Tolley® Exam Training

CTA ADVANCED TECHNICAL

CROSS BORDER INDIRECT

PRE REVISION QUESTION BANK

FA 2020

May and November 2021 Sittings

PQ925

Tolley® Tax intelligence from LexisNexis®

INTRODUCTION

This Pre Revision Question Bank for the Advanced Technical Cross Border Indirect paper contains 20 exam standard questions (all with answers updated to Finance Act 2020).

Using this question bank

All the CTA exams, with the exception of the Awareness paper, are **3.5 hours** in length.

We recommend you **allocate 1.9 minutes per mark** which allows for 10 minutes initial reading time and a further 10 mins in total for final reviews (best done as you finish each question).

10 mark question = 19 minutes
15 mark question = 28.5 minutes
20 mark question = 38 minutes

You should attempt each question as if you were in the real exam. Try to **avoid just reading the answers** to **questions** – it is all too easy to nod as you read our answer saying "yes I know that point, yes I understand that advice given" – the test is would you have actually put those points in your answer? You won't find this out unless you **type up the answers** yourself.

Doing "proper" answers also gives you a good idea of how long an exam standard answer will take you to type.

Reviewing your answers

It is essential to read through your answer when you have finished typing it. We thought it might be useful at this stage to pass on some tips about how to review your answers effectively – **before** you look at our model answer.

Remember the first thing the marker will do is read your answer through as a whole – what overall impression are you giving of your ability? Have you put the marker in a good mood as soon as they see your script or are they going to be dreading marking what you have handed in?

Key **presentation considerations** include spacing your answer out, cross referencing your workings and using subheadings and short paragraphs.

You may be able to make some small corrections at this review stage – you can use the spell check function to correct any spelling mistakes and you may find you have missed out a vital word such as "not" or you may at this stage think of another point or two to add while reading through your answer. This approach could increase your marks much more effectively than carrying on with the point you were making before you stopped to do this final review.

The presentation and higher skills (PHS) marks are given for "clarity of explanation" so consider giving your answer to somebody else to read to see whether they can understand the points you are trying to make as a test of your PHS skills. A good question to ask yourself is would the reader pay money for your advice?

Reviewing the model answer

In the advanced technical papers, it is quite likely that there is no single right answer. The model answer is only one possible solution. You may well have included valid points which are not included in the model answer. Review critically both your answer and the model answer. Are there points in the model answer which you could have included in your answer to get extra marks? Are there points you have included which, with the benefit of hindsight, you should have left out?

CONTENTS

CTA EXAMINATIONS

2021

TAX TABLES

Chartered Institute of Taxation
Excellence in Taxation

INCOME TAX - RATES AND THRESHOLDS

	2020/21	2019/20
Rates	%	%
Starting rate for savings income only	0	0
Basic rate for non-savings and savings income only	20	20
Higher rate for non-savings and savings income only	40	40
Additional and trust rate for non-savings and savings income	45	45
Dividend ordinary rate	7.5	7.5
Dividend upper rate	32.5	32.5
Dividend additional rate and trust rate for dividends	38.1	38.1
Thresholds	£	£
Savings income starting rate band	1 – 5,000	1 – 5,000
Basic rate band	1 – 37,500	1 – 37,500
Higher rate band	37,501 – 150,000	37,501– 150,000
Dividend allowance	2,000	2,000
Personal Savings Allowance		
– Taxpayer with basic rate income	1,000	1,000
– Taxpayer with higher rate income	500	500
– Taxpayer with additional rate income	Nil	Nil
Standard rate band for trusts	1,000	1,000
Scottish Tax Rates(1)	%	%
Starter rate	19	19
Scottish basic rate	20	20
Intermediate rate	21	21
Higher rate	41	41
Top rate	46	46
Scottish Tax Thresholds(1)	£	£
Starter rate	1 – 2,085	1 – 2,049
Scottish basic rate	2,086 – 12,658	2,050 – 12,444
Intermediate rate	12,659 – 30,930	12,445 – 30,930
Higher rate	30,931 – 150,000	30,931 – 150,000
Top rate	150,000 +	150,000 +

INCOME TAX - RELIEFS

	2020/21	2019/20
	£	£
Personal allowance(2)	12,500	12,500
Married couple's allowance(3)	9,075	8,915
– Maximum income before abatement of relief - £1 for £2	30,200	29,600
– Minimum allowance	3,510	3,450
Transferable Tax allowance for married couples and civil partners(4)	1,250	1,250
Blind person's allowance	2,500	2,450
Enterprise investment scheme relief limit(5)	1,000,000	1,000,000
Venture capital trust relief limit	200,000	200,000
Seed enterprise investment scheme relief limit	100,000	100,000
Social investment relief	1,000,000	1,000,000

Notes: (1) Scottish taxpayers pay Scottish income tax on non-savings income.

(2) The personal allowance of any individual with adjusted net income above £100,000 is reduced by £1 for every £2 of adjusted net income above the £100,000 limit.

(3) Only available where at least one partner was born before 6 April 1935. Relief restricted to 10%.

(4) The recipient must not be liable to tax above the basic rate. The recipient is eligible for a tax reduction of 20% of the transferred amount.

(5) The limit is £2 million, where over £1 million is invested in knowledge intensive companies.

CTA EXAMINATIONS

2021

TAX TABLES

ISA limits	**2020/21**	**2019/20**
Maximum subscription:	£	£
'Adult' ISAs	20,000	20,000
Junior ISAs	9,000	4,368

Pension contributions

	Annual allowance[1]	**Lifetime allowance**	**Minimum pension age**
	£	£	
2019/20	40,000	1,055,000	55
2020/21	40,000	1,073,100	55

Basic amount qualifying for tax relief £3,600

Note: (1) The annual allowance is tapered by £1 for every £2 of adjusted income above £240,000 (2019/20: £150,000) for individuals with threshold income above £200,000 (2019/20: £110,000). It cannot be reduced below £4,000 (2019/20: £10,000).

Employer Supported Childcare

Exemption – basic rate taxpayer[1]	£55 per week	£55 per week

Note: (1) For schemes joined on or after 6 April 2011 the exempt childcare amounts for higher and additional rate taxpayers (based on the employer's earning assessment only) are £28 and £25 respectively.

ITEPA mileage rates

Car or van[1]	First 10,000 business miles	45p
	Additional business miles	25p
Motorcycles		24p
Bicycles		20p
Passenger payments		5p

Note: (1) For NIC purposes, a rate of 45p applies irrespective of mileage.

INCOME TAX - BENEFITS

Car benefits – 2020/21

Emissions	**Electric range (miles)**	**Car benefit %[1] Pre 6 April 2020 registration**	**Car benefit %[1] On/after 6 April 2020 registration**	
0g/km	N/A	0%	0%	
1-50g/km	>130	2%	0%	
1-50g/km	70-129	5%	3%	
1-50g/km	40-69	8%	6%	
1-50g/km	30-39	12%	10%	
1-50g/km	<30	14%	12%	
51-54g/km		15%	13%	
55-59g/km		16%	14%	
60-64g/km		17%	15%	
65-69g/km		18%	16%	
70-74g/km		19%	17%	
75g/km or more		20%	18%	+ 1% for every additional whole 5g/km above 75g/km
160g/km or more		37%		
170g/km or more			37%	

CTA EXAMINATIONS

2021

TAX TABLES

Chartered Institute of Taxation
Excellence in Taxation

Car benefits – 2019/20

Emissions	**Car benefit %[(1)]**
0 – 50 g/km	16%
51 – 75 g/km	19%
76 – 94 g/km	22%
95 g/km or more	23% + 1% for every additional whole 5g/km above threshold
165 g/km or more	37%

Note: (1) 4% supplement for diesel cars excluding those that meet the Real Driving Emissions Step 2 (RDE2) standard (not to exceed maximum of 37%).

Fuel benefit base figure	**2020/21**	**2019/20**
	£	£
	24,500	24,100

Van benefits	**2020/21**	**2019/20**
	£	£
No CO_2 emissions	2,792	2,058
CO_2 emissions > 0g/km	3,490	3,430
Fuel benefit for vans	666	655

INCOME TAX - CHARGES

Child benefit charge	**Withdrawal rate**
Adjusted net income >£50,000	1% of benefit per £100 of income between £50,000 and £60,000
Adjusted net income >£60,000	Full child benefit amount assessable in that tax year

	2020/21	**2019/20**
Official rate of interest	2.25%	2.5%

INCOME TAX - SIMPLIFICATION MEASURES

Allowances

	2020/21	**2019/20**
	£	£
'Rent-a-room' limit	7,500	7,500
Property allowance/Trading allowance	1,000	1,000

Flat Rate Expenses for Unincorporated Businesses

Motoring expenses	First 10,000 business miles		45p per mile
	Additional business miles		25p per mile
Business use of home	25 – 50 hours use		£10 per month
	51 – 100 hours use		£18 per month
	101+ hours use		£26 per month
Private use of business premises	No of persons living there:	1	£350 per month
		2	£500 per month
		3+	£650 per month

Cash Basis for Unincorporated Businesses	£
Turnover threshold to join scheme	150,000
Turnover threshold to leave scheme	300,000

CTA EXAMINATIONS

2021

TAX TABLES

CAPITAL ALLOWANCES

Annual investment allowance for plant and machinery (AIA)(1)	100%
WDA on plant and machinery in main pool(2)	18%
WDA on plant and machinery in special rate pool(3)	6%
WDA on patent rights and know-how	25%
WDA on structures and buildings (SBA) (4)	3%

Notes: (1) On first £1,000,000 of investment in plant & machinery (not cars) from 1 January 2019 to 31 December 2020 (£200,000 from 1 January 2021) (£200,000 before 1 January 2019).
(2) The main pool rate applies to cars with CO_2 emissions of not more than 110 g/km (from April 2021 not more than 50g/km).
(3) The special pool rate applies to cars with CO_2 emissions greater than 110 g/km (from April 2021 greater than 50g/km). The special pool rate was 8% before 6 April 2019 (1 April 2019 for companies).
(4) The SBA rate was 2% prior to April 2020.

100% First year allowances available to all businesses

1) Capital expenditure incurred by a person on research and development.
2) New zero-emission goods vehicles (until April 2025).
3) New cars if the car either emits not more than 50 g/km of CO_2 (0 g/km of CO_2 from April 2021) or it is electrically propelled (until April 2025).
4) Electric vehicle charging points (until April 2023).

NATIONAL INSURANCE CONTRIBUTIONS

Class 1 limits	**2020/21**			**2019/20**		
	Annual	**Monthly**	**Weekly**	**Annual**	**Monthly**	**Weekly**
Lower earnings limit (LEL)	£6,240	£520	£120	£6,136	£512	£118
Primary threshold (PT)	£9,500	£792	£183	£8,632	£719	£166
Secondary threshold (ST)	£8,788	£732	£169	£8,632	£719	£166
Upper earnings limit (UEL)/ Upper secondary threshold for under 21 (UST)(1)	£50,000	£4,167	£962	£50,000	£4,167	£962
Apprentice upper secondary threshold for under 25 (AUST)(2)						

Class 1 primary contribution rates		
Earnings between PT and UEL	12%	12%
Earnings above UEL	2%	2%
Class 1 secondary contribution rates		
Earnings above ST (1)(2)	13.8%	13.8%

Notes: (1) Rate of secondary NICs for employees < age 21 on earnings between ST&UST is 0%.
(2) Rate of secondary NICs for apprentices < age 25 on earnings between ST&AUST is 0%.

