark]**. Consultations provided by the US based dietitians will be outside the scope of UK VAT **[0.5 mark]**.

Platform services for the dietitians

The platform services to the dietitians will be supplies of on-line advertising and promotion services by Salafit, which fall within the definition of electronically supplied services **[0.5 mark]**. Supplies made to the US based dietitians will be outside the scope of UK VAT **[0.5 mark]** and those made to the UK based dietitians will be subject to UK VAT by them by reverse charge **[0.5 mark]**.

The handling of payments carried out by Salafit, despite being separately priced and charged, does not fall within the financial exemption, which requires that such service changes the legal and financial situation **[1 mark]**. This follows ECJ decisions in *Bookit* (C-607/14) and *NEC* (C-130/15), which concluded that card processing services do not qualify for VAT exemption **[0.5 mark]**. The payment handling and the platform facility provision (for advertising and holding consultations) will be a single supply of electronic services as described earlier **[0.5 mark]**.

MARKING GUIDE

TOPIC	MARKS
Fitness programme memberships	
Salafit subscriptions – analysis of supply and PoSS	2.5
Salafit UK VAT registration	0.5
Time of supply - Salafit	0.5
Disclosed agency	0.5
Contingent introduction fees earned via discount	1
No intervention into the supply by fitness centres	1
Time of supply – fitness centres	0.5
VAT liability of supply	0.5
Dietitian consultations	
Outside scope of electronic service definition	0.5
Health care exemption analysis (names and references of cases not required)	2.5
Liability of supplies	1.5
Platform services for the dietitians	
VAT liability of supply	1.5
Financial exemption analysis (names and references of cases not required)	1.5
Single supply of service	0.5
TOTAL	**15**

ANSWER 2

The services performed by the Pachtenon product designer will be subject to the general rule for place of supply – ZBUL will be responsible for accounting for UK VAT on the supply as a reverse charge **[1 mark]**.

For Pax to be delivered from Germany, it will have to be cleared as an import into the UK, which requires a UK EORI registration **[0.5 mark]**. For the import declaration, the £120,000 customs value of Pax will need to be adjusted to include all incidental expenses, including insurance, transportation, tooling and import clearance agent's fees plus customs duty, if chargeable **[1 mark]**. The design costs, installation services and transportation costs within the UK are not to be included in the import VAT valuation **[0.5 mark]**.

The purchase of packing materials will be a taxable UK domestic transaction and any VAT charged by the supplier can be recovered as input tax subject to the normal rules. **[0.5 mark]**.

Pachtenon will have an obligation to register for VAT in the UK under Para 1, Sch. 1A of VATA 1994 based on the expectation that the sale of Pax to ZBUL would take place within 30 days **[1 mark]**. It would be more beneficial for Pachtenon to register as an intending trader, ahead of the importation, to ensure the import VAT can be recovered as input tax on its VAT return, without a negative cashflow impact **[0.5 mark]**.

It is possible for either Pachtenon or ZBUL to be the Importer of Record (IOR):

Option 1: Pachtenon as IOR

Pachtenon can obtain a UK EORI to import the goods as the owner for the purposes of the trial in the UK and the intended supply of Pax to ZBUL **[0.5 mark]**. Pachtenon will be able to opt for postponed VAT accounting (PVA) although it will be required to use a third-party agent to process the import declarations because of it not having an establishment in the UK **[1 mark]**. If ZBUL does not purchase Pax, it can be exported back to Germany by a third-party (ZBUL can do this) as Pachtenon will not be permitted to act as the exporter of record due to it not having an establishment in the UK **[0.5 mark]**. Official evidence of removal will be required to demonstrate the transfer of Pax and VAT zero-rating within 3 months of removal **[0.5 mark]**.

