THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Cross-Border Indirect Taxation

May 2023

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 2022/23 legislation (including rates and allowances) continues to apply for 2023/24 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. LeasecoDE GmbH, a company established in Germany, is planning to start leasing 3D printers to UK business customers from June 2023. The printers are manufactured in Germany and will be shipped from there to customer sites in the UK. LeasecoDE GmbH will retain ownership of the printers throughout the two-year leasing contract. Once the contract ends, the printers will either be shipped back to Germany or will be sold for scrap in the UK.

   LeasecoDE GmbH has a UK VAT registered subsidiary, SupportcoGB Ltd, which will provide support services in relation to the leasing contract. These will consist of on site and remote repair and maintenance work. There is an intercompany agreement in place between LeasecoDE GmbH and SupportcoGB Ltd to remunerate SupportcoGB Ltd for the services to be provided.

   Requirement:

   Explain the VAT implications of this scenario including the import process and Customs Duty position. (15)

2. Dollivard SA is a company established in France which has a contract to manufacture, supply and install heavy duty machinery at a sewage plant in Didcot, UK. The machinery will be cemented into the floor of the building and legal title to it passes once installation has been successfully completed. Dollivard SA's client, H2O Industrial Ltd, is a UK established VAT registered business.

   Dollivard SA does not have a business establishment in the UK, but its engineers will travel to the UK periodically during the project to oversee the contract. A Polish sub-contractor company, Nowak Sp. z o.o., will be used to install the machinery on site and it will provide its services to Dollivard SA.

   Nowak Sp z o.o.'s staff will incur travel and subsistence costs with UK VAT. The machinery will be shipped from France to the UK and other materials needed for the project will be sourced by Dollivard SA locally in the UK. Dollivard SA will also purchase a licence for specialist software from a UK established company, Parsons Ltd, for use during the initial design process.

   Neither Dollivard SA nor Nowak Sp. z o.o. are UK VAT registered.

   Requirement:

   Explain the UK VAT and Customs Duty implications of all transactions including the VAT recovery position on imported goods, and also on other costs incurred. (15)

3. TravIns Ltd is an insurance company based in Belfast, Northern Ireland, that also has staff and offices in England, and is VAT grouped with a fully taxable UK group company. It has decided to expand its travel insurance offering to customers in Europe. It will set up and VAT register branches in Sweden and Spain to help promote the brand and TravIns Ltd's insurance products with a view to TravIns Ltd (the group headquarters) negotiating and entering into insurance policies with potential new clients identified by the branches.

TravIns Ltd will rent serviced office space in Sweden and Spain and hire staff locally overseas to be employed by the branches. TravIns Ltd will have a transfer pricing policy to remunerate the branches on an arm's length basis for the marketing and promotional services it will provide to the UK including arranging policies for customers. This will be based on its costs plus a 15% mark up.

As an alternative, TravIns Ltd is also considering whether to incorporate separate legal entities in Sweden and Spain rather than registering branches.

Requirement:

Explain the VAT implications of the transactions taking place between the overseas branches and UK Headquarters, and of the potential creation of separate legal entities. (20)

4. Tripage Ltd is a VAT registered UK based online travel agent which arranges overseas trips as disclosed agent for private individuals. It is eager to maximise revenues and is considering levying a service charge of £30 per booking on its customers, the travellers, in addition to continuing to charge commission to underlying travel providers (hotels etc). Its customers are located in the UK and The Netherlands and the travel arrangements sold take place in the UK and Europe.

The underlying travel providers paying commission to Tripage Ltd are generally located overseas, but one is based in the UK and arranges overseas hotel accommodation.

In addition to the customer service fee to be charged for all bookings, a fee of £5 will be introduced for any amendments made to bookings. This will be retained by Tripage Ltd and not shared with the underlying travel provider.

Tripage Ltd is planning to further develop its business by creating a division which will sell UK and overseas package holidays as principal rather than as agent to provide more control over pricing. It has purchased two 5* hotels, in Spain and France, which will feature in its packages with car hire and flights arranged as undisclosed agent.