	2020/21	**2019/20**
Employment allowance		
Per year, per employer	£4,000	£3,000
Class 1A contributions	13.8%	13.8%
Class 1B contributions	13.8%	13.8%
Class 2 contributions		
Normal rate	£3.05 pw	£3.00 pw
Small profits threshold	£6,475 pa	£6,365 pa
Class 3 contributions	£15.30 pw	£15.00 pw
Class 4 contributions		
Annual lower profits limit (LPL)	£9,500	£8,632
Annual upper profits limit (UPL)	£50,000	£50,000
Percentage rate between LPL and UPL	9%	9%
Percentage rate above UPL	2%	2%

CTA EXAMINATIONS

2021

TAX TABLES

OTHER PAYROLL INFORMATION

Statutory maternity/adoption pay		First 6 weeks @ 90% of AWE Next 33 weeks @ the lower of £151.20 and 90% of AWE
Statutory shared parental pay /paternity pay/parental bereavement pay		For each qualifying week, the lower of 90% of AWE and £151.20
Statutory sick pay		£95.85 per week
Student Loan	Plan 1:	9% of earnings exceeding £19,390 per year (£1,615.83 per month/ £372.88 per week)
	Plan 2:	9% of earnings exceeding £26,575 per year (£2,214.58 per month /£511.05 per week)
Postgraduate Loan		6% of earnings exceeding £21,000 per year (£1,750 per month/£403.88 per week)

National living/minimum wage (April 2020 onwards)

Category of Worker	**Rate per hour** £	**Category of Worker**	**Rate per hour** £
Workers aged 25 and over	8.72	18–20 year olds	6.45
21–24 year olds	8.20	16–17 year olds	4.55
		Apprentices	4.15

Accommodation Offset £8.20 per day

HMRC INTEREST RATES

Late payment interest	2.6%
Underpaid corporation tax instalments interest	1.1%
Repayment interest	0.5%
Credit interest	0.5%

CAPITAL GAINS TAX

	2020/21	**2019/20**
Annual exempt amount for individuals	£12,300	£12,000
CGT rates for individuals, trusts and estates		
Gains qualifying for business asset disposal(1)/investors' relief	10%	10%
Gains for individuals falling within remaining basic rate band(2)	10%	10%
Gains for individuals exceeding basic rate band and gains for trusts and estates(3)	20%	20%

Notes: (1) Formerly called entrepreneurs' relief
(2) The rate is 18% if the gain is in respect of a residential property
(3) The rate is 28% if the gain is in respect of a residential property

Business Asset Disposal(1) relief	**2020/21**	**2019/20**
Relevant gains (lifetime maximum) (2)	£1 million	£10 million
Investors' relief		
Relevant gains (lifetime maximum)	£10 million	£10 million

Note: (1) Formerly called entrepreneurs' relief
(2) For qualifying disposals made before 11 March 2020 the lifetime limit was £10 million.

CTA EXAMINATIONS

2021

TAX TABLES

Chartered Institute of Taxation
Excellence in Taxation

Retail Prices Index

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1982	–	–	79.44	81.04	81.62	81.85	81.88	81.90	81.85	82.26	82.66	82.51
1983	82.61	82.97	83.12	84.28	84.64	84.84	85.30	85.68	86.06	86.36	86.67	86.89
1984	86.84	87.20	87.48	88.64	88.97	89.20	89.10	89.94	90.11	90.67	90.95	90.87
1985	91.20	91.94	92.80	94.78	95.21	95.41	95.23	95.49	95.44	95.59	95.92	96.05
1986	96.25	96.60	96.73	97.67	97.85	97.79	97.52	97.82	98.30	98.45	99.29	99.62
1987	100.0	100.4	100.6	101.8	101.9	101.9	101.8	102.1	102.4	102.9	103.4	103.3
1988	103.3	103.7	104.1	105.8	106.2	106.6	106.7	107.9	108.4	109.5	110.0	110.3
1989	111.0	111.8	112.3	114.3	115.0	115.4	115.5	115.8	116.6	117.5	118.5	118.8
1990	119.5	120.2	121.4	125.1	126.2	126.7	126.8	128.1	129.3	130.3	130.0	129.9
1991	130.2	130.9	131.4	133.1	133.5	134.1	133.8	134.1	134.6	135.1	135.6	135.7
1992	135.6	136.3	136.7	138.8	139.3	139.3	138.8	138.9	139.4	139.9	139.7	139.2
1993	137.9	138.8	139.3	140.6	141.1	141.0	140.7	141.3	141.9	141.8	141.6	141.9
1994	141.3	142.1	142.5	144.2	144.7	144.7	144.0	144.7	145.0	145.2	145.3	146.0
1995	146.0	146.9	147.5	149.0	149.6	149.8	149.1	149.9	150.6	149.8	149.8	150.7
1996	150.2	150.9	151.5	152.6	152.9	153.0	152.4	153.1	153.8	153.8	153.9	154.4
1997	154.4	155.0	155.4	156.3	156.9	157.5	157.5	158.5	159.3	159.5	159.6	160.0
1998	159.5	160.3	160.8	162.6	163.5	163.4	163.0	163.7	164.4	164.5	164.4	164.4
1999	163.4	163.7	164.1	165.2	165.6	165.6	165.1	165.5	166.2	166.5	166.7	167.3
2000	166.6	167.5	168.4	170.1	170.7	171.1	170.5	170.5	171.7	171.6	172.1	172.2
2001	171.1	172.0	172.2	173.1	174.2	174.4	173.3	174.0	174.6	174.3	173.6	173.4
2002	173.3	173.8	174.5	175.7	176.2	176.2	175.9	176.4	177.6	177.9	178.2	178.5
2003	178.4	179.3	179.9	181.2	181.5	181.3	181.3	181.6	182.5	182.6	182.7	183.5
2004	183.1	183.8	184.6	185.7	186.5	186.8	186.8	187.4	188.1	188.6	189.0	189.9
2005	188.9	189.6	190.5	191.6	192.0	192.2	192.2	192.6	193.1	193.3	193.6	194.1
2006	193.4	194.2	195.0	196.5	197.7	198.5	198.5	199.2	200.1	200.4	201.1	202.7
2007	201.6	203.1	204.4	205.4	206.2	207.3	206.1	207.3	208.0	208.9	209.7	210.9
2008	209.8	211.4	212.1	214.0	215.1	216.8	216.5	217.2	218.4	217.7	216.0	212.9
2009	210.1	211.4	211.3	211.5	212.8	213.4	213.4	214.4	215.3	216.0	216.6	218.0
2010	217.9	219.2	220.7	222.8	223.6	224.1	223.6	224.5	225.3	225.8	226.8	228.4
2011	229.0	231.3	232.5	234.4	235.2	235.2	234.7	236.1	237.9	238.0	238.5	239.4
2012	238.0	239.9	240.8	242.5	242.4	241.8	242.1	243.0	244.2	245.6	245.6	246.8
2013	245.8	247.6	248.7	249.5	250.0	249.7	249.7	251.0	251.9	251.9	252.1	253.4
2014	252.6	254.2	254.8	255.7	255.9	256.3	256.0	257.0	257.6	257.7	257.1	257.5
2015	255.4	256.7	257.1	258.0	258.5	258.9	258.6	259.8	259.6	259.5	259.8	260.6
2016	258.8	260.0	261.1	261.4	262.1	263.1	263.4	264.4	264.9	264.8	265.5	267.1
2017	265.5	268.4	269.3	270.6	271.7	272.3	272.9	274.7	275.1	275.3	275.8	278.1

Lease percentage table

Years	Percentage	Years	Percentage	Years	Percentage	Years	Percentage
50+	100.000	37	93.497	24	79.622	11	50.038
49	99.657	36	92.761	23	78.055	10	46.695
48	99.289	35	91.981	22	76.399	9	43.154
47	98.902	34	91.156	21	74.635	8	39.399
46	98.490	33	90.280	20	72.770	7	35.414
45	98.059	32	89.354	19	70.791	6	31.195
44	97.595	31	88.371	18	68.697	5	26.722
43	97.107	30	87.330	17	66.470	4	21.983
42	96.593	29	86.226	16	64.116	3	16.959
41	96.041	28	85.053	15	61.617	2	11.629
40	95.457	27	83.816	14	58.971	1	5.983
39	94.842	26	82.496	13	56.167	0	0.000
38	94.189	25	81.100	12	53.191		

CTA EXAMINATIONS

2021

TAX TABLES

Chartered Institute of Taxation
Excellence in Taxation

CORPORATION TAX

Financial year	**2020**	**2019**	**2018**
Main rate	19%	19%	19%

EU definition of small and medium sized enterprises

	Small [2]	Medium [2]	Extended definition for R&D expenditure
Employees[1]	< 50	< 250	<500
Turnover[1]	≤ €10m	≤ €50m	≤ €100m
Balance sheet assets[1]	≤ €10m	≤ €43m	≤ €86m

Notes: (1) Must meet employees criteria and either turnover or balance sheet assets criteria.
(2) Thresholds apply for transfer pricing and distributions received by small companies.

VALUE ADDED TAX

	Standard rate	**VAT fraction**
Rate	20%	1/6

Limits	**From 1.4.20**	**From 1.4.19**
	£	£
Annual registration limit	85,000	85,000
De-registration limit	83,000	83,000

Thresholds	**Cash accounting**	**Annual accounting**
	£	£
Turnover threshold to join scheme	1,350,000	1,350,000
Turnover threshold to leave scheme	1,600,000	1,600,000

ADVISORY FUEL RATES (as at 1 June 2020)

Engine size	**Petrol**	**LPG**	**Engine size**	**Diesel**
1400cc or less	10p	6p	1600cc or less	8p
1401cc to 2000cc	12p	8p	1601cc to 2000cc	9p
Over 2000cc	17p	11p	Over 2000cc	12p

Electricity rate 4p

OTHER INDIRECT TAXES

	2020/21	**2019/20**
Insurance premium tax[1]		
Standard rate	12%	12%
Higher rate	20%	20%

Tobacco products duty	**From 11.3.20**	**From 29.10.18**
Cigarettes	16.5% x retail price + £237.34 per thousand cigarettes (or £305.23 per thousand cigarettes [2])	16.5% x retail price + £228.29 per thousand cigarettes (or £293.95 per thousand cigarettes [2])
Cigars	£296.04 per kg	£284.76 per kg
Hand-rolling tobacco	£253.33 per kg	£234.65 per kg
Other smoking/chewing tobacco	£130.16 per kg	£125.20 per kg
Tobacco for heating	£243.95 per kg	£234.65 per kg[3]

Notes: (1) Premium is tax inclusive ($^{3}/_{28}$ for 12% rate and $^{1}/_{6}$ for 20% rate).
(2) The £305.23/£293.95 per thousand cigarettes is a minimum excise duty (if higher than the first calculation).
(3) From 1.7.19.

CTA EXAMINATIONS

2021

TAX TABLES

INHERITANCE TAX

Death rate	40%(1)	**Lifetime rate**	20%

Note: (1) 36% rate applies where 10% or more of the deceased person's net chargeable estate is left to charity.

Nil rate bands

6 April 1996 – 5 April 1997	£200,000	6 April 2003 – 5 April 2004	£255,000
6 April 1997 – 5 April 1998	£215,000	6 April 2004 – 5 April 2005	£263,000
6 April 1998 – 5 April 1999	£223,000	6 April 2005 – 5 April 2006	£275,000
6 April 1999 – 5 April 2000	£231,000	6 April 2006 – 5 April 2007	£285,000
6 April 2000 – 5 April 2001	£234,000	6 April 2007 – 5 April 2008	£300,000
6 April 2001 – 5 April 2002	£242,000	6 April 2008 – 5 April 2009	£312,000
6 April 2002 – 5 April 2003	£250,000	6 April 2009 – 5 April 2021	£325,000

Residence nil rate bands(2)

6 April 2017 – 5 April 2018	£100,000	6 April 2019 – 5 April 2020	£150,000
6 April 2018 – 5 April 2019	£125,000	6 April 2020 – 5 April 2021	£175,000

Note: (2) An additional nil rate band is available where a main residence is passed on death to a direct descendant. Tapered withdrawal for estates > £2million.