Option 2: ZBUL as IOR

ZBUL can use its EORI to clear the import of Pax into the UK but, as it will not be the owner at the time, it would not be able to recover the import VAT charged as its input tax **[0.5 mark]**. ZBUL can use the temporary admission procedure to suspend the import VAT until Pax is purchased from Pachtenon. **[1 mark]**. This can be done using PVA and recognising the import VAT in the relevant VAT return when Pax is purchased **[0.5 mark]**. If ZBUL decides not to purchase Pax, it can export it back to Germany without the suspended import VAT becoming chargeable **[0.5 mark]**. ZBUL will not be making a supply and the conditions required for zero-rating of exports will not apply but it should retain evidence of removal, both official and commercial **[0.5 mark]**.

Sale and Installation

Pax will be fixed to the factory floor and the installation services will be directly related to land, the definition of which includes buildings **[0.5 mark]**. As work on land is not covered by the supply and install simplification, a supply of goods and services will take place **[0.5 mark]**. The place of both supplies will be the UK and they will be subject to UK VAT **[0.5 mark]**. Given that Pachtenon has no establishment in the UK, the service will be compulsorily subject to reverse charge by ZBUL, even if Pachtenon has a UK VAT registration under Option 1, as per VAT Notice 741A, section 7.6 **[1 mark]**.

Other services

The first-year warranty repairs will not be a supply for VAT purposes, even though they may involve the fitting of spare parts imported from Germany because the cost of such repairs is assumed to be included in the sales price of Pax **[1 mark]**. The extended service cover offered by Pachtenon will not fall within Group 2, Sch. 9 of VATA 1994 exemption as insurance requires the transfer of risk, which will only take place between Pachtenon and its own insurer **[1 mark]** and UK VAT will be due on £20,000 under reverse charge by ZBUL **[0.5 mark]**. Any parts, which will be fitted during the warranty repair service period, will not be supplied separately and they will be used in the provision of what will be a single supply of the extended service cover **[0.5 mark]**. Import VAT incurred in the UK on bringing the spare parts will be recoverable by Pachtenon if it is the IOR into the UK as they form a part of Pachtenon's taxable supplies of maintenance services in the UK **[0.5 mark]**. Spare parts, which may be fitted in the process of the extended cover maintenance, can be imported into the UK by either ZBUL or Pachtenon and their supply will be incidental to the supply of the service itself and as such any charges made by Pachtenon to ZBUL for them will be additional consideration for the extended cover services **[1 mark]**.

The UK-based subcontractor's services repairing Pax will be made to Pachtenon and constitute taxable supplies **[0.5 mark]**. As per above, given that Pax will be fixed to the floor, the services of the subcontractor will be land-related as maintenance of a permanent structure with the place of supply in the UK **[0.5 mark]**. If the subcontractor is VAT registered, the supply will be subject to 20% VAT, which Pachtenon can recover as input tax through its VAT return if it is registered in the UK under Option 1 or through the refund scheme for non-UK business under Option 2 **[0.5 mark]**.

MARKING GUIDE

TOPIC	**MARKS**
UK VAT registration	1.5
Purchases of packing materials	0.5
Importation and valuation	2
Importation of Pax under Option 1	
UK EORI registration	0.5
PVA	1
Export of Pax to Germany	1
Importation of Pax under Option 2	
IOR VAT recovery	0.5
Temporary admission	2
PVA	0.5
Export of Pax to Germany	1
Supplies by Pachtenon	
Product designer reviewing of existing operations	1
Installation: land related supply analysis	1
Compulsory reverse charge on land related service	1
Supply of goods	0.5
Warranty repairs	1
Warranty spare parts	1
Extended service cover	1.5
Extended-service spare parts	1
UK subcontractor services to Pachtenon: land-related supplies	1.5
TOTAL	**20**

ANSWER 3

Supco

The service agreement should be clear on the relationship, responsibilities, and the components of the services. Blendorg will be supplying services but not as an agent acting under the control of Supco. The storage of goods in the UK, their processing by Blendorg and sales made by Supco will not constitute an establishment in the UK for Supco as no human or technical resources are available in the UK, capable of receiving and using services *Cabot-Plastics Belgium* (C-232/22 **[1 mark].** As a non-established trader, Supco will need to register for VAT as soon as it starts making taxable supplies in the UK **[0.5 mark].**