Travellers booking trips to these hotels in Spain and France receive a free of charge t-shirt with the Tripage Ltd logo. Tripage Ltd has outsourced the purchase and sending out of these items to another group company in Northern Ireland which will invoice Tripage Ltd for the t-shirts sent to UK customers.

Requirement:

Explain the VAT treatment of the transactions to be made and received by Tripage and any possible further VAT registrations that may be required. (20)

5. A GB-based company, Carresflav Ltd has been running a small chain of restaurants for a few years and has decided to relaunch some of these as Caribbean-style restaurants. Carresflav Ltd will use Joycelyn Franks, a friend of a director, who lives in the Caribbean to source a variety of second-hand and locally produced articles to decorate the restaurants. It will pay Joycelyn a finder's fee of 3% of the cost of the goods. Jocelyn does not mind whether she acts as principal or agent in the supply.

Carresflav Ltd also wishes to start importing spirits itself rather than relying on buying from UK-based suppliers. Carresflav Ltd has found a small-scale spirits producer (Carrum Co based in Cuba) who will bottle and label their spirits as an own brand product if provided with artwork to use. Carrum Co can suggest a local Cuban company which could design the label incorporating the legally required UK Duty Stamp but will use any artwork if Carresflav Ltd prefers to source it elsewhere.

Carresflav Ltd will initially purchase 50 bottles of 45% ABV rum at a cost of £4 per bottle. Each bottle holds one litre. Freight from Cuba to UK will be £300 and freight from the UK border to its premises will be £80. The relevant Customs Duty rate is £0.50 / % vol / 100 litres + 2% of Customs Value. The Excise Duty rate is £28.74 / litre of pure alcohol.

Carresflav Ltd has experience of importing non-excise goods so is aware of the need to make declarations, use of guarantees and other basics.

Requirement:

1) **Discuss the options available for the supply of the second-hand and locally produced items to Carresflav Ltd and the implications on the Method 1 valuation for Customs Duty purposes.** (9)

2) **Explain any Customs Duty and VAT valuation implications of the label design and the obligations in respect of the Duty Stamps.** (7)

3) **Calculate the Customs Duty, Excise Duty and Import VAT due on the first purchase of spirits (ignoring the effect of the label in requirement 2).** (4)

Total (20)

6. T'Wheels Ltd is established in Northern Ireland and imports bicycles and parts into Northern Ireland. It employs a direct representative to declare its goods at import.

In September 2021, following an HMRC audit, T'Wheels Ltd was issued with a C18 (Post-Clearance Demand Notice) to collect underpaid Customs Duty and Import VAT as it declared some goods as originating in Vietnam which had actually originated in Taiwan. HMRC also issued a Civil Penalty Warning Letter for failure to correctly declare goods. These decisions were not appealed as it was accepted that the origin had been declared incorrectly, and the C18 was paid.

In December 2022 HMRC audited T'Wheels Ltd again and identified that bikes purchased monthly from a new supplier which it started using for imports from January 2022 were all declared as originating in Sri Lanka as stated on the invoices. HMRC found that all other paperwork for these imports showed they originated in China, and issued a Right to be Heard letter in February 2023 for underpaid Customs Duty and Import VAT totalling £300,000. T'Wheels Ltd advised HMRC it agreed that it had made an error and in March 2023 HMRC issued the C18.

Also in March 2023 HMRC issued a further Right to be Heard letter advising that they intended to issue a £250 Civil Penalty for each of these 12 entries. T'Wheels Ltd did not have time to reply within the Right to be Heard period and asked for an extension, which was refused. The Civil Penalty for £3,000 was issued in April 2023.

T'Wheels Ltd thinks the penalty is unfair as it has already paid the extra charges and would like to challenge this.

Requirement:

Explain T'Wheels Ltd's options and discuss the factors it should consider in relation to the penalty. (10)