Taper relief		
Death within 3 years of gift		Nil%
Between 3 and 4 years		20%
Between 4 and 5 years		40%
Between 5 and 6 years		60%
Between 6 and 7 years		80%
Quick Succession relief		
Period between transfers less than one year		100%
Between 1 and 2 years		80%
Between 2 and 3 years		60%
Between 3 and 4 years		40%
Between 4 and 5 years		20%
Lifetime exemptions		
Annual exemption		£3,000
Small gifts		£250
Wedding gifts	Child	£5,000
	Grandchild or remoter issue or other party to marriage	£2,500
	Other	£1,000

ANNUAL TAX ON ENVELOPED DWELLINGS (ATED)

Residential property value	**From 1.4.20**	**From 1.4.19**
>£0.5m - ≤ 1m	£3,700	£3,650
> £1m - ≤ 2m	£7,500	£7,400
> £2m – ≤ 5m	£25,200	£24,800
> £5m – ≤ 10m	£58,850	£57,900
> £10m – ≤ 20m	£118,050	£116,100
> £20m	£236,250	£232,350

STAMP DUTY/SDRT

Stamp duty(1)	- On shares transferred by physical stock transfer form	0.5%
Stamp duty reserve tax(1)	- On agreements to transfer shares(2)	0.5%
	- On shares transferred to depositary receipt schemes	1.5%

Notes: (1) Does not apply to UK securities traded on a recognised growth market (eg AIM).
(2) Does not apply to units in UK unit trust schemes or shares in UK OEICS bought from fund managers.

CTA EXAMINATIONS

2021

TAX TABLES

STAMP DUTY LAND TAX

Stamp Duty Land Tax on purchase price / lease premium / transfer value – England & NI

Basic Rate %[1][2][3]	Higher Rate %[1][2]	Residential[1][2][3]	Non-Residential
0	3	£0 - £125,000	£0 - £150,000
2	5	£125,001 - £250,000	£150,001 - £250,000
5	8	£250,001 - £925,000	£250,001 +
10	13	£925,001 - £1,500,000	N/A
12	15	£1,500,001 +	N/A

Notes: (1) The basic rates are increased by 3% where the purchase is of an additional residential property for individuals (see column 2 for the rates that apply). Companies and trusts pay the additional 3% on all purchases of residential properties, subject to note 2 below.

(2) Companies (and certain other entities) pay 15% on purchases of residential property valued > £500,000.

(3) First-time buyers purchasing a single dwelling as their only or main residence may benefit from a reduced rate. (This includes qualifying shared ownership properties.) SDLT will not be due on properties up to £300,000. For homes up to £500,000, SDLT will be payable on £200,000 at 5%. Homes bought for more than £500,000 will incur the rates as per column 1 of the table above.

New leases – Stamp Duty Land Tax on lease rentals – England & NI

Rate (%)	Net present value of rent	
	Residential	Non-residential
Zero	Up to £125,000	Up to £150,000
1%	Excess over £125,000	£150,001-£5m
2%		Over £5m

Land and Buildings Transaction Tax (LBTT) on purchase price – Scotland

Basic Rate %[1][2][3]	Residential	Rate %[1]	Non-Residential
0	up to £145,000	0	£0 - £150,000
2	£145,001 - £250,000	1	£150,001 - £250,000
5	£250,001 - £325,000	5	£250,001 +
10	£325,001 - £750,000		
12	£750,001 +		

Notes: (1) Rates are charged on the portion of consideration that falls in each band. The same tax is payable for a premium granted for a land transaction, except for residential leases which are generally exempt. Special rules apply to a premium for non-residential property where the rent exceeds £1,000 a year.

(2) An additional amount of tax equal to 4% of the relevant consideration applies broadly to purchases of an additional dwelling by individuals and trusts (over which the beneficiary has substantial rights) and to purchases of a dwelling by certain businesses, companies and other trusts.

(3) There is a relief for first-time buyers where a 0% rate is applied to the first £175,000 of the purchase consideration.

New leases – Land and Buildings Transaction Tax (LBTT) on lease rentals - Scotland

Rate (%)	Net present value of rent[1]
	Non-residential
Zero	Up to £150,000
1%	£150,001 to £2,000,000
2%	£2,000,001+

Note: (1) Residential leases are generally exempt

VAT QUESTIONS

1. Mr Estobar works for Import and Export Ltd (I&E). He has asked his external firm of auditors if they can arrange a purchase of a large consignment of confectionary that I&E wants shipped to its premises in Spain. He wants the auditors to sell it to his business for £100,000 net of any VAT. Mr Estobar has also heard of another UK company that might be able to supply the auditors with the goods.

   The auditors could purchase the goods for £90,000 net of VAT but inclusive of the transport costs to Spain and make a 10% (approx.) margin on the purchase and sale.

   Mr Estobar will clear funds to his auditor's account in advance of the goods being dispatched to him. The auditors will confirm that we have obtained the goods, and the supplier will then dispatch them directly to Spain by means of a transport company that they regularly use. The auditors will use the cleared funds to pay for the goods and they will be released immediately.

   The auditors have been provided with Mr Estobar's Spanish VAT number to put on the invoice and the sales list, and the UK supplier says they're registered in the UK, as are the auditors.

   Requirement:

   1) Explain whether HMRC will raise any objections to the above arrangement

   2) Explain what checks the auditors need to make in relation to the above arrangement and

   3) Explain what could happen if HMRC don't think enough checks have been made

   (15)

2. Engineering Resources Ltd (ERL) is a company which manufactures and installs specialist pumps in factories. It has three manufacturing sites in the UK and is registered for VAT in the UK. Until recently, it has had no premises or assets outside the UK. Whenever it has sold pumps to customers in other countries, it has zero-rated the dispatch of the goods, which have been installed in the customers' premises by local subcontractors who invoiced the customer directly. The company has had its records of international sales inspected by HMRC and has had no major issues raised.

   The company has recently won a major contract to supply several factories of a large German company which is registered for VAT in that country. In order to service this customer quickly and efficiently, it has rented a warehouse in Germany and has transferred a consignment of spare parts to the warehouse. The landlord is charging German VAT on the rent. As ERL has only recently started to sell brand new pumps to the German customer, still fitted by local subcontractors in the normal way, it has not yet had to supply any of the spare parts, and it has therefore not yet registered for VAT in Germany.

   The managing director is considering using the company's own engineers to carry out installation and servicing work for this customer in the future. These engineers would continue to be based in the UK, and they would travel to Germany to carry out their work. The principal contract would change to cover supply and installation of the pumps, and a separate maintenance contract would cover subsequent necessary work. The spare parts will be used for the maintenance work and will be charged to the customer as and when they are required, as well as a separate charge for the engineers' time on the job.

   Requirement:

   Explain the VAT issues arising from these developments in ERL's business, including the place of supply of all ERL's existing and proposed transactions, and outline any features which may make registration for VAT in Germany necessary or advisable.

   (15)

   You are NOT required to describe the Intrastat reporting requirements for the movements of goods, or to discuss the reporting of transactions on EC Sales Lists.

3. In early 2018 a wealthy group of Australian investors incorporated a company in Jersey. It is resident there for Corporation Tax purposes but as there is no VAT in Jersey they have not sought any VAT advice since being formed.

The company does not have a presence in the form of offices and staff anywhere within the EU, nor is it VAT registered. The following transactions have/are due to take place:

1) In January/February 2019 the company received $400,000 from a Chinese company to dismantle and ship to China a motor vehicle production line (comprising mainly fixed plant and machinery) acquired by the Chinese company from the liquidator of a UK manufacturer. Most of the work was undertaken by Australian workers and relatively little VAT was incurred in the UK.

2) The company acquired a property in London in May 2019. VAT was not charged on its purchase, but VAT of £10,000 was incurred on acquisition costs. Subsequently, further VAT of £250,000 was incurred on planning and legal costs associated with seeking planning consent to convert the building from office use to a mixed use, comprising retail units at ground level and flats on the upper floors. Planning consent has now been granted, and tenders have been invited from contractors to undertake the conversion works. The cost of the works is expected to be £10 million, plus VAT. On their completion, the retail units will be leased, and 99-year leases granted on the flats in return for a premium.

3) In November 2019 the company purchased from a liquidator a quantity of portacabins which it has leased to construction companies for equipment storage in the UK. While the units are mobile, they need to be anchored to the land on which they stand and generally will be in place for extended periods, usually 9 - 18 months. The first rental receipt of £10,000 was received in December 2019, with £25,000 received since then.

4) In September 2021, the company exchanged contracts to acquire a portfolio of investment properties. Completion is scheduled for late October 2021. The annual rents from the portfolio are expected to be £500,000, of which £300,000 will be derived from opted properties. VAT incurred on fees associated with the acquisition of the properties is expected to be £100,000, 60% of which has been paid over the last six months.

5) The company hopes to complete shortly two further contracts with UK clients:

   (a) The design of a golf course in Eire – the projected fee is £150,000; and

   (b) The installation of LED lighting in 16 retail parks in Spain – the projected fee being £185,000.

6) The company will appoint advisors who will provide the following:

   a) Tax advisory services (including VAT advice) relating to trading in the UK.

   b) The preparation of letting accounts, the issue of rent demands and collection of rents.

   c) Maintaining accounting records relating to the company's activities in the UK and preparation of VAT returns.

Requirement:

Explain the following:

1) The company's options to meet its obligations for VAT registration in the UK

2) At what point the company has/had an obligation to register for VAT in the UK

3 If there is any scope for the company recovering VAT expended on the London property acquired in May 2019

4) The VAT implications of the transactions set out in paragraphs 3 – 6 above

Support your answer with references to the legislation and case law, as appropriate.

(20)

4. Financial Software Design Ltd (FSD) writes specialised software for insurance and financial companies which enables them to assess the risks involved in selling products to individual customers. FSD has just won a contract to supply a major US insurance and financial group with a variant of a package. The contract is set to run for five years to start with and will earn FSD millions.

FSD's software developers will continue to do most of the work in the UK, but they will have to travel regularly to the USA to discuss requirements with head office there. FSD will use its own people to install and test the software on the client's computers, which is an important procedure that will take a couple of months. That work will take place in the USA for the head office and its subsidiaries and branches over there, but there are also two wholly-owned subsidiaries and a branch in the UK, and they will be having the same software installed at the same time. There is a substantial up-front fee for the development, installation and testing.

Once the software is in place, there will be an annual fee which will cover upgrades, maintenance and technical support, most of which will be supplied over the internet from the UK, but which may require some of FSD's staff visiting the USA from time to time.

FSD will also be running software training courses for the USA staff. FSD have hired in a training company which will run these courses and they will charge FSD, but this cost is absorbed in FSD's development fee to the client. FSD won't be making a separate charge to the client for training. The training will probably take place about 10% in the UK, 90% in the USA, and it will generally be face-to-face rather than computer-based.

FSD will invoice the whole amount of its fees to the holding company which will then recharge its various group companies and branches as it sees fit. The USA company have said that they don't want to pay VAT on FSD's charges because they are American, and because they understand that selling insurance and financial services – which is what this software does, after all – is exempt from VAT.