Ingredients and packaging - VAT

Vitamins and minerals are essential for human nutrition but outside the definition of food and are standard rated **[0.5 mark].** Supco will be able to recover the import VAT, once it registers **[0.5 mark]**. Packaging from Italy will need to be declared by Supco as EU acquisitions **[0.5 mark].** Intrastat will not be required until the £500,000 threshold is exceeded in a calendar year **[0.5 mark]**.

Ingredients and packaging – Customs Duties

As Supco will be importing into Northern Ireland, it will need an XI EORI number, to clear the goods as the importer of record **[0.5 mark]**. Customs declarations will be required (an import licence may be needed), which can be outsourced to a customs agent **[0.5 mark]**. The imported ingredients will be ‘at risk’ of onward movement to the EU and as such the EU duty tariff will be applicable **[0.5 mark]**. It might be possible to apportion import deliveries based on the destination, with those for sale in the UK falling within UK duty tariff subject to the UK Trusted Trader Scheme, however, Supco is ineligible without an establishment in NI **[0.5 mark]**.

Liability of finished products

In *Mrs S Ridal* (LON/01/7038), the tribunal concluded that powdered nutritional supplement powder was zero-rated food as it was consumed by mixing it into foodstuffs **[0.5 mark]**. In *Arthro Vite Ltd* (MAN/96/1190 & 2453), the tribunal decided that powders of high nutrition were food, and the high nutritional value was decisive **[1 mark]**. The Supco products will fall within Group 1, Sch. 8 VATA 1994 as food **[0.5 mark]** and given they will be marketed for consumption by dissolving into liquids, they will be beverage preparations **[0.5 mark]**.

Item 4A of Group 1, Sch. 8 VATA 1994 excepts sports drinks designed to enhance physical performance and recovery, and so this category of products will be standard rated **[0.5 mark]**. The weigh-loss products, designed for use as part of a controlled weight loss or meal replacement will fall within the food zero-rating provisions **[0.5 mark]**.

Supplies of finished products

As Supco will be supplying goods in the UK, it will need to account for VAT on sports recovery powders **[0.5 mark]**. Supplies within the UK will be treated as domestic as the products will be ‘qualifying NI goods’ having been processed in NI and no customs duties will apply **[0.5 mark]**. Supco will be making distance sales to the Republic of Ireland (ROI) with UK VAT due on the standard-rated products until the €10,000 threshold is exceeded **[0.5 mark]**. Supco can register for VAT in the ROI or join the OSS scheme with HMRC to account for Irish VAT on taxable sales above the threshold **[0.5 mark]** with the zero-rated sales reported as domestic UK supplies **[0.5 mark]**. Liability in ROI will need to be confirmed.

Courier transport falls within the general rule and will be taxable when supplied to Blendorg for domestic deliveries and zero-rated for ROI deliveries **[0.5 mark]**. If Supco receives the courier services, they will be outside the scope of VAT as general rule services **[0.5 mark]**. If a charge is made to customers, the liability will follow the goods delivered and a VAT apportionment may be required, if they have different VAT liabilities **[0.5 mark]**.

Blendorg’s services to Supco

Blendorg’s services of blending, packaging, etc, will constitute a single supply of services, subject to the general place of supply rules and will be outside the scope of UK VAT **[0.5 mark]**. If a separate charge is made for storage in a dedicated space, then UK VAT would be due on this element as the provision of a land-related service (Para. 1, Sch. 4A VATA 1994) so clarity in the contract is needed **[0.5 mark]**.

