

THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Cross-Border Indirect Taxation

November 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 2032/24 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. Opfyl Ltd was incorporated in June 2023 and started to trade and was registered for VAT on 1 September 2023. It owns a warehouse in the East Midlands in which it stores goods for various sellers. Where relevant, the import process is carried out by the sellers and not by Opfyl Ltd. The sellers of the goods receive orders and payment for the goods from their customers, who are UK individuals. The sellers then transmit orders for the goods to Opfyl Ltd, which fulfils the orders by picking, packing, and sending them out, within a two-day turn-around in return for a fee.

Opfyl Ltd has had the following new clients since 1 September 2023:

- 1) 99YP Ltd, which is a UK VAT registered online seller. Its staff are all based in the UK, although its internet server is located outside the UK. 99YP Ltd imports its goods, clears them for duty and VAT, and then ships the goods to Opfyl Ltd's premises.
- 2) Fuz87 Sarl, which is incorporated and based in France and VAT registered there. It is not UK VAT registered. It sends goods in bulk from its French warehouse direct to Opfyl Ltd's premises. It has no staff in the UK.
- 3) GRitZ GmbH, which is incorporated in Germany and VAT registered there. It is not UK VAT registered. It makes sales in Germany and has also made sales to UK customers in the last 12 months of £70,000. GRitZ GmbH has two directors, a brother, James, and a sister, Lottie. James is the managing director and is resident in the UK. He works full-time in the business. Lottie spends eight months of the year at her home in Germany and the other four months at her home in the UK. She carries out the administrative duties for the company, such as filing German tax/VAT returns. She was made a director in case anything happened to James, and she needed to take over. She only gets involved in running the sales side of the business when James is away on holiday.

Requirement:

Explain the VAT issues affecting Opfyl Ltd and recommend any action that it should take.

Do NOT discuss the place of supply of Opfyl Ltd's services.

(15)

2. 53APPS Ltd has recently incorporated in the UK and is registered for UK VAT as an intending trader as it will make supplies from both Great Britain and Northern Ireland. It has a 'GB' identifier and an 'XI' identifier in relation to the Northern Ireland supplies. Staff are based in both countries. It will supply gaming applications ('apps') to individuals across the EU and anticipates being ready to launch its products by January 2024. It anticipates sales in 2024 of £80,000 with a split of 70:30 for UK to EU sales.

The apps involve interactive play with other individuals and optional extras can be purchased to enhance the play experience. These are bought through the app. These are accessories such as fancy dress headwear, including pirate hats, and other props, for example, plastic swords. Game players can upload photos of themselves dressed up to share with competitors and there are prizes (money off future purchases) for winners.

53APPS Ltd has found two suitable warehouses to rent for the storage of the accessories and props. One warehouse is located in Great Britain and the other in Northern Ireland. As it has staff in both locations, supplies can be made from either Great Britain or Northern Ireland.

The accessories will be imported in bulk consignments from China. 53APPS Ltd is unsure whether to import the accessories to a warehouse in Northern Ireland or Great Britain. Once imported, the consignments will be unpacked, and individual items will be sent out to players when purchased through the app. No consignment will exceed £50 and goods will not be moved between the two warehouses themselves. The players could be in the UK or in various EU countries. From a commercial perspective the costs associated with running either warehouse are similar and projected costs for freight agents to clear the goods are similar in both locations.

In the future 53APPS Ltd may send staff to various EU countries to show its apps at Gaming Fairs. These are exhibitions open to members of the public and 53APPS Ltd is concerned about how to recover any VAT suffered overseas.

Requirement:

Explain the VAT and Customs Duty implications for 53APPS Ltd of the above activities.

(20)

3. Elordy is a French national who intends to start a part-time business making jewellery containing the ashes of deceased pets. Her customers will all be private individuals and initially her customers will be in GB. Customers will choose an item of jewellery from an online catalogue on Elordy's own website and send the ashes to be incorporated into the jewellery. Each finished item will take between three and five weeks to complete and will be bespoke to the customer, with the pet's name engraved on the jewellery. The catalogue will show basic designs along with a set price but if the customer wants additional customisation, then this can be done for an agreed price. The total price for each item is unlikely to exceed £120.

Elordy owns two houses: one in England and one in France. Her mother is in a care home in England, so she regularly travels between the two countries, often spending over a month at a time at each home. Over the course of the year, she spends approximately 50% of her time in each country and as a result, she is unsure where to base her business.

Initial design work and liaison with the customer can be carried out in either England or France. As the ashes and jewellery are small, she could manufacture her products in either location. The special press required to make the jewellery is however expensive, and so she will only purchase one and it will be located in either England or France. Elordy has found a press for sale in the UK, which is £300 cheaper than a similar one in France. The UK seller will buy it from China and clear it for Customs purposes before selling it on to Elordy.