Requirement:

Explain the VAT implications of the above transactions. (20)

5. Jack Willis works for Reliable Insurance Group plc (RIG) and has provided the following information from its human resources department:

The group has a policy of moving people around the European operations, and also of supporting good causes in its social responsibility programme. The following people are being seconded in the near future:

1) Jacques Xepec, who is employed by RIG's French subsidiary, will be working in the London office for six months. For simplicity, he will remain employed by the French company, and the UK holding company will reimburse the French subsidiary each month for the cost of his salary while he works in the UK. The French subsidiary is registered for VAT in France.

2) Tamsin McAllister, who is employed by the London office, will be working for RIG's Italian branch operation for eight months. The Italian branch will reimburse head office (the holding company of the group) for the cost of her salary each month. The Italian branch is registered for VAT in Italy, but it isn't a separate incorporated company.

3) Gregory Simpson, who is employed by one of RIG's UK subsidiary companies, will be seconded to a third party German not-for-profit organisation for a year. The organisation is registered for VAT in Germany but is also involved in regulatory activities which are outside the scope of VAT, and it's those non-business activities that Gregory will be working on. In this case, the German organisation will pay a lump sum at the outset of the arrangement which will cover about half Gregory's salary for the year.

4) Jane Collins, who works for a different UK subsidiary, will be supplied on a short-term contract to a Polish company for three months. The Polish company is not currently owned by RIG but they are thinking of buying them. They will pay a fee which exceeds Jane's salary at the end of the three months. The Polish company is currently only making exempt supplies, so it isn't yet registered for VAT in Poland.

5) Lastly, Zac Finesides is being seconded to RIG from its US associated company. For various reasons RIG is not going to have to pay for his services either directly or indirectly. The US company will continue to pay his salary for the four months he is working in London.

The four UK companies in the RIG corporate group are all group VAT registered with the holding company as representative member. The group make mainly exempt supplies but they do have some recovery of overhead input tax and a few taxable activities.

Requirement:

For each of the above secondments advise on the UK VAT issues, including:

- **Who has to pay VAT and whether it is recoverable,**
- **The time of supply, and**
- **Reporting requirements**

(15)

6. Spexra plc is a large group of companies. It is concerned about exposure to abuse of law in relation to the following arrangements:

   1) Its retail website advises purchasers who place an order for home delivery for any product (excluding books) which is priced at £13 or less will have that order fulfilled by Spexra Retail Services Ltd ("SRS"). SRS is incorporated and established in Norway. Although the website is maintained by Head Office staff in the UK, SRS processes and dispatches the goods directly to consumers (who are mainly resident in the UK, but there are also sizeable dispatches to people resident in Ireland, France and Holland) from stock held in Norway. Payment is made to SRS and it handles all customer enquiries. In short, SRS is a self-contained enterprise, with Head Office only providing it with specialist services, and management and financial support.

      SRS's annual turnover is £75 million. It is not registered for VAT in the UK, nor elsewhere in the EU. The arrangements were effected in early 2012 to maintain the group's market share when some of its competitors adopted similar arrangements with the Channel Islands.

   2) The Group has a very substantial personal loan brokerage service which is provided by Spexra Financial Services Ltd ("SFS"), a subsidiary company incorporated in Norway. Through a panel of independent lenders, it arranges for the provision of personal loans to individuals resident in the UK. It has its own premises and staff and is authorised to conduct such business in the UK. SFS vets and agrees commercial terms with panel lenders and it approves "in principle" loan applications before they are forwarded to lenders. Once the loans are approved by the lenders, it completes the loan documents (as agent for the lenders) and dispatches them to Spexra plc for onward transmission to the borrower for signing. It deals with compliance matters relating to its credit licence and has overall control over the placement of advertising in the UK (principally in newspapers, Yellow Pages, etc). The annual advertising spend is £30 million, and the placement of advertising in the UK is handled by an independent advertising agency based in Norway. SFS is not registered for VAT as its services are regarded as outside the scope of UK VAT.

      Under a service agreement between Spexra plc and SFS, the responsibility for processing loan applications rests with Spexra plc. Call centre staff initially take the personal details of a caller, the loan required, details of income, the estimated value of the applicant's home and other assets, etc - and then send an application pack to the caller. On receipt of a completed application pack, Spexra plc staff summarise the information, identify the most suitable lender for each applicant and undertake credit and other creditability enquiries into applicants.

      Once satisfied, an offer form is prepared and transmitted to SFS. SFS then makes all the necessary arrangements to complete the loan. Under the service agreement, Spexra plc receives 60% of all commission receivable by SFS, net of its advertising spend. Spexra plc received commission of £72 million in the financial year to 30 September 2020.

      [Spexra plc's services under the service agreement have been treated as exempt from VAT on the basis that it has acted as an intermediary in the provision of personal loan finance and you are not required to comment on this treatment.]

      These arrangements were put in place to ensure the group did not suffer irrecoverable VAT on the very considerable advertising spend.

3) Spexra Leasing Ltd ("SLS") is incorporated in the UK and is part of the Spexra plc VAT group. It acquires MRI scanners and other radiology equipment, which is leased to another group company, Spexra Medical Services Ltd ("SMS") which is not VAT registered (nor is it part of the Spexra plc VAT group) since it provides VAT exempt specialist medical services. This arrangement was entered into to defer over an extended period the VAT cost on equipment acquired by SMS. The leasing charges are based on prevailing market rates.

Requirement:

Explain the principle 'abuse of law' and the extent to which it could apply to the arrangements above.

(20)

Note: You are not required to cover any Customs Duty implications of the transactions.

7. Archie Cochrane, is an Australian businessman who is an international expert on satellite technology. He has approached European government agencies with a view to making supplies of consultancy services to them concerning their space programmes. He has been told that he must form a company within the EU in order to make these supplies and he has incorporated a company in the UK called Spacetech Ltd in order to meet this requirement.

His plan is for Spacetech Ltd to invoice the government agencies (who are all registered for VAT in their respective countries) for consultancy services. None of the customers will be based in the UK. Mr Cochrane himself will manage the company from Australia. There will be two other directors and they will hold regular board meetings at the offices of an Australian company owned by Mr Cochrane.

He will use independent consultants to do the work. Most of them will be based in Australia, and they will invoice Spacetech Ltd in respect of their services rendered. Spacetech Ltd has asked to use the address of a firm of Accountants in the UK as its registered office, and intends to pay a fee for them to provide administration services (answering and forwarding mail and telephone queries, raising invoices, filing statutory returns, preparing accounts for statutory and management purposes). The company will not employ anyone in the UK.

Mr Cochrane expects that his consultants will incur accommodation and transport costs (including car hire as well as air transport) as they travel around Europe. The company will supply them with mobile telephones for use in the EU, under contracts with a UK supplier. They will also be able to use these contracts to connect to the internet. It is unlikely that the consultants will visit the UK, but they will use the phones all around the EU.

Some of the customers have expressed an interest in receiving training as well as consultancy. They envisage the consultants visiting their premises in different EU states and using their facilities to present courses to groups of employees, and where this occurs it will probably be a minor part of a larger project.

Mr Cochrane is concerned about whether his company will be allowed or required to register for VAT in the UK or elsewhere in the EU. He is also concerned to know what VAT the company may incur in the UK or elsewhere, and whether and how he can recover that VAT. He wonders if it will make any difference if, after the business has expanded, it begins to operate from its own office located in the UK with UK-hired administrative employees (but still using Australian consultants).

Requirement:

Explain the VAT issues that arise for Spacetech Ltd. You should refer to relevant case law.

(20)

Note: You are not required to give details of specific VAT treatments in other EU member states, but you should outline the likely issues that will arise in any member state based on the EU VAT Directive provisions. You are not required to consider any direct tax issues.]

8. AB Healthco Ltd (ABH) supplies high level consultancy and managerial services to public and private healthcare providers, as well as supplying and installing Gamma Knife machines which are principally used in the treatment of cancerous tumours. Advice is needed on the following transactions:

1) Management charges – US branch

ABH has a branch office in the United States. At the end of each quarter it issues an invoice for accounting and marketing services supplied by ABH to the branch office. UK VAT has not been paid on these services and there is no reference to VAT on the invoices.

2) Contract – Norwegian Ministry of Health and Care Service

ABH has a two year contract with the Norwegian Ministry of Health and Care Service ("NGHC") under which:

a) Two senior healthcare managers have been seconded to NGHC for eight days a month. Their employment costs are to be recharged to NGHC at cost. Over the period of the contract ABH will recover £164,000;

b) ABH will advise NGHC on the development and implementation of a public health programme relating to the identification and treatment of specific cancers;

c) Over the period of the contract, senior management of ABH will provide NGHC with strategic advice and managerial services in connection with rationalisation of healthcare resources and changes to hospital procedures after the introduction of the programme.

The value of the contract over two years is expected to be £300,000 (including the £164,000 referred to in (a) above). The latest invoice issued in April 2021 was in the following terms: "Fees due under contract HEACAR/Rev/1234 dated 30 November 2020 – £30,000". There is no reference to VAT on the invoices. UK VAT has not been accounted for on any of the invoices which have been issued to NGHC.

3) Supply and installation of Gamma Knife – Madrid

In 2020 ABH concluded a contract with a private healthcare provider established in Spain to supply, install and commission a Gamma Knife at the customer's hospital in Madrid. The customer is not VAT registered in Spain because its services are exclusively exempt from VAT. The final contract price was three million Euros. The Knife was installed and commissioned by specialist staff of ABH who travelled back and forth to Spain from the UK. VAT of £30,000 was incurred in Spain on rented staff accommodation, staff subsistence, fuel, tools, consumables, etc purchased in Spain. VAT on these expenses has been reclaimed by ABH on its UK VAT returns. The Knife was finally commissioned in March 2021; its installation and commissioning having taken 10 months. VAT has not been accounted for on the income accruing from this contract either in the UK or Spain.

4) Supply of Gamma Knife – Russia

A Gamma Knife was sold to a hospital in Russia in June 2020 for £2 million. The shield for the Knife had to be renewed before delivery. This work was undertaken by a company in Germany at a cost of £500,000, and on its completion the German company (on the instructions of ABH) dispatched the Knife to the Russian customer. HMRC issued an assessment for £350,000 in respect of the accounting period to June 2020 on the basis that, although ABH had evidence of the movement of the Knife to Germany, there was no evidence of its movement to Russia. Such evidence in the form of a signed CMR and a stamped C88 was obtained in November 2020. The

assessment has been paid, but no adjustment has yet been made to VAT returns, nor has the assessment been set aside.

5) Gamma Knife dispatched to France on approval

In June 2020 a Gamma Knife was delivered to a private French healthcare provider on the understanding that it could be used free of charge for the treatment of the customer's patients until 31 March 2021 by which date it either had to return the Knife to the UK, or exercise an option to purchase it at the agreed price of £2,500,000. The customer, which is not VAT registered in France, elected to purchase the Knife in February 2021. ABH proposes to account for UK VAT on its June 2021 VAT return, with the dispatch reflected on its April dispatch Intrastat return.

Requirement:

Comment on the treatments adopted above. Make specific reference to statute and case law.

(20)

You are not required to provide specific advice of the tax or VAT treatment which applies outside the UK.

9. CIBFSA is a members' association and had a recent visit from HMRC. Various issues were identified.

The Association funds legal and forensic accounting assistance provided to its members where they are the subject of legal, regulatory or disciplinary claims or charges arising out of their professional activities as financial advisers. HMRC has previously agreed that the Association's main source of income – members' annual subscriptions – is exempt from VAT as a supply of insurance. Accordingly, the Association is not registered for VAT.