Any UK purchases Blendorg may be making on behalf of Supco (e.g. customs processing or UK transportation of materials), should be made by Supco directly to avoid any VAT charges on such disbursements becoming irrecoverable for Blendorg **[0.5 mark]**. Blendorg will be receiving goods for processing, which it will not own, and it is critical that

Supco is named as the consignee on invoices and customs declarations as Blendorg will not be able to recover import VAT, even if it is named on the documentation instead of Supco **[0.5 mark]**.

MARKING GUIDE

TOPIC	**MARKS**
UK establishment analysis of Supco Cabot-Plastics Belgium (C-232/22) No need to refer to case name	1
NETP VAT registration	0.5
Ingredients and packaging - VAT	
VAT liability of materials	0.5
Imports to NI – VAT recovery position	0.5
Acquisition to NI – reporting	1.0
Ingredients and packaging – Customs Duties	
Imports to NI – registrations and customs declarations	1.0
Goods “at risk” – EU tariff applicable	1.0
Liability of finished products	
Powder blends as food/drink analysis (names and references of cases not required)	2.0
Zero rating of food	0.5
Sports drinks are excepted items	1
Supplies of finished products	
Deliveries in UK	1
Deliveries in ROI – UK VAT, Irish VAT, OSS	1.5
Transportation services – VAT liability and PoSS	1.5
Blendorg’s services to Supco	
Single supply of service	0.5
Dedicated space in warehouse	0.5
Bought-in services – direction of invoicing and VAT recovery	1
TOTAL	**15**

ANSWER 4

The provision of deposit accounts is exempt when supplied to UK customers (item 8, Group 5, Schedule 9 VATA 1994). The Luxembourg branch is likely to have a similar exemption which would apply to this revenue. Both establishments therefore have exempt revenue from domestic customers. When provided to a non-UK customer, the supply will be specified [Section 26(2)(c) VAT Act 1985 and SI 1995/3121] and so the VAT incurred on costs involved in supporting the provision of such services to non UK customers will be recoverable.

Whilst the provision of financial advice is taxable, if the service involves intermediation [item 5, Group 5, Schedule 9 VAT Act 1994] it will be exempt. Intermediation involves bringing together a party providing financial services with a person seeking them. It does not matter whether that transaction ultimately goes ahead provided that is the intention. Accordingly, advice which extends to helping a customer obtain a loan or buy securities will be exempt provided certain conditions are met, e.g. if a loan is arranged the intermediary needs to be providing 'preparatory' services and mediating in relation to the contract. This could include negotiating the value of the fees or the contractual terms. This condition does not apply for arranging securities where introducing the parties as an intermediary suffices for exemption to apply.

The provision of fund management services is taxable unless provided to one of the types of funds in items 9 and 10 of Group 5 of Schedule 9 VATA 1994. However, cases such as *ATP PensionService* [2014] CJEU C-464-12 have shown that the UK exemption is too narrow. These cases make clear that the funds covered by the exemption are any collective funds subject to state regulation aimed at retail customers where the risk is shared. The management of collective funds aimed at retail customers in the UK will therefore be exempt, but the management of funds owned by individuals will be taxable.

Fund management is treated as a B2B supply. Supplies are made where received. Where funds are established in Luxembourg, the place of supply will Luxembourg and so no UK VAT will be chargeable whether those supplies are taxable or exempt. Exempt supplies of fund management are not covered by the specified supplies order so no input tax recovery would normally be allowed for management of overseas funds. However, the management of funds which have never been advertised to UK customers and where less than 5% of the investors are in the UK are not covered by the exemption [note 6A, Group 5, Schedule 9] so are treated as taxable. Full recovery will follow.

