THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Cross-Border Indirect Taxation

November 2022

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 2021/22 legislation (including rates and allowances) continues to apply for 2022/23 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. Organic Ices Ltd is a VAT registered company based in Enniskillen in Northern Ireland. It sells luxury ice cream throughout the UK. A small amount of its product is sold to private individuals in Northern Ireland via the company's website. However, the bulk of its sales are to retailers, both in Northern Ireland and in Great Britain.

The company is now looking to expand into the EU. It intends to start selling to private individuals in the Republic of Ireland. In the year beginning 1 November 2022, it expects sales of €5,000, rising to €30,000 in year two.

It has also begun discussions with two EU business customers. The first customer is Le Shopping SA, which operates a small chain of supermarkets in France. The second customer is a wholesaler, Eisundsachen GmbH, based in Germany and which supplies VAT-registered retailers throughout the EU. Both companies are currently only registered for VAT in their home country.

Le Shopping SA does not want to buy stock it is not sure it can sell. Accordingly, it wants Organic Ices Ltd to hold stock in France for delivery to its stores. To do this, Organic Ices Ltd will need to rent warehouse space in France and arrange transport of the stock to Le Shopping SA's stores when it is requested to do so. It will use third parties to supply these services as it does not want to take on employees outside Northern Ireland. Organic Ices Ltd believes that there may be scope for servicing other business customers in France from this stock. If it is commercially viable, then the company may supply private individuals from this warehouse too.

Eisundsachen GmbH is however happy to buy stock upfront. It wants Organic Ices Ltd to arrange delivery of most of its purchases to its main warehouse in Munich. However, for some of its bigger customers, based in Belgium, France and Spain, it has requested that Organic Ices Ltd arranges delivery from Northern Ireland direct to the customer's premises (as was the practice with its previous supplier). The invoice will still be issued by Organic Ices Ltd to Eisundsachen GmbH, which will then invoice its customer for the goods. Eisundsachen GmbH has said it is happy for its French customer to be supplied from Organic Ices Ltd's French warehouse if that is convenient.

Organic Ices Ltd is keen to reduce its carbon footprint and has had preliminary discussions with both customers about potentially using new (but expensive) low-carbon freezers to hold stock pending sale. For now, Le Shopping SA is not interested in this arrangement, and has said that in any case it would not be willing to pay for the use of the freezers in its supermarkets even if sales grew well. Eisundsachen GmbH however is keen to have the freezers shipped directly from Northern Ireland to its Munich premises immediately and is willing to pay a small rental charge for each freezer to help Organic Ices Ltd fund the purchase of the freezers. If sales go well, it will also discuss increasing the number of freezers on its premises.

Requirement:

Explain Organic Ices Ltd's VAT obligations in respect of the proposed transactions, including any simplifications available. (20)

2. ZXYdata Inc is a US-based company which arranges the construction of data centres all over the world. It has recently been asked by a German accounting software provider, Buchkeeper AG, to arrange the construction of new data centres in the UK and the Netherlands, beginning on 1 November 2022. It is expected the works will take about six to nine months to complete.

Buchkeeper AG has taken a long-term lease over a greenfield site near Manchester. It employs a small local administration and sales team in the UK and one of the company's directors has recently moved from Germany to grow business opportunities there. Buchkeeper AG is VAT-registered in the UK.

ZXYdata Inc will employ a single project manager based in Amsterdam to oversee both projects. All of the design and construction works will be subcontracted to a mixture of UK and EU suppliers. ZXYdata Inc has already identified its preferred suppliers for the projects. Some of the UK-based professionals, such as architects and surveyors, will be working on both of the projects simultaneously.

For the UK site, ZXYdata Inc must source both the specialist equipment such as data-processors, and the building materials.

The equipment will all be coming from the USA. It has been agreed that ZXYdata Inc will be the importer of record for these goods, but it has not been decided whether it will take title to the goods itself, or simply act as Buchkeeper AG's agent.