At the conclusion of his visit, the officer said that he thought that legal and other professional fees paid by the Association to Australian and South African firms acting on behalf of its members resident in those countries were subject to UK VAT, and therefore the Association might need to register for VAT. He explained that this arose on account of the 'reverse charge mechanism' as these services were provided to the Association, rather than to the members, because of the level of control that the Association exercised over the conduct of cases taken on their behalf.

The Association disagrees as its limited resources dictate that the Association only takes on cases where its legal department, based on the professional advice received by the member and the facts, is satisfied that the chances of success are good. For the same reason, the Association may have to advise a member to settle a case/claim. Where members fall foul of the regulators or have claims lodged against them, they are entitled to consult advisers on the Association's local panel of forensic accountants or lawyers. They will agree the terms of engagement and business with their chosen advisers and, subject to the Association's agreement to support their case, their fees will be underwritten by the Association.

Payments made to Australian and South African advisers in the last two years were:

£	Month of payment in 2019	Date of invoice in 2019
8,000	April	1 March
4,000	July	2 April
12,000	September	1 June
20,000	November	1 August
	In 2020	
20,000	January	1 November 2019
20,000	August	3 June 2020
10,000	October	1 August 2020
	In 2021	
37,000	January	30 September 2020
8,000	February	2 December 2020
6,000	March	3 January 2021

Invoices are rendered by advisers at the beginning of each month to clear down their work in progress for the previous month, so the invoice that the Association received on 3 January 2021 would have related to work done in the month of December 2020.

The Association needs to understand the reverse charge mechanism, whether the officer is correct in his conclusion that the charge applies to the payments made by the Association and, if so, whether they should have registered for VAT and can reclaim the VAT charged.

Requirement:

Answer the questions raised by the Association.

(15)

You are not required to address the question of whether the Association could be liable to a penalty for belated notification of liability to register.

10. A German online retailer needs advice on its VAT compliance responsibilities in relation to sales made to UK customers. Sigma GmbH is a company based in Germany. It sells, over the internet, fashion and lifestyle products, from a significant portfolio of brand names. Its customers are exclusively private persons. The stock is allocated to customers in Germany on receipt of customer orders. In order to avoid multiple VAT registrations across Europe, it was previously advised that the distance selling arrangements did not apply where the customer assumed responsibility for the delivery of stock purchased – accordingly, where customers request it, as the customer's agent, Sigma arranges for the transport of approximately 40% by value of stock purchased. It commenced supplying UK residents in May 2018 and its sales (which accrued evenly throughout the year) in the three years to 30 April 2021, were:

Sales to UK customers (exc VAT) in 12 months to 30 April	2019	2020	2021
	£	£	£
Clothing and footwear suitable for young children	20,000	25,000	35,000
Other clothing and footwear sales:			
- delivered by company	40,000	47,000	55,000
- delivery arranged by customer	40,000	43,000	48,000
	100,000	115,000	138,000

VAT at the rate of 19% has been accounted for in Germany on all sales made. Sigma received a letter from HMRC in February 2021 which noted that it was selling stock direct to UK consumers and set out in general terms the requirements for online retailers based in other EU member states to register for VAT in the UK under the distance selling arrangements. This letter has prompted Sigma to seek advice, and specifically it requires help on the following issues:

1) When is/was it required to register for VAT in the UK under the distance selling arrangements?

2) If it has registered late will it be liable for a penalty and if so, what is it likely to be?

3) If the company is required to register for VAT in the UK, it also requires the following background information:

   a) how does it effect registration;
   b) what VAT accounting records will it be required to maintain and for how long;
   c) how frequently will it be required to submit VAT returns – its financial year end is 31 March;
   d) can VAT returns be filed electronically and how might it pay VAT due;
   e) when is VAT due? All customers pay for goods ordered with a credit/debit card and an order will only be processed when payment has been authorised by the card provider. However, the Distance Selling Regulations give customers a seven-day period within which they may cancel an order following receipt of the goods. Given that it may take up to 21 days before the goods are dispatched, possibly there will be a 30 day interval between payment and receipt and acceptance of the goods by a customer; and
   f) in addition to completion of periodic VAT returns, what other returns need to be filed by Sigma?

Requirement:

Respond to the issues raised by Sigma with reference to statute where appropriate. (15)

CUSTOMS DUTIES & EXCISE DUTIES QUESTIONS

11. Hagrid Ltd has been supplying plastic kits of dragons to private consumers in the UK since 2018. These are subject to a 5% Duty rate. In 2018, it sourced kit A from a Spanish subsidiary, Fluffy & Co, and kit B from a non-related Far East supplier, Umbridge Inc. The cost of these kits was £10 each including all transport and insurance costs. After arrival in the UK, Hagrid Ltd then sold these to members of the public for £25 each by mail order.

In 2020, Hagrid Ltd altered the operation so that the kits were mailed direct to its customers by the Spanish subsidiary and by a Far East subsidiary set up to buy the goods from Umbridge Inc. These goods were purchased by final consumers over the internet direct from the subsidiaries. They continued to be sold for £25. It did this as it thought that it could use the cost of £10 as the value for duty even though goods were purchased by the final consumers for £25.

A small education entity, The Fang Education Trust, also sources these plastic kits from Fluffy & Co. The Fang Education Trust makes no supplies of kits but uses them for its non-business activities.

Hagrid Ltd has been approached by a French company which is looking to sell them a novelty pack for Christmas, for Hagrid to sell on to UK customers. This will contain a small bottle of champagne, along with a card game that can be used in conjunction with the dragon kits. Hagrid Ltd was told by the French company that it would need to become a Registered Consignee as there would be excise duty implications on arrival of the set into the UK. Hagrid Ltd has never heard of the phrase 'Registered Consignee'.

Requirement:

1) Calculate the VAT and Customs Duty position of Hagrid Ltd for each kit bought and sold in 2018. (6)

2) State the VAT implications in 2020 when the Spanish subsidiary supplied the kits direct. (5)

3) Explain whether the changes implemented in 2020 would allow the £10 cost to be used as the value for duty and import VAT for imports from the Far East. (2)

4) Explain what a Registered Consignee is and why Hagrid Ltd would need to become one for the purchases of the champagne. (4)

5) State the VAT implication of The Fang Education Trust acquiring kits from Fluffy & Co. (3)

Total (20)

12. Jim Yot is the import manager for "Just for Big Kidz Ltd". He is very excited about a new toy product that has just been developed, for which production should be starting in the next few months. To take advantage of cheaper costs abroad, the toy will be manufactured in the Far East and imported into the UK. 'Toy' is rather a loose term for this highly sophisticated electronic device. In Jim's words it is 'rather large' and will be very expensive 'but suitable for those yuppie types with more money than sense. It will change technology as we know it!'

    Jim is worried that someone in the company has been leaking information to a competitor about the new product. Jim wants to make sure that the company imports the product to the correct commodity code.

    Requirement:

    1) Explain the basic procedure for classifying a product and how an importer can obtain certainty from Customs that the code he is using is correct and discuss which GIR is of most relevance to this new toy product. (15)

    2) Jim obtains a ruling from Customs concerning the classification of the product. However, he is unhappy with the code that Customs has chosen. He would like to appeal. Explain how would he go about this. (5)

    Total (20)

13. Mr Berry works in the tax department for a company that makes cleaning products and stain removal products for the UK and US markets.

For the last few months, the company has been developing a new stain remover for silk products to compete with a US producer, which has started to import a similar product into the EU as well as making domestic sales. The rate of Duty on the stain remover is 3% ad valorem but, to manufacture it here in the UK, the company has to import a special chemical from China which is currently 15% ad valorem (and constitutes about 60% of the end product).

Due to the short supply of other materials it is currently taking between four and five months to get the product processed and ready for sale and the company is having to pay the Customs Duty and import VAT upfront.

The Chinese supplier is also experiencing problems with delivery and the company sometimes has to buy a much more expensive chemical from France to use in production. The company stores all the stain remover together and it is unknown which chemical goes into which end product.

Mr Berry has recently changed freight agents who asked him to verify whether the company was an AEO or an EORI. Mr Berry is unsure whether he can apply any of these authorisations retrospectively to save the company cash paid in the past. The company has received advice in the past on Customs' warehouses so doesn't need any advice with that option.

Requirement:

1) Explain the principal duty relief available to the company and how it works; and

2) Explain what an 'AEO' and 'EORI' are.

As part of your answers above explain whether authorisations can be retrospective

(20)

14. Lancs Ltd, has just signed a contract to import flat screen televisions from Korea for sale on the UK retail market.

The company has experienced problems with imports in the past with paperwork and record-keeping errors holding up the clearance of goods through Customs and increasing the cashflow costs due to the delay between duty payment and eventual sale. The new finance director, Mr Formby, has no experience in Customs Duties. He has heard something about warehouse arrangements and "simplified procedures" which might help but is confused about the different options, their benefits and the conditions which Lancs Ltd would need to meet.

Requirement:

Detail the options open to Mr Formby and the consequent obligations for Lancs Ltd. (15)

15. With the increased trend in internet purchases, the reliefs for imports of small consignments from abroad are more relevant than ever before.

Requirement:

Detail the reliefs available and any conditions that apply to them and explain what other reliefs are available for individuals bringing belongings into the UK.

(10)

16. A UK company is to start importing goods from a new manufacturing subsidiary in the Far East and is unsure of how goods are valued.

Requirement:

1) List the methods of valuation. (3)

2) Detail restrictions on the use of method 1. (2)

3) Give four examples of additions to be made to the transaction value. (2)

4) Give six exclusions or deductions to be made from the transaction value. (3)

Total (10)

17. SupaKarts Ltd is setting up as a manufacturer and distributor of motorised shopping carts that elderly people use. 70% of its sales will be export sales to customers in Canada. The assembly of the shopping carts will take place in the UK.

SupaKarts Ltd will import all the frames for the shopping carts from a supplier in China and will pay an ad-valorem duty rate of 10% on these. Imports over a six-month period are estimated to be around £200,000. The motors will be supplied from a French company at a cost of £350,000 per year and the wheels will be imported from the Far East. It is estimated that next year's duty bill for the wheels will come to £35,000.

Imports of the frames and wheels have been quicker than anticipated and a shipment is due to come in in a fortnight's time.

The managing director of SupaKarts Ltd has heard that it may be possible to use a special procedure to provide Customs Duty relief to reduce the amount of duty payable on its imports.

Requirement:

Explain the principal special procedure available including:

- **setting out the advantages for SupaKarts Ltd in operating this procedure, and**

- **calculating how much duty they could save.**

(10)

18. Preference is a key area when importing goods from outside the EU. Where goods have been imported under preference, under the GSP, but are subsequently found not to qualify under the rules of origin, a substantial claim for back duty can arise.

Requirement:

Explain what preference is, the conditions that need to be met, and how an importer can protect themselves from back duty demands. (10)

19. Rouge Ltd is an importer of cosmetics. Lipsticks originate in Korea; blusher comes from Spain and eye shadow originates in China. All of the components are imported into Rouge Ltd's distribution centre in the Midlands and consolidated into a single shrink-wrapped package for sale in Superdrug and Boots. Rouge Ltd only makes wholesale supplies.

    On average products can spend four months in the distribution centre due to timing differences between receiving all the products. Rouge Ltd does not operate any special procedures and its freight agent clears the imported components on its behalf using the commodity codes for the individual items.

    Rouge Ltd would like to defer/and lower if possible the customs duty it pays on the imported components.

    Requirement:

    Explain how Rouge Ltd can lower or defer its customs duty, indicating any queries you might have for the company in order to achieve its objective.