As CWealth is making a mixture of taxable and exempt supplies, it will be partly exempt and needs to use a partial exemption method. Its UK costs are being used, at least in part, to support supplies made from Luxembourg which are treated as taxable under the Specified Supplies Order (SI 3121/1999) . Supplies made from Luxembourg cannot be included in the standard method or a single pot Partial Exemption Special Method ("PESM") [Regulations 101(3)(f) and 102(1A)(e) VAT Regulations 1995]. These issues were considered in e.g. *Morgan Stanley & Co International plc* [2019] CJEU C-165/17. CWealth will have separate activities in providing advice and managing funds and so a sectorised PESM would potentially be inappropriate. Approval for a special method would need to be sought from HMRC to ensure a fair and reasonable recovery. Otherwise the standard method would need to be used. A fair recovery may still be achieved because of the standard method override [Regulation 107B VAT Regulations 1995] if the difference exceeds £50,000 or £25,000 and 50% of the residual input tax.

The charges between the UK and Luxembourg branches of CWealth will not be consideration for supplies because they are within the same legal entity as per *FCE Bank* [2006] CJEU C-210/04. However, any taxable services received from Wealth Corporation Inc would be subject to a reverse charge [Section 8 VAT Act 1994]. As CWealth is partly exempt, not all the VAT incurred through the reverse charge will be recoverable, resulting in a VAT cost. Consideration should therefore be given to how the services from Wealth Corporation Inc are provided to CWealth. If the services were separate then the reverse charge, and hence the sticking tax, could be reduced.

The circumstances in which there is one, or several, supplies has been considered in many cases, e.g. *Levob Verzekeringen & OV Bank* [2005] EUECJ C-41/04. UK cases e.g. *The Honourable Society of Middle Temple* [2013] UKUT 0250 (TCC). Whether elements are inseparable and indispensable, genuinely available separately and invoiced and priced separately are all important factors to consider.

Marketing support, a loan and software packages do not seem to be "inseparable and indispensable", but if supplied under a single contract with a single price as per the current plans, it might be concluded that there is a single supply. Separate contracts, invoicing and pricing, together with the genuine ability of CWealth to buy individual elements from third parties if it chose, should enable the separate elements to be treated as separate supplies.

If the software which is specific to the management of the collective funds were supplied separately, then it would be an exempt supply as fund management under either item 9 or 10 of Group 5 of Schedule 9 VAT Act 1994, (See *Blackrock Investment Management* [2020] CJEU C-231/19). If supplied separately, the loan would also be exempt [item 2, Group 5, Schedule 9 VATA 1994]. Separating out these elements as set out above would allow this exempt treatment and in turn reduce the sticking VAT incurred by CWealth.

MARKING GUIDE

	Marks
<u>Liability (7)</u>	
Deposit Accounts exempt and specified supplies	1
Financial advice is taxable	0.5
Financial advice could be intermediation and explanation of intermediation	1.5
Fund management is taxable unless provided to item 8 or 9 fund	0.5
A reference to relevant caselaw	0.5
Funds to individuals taxable; collective funds likely to be exempt	1
No UK VAT on management of Luxembourg funds	1
Deduction if not advertised to UK customers	1
<u>Partial Exemption (4.5)</u>	
CWealth will be partly exempt	0.5
UK costs will be used to support taxable supplies in Luxembourg	0.5
Overseas supplies cannot be included in the standard method or a single pot PESM	0.5
A reference to relevant caselaw	0.5
Recommendation of application for sectorised PESM	1
Standard method override might apply and conditions	1
<u>Cross charges (3)</u>	
No supplies between UK and Luxembourg	0.5
Reference to relevant caselaw	0.5
Taxable services from Wealth Corporation will be subject to a reverse charge and create a VAT cost	1
Recommendation that consideration should be given to how those services are provided.	1
<u>Single/ multiple supply (5.5)</u>	
Reference to one relevant EU case and one relevant UK single/ multiple supply case	1
Summary of single/ multiple supply principles	0.5
The services provided from Wealth Corporation appear to be severable, but if there is a single contract, payment and invoicing the supply position is more likely to be challenged	1
Software specific to the management of special investment funds would be exempt if separate.	1
Reference to a relevant case	0.5
Loan would be exempt	0.5
Recommendation for separate contracts, invoicing and pricing, plus ability for CWealth to choose to receive services separately from third parties.	1
TOTAL	20

ANSWER 5

Customs Valuation Methods are hierarchical and must be tried in order, although Methods 4 and 5 may be swapped at the choice of the declarant, Greabric.