All of the building materials for the UK project will be supplied from within the UK. ZXYdata Inc will purchase and sell on these materials to Buchkeeper AG as part of the construction service.

Buchkeeper AG has paid £1 million upfront to cover the first part of both projects. ZXYdata Inc's margin is incorporated in the overall figure.

Preliminary surveys have already been carried out for both sites by Kate Wong, an independent contractor, who is based in Bristol and is registered for UK VAT. She has issued separate invoices in respect of each site. However, she has charged UK VAT on both invoices. She has told ZXYdata Inc that she is not registered for VAT in the Netherlands.

Kate Wong must carry out some additional work to allow physical construction to begin and is insisting on being paid for the work she has already done first. Although it does not want to pay her until it is sure of the correct position, ZXYdata Inc is keen to avoid any unnecessary delays to the works.

Note that ZXYdata Inc has retained Dutch VAT advisers for the Netherlands element of the project and does not require advice in respect of that element.

Requirement:

Explain ZXYdata Inc's VAT position under the contract with Buchkeeper AG. (15)

3. Bruxelles Teddies VOF is a partnership based in Belgium which manufactures high-end teddy bears and sells them to business customers all over the world, including in the UK. Its principal UK customer is Luculia Ltd, a wholesaler based in Birmingham, which acts as importer into the UK.

The partnership has no staff or premises anywhere outside Belgium and relies on the distribution networks of its business customers. The partners have however felt for a long time that the private individual market overseas offered real opportunities. Accordingly, they have signed up with a major multinational online marketing platform, Diosma plc.

This arrangement will allow Bruxelles Teddies VOF to begin making sales to private individuals in the UK from 1 January 2023. Diosma plc will charge a flat fee of £10 per month plus a 10% commission, deducted from the sales price, on all sales on the platform.

Diosma plc also offers the chance to make business sales from its platform, and the partnership is keen to use this feature to expand its reach to smaller, niche retailers in the UK. It will continue to supply Luculia Ltd as before.

Bruxelles Teddies VOF expects that most of its sales via Diosma plc will be sent in consignments below £135 in value. However, its most expensive teddy bear retails for £180 (£150 plus VAT). The partnership does not expect to sell very many of these, but as the profit margin is much greater for the larger bears, it does want to offer them for sale in the UK.

In September 2020 Luculia Ltd advised Bruxelles Teddies VOF that from 1 January 2021, it would no longer supply Northern Ireland. As the market was relatively small at that time, the partnership decided not to seek an alternative distributor. However, the partnership has now been approached directly by a chain of toy shops based and VAT-registered in Northern Ireland, which has expressed interest in stocking Bruxelles Teddies VOF's products in its shops.

As a result, the partnership is now seeking to establish whether it makes more sense to move goods directly by ship from Belgium to Northern Ireland, or to send them via England and Wales, since the transport costs by that route are lower.

Requirement:

Explain the UK VAT and Customs Duty implications of the proposed transactions. (15)

4. URock University is a for-profit Canadian university based in the Rocky Mountains. It offers accredited five-year Doctor of Dental Surgery graduate-entry degrees in dentistry to its students. The degree is offered both to students who attend URock University's Canadian campus, but also to international students who can choose to carry out some or all of their degree from one of a number of international centres.

As part of its plans for growth, URock University has now received accreditation from the UK authorities to provide an equivalent graduate degree (Bachelor of Dental Surgery) in the UK from the academic year beginning in September 2023. It is intended that the course will be open only to non-UK students who have chosen URock University for its international reputation and who want to experience life in the UK.

It has been agreed that students will pay £20,000 per year and in return they will receive a "bundle" which includes:

1) Lectures and testing
2) In-person training sessions for the practical part of the degree
3) Final examinations

In order to provide the course in the UK, URock University has made arrangements with the University of Darent in Kent whereby URock University will pay an agreed fee per student and the University of Darent will provide all of the necessary staff and other facilities for lectures and examinations. The agreement between the two universities will be financially beneficial to both parties owing to the higher income earned from international students.