    (15)

20. EXCISE DUTIES SCENARIOS

These are not exam standard stand-alone questions but are scenarios covering various aspects of the syllabus on excise duties to help you to understand and apply the rules. Usually excise duties are a small part of a larger question (either on VAT or Customs Duties).

Scenario 1

You are an Indirect Tax advisor specialising in excise duties. You have been researching a new planning regime that could reduce clients' excise duty liabilities on alcoholic products that they produce. You are about to write to several of your clients about the proposed new scheme, for which you will charge a contingent fee based on the savings that you make.

You understand there are regulatory obligations concerning excise avoidance schemes and you want to make sure that you are compliant.

Requirement:

State what legislation governs the promotion of this scheme and describe briefly the actions you need to take to be compliant. (5)

Scenario 2

You work in the in-house tax department for a large alcoholic wholesaler. You are taking on two new joiners to work in the department who will begin studying for their CTA exams. You are going to lead a training session with them about the Alcohol Wholesaler Registration Scheme (AWRS) and its impact on your company.

Requirement:

Prepare bullet point notes about the operation of the scheme and its impact for your business. (5)

Scenario 3

You have recently joined the in-house tax team for a large alcoholic company that produces its own alcopops. In order to learn more about excise duties your manager has given you topics to research and present back your findings to him by way of a short presentation. The most recent topic he has given you is 'Excise Warehouses'.

Requirement:

Prepare bullet point notes about operating an Excise Warehouse. (10)

Scenario 4

You have recently joined the indirect tax team for a large firm of accountants. One of your clients produces tobacco. In order to learn more about excise duties on tobacco you have been given the task of researching what a tobacco manufacturer needs to do to be compliant with the law on producing tobacco.

Requirement:

Prepare bullet point notes about becoming authorised to manufacture tobacco products. (5)

Scenario 5

Requirement:

Briefly explain the difference between:

Registered Consignees, Temporary Registered Consignees, Registered Commercial Importers and Unregistered Commercial Importers (10)

VAT ANSWERS

1. IMPORT AND EXPORT LTD

HMRC's objections to the arrangement

If the transactions are all genuine, then the purchase of goods from the UK supplier will involve the payment of input tax by the firm of auditors.

The sale of goods to the Spanish customer will be a zero-rated intra-Community dispatch, so the auditors will not have to charge VAT to them; but they will be able to claim back the input tax on the purchase. On the figures quoted, the goods would be bought for £90,000 plus £18,000 VAT, and sold for £100,000 with no VAT.

The risk is that this could be a "missing trader fraud". If it is, then the supplier will send the auditors an invoice for £108,000 gross but will disappear without paying the output tax over to HMRC.

The supplier would very probably be in league with the Spanish purchaser; they would therefore have made a dishonest profit on the transaction of £18,000. The auditors will have had to fund that part of the purchase cost themselves, but will expect to recover £18,000 on their next VAT return.

Missing trader frauds on goods have traditionally been mainly concerned with mobile phones and CPUs; but as the authorities and honest traders have become more vigilant in those areas, the criminals have tried other types of goods.

The way in which the auditors have been offered the deal that allows them a profit without a great deal of effort certainly has the hallmarks of a fraud, and the auditors should proceed very carefully.

It may be above board, but the description is consistent with how it would appear if it were not. The fact that they have been offered the deal by someone who apparently could source the goods directly, and so cut out the auditor's profit, begs the question of why they would want to do that?

The fact that auditors do not normally deal with these people or in these goods should also raise their level of concern.

Checks to be made by the auditors

HMRC recommend a number of checks for traders to carry out in order to make sure that they do not become associated with missing trader fraud. Some of these are specific to VAT, and some are commercial common sense. The following are key checks:

- Check that the Spanish VAT number is valid – there is an electronic facility for doing this operated by the EU which can be accessed via the HMRC website, or a person can ring the National Advice Service for advice on how to verify that the VAT registration is current. HMRC prefer this latter option as it is updated more regularly than the EU website.

- Carry out normal commercial checks on the customer and the supplier – company searches, credit references. Even if they do not appear to pose a credit risk to the auditors because they are paid in advance, the auditors will lose out if they do not confirm that the customer and supplier are genuine businesses.

- Carry out normal commercial checks to make sure that the goods exist and are as described in the documentation – there is a significant risk to the auditors if they do not have independent evidence that the goods are genuine and are worth the amount stated.

- Consider the commercial reality of the situation: is there a reason why the Spanish customer appears to be willing to allow the auditors to make a profit when they are aware of the identity of the source of the goods and could therefore buy them more cheaply direct?

What may happen if not enough checks are made

If the auditors proceed with the transaction and it turns out that the supplier does not account for output tax, HMRC may take one of two courses of action. They have even been known to run both arguments at the same time (although a person cannot be liable for tax under both assessments):

- denial of input tax (ie the goods would cost £108,000 gross and the auditors would make a loss of £8,000);

- denial of zero-rating (ie HMRC would require the auditors to pay £20,000 in output tax that has not been collected from the customer, and the auditors would lose £10,000 overall – the output tax less the £10,000 margin they were expecting to make).

Denial of input tax can be sustained by HMRC on either of two grounds:

- the goods did not exist or were not as described on the documentation – this would mean that the input tax invoice was invalid, and credit would be denied under the normal rules which apply to any purchase transaction;

- the goods existed but were the subject of a missing trader fraud and the auditors knew, or ought to have known, that the transactions were tainted by fraud. “Knew” is hard for HMRC to prove where the trader is honest; but “ought to have known” covers the situation where the transactions are suspicious, as they are here, and the trader does not carry out sufficient checks.

Denial of zero-rating follows where the goods existed but there is insufficient evidence that they have left the UK, so the conditions for zero-rating are not met. For example, a fraudulent supplier might send documentation purporting to show a dispatch to Spain but might then divert the goods to the UK market or use them for a similar transaction with another intermediary in a position similar to the auditors.

The auditors are entitled to rely on documentation which appears genuine provided that there is no reason to doubt its authenticity; but, once again, the suspicious nature of the proposal means that they would be expected to carry out further checks to make sure that the documentation is genuine.

The CJEU case of *Kittel v Belgium State* provides the basis for HMRC opinion in this regard.

MARKING GUIDE

TOPIC	***MARKS***
Presentation and Higher Skills	*1*
HMRC's objections	
– *position re purchase of goods if genuine transaction*	*½*
– *position re sale of goods if genuine transaction*	*½*
– *relating to figures quoted in question*	*½*
– *identifying potential MTIC*	*½*
– *application to scenario in question*	*2*
– *identifying does not just apply to mobile phones/CPUs*	*½*
– *advising transaction has hallmarks of fraud*	*½*
– *identifying elements of transaction which cause concern*	*1*
The appropriate checks	
– *highlighting HMRC recommend checks*	*½*
– *1 mark for each check identified*	*4*
What may happen if not enough checks are made	
– *possible denial of input tax*	*½*
– *possible denial of zero-rating*	*½*
– *grounds for denial of input tax (1 each)*	*2*
– *situation where denial of zero-rating follows*	*2*
– *reference to Kittel case*	*1*
Conclusion	*½*
TOTAL (MAX)	***15***

Examiner's report:
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Missing Trader Intra-Community Fraud has been one of the most important issues in cross-border VAT during the last decade, and this question was set to test whether candidates would recognise suspicious circumstances. A fraudulent trader will not always deal in microchips or mobile telephones, and the fraud may depend on taking advantage of an honest and unsuspecting trader such as the entity in this question.

Fewer than half the candidates raised the possibility of MTIC fraud. Among those that did, there were some good answers; however, some were willing to carry out "due diligence tests" such as asking the Spanish customer to confirm his VAT number, inspecting his letter headed notepaper, and ringing the supplier to confirm that the goods had been dispatched. It is to be hoped that candidates will not have had to deal with this situation often in practice, but they should be more aware of the risks of fraud that exist, and much more sceptical in carrying out tests to make sure that a transaction is what it seems to be. Although several candidates were aware of the Teleos case, few would have satisfied HMRC that they had "taken all reasonable steps" to confirm the bona fides of the trade.

Candidates also seem to be unaware of the main lines of attack that HRMC employ against the dupe (or, sometimes, participant) in a carousel fraud. Although there are statutory measures such as s.77A VATA 1994, they are rarely employed in practice. HMRC will deny the recovery of input tax where the claimant "knew, or ought to have known" that the transaction was tainted by fraud. No candidate mentioned the case of Kittel, which is the leading CJEU decision in this area. The possibility of the denial of zero-rating was a little better covered, although the explanation of Teleos was usually unconvincing.

A surprising number of candidates spent time discussing whether the transaction involved agency, either disclosed or undisclosed. It is possible that the description given is a misunderstanding and the contracts should be examined to check; but "we could purchase for £90,000" and "we would sell it to his business for £100,000" is not the language of agency. Those who spent their time dealing with the place of supply of services rules were therefore earning no marks. This is clearly a question about a supply of goods. A few candidates also considered that the main risk was that HMRC would levy "penalties" (which ones were not specified). In this area, HMRC usually deny input tax or charge output tax, but penalties are much rarer.

2. ENGINEERING RESOURCES LTD

Transactions and place of supply

ERL is carrying out or is proposing to carry out the following transactions:

- Dispatch of goods from the UK for local installation – supply of goods in the UK which is zero-rated by virtue of s.30(8) VATA 1994 provided that the conditions for an intra-community dispatch are met. The German VAT-registered customer accounts for acquisition tax and there is no liability for ERL to register for VAT in Germany.

- Transfer of own goods to a branch in another member state: this is a deemed supply under para.6 Sch 4 VATA 1994. As the foreign branch is not registered yet, the conditions for zero-rating the deemed dispatch are not met. In the case of *Centrax plc*, the VAT Tribunal held that charging UK VAT on such a deemed dispatch was not the correct solution under EU law: rather, the foreign branch should register retrospectively in Germany (if the local rules allow that), justifying the zero-rating of the dispatch. HMRC subsequently accepted that this was the correct approach. However, see the comment on call-off stock below.

- Acquisition of own goods in Germany: this normally requires registration to account for acquisition tax, subject to the local equivalent of Sch.3 VATA 1994. However, see the comment on call-off stock below.

- Supply and installation of equipment: this is treated as a supply of goods. The place of supply of such a contract is normally where the goods are installed (s.7(3) VATA 1994), which would require registration in Germany. Where Germany has introduced a VAT simplification under Article 36 of the 2006 EU VAT Directive, it should be possible to pass the VAT obligations onto the German customer by way of an acquisition VAT liability.

- The supply of spare parts from a stock maintained in Germany is normally treated as a supply made in Germany, being the location of the goods when they are supplied: this would normally lead to a registration liability in Germany (if not already registered for the acquisition). The supply of parts appears to be separately charged from the supply of maintenance services, so they are likely to be independent supplies and not compounded together. See also the comment on call-off stock below.

- Work carried out on goods will be a service, deemed under s.7A(2) VATA 1994 to be supplied where the “relevant business person” customer belongs as it is not mentioned in parts 1 or 2 of Sch.4A VATA 1994. If the pumps become immovable property by being incorporated in the structure of the building, the supply may also be placed in Germany by para.1(2)(e) Sch.4A VATA 1994 (and the local equivalents of this rule). This would carry a registration liability in Germany unless Germany operates a simplification which allows the registered German customer to account for a reverse charge (as the UK does by extending the reverse charge under s.8 to any supply received by a VAT-registered UK relevant business person where the place of supply is the UK and the supplier belongs elsewhere).