[0.5 mark]

Without data on sales of similar or identical goods (as required under Methods 2 and 3 respectively), Greabric must consider Methods 4 and 5. It may consider both for each product if it has the data and choose whichever gives the lower value or is administratively easier to calculate.

[0.5 mark]

Greabric does not, at least for entries going forward, need to apply to HMRC to use either method - it just indicates which has been used by a code on the import declaration. HMRC will be able to audit and challenge these entries.

[0.5 mark]

For the entries already challenged, it must be expected that HMRC will scrutinise the detail of the replacement values but again HMRC can only challenge a value declared; it can not instruct the declarant which method to use.

[0.5 mark]

<u>Method 4</u>

This is likely to be the administratively simpler to calculate for Greabric as it will hold all the data.

[0.5 mark]

Method 4 is based on the value it sells goods at in the UK in the 90 days after importation and has to be adjusted to take account of specific factors.

[0.5 mark]

The values used must be for sales made to persons who are not related to the importer which would exclude the sales to Kenbric.

[1 mark]

The following amounts may be deducted from the UK sales value to arrive at a Customs Value:

- Any commissions or amounts added in the UK for general expenses in connection with sale of the type of product in the UK, including marketing costs and Greabric's profit;
- The transport and insurance costs incurred in the UK; and
- The Import Duties and other charges that are payable as a result of importing the goods.

[1 mark]

<u>Method 4 Calculation</u>

Price sold to unrelated customers = £75 each.

Units Imported 1,500.

1,500 * £75 = £112,500

Transport and insurance to UK per load = £3,500 this must be included in Customs Value however it is assumed to be included in the sales cost to unrelated parties, so no adjustment is needed.

Deduct UK Transport - £1,000

Deduct amount for general expenses and profit per item £8 * 1,500 = £12,000

Customs Duty Value = £99,500

Customs Duty = 99,500 *4/104 = £3,826.92

Customs Value = £95,673.08 or £63.78 per unit.

[2.5 marks]

Method 5

Greabric will not be able to consider this method without information provided by Usbric Co, which even though it is the parent company, it may not wish to provide.

[0.5 mark]

This method is built-up from the cost of production in the country of export. It consists of costs of materials and production, included the packaging and containers and any free of charge assists and transport and insurance as for a Method 1 valuation. It must also include an amount for general expenses and estimated profit that is normal for the type of goods made in the country of export for sales to unrelated parties.

[2 marks]

Method 5 Calculation	£
Material, labour, overheads	45
Estimated export expenses and profit	14
Transport and Insurance to the UK border only	3
Total	£62

[1 mark]

Method 4 v Method 5

In this instance Method 5 gives the lowest Customs Value at import and so the lowest Customs Duty payment. Consideration needs to be made however of the strength of the evidence available.

[1 mark]

Whichever Method is used to replace the value of entries already made, HMRC will deduct the Customs Duty already paid on the entries made from any post-clearance recovery action.

[0.5 mark]

HMRC may challenge the amounts for general expenses and profits under either method and as these are both amounts for the industry norm where there are no related party transactions these may be harder to prove and may involve some discussion and agreement with HMRC.

[1 mark]

As each entry is a separate legal debt Greabric needs to carry out the calculation each time it imports, though in practice the calculations would only need to change under Method 4 when the sale price changes and under Method 5 when values change.

[0.5 mark]

Import VAT Adjustment

Where Import VAT was declared on the entry, an adjustment to the amount owing cannot be made via the VAT return. HMRC's notification of debt will be for the Customs Duty and Import VAT. Both will have to be paid and the Import VAT may be reclaimed through the VAT return as normal.