For the practical training element of the degree, the University of Darent will find suitable patients. URock University has arranged for a number of dentists working at a large local dental practice to provide this training to the students. It has been agreed that, while the dentists will come under the control of the University of Darent, URock University will recompense the University of Darent by way of an adjustment to the agreed fees calculated quarterly.

It has also been agreed that URock University will procure the purchase of dental prostheses and similar materials in the UK to be used in the training up to a total of £10,000 for each academic year. Over that limit, the University of Darent will be responsible for obtaining the materials, though it will have the option of buying more via URock University. These materials will all be consumed as part of the training course.

URock University has also agreed to upgrade the training premises at the University of Darent. This will include the latest dental equipment, such as dental chairs, etc. It is agreed that URock University, will own this equipment, and that the University of Darent will pay a rental charge for use of the equipment to train its own domestic undergraduate students. This is expected to be approximately 65% of the total use.

The specialist equipment is manufactured in Germany. The University of Darent is responsible for the costs of fitting the equipment safely at its premises. URock University needs to establish who should act as importer.

At the end of three years, URock University intends to sell off the older equipment and to replace it. It is happy to sell to the highest bidder, whether the purchaser is based in the UK or elsewhere but is unsure of the VAT treatment of such an arrangement.

Finally, URock University needs to decide whether it should employ staff in the UK or manage the arrangements from Canada and how this interacts with its UK VAT obligations.

Requirement:

Explain, with reference to case law, URock University's UK VAT position under the proposed arrangements, including steps that may be taken to minimise VAT costs. (20)

5. Jumfles Ltd is a GB-established business that sells toys within GB only.

In August 2022, it started importing toy construction kits from China. Parts of the kits are made of plastic, metal and wood with some being composites of these materials. The sets have been declared to the Commodity Code selected by the buying department as “construction sets, of plastics” with a 4% Customs Duty rate. The import department however thinks that they should be “construction sets, other materials” with a 0% Customs Duty rate.

Having reviewed both Commodity Codes and the General Interpretative Rules the departments are not sure which is correct.

There is no preferential Customs Duty rate available for either Commodity Code, and there are no alternative suppliers in countries with which the UK has Free Trade Agreements which might relieve the Customs Duty at import.

The company knows how to advise HMRC of errors but does not know which Commodity Code is correct.

Requirement:

Explain how Jumfles Ltd can be certain which Commodity Code to use. (10)

6. Fiblem Ltd is a GB-established business that sells seasonal goods to independent shops throughout England, Wales and Scotland. The goods it sells include sun tan lotion and beach toys in summer, and decorations for seasonal events such as Hallowe’en and Christmas. Some of these are sourced within GB but most are imported from outside the UK.

Fiblem Ltd always has some residual stock which it stores in its own warehouse for the next season. Sometimes it has to destroy unsold stock that would deteriorate before the next year.

Fiblem Ltd has always imported goods three months in advance to avoid problems caused by shipping delays and damaged goods on arrival. When goods arrive damaged, the seller issues a partial refund, once satisfactory evidence has been provided. Fiblem Ltd pays Customs Duty on the original invoice provided with the goods. Unfortunately, around 10% of consignments are damaged on arrival with an average reduction in price of 20%.

It uses a Customs agent to clear the goods to free circulation at the port, using the agent’s Deferment Account to pay any Customs Duty and Import VAT. It has a Customs Duty bill of around £850,000 a year with an average Customs Duty rate of 4%.

Fiblem Ltd has staff experienced in classification and it is confident that its goods are correctly classified and that it makes full use of preferential rates of duty and duty savings to be made from Free Trade Agreements.

Requirement:

Explain how Fiblem Ltd could improve its Customs Duty and VAT position in relation to these imports. (20)