Call-off stock

Call-off stock is stock held in another country for a single customer. The goods can be held at a warehouse under the control of either the customer or the supplier. If the goods are held in premises under the control of the supplier, the customer must be informed of stock arrivals and movements.

From 1 January 2020 there is a simplification for call-off stock which all member states have adopted.

The simplification means that a zero-rated dispatch occurs when the goods are called off by the customer. The supply of the goods does not create a German registration liability for ERL because they are deemed to have been supplied to the customer at the time of the call-off, and acquisition tax will be accounted for at that time by the German customer.

If goods are held for more than one customer, the call-off stock simplification cannot be used and ERL would have to register in Germany (this is called “consignment stock” rather than “call-off stock”).

Recovery of German VAT

As ERL is incurring German VAT on the warehouse rent, it may be simpler and more efficient to register for German VAT straight away (if it is not already required to be registered). Reclaiming German input tax on a VAT return is likely to be quicker than claiming under the Electronic Cross Border Refund Scheme; however, this needs to be balanced against the increased administrative burden of filing VAT returns in Germany if the business is not required to be registered there by virtue of the supplies it makes in Germany.

MARKING GUIDE

TOPIC	***MARKS***
Transactions and place of supply	
a) Dispatch of goods from UK for local installation	
– *UK place of supply*	*½*
– *ZR by way of s.30(8)*	*½*
– *GM VAT number required (customer of ERL)*	*½*
– *GM acquisition VAT for customer or ERL*	*½*
b) Transfer of own goods to branch in another member state	
– *deemed supply*	*½*
– *branch not regd = SR deemed supply*	*½*
– *Centrix confirms correct approach is for branch to retrospectively register*	*½*
– *once registered we have a ZR deemed supply*	*½*
c) Acquisition of own goods in Germany	
– *acquisition of own goods*	*½*
– *registration requirement re equivalent of Sch 3*	*½*
d) Supply and installation of equipment	
– *supply of goods*	*½*
– *place of supply is where installed*	*½*
– *GM registration to consider*	*½*
– *simplification to avoid GM registration*	*½*
e) Supply of spare parts	
– *GM supply re location of goods when supplied*	*1*
– *Registration obligations in GM*	*½*
– *independent of the supply of services*	*½*
f) Work carried out on goods	
– *service*	*½*
– *B2B therefore POS is where recipient belongs*	*½*
– *comments on immovable land supply*	*½*
– *registration re land supply could be avoided via reverse chg*	*½*
Call-off stock	
– *definition*	*½*
– *ZR dispatch at time of call-off*	*½*
– *preferred as call-off stock avoids GM registration*	*½*
– *comparison to consignment stock*	*½*
Recovery of German VAT	
– *GM registration will facilitate input tax recovery*	*½*
– *alternative is electronic cross border refund scheme*	*½*
– *brief overview/explanation of cross border refund scheme*	*1*
Presentation and Higher Skills	*½*
TOTAL (MAX)	***15***

Examiner's report:
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The average marks for this question were good, and many candidates took the opportunity to make sensible and accurate comments about some of the transactions described in the question. Very few, however, used the list in the question to provide a comprehensive answer – hardly anyone identified all the supplies made by ERL. The one candidate who did so earned full marks.

Candidates need to understand the requirement for technical precision in an examination of this kind. For example, the correct response to "what is the place of supply?" is not "it is zero-rated" but "it is inside/outside of the UK". The liability of the supply follows from the place. Those candidates who wrote "it is outside the scope of UK VAT and therefore zero-rated" should think carefully about why that cannot be correct.

Similarly, the expressions "reverse charge" and "acquisition" are not interchangeable. One is used for services and the other is used for goods; they appear in different places on the VAT return and have a number of different detailed consequences. A general practitioner might be forgiven for confusing the terms, but a candidate for a CTA VAT Cross-Border exam should know those distinctions and should make them clear in every answer.

Some candidates seemed to confuse themselves into getting their supplies the wrong way round. The question required comment on the likely position regarding registration in Germany. No particular knowledge of the German rules was (or ever would be) required: the intention is to test an awareness of the likely issues which will arise in other member states on the basis of European law. It is perfectly acceptable to say, "if Germany has the equivalent of..." and give the UK provision. Many candidates did this and gave reasonable answers.

3. JERSEY CO

1) UK VAT Registration options

Any UK supplies by a non-established trader will result in a UK registration obligation under Schedule 1A VATA 1994.

"Taxable supplies" means supplies chargeable to VAT at the standard, reduced or zero rate (s4(2) VAT Act 1994. Exception from registration can be claimed if the supplies are zero rated.

Where a taxpayer does not have a business or fixed establishment in the UK, there are three options open to it to meet its obligations under the Act:

1. It may, with the agreement of HMRC, appoint a representative to act on its behalf (s48(2), VAT Act 1994). The representative will be registered in the name of its principal, and it must notify HMRC – by filing a form 1TR – within 30 days of its appointment, accompanied by evidence of appointment (reg10, VAT Regs 1995). The representative is required to ensure that its principal meets all its obligations under the VAT Act and, most significantly, is jointly and severally liable for VAT debts due to the Crown as a consequence of its principal's non-compliance (s48(3)(c), VAT Act 1994).

   The VAT office local to the office of the representative which maintains its principal's accounting records will have responsibility for the principal's VAT affairs.

   Given that a tax representative is jointly and severally liable for compliance failures of its principal, this option is not attractive to a firm of advisors unless the Jersey co is prepared to provide it with an adequate guarantee to cover potential liabilities;

2. It could appoint a firm of advisors to act as an agent. HMRC will require a letter of authority. Unlike a tax representative, the agent is not jointly and severally for failures by its principal to meet its obligations. The VAT office local to the agent's office which maintains its principal's accounting records will have responsibility for the principal's VAT affairs;

3. Finally, the company may register directly with the Non-Established Tax Payer ("NETP") unit in Aberdeen. It will need to make arrangements for the accounting records to be made available to officers for inspection when required. Under this option, an appointed firm of advisors could complete the company's VAT returns, then forward them to the company for signature and submission to HMRC.

2) Liability to register for UK VAT

In order to determine when the company has/had an obligation to register for UK VAT we need to determine if it has made any UK supplies and when those were made.

The following services take place where the land is situated (paragraph 1, Schedule 4A VAT Act 1994):

a) any works of construction, conversion and civil engineering. The CJEU in the *Maierhofer* case ruled that prefabricated buildings fixed firmly to or in land not owned by a lessor constituted services relating to "land". Similarly, services relating to equipment which is a permanent or quasi-permanent feature of the land to which the equipment is attached will be regarded as services relating to land – see the decision of the Tribunal in *McClean and Gibson (Engineers) Ltd*;

b) services supplied by estate agents, architects, engineers and others "involved in matters relating to land". A Tribunal has held that services comprising book-keeping and the production of rental accounts by managing agents are sufficiently closely related to land to be regarded as taking place where the land is situated (see *Aspen Advisory Services*).

The EU Implementing Regs 282/2011 Article 31a provides useful examples of land related services.

Conclusions

1. All existing authority points to the fact that the company's service to its Chinese client took place in the UK either because the service related to land situated in the UK or to work undertaken on goods situated in the UK. Given that the supply took place in early 2019 the non-established company should have notified HMRC of its liability to register for VAT in the UK. On account of its failure to do so, it may be liable to a penalty of 30% of the net VAT arising in the period from when it was required to be registered for VAT to the date HMRC is so notified (Sch 41, FA 2008) (any further delay in notifying HMRC of its liability could result in the penalty increasing to 100% of the net tax due) if HMRC consider the failure to be deliberate and concealed. HMRC may (or on appeal to the First-tier Tax Tribunal,) excuse the penalty. Why the company failed to notify HMRC needs to be determined on whether it has a case for the penalty to be excused.

2. HMRC is required to register the company from the point at which the liability arose in early 2019. The company should appoint an agent in the UK.

3) Recovery of VAT on the London property

Given that the company will be making zero-rated onward supplies in relation to the property acquired in May 2019 which has been converted into flats, and perhaps providing standard-rated services if it opts to tax the retail units (see comments in the following paragraph), it should be able to recover VAT on the costs associated with acquiring the property and the planning advisory services received.

If the company is to recover in full VAT incurred on the May 2019 investment property, it should consider opting to tax the retail units – unless it does so, the letting income from the units will be exempt from VAT and, on this account, there is likely to be a restriction on the amount of input tax recoverable on the acquisition and redevelopment costs.

VAT implications on purchase from Liquidator

Since the portacabins are fixed to the sites, their hire will be regarded as taking place in the UK, and in accordance with s8 of the VAT Act 1994, the recipient of the service should have accounted for VAT on the supplies made under the reverse charge.

VAT implications on portfolio of investment properties

If the company wishes to recover input tax thus far incurred on the investment property portfolio to be acquired in October, before completion, it must opt to tax the properties. It may restrict its option to tax to those properties on which the seller has so opted or extend it to all or part of the remaining properties. In general, the company will only be entitled to recover VAT on the costs of acquisition to the extent that it relates to opted properties. However, where the input tax apportionable (on any fair and reasonable basis) to non-opted properties (which will generate exempt supplies) is insignificant (broadly a maximum £625 per month on average), it may be recovered in full – the detailed rules on this are in regulation 106 of the VAT Regs 1995.

VAT implications on Golf Course and LED lighting

In relation to the proposal to design a golf course in Eire and the installation of LED lighting in retail parks in Spain, since the company's services directly relate to land, the place of supply will be Eire and Spain respectively. It is likely that its clients (or their associates) will be VAT registered (or will seek registration) in these countries. That being so, there is every likelihood that the recipient of the service will account for VAT in Eire and Spain, but local advice must be sought.

If the LED lighting in retail parks in Spain is not a service directly related to land, in the alternative, it may be regarded as representing supplies of installed goods, with the place of supply being in Spain even though the customer is based in the UK (s7(3)(b) VAT Act 1994). Local advice should be sought on whether Spain has adopted measures to allow the recipient of the supply to account for VAT due on such services if they are VAT registered in the country where the goods are installed.

Finally, the company should also obtain local advice on whether these services may give rise to a permanent establishment for corporation tax purposes in Eire and Spain.

VAT implications on advisory services

The tax advisory services will not be subject to UK VAT because the place of supply is where the recipient belongs, and the company does not have an establishment in the UK.

However, because the preparation of rental accounts, the issue of rent demands and the collection of rents are directly linked to the company's services in relation of land in the UK, such services should be treated as standard-rated but the VAT charged will be substantially recoverable by the company as input tax.

Tutorial Note

The length of this answer is not achievable in the time available and is indicative of the points that a student could raise. Use the marking scheme to see the number of marks available for each part.

It would have been advisable to cover the registration options and general rules for land related services first but not in the detail contained in the model answer above. Students should always aim to get into the body of the question as soon as possible.

MARKING GUIDE

TOPIC	***MARKS***
Presentation and Higher Skills	*1*
General Principles re Registration	
NETP any supplies = regn (Schedule 1A)	*1*
administering the UK registration	*1*
– 3 options (1 mark each)	*3*
Place of supply – services	
– discussion re land	*2*
Conclusions	
– discussion re failure to notify	*2*
– discussion re compulsory registration	*1*
– discussion re date from which registration should apply	*2*
– discussion re option to tax	*2*
– treatment of portacabin hire	*1*
– treatment re design of golf course/installation of lighting	*2*
– treatment of tax advisory and accountancy services	*1*
– treatment of preparation of letting accounts etc	*1*
TOTAL	***20***

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In general, the standard of the answers was disappointing. Essentially it was testing candidates' understanding of two basic VAT principles: whether the supplies made by the Jersey company took place in the UK and, if so, when was it required or might register for VAT in the UK. The case law and HM Revenue & Customs' policy on which the question was predicated is well established, yet few candidates made reference to it in their answers.