Wherever she manufactures, she will buy the metal and jewels locally. Her accounting records will be kept where she establishes her business.

If she sets up in France, then customers would post the ashes out to Elordy, and she would use a specialist postal courier to send the jewellery back to them once complete. The English press seller said they could send the press to her, charging Elordy for any French importation and transport costs.

Elordy does not want to register for VAT unless she has to and will carry out all administrative obligations herself, should she be required to register. She will not have any customers located in Northern Ireland.

Requirement:

Explain the UK VAT and Customs Duty implications of Elordy's proposals, including any appropriate recommendations. (15)

4. NigAgri Ltd is incorporated and based in Nigeria. It runs courses in Nigeria on sustainable farming. NigAgri Ltd has both Nigerian and GB clients, who are farm owners. The GB farmer owners send employees out to Nigeria to attend the courses. Each course has a maximum 15 participants who gain practical experience on how to take soil samples and test it for microbes. Courses can be block booked by a single client company and where this occurs the course is tailor made for the recipient's specific requirements.

When the participants from GB return, they can download the e-manuals and testing instructions that were used on the course in Nigeria. Each individual participant is set up with a password and access. Use of the e-manuals and instructions are only available to that participant. Participants can receive a physical copy on request, in addition to the e-books. Physical copies are more expensive, and a CIF value of £130 is added to the course fee, if this is requested. Each participant signs a copyright contract stating, for example, that they will not disclose their password and not copy physical books.

Each participant also has remote access to the tutor on the course, who is a Nigerian qualified scientist, for help with their own testing in GB. If they need specialist help, they email the tutor who will give a video call back to assist with their specific queries about soil testing and land management. One call a month (for six months following the course) is included within the course fee but if a participant requires further calls, a separate charge is made. The tutor is based in Nigeria and all calls are made from there.

When the farm owners send their employees on the course, invoices are issued to the farm owner. The employees attending are named on the contract and the remote access is not transferable to another person due to the employee having undergone the required training in Nigeria. Some of the GB farmer owners that send employees use the Farmers' flat-rate scheme.

Also contained within the course fee is a set of basic chemicals for soil testing which are delivered direct to each participant's business premises in GB following the course. They are sold separately to Nigerian farmers for the equivalent of £100 in local currency, and they must provide a certificate of competency to NigAgri Ltd to be able to buy them. Extra chemicals can be bought separately after the course and will be bespoke to the recipient's need.

Requirement:

Explain the UK VAT and Customs/Import duties implications of the above activities. (20)

5. Bspokit Ltd is a GB-established manufacturer of televisions. It has a factory, with skilled staff and specialised machinery, where it manufactures the televisions from component parts. It buys 60% of its components from suppliers in GB and imports the remainder from non-EU countries. It does not buy any interchangeable components from GB and non-GB suppliers. Bspokit Ltd does not trade with Northern Ireland and has no intention to do so in the future.

Until now, it has only sold its televisions to trade customers within GB and the EU but wants to start exporting to other countries.

Bspokit Ltd has a long-standing relationship with CustDecs Ltd, which handles all its import declarations and its export declarations to the EU. CustDecs Ltd acts for Bspokit Ltd as an Indirect Representative and allows Bspokit Ltd to use its deferment account to pay Customs Duty for a small fee. Bspokit Ltd does not want to bring the declaration process in-house nor does it wish to operate its own deferment account.

Bspokit Ltd recently paid for a review of the classification, valuation, and origin of the goods it uses and how these are declared, and no savings were identified. It wishes to generate some Customs Duty savings if possible but is not interested in savings to cashflow.

Bspokit Ltd is not in a Freeport (Free Zone) area.

Requirement:

Discuss any Customs Duty savings that Bspokit Ltd may be able to make. (20)

6. Jeff Gardiner, a UK national, has lived and worked in South Africa for the last eight years as the general manager at a vineyard and wine producer. He is planning to return with his family to GB permanently in the next few months once he has bought a house in Suffolk.

Jeff is selling his house in South Africa and will transport to GB the family's furniture; clothes; personal possessions; wine from his cellar and his collection of African antiques, artifacts, and animal trophies. However, he will not be able to import any of his hunting rifles and he will sell his car before his move. Jeff will also buy some additional new furniture and antiques in South Africa to bring with him to GB as it is much cheaper to buy these there.

If the sale of his property in South Africa is completed before he finds a house in Suffolk, he will put his possessions into temporary storage in South Africa.

Requirement:

Discuss the import implications of Jeff bringing the household goods into GB. (10)

You are NOT required to discuss valuation, the declaration itself or use of Customs agents.