[2 marks]

Where PVA was elected on the import declaration, HMRC will notify the Customs Duty element of the debt and that must be paid. They will advise what amount of Import VAT must be adjusted and will expect Greabric to adjust this thorough its next VAT return as it did for the original PVA amounts. However, the post-clearance Import VAT amounts will not appear on the PVA statement so Greabric will need to ensure the adjustment is made manually on the VAT return.

[1 mark]

Civil Penalty v Civil Evasion

HMRC will consider the facts to determine whether they consider a Civil Penalty or Civil Evasion Penalty is due; neither penalty is automatic.

[1 mark]

Given the repeated errors and relatively high amounts involved it is unlikely that only a Civil Penalty Warning Letter would be issued, Greabric should expect to receive a Civil Penalty. The amount of any penalty may be reduced (mitigated) by HMRC but what counts as mitigation and levels of mitigation are not defined in law, so any mitigation is at HMRC's discretion. Co-operation with resolving the issue may well lead to some level of mitigation.

[1 mark]

It is unlikely that a Civil Evasion Penalty would be levied as these are raised to penalise intentional evasion of Customs Duty. HMRC would need evidence of intent to avoid paying amounts. In the absence of other evidence, the fact that the adjustments were not reported to HMRC is unlikely by itself to be seen as intent as this could be an oversight particularly as Greabric is a relatively new business.

[1 mark]

MARKING GUIDE

Valuation Methods are hierarchical but 4 and 5 may be swapped.	0.5
Greabric may consider 4 & 5 and choose the one that gives the lower value or is easier to calculate.	0.5
No need to apply, just indicate what Method is being used. Values may be challenged.	0.5
For entries already looked at by HMRC, they can challenge value but can not instruct what Method to use.	0.5
Method 4	
Likely to be administratively easier as Greabric will hold all the data.	0.5
Based on Greabric's sale price, adjusted as required.	0.5
Sales must be to unrelated person (excludes Kenbric).	1
Deductions allowed (any two for mark): • Any commissions or amounts added in the UK for general expenses or profits in connection with sale of the type of product in the UK, including marketing costs; • The transport and insurance incurred in the UK; and • The Import Duties and other charges that are payable as a result of importing the goods.	1
Method 4 Calculation	
(1,500 units * £75=) £112,500	0.5
Deduct: UK Transport - £1,000 Expenses & profits (1,500 * £8 = £12,000) Gives Customs Duty Inclusive Amount £99,500	1
Customs Duty = 99,500 *4/104 = £3,826.92	0.5
Customs Value = £95,673.08 or £63.78 per unit	0.5

Method 5	
Greabric will need information from its parent company which it may not want to provide	0.5
Value is built up from production costs. Costs of materials and production including packaging, any assists and transport and insurance as for Method 1. Must add amount for expenses and profit which is normal in country of export.	2
Method 5 Calculation	
Materials, labour, overheads £45 Estimated expense and profit £14 Transport and Insurance £3 Customs value = £62 per unit	1
Method 4 v Method 5	
In this case Method 5 give lower Customs value. But Greabric must consider if the evidence is strong enough to support this method.	1
Whichever Method is used HMRC will deduct amounts already paid on Customs Declarations.	0.5
Both methods require a "normal" amount for profit and expense" which may be hard to prove and may be subject to HMRC challenge.	1
As each entry is a separate legal declaration the calculation should be carried out for each entry but in practice only changes when the values change.	0.5
Import VAT Adjustment	
Where Import VAT was originally accounted for on the entry HMRC's notification of an additional debt will include Import VAT. This must be paid and reclaimed.	2
Where PVA was elected HMRC will notify the Customs Duty and advise how much Import VAT should be adjusted on the next VAT return.	1
Civil Penalty v Civil Evasion	
HMRC will consider the facts, penalties are not automatic.	1
Given level or error and length of time involved, a Civil Penalty is likely. HMRC may mitigate so co-operation is advisable.	1
Civil Evasion Penalty is unlikely as these are used in cases of fraud and HMRC would need evidence. (Any reasoned argument accepted.)	1
Total	**20**

ANSWER 6

Northern Ireland (NI) follows EU Customs rules for supplies of goods. Goods may travel through the EU for export without payment of Customs Duty if Transit (NCTS) is used.