Regrettably some candidates did not read the question carefully enough, and a significant number had not planned their answers. Had they done so, the question might not have been so demanding as it appeared.

4. FINANCIAL SOFTWARE DESIGN LTD

Exempt supply?

FSD's customer suggests that it does not need to charge VAT because insurance and financial supplies are exempt. This is a misunderstanding of how the rules work. The USA company's supplies to their customers are supplies of insurance and financial services, and if they are supplied in the UK they will generally be exempt; but FSD's supplies to them are not supplies of insurance and financial services but rather supplies of software and training. Although they might be closely related to their exempt business, and used to make exempt supplies, FSD's supplies do not benefit from the exemption. They are too different and too far removed from the exempt end product.

Single and multiple supplies

Whenever someone sells several things together, it is necessary to consider whether they are selling an overall package which has a single VAT liability, or separate elements which can have different treatments. In FSD's case, it will be necessary to consider whether they are supplying:

- a single package of development, installation and training, or two or three different elements which might be treated differently;

- a single product to the holding company which then makes onward supplies to its subsidiaries and branches, in particular the ones in the UK, or whether FSD is in fact making separate supplies to the different subsidiaries and branches.

From the description it looks like the development, installation and training is likely to be a single package and it is supplied to the holding company, but this should be investigated further with a detailed examination of the contracts and the work involved in fulfilling them.

Place of supply

All of the supplies that FSD will make will be supplies of services rather than goods. Even if FSD sells software on disks, the payment is for the work done in developing it (ie it is bespoke) rather than for the disks themselves.

The general rule for international supplies to businesses is "where the customer belongs", subject to a number of limited exceptions.

Supplies of software development are very likely to be consultancy, and the regular annual fees are most likely to be licence fees. Both are subject to the "general rule" for business to business supplies. Where these supplies are made to a business established in the USA, they will be outside the scope of UK VAT and FSD does not need to charge VAT (but see comments below on the UK subsidiaries and branch).

The installation work appears to be an incidental part of the development contract. The manner and place in which this is done does not affect the VAT liability, which is still based only on where the customer belongs.

Similarly, the training appears to be an incidental part of the overall consultancy package. If it is not, the supply of educational services is treated as where the course takes place (based on the 2019 Srf CJEU case concerning the 'admission to the event' rule). If this was a separate supply then the courses that take place in the UK (10% of them) would be liable to UK VAT (see below if it is part of a single supply of consultancy and part is supplied to UK subs/branches).

UK subsidiaries and branches

The situation is made more complicated by the existence of the UK subsidiaries and branches. To the extent that the supplies of software are "most concerned" with a UK "fixed establishment" of the US company, then if the general rule applies, then they must be charged to UK VAT, because the customer belongs in the UK rather than in the USA. This would mean that 10% of the training supplies, that are 'most concerned' with the UK establishment would be charged to UK VAT.

A "fixed establishment" of a foreign company is typically a branch which has, present on a permanent basis, the human and technical resources necessary to make or receive supplies. We need to know what the UK branch of the US company does, but it is likely to be a FE. It is also possible for subsidiaries to constitute FEs of their holding company if they are entirely dependent on them and have no independent existence.

It is possible that the whole of the supply could be treated as made to the holding company because it is "most concerned" with receiving it – it is a contract entered into by the holding company to control its whole operation, rather than something that is supplied to each individual part of the operation. If it then charges some of the work back to the UK subsidiaries, it is likely that they would have to account for a "reverse charge" on that intra-group supply, but that would not affect FSD. However, it is likely that FSD will have to consider charging VAT on the supplies to the extent that they are used by the UK branch, because there would be no reverse charge on the payment by the branch to its head office (cases involving *Zurich Insurance* and *FCE Bank* have shown this).

In summary, therefore, if this is categorised as education as part of a mixed supply then the 10% is treated as a UK supply and liable to UK VAT. If it is part of a single supply of consultancy, then the 10% would still be liable to VAT in the UK if it is supplied to the UK "fixed establishment".

Conclusion on charging UK VAT

To the extent that FSD's supplies are treated as made in the UK, it will have to charge UK VAT, because the supplies are not exempt. This could affect:

- the main consultancy contract and annual fees, if some of it is for the benefit of a UK fixed establishment, which will most likely affect the UK branch but might also affect the UK subsidiaries;

- the training work, if it falls to be treated as a separate supply in its own right, to the extent that it relates to courses in the UK.

The remainder of the work will be outside the scope of UK VAT.

Training costs

The training provider will be supplying a VATable service (because the exemption for education in Group 6 Sch 9 VATA 1994 does not generally apply to commercial enterprises). Applying the *Srf case* above then the place of supply would be where the training takes place. If 10% of the courses take place in the UK, then this proportion will be liable to UK VAT but the courses that take place in the US will be outside the scope of UK VAT.

As FSD is using these inputs to make supplies which are either taxable in the UK or are outside the scope but would be taxable here, FSD can recover any input tax charged in full.

13th Directive

If FSD has to charge UK VAT to the US company, it is possible that the US company will not be able to reclaim it under the 13th Directive because it is using the supplies to make insurance and financial services sales, ie exempt supplies. However, as its customers will be persons belonging outside the EU, it may be possible to justify a claim under the so-called "specified supplies" rules. The UK changed its law a few years ago after an artificial tax avoidance scheme attempted to exploit these rules, but the European Commission has argued that our prohibition of recovery in such circumstances is contrary to EU law.

If FSD has to charge UK VAT to the UK businesses, it is very likely that they will not be able to recover it, as presumably most of their customers belong within the UK/EU and their supplies will be mainly exempt from VAT.

Tutorial Note:

The impact of the Srf case in 2019 is subject to debate. A well-argued answer based on the principles of the case for the training supplies will score marks. Often there is not a single correct answer and examiners give credit for applying principles and coming to a different conclusion to the marking guide.

MARKING GUIDE

TOPIC	***MARKS***
Presentation and Higher Skills	*1*
Exempt Supply?	
– *USA co supplies are exempt*	*½*
– *identifying supplies made by FSD*	*½*
– *identifying exemption does not apply*	*½*
Single and multiple supplies	
– *definition*	*1*
– *two options for FSD*	*1*
– *conclusion + further investigation*	*1*
Place of supply	
– *all supplies of services*	*½*
– *general rule*	*½*
– *consideration of supplies of software development*	*1*
– *consideration of installation work*	*1*
– *consideration of training and Srf case*	*1*
UK subsidiaries and branches	
– *treatment of supplies of software*	*1*
– *treatment of training supplies*	*1*
– *definition of fixed establishment*	*1*
– *potential to treat whole of supply as made to holding company*	*2*
Conclusion on charging UK VAT	
– *when UK VAT will be charged*	*½*
– *supplies affected*	*1*
Discussion of input VAT re Training costs	
– *13th Directive*	*1*
– *claim may not be possible for US co.*	*1*
– *possible claim under 'specified supplies' rules*	*1*
– *position re UK businesses*	*1*
TOTAL	***20***

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The answers to this question were mainly disappointing. As in question 1, there were explicit and implicit points to be dealt with. Most of the explicit ones were reasonably well covered, but few candidates took the time to correct the specific misconception that FSD expressed about qualifying for exemption on software for insurance purposes. Those who did so earned some relatively easy marks.

Few candidates considered whether the company was making single or multiple supplies. That is commonly a significant issue in Tribunal cases, and here there are quite clearly several things being sold as a package.

The nature of the service of designing software is likely to be consultancy. It is true that para.9(3)(b) Sch.4A VATA 1994 mentions "software", but the service described (bespoke design, installation and testing, training) does not seem likely to fall under "electronically delivered services". The end result is probably the same, but the correct rule should be quoted. The annual updating and maintenance is much more likely to be para.9. The initial development and installation will be "general rule".

Some quoted the rule (ie "where the customer belongs") and then wrote "because the work is carried out in the USA..." without explaining why that could be relevant. If the supply is "general rule", it does not matter where the work is done. If the supply is subject to "use and enjoyment", it does not matter where the customer is established. It is important to choose the right rule and then apply it consistently to the facts.

The most disappointing aspect of the answers was the almost total lack of appreciation of the significance of the distinction between a branch and a subsidiary. An understanding of the nature of a fixed establishment is key to the VAT Cross-Border exam: candidates ought to know the DFDS case and appreciate the circumstances in which a subsidiary might be a FE, but usually isn't. Just one candidate explained that there was a distinction, and even that one did not go on to explain the significance. Just one candidate commented on the fact that recharges to a branch could not create a supply, but again failed to draw further conclusions from that.

About a quarter of candidates mentioned the Zurich Insurance case, which was directly relevant, but few were convincing. One even used the case to support the opposite conclusion to the Court of Appeal – perhaps recalling the Tribunal decision which was subsequently overruled.

In relation to the training supplies, most candidates earned straightforward marks by quoting the place of supply rules. For some reason, as in Q1 some candidates seemed determined to find an agency arrangement in place. It seems clear in the question that the training is part of the overall supply made by FSD, bought in as principal and sold on within a compound supply; the issue is rather whether FSD will incur input VAT on the supplies made to it by the training company, and how it will recover that if so.

Lastly, many candidates discussed at some length the distinction between supplies of software which are goods, and which are services. It is absolutely clear in this question that this supply must be services, so it can hardly be worthwhile explaining to FSD that "standardised software is a supply of goods" and then describing the consequences of an export of goods.

5. JACK WILLIS – RELIABLE INSURANCE GROUP PLC

UK VAT Treatment of Secondments

The secondment of staff who remain employed by the company that seconds them is regarded as a supply of services where consideration is given. It is treated as a supply made where the customer belongs, as long as the customer is a "relevant business person" and the supply is received otherwise than for wholly private purposes.

As all the UK companies are group registered for VAT, any supplies made or received by any of those companies will be treated as made or received by the representative member of the group (the holding company). Grouping is not available across state boundaries, so supplies between the UK companies and foreign subsidiaries and associates must be taken into account for VAT.

Applying these principles to each individual:

1) The secondment of Jacques Xepec will be treated as a supply of services purchased by the UK representative member. Because it is treated as made in the UK, where the customer belongs, it will be subject to the "reverse charge". No French VAT will be charged by the subsidiary, and instead the UK representative member will account for output tax as if it had made the supply (20% of the amount paid to the French subsidiary). It will deduct a proportion of the same amount as input tax (but this will be restricted by the rules of partial exemption).

2) Transactions between a head office and a branch are not treated as supplies for VAT purposes, even where they are separately registered in different countries. Because they are parts of the same legal entity, the secondment of Tamsin McAllister is an internal transaction and is not liable to any VAT in either country. *(Tutorial Note: Reference to the Danske Bank referral will receive credit – it might need to be reverse charged in Italy)*

3) As the German organisation is registered for VAT it is a "relevant business person", even though the secondment is not for the business purposes of that entity. The secondment of Gregory Simpson will therefore be outside the scope of UK VAT. Reverse charge narrative should be included on the invoices. (*AG opinion in Wellcome Trust case.)*

4) Similarly, the Polish company is a "relevant business person" because it is a taxable person within the meaning of the VAT Directive: it independently carries on an economic activity, even if that has not made it liable for VAT registration. Once again, the secondment will be outside the scope of UK VAT. Again reverse charge invoice narrative will be required.

5) A transaction which would be a supply of services, but which is made for no consideration, is not a supply. If there is no consideration paid for the secondