THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Cross-Border Indirect Taxation

May 2021

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.

- Except as set out below or indicated by additional information in the question, you may assume that 2020/21 legislation (including rates and allowances) continues to apply for 2021/22 and future years.

  1) You MUST assume that the UK remains within the European Union.

  2) You MUST ignore all temporary Covid related legislation including furlough, grants, loans and the reductions in VAT and SDLT rates.

  Except in relation to points 1) and 2) above, candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.

- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. Kitchener Ltd is a VAT registered UK established company which intends to purchase a significant quantity of unsorted recyclable glass currently located in France. It will bring 80% of the glass to the UK to smelt to create new glass bottles, relying on transport arranged by the French supplier. However, before it can use the recycled glass, it needs to be sorted and graded. The options are:

   1) Engage a sorter in France to perform this work and then ship the sorted product to the UK.

   2) Bring it to the UK and sort and grade it here.

   Since Kitchener Ltd has agreed to buy more glass than it can reasonably use, it has arranged to sell the remaining 20% of its unsorted glass to a buyer in Germany who will be invoiced from the UK. That glass will be shipped directly to them from France very soon after it has been purchased by Kitchener Ltd.

   <u>Label design and production</u>

   Kitchener Ltd's in-house label design and production service is a profitable value-added activity which it tries to sell to as many customers as possible who purchase bottles.

   At present, the design and production elements of the labels is included within a single price for labelled bottles and a higher price per unit is charged than for a supply of unlabelled bottles.

   A query has been raised by a non-EU established business customer to whom labelled bottles have been exported in the past. They are looking at re-branding and have asked whether Kitchener Ltd can supply a new design for their labels. In the future the customer may source its bottles from a producer in its own country but may wish to retain Kitchener Ltd to supply solely labels, provided it is happy with the design. If successful it is anticipated that EU business customers will seek similar arrangments in the future.

   Whilst Kitchener Ltd makes every effort to promote its in-house design team, some UK and overseas customers have indicated that they may wish to use a third-party designer. The customers may do this, but under the terms of contracts for the supply of labelled bottles, they are obliged to appoint Kitchener Ltd as their agent to procure the third-party designer. This clause would allow Kitchener Ltd to generate some "agency" income, (although in practice it would invoice the client for the work including amounts it needs to pass on to the third-party designers, who could be established in the UK or other parts of the EU).

   Requirement:

   Explain the VAT implications of the range of proposed activities. (20)

2. Globalgend Ltd is a UK established VAT registered business which supplies generators for sale and lease and is to undertake the following activities:

<u>Hire of Generators to Clients in Romania, Turkey and the Middle East</u>

Globalgend Ltd is going to lease some generators to business clients in both Romania and Turkey for six months from 1 January 2022.

After the contract with the Romanian client has ended, those generators will be returned to the UK and then will be hired to a French based charity for use in humanitarian aid operations in the Middle East. Globalgend Ltd will be handing over the generators to them in Southampton docks before shipment. The Turkish generators will have minimal value at the end of the lease and will be scrapped in Turkey.

<u>Swiss Charity</u>

From 1 March 2022 Globalgend Ltd will ship some generators to Sudan and will generate electricity and sell it to a Swiss established charity performing irrigation projects. It has just donated a new generator (cost £100,000) to the UK office of the Swiss charity. The charity has arranged road transportation from Birmingham where it is currently stored to Tilbury Docks, where it will be officially handed over to them. Globalgend Ltd has agreed to pay for the transport as part of the donation. As the transportation invoice will be made out to the charity, it is keen to know for budgetary purposes, whether the charity status will have any bearing on the VAT liability of these services.

Whilst the charity will arrange the UK transport, Globalgend Ltd are more skilled at arranging exports, and so have agreed to organise (and pay for) the export to Sudan on the charity's behalf. The invoice for this will be made out to Globalgend Ltd.

Globalgend Ltd has been financially supported by business partners established in the US, Germany and the UK who will sponsor part of the cost of the generator in return for which it will have their corporate names prominently displayed on it. Globalgend Ltd has also purchased TV advertising coverage to gain maximum exposure of the handover to the President of the Swiss charity at Tilbury Docks.

Requirement:

Discuss the VAT implications of the proposed projects, including any reporting requirements. (20)

3. Insuranceworld plc, is a leading UK established insurance group which has decided to conduct a review of three specific areas of its group activities.

<u>Neckcrop Ltd</u>

Neckcrop Ltd, a wholly owned subsidiary company, will act as underwriter for a specific range of insurance policies to be offered to the UK horse riding community. The company is established in Guernsey and will sell policies through a wholly owned VAT registered UK subsidiary, Remindon Ltd, which will act as agent on behalf of Neckcrop Ltd. Neckcrop Ltd has no staff or assets in the UK.

Remindon Ltd, has recently incurred input tax on advertising in preparation for the supplies to be made to Neckcrop Ltd.

<u>Dowsett Ltd</u>

Dowsett Ltd is a UK established group member which sells public liability and marine insurance. In June 2021 it is expected to conclude the sale of all of its 500 public liability insurance contracts along with other assets to a related group company, Crodos Ltd, which is established in Cyprus. It will continue to sell marine insurance.

Under the terms of this sale:

1) In addition to the contracts, the sale will include an office in the UK, some computer equipment and the transfer of 20 employees.

2) Dowsett Ltd will provide existing customer details in return for payments and will continue to receive a commission on renewed policies for five years following the sale.

3) Dowsett Ltd must redirect any enquiries for public liability insurance from potential customers to the buyer.

4) The buyer will market Dowsett Ltd branded marine policies.

5) Dowsett Ltd will include a link on its website to the buyer's website so that any customers can obtain details and connect to the buyer's website to buy public liability insurance.

Immediately following completion of the sale by Dowsett Ltd, for commercial reasons Crodos Ltd will sell the insurance contracts and the other purchased assets and assign the rights and obligations of the contracts on the same day to a third-party Luxembourg established company, Bevos SARL.

<u>Commission post completion</u>

Dowsett Ltd will continue to receive a commission payable monthly on new and renewed policies (initially as part of the terms of the transaction with Crodos Ltd but ultimately from Bevos SARL), for five years following completion of the June 2021 transaction.

Dowsett is uncertain whether this commission would be seen as part of the original transaction, or as separate supplies over the five-year period.

Requirement:

Explain the VAT treatment of the proposed transactions with reference to case law where applicable. (15)

4. Oegn AG is an Austrian holding company of a group of European companies and intends to make changes to its structure.

   One of its UK VAT registered subsidiaries, Oegn (UK) Ltd, manufactures shrink wrap and other food packaging materials at its two UK factories. Oegn (UK) Ltd currently sources raw materials, then manufactures and sells the finished product directly to business customers in the UK and EU. However, in order to generate better economies of scale with centralised purchasing, it plans to change its European operations as follows:

   1) Oegn AG will introduce a wholly owned Swiss established company, Oegn GmbH, as principal, which will be responsible for sourcing all raw materials, including imports into the UK. Procurement and ordering of all raw materials, transport, and final product sales previously performed by Oegn (UK) Ltd will in future be controlled and arranged by Oegn GmbH.

   2) Oegn (UK) Ltd will solely supply processing services by working on goods owned by the Swiss entity, taking them from raw materials to finished product.

   3) The finished products will be available for collection and shipment by Oegn GmbH from the factories, to be shipped, in most cases, directly to UK and EU customers. Alternatively, Oegn GmbH may occasionally arrange for storage of the finished products in designated areas in third party warehouses in the UK.

   This restructuring will involve consequential changes with suppliers and customers, including replacing all current third-party contracts entered into by Oegn (UK) Ltd with Oegn GmbH as the contracting party.

   Requirement:

   Explain the VAT implications of the proposed changes described above. (15)

5. Teram Ltd is a UK-based company which imports goods from outside the EU.

On 15 December 2020 Teram Ltd had an audit of its Customs Duty procedures and declarations by HMRC. On 25 February 2021 HMRC sent Teram Ltd a letter and issued a Post Clearance Demand Note (C18) to collect Customs Duty and Import VAT on freight and tooling charges that it had failed to declare. The Customs Duty charged on the C18 was £300,000 for all 160 entries made between May 2019 (when they did their previous audit) and 15 December 2020.

Teram Ltd's Finance Director checked and found that it had failed to put a system in place to ensure that these were declared after similar errors were detected during the May 2019 audit which resulted in HMRC issuing a C18 covering the previous three years. Teram Ltd will not be appealing the latest C18 and indeed it paid the C18 five days after it was received.

The Finance Director is worried by a line towards the end of the letter that says that although HMRC were issuing the C18, they did not consider the matter closed and that further action may follow.

There was no indication of when Teram Ltd would hear from HMRC again.

Requirement:

Explain what further action HMRC may take. You are NOT required to discuss criminal sanctions. (15)

6. Fabrics Ltd is a UK-based manufacturer and retailer of raincoats, which are sold throughout the EU.

One of Fabrics Ltd's range of raincoats requires the fabric to have a specialist waterproof coating applied before they make the coats. The only company it can find to do this is based in the US, which means that Fabrics Ltd will have to export the UK manufactured fabric to the US, have it coated and then re-import the treated fabric.

When the product is re-imported it is classified to a Commodity Code that attracts a Customs Duty rate of 8%.

A typical example of the amounts involved is:

	£
Value of Fabric as exported	100,000
Cost of Freight and Insurance at Export	3,000
Cost of Processing	27,000
Insurance at Import	750
Freight to EU border at Import	3,500

Fabrics Ltd wishes to establish if there are any true savings (not cash flow benefits) that it could achieve and still carry out this process.

Requirement:

Discuss the scope for Fabrics Ltd to make any Customs Duty savings. (15)