[0.5 mark]

This confirms the status of the goods, where they are traveling to and from and that unpaid charges are secured by a guarantee.

[0.5 mark]

Customs Duty will never become due provided it can be shown that the goods were exported from the transit area and procedures were followed.

[0.5 mark]

Individual transit declarations may be made without an authorisation. The goods and paperwork must be presented at a NI port Customs office to have the movement recorded as started and at the port where they leave the EU to record it as finished. The goods could be examined at each location.

[1 mark]

If there are many movements, it may be beneficial to be an Authorised Consignor. The same number of declarations are needed but McHol would start the movement at its premises with examinations taking place there.

[1 mark]

The transit movement must be ended as goods leave the transit area at the French or Spanish border to prove they have left the transit area. As McHol does not have premises at these ports it can not become an Authorised Consignee. It could however engage an Authorised Consignee Customs Agent at these ports who could receive the goods at its premises and carry out the formalities to end the Transit movements there.

[1 mark]

Any combination of individual movement and Authorised Consignor / Consignee can be used (e.g. movement from Customs office to Authorised Consignee, or Authorised Consignor to Customs office).

[0.5 mark]

Whether individual movements are made or the Authorised Consignor option is used, a guarantee must be in place covering the Customs Duty that would become due if goods were not exported.

[0.5 mark]

The guarantee can be provided by the consignor or a third party “principal”. The principal agrees to use of their guarantee, for a fee, and will pay any charges that become due.

[1 mark]

McHol could apply to increase its Customs Warehouse / deferment comprehensive guarantee to cover the transit movements. This may be cheaper than using one belonging to someone else.

[0.5 mark]

The Authorised Consignor application conditions (e.g. good compliance history and suitable record keeping) are very similar to those for obtaining a Customs Warehouse or deferment account guarantee which McHol already holds.

[0.5 mark]

The transit declaration only covers the movement of the goods. McHol must still update its Customs Warehouse record correctly and promptly with the removal. An export declaration must be made in NI before the Transit movement starts.

[1.5 mark]

Whether McHol makes individual movements or uses the simplification it can employ an agent to make declarations or use the web-based system. A commercial decision based mainly on cost and convenience must be made. McHol could start using individual transit movements as soon as it has appointed an agent and found a principal to provide a guarantee. It could then consider applying for Authorised Consignor or to increase its guarantee.

[1 mark]

MARKING GUIDE

Goods may travel overland through EU without payment of Customs Duty if procedures are followed use Transit (NCTS).	0.5
Confirms status, shows where goods are travelling and shows that they are covered by a guarantee.	0.5
Customs Duty will not be payable provided can demonstrate the goods were exported and transit was discharged.	0.5
Options available, commercial decision needed. Individual declarations for each movement. Start and end at port. Goods must be presented at both ends of journey. May be examined.	1.0
Authorised Consignor allows McHol to start movement at its premises and have goods examined there.	1
McHol can't be Authorised Consignee as doesn't have premises at the ports overseas but could engage an agent who is and have movements finished there.	1
Can use any combination of Authorised Consignor to port. Authorised Consignee etc.	0.5
Goods must be guaranteed whether individual movements or Authorised Consignor / Consignee is used.	0.5
In either case consignor can provide the guarantee or use third party "principal" as guarantor.	1
McHol could apply for comprehensive guarantee – likely to be cheaper.	0.5
Conditions for Authorised Consignor and Comprehensive Guarantee are like those already met for Customs Warehouse and Deferment Account.	0.5
Transit only covers movement. Still need to complete Customs Warehouse removal and submit an export declaration in NI.	1.5
Can use agent to make the declaration or use web-based system. Could start with individual movements and then become Authorised Consignor or stay with individual movements.	1
Total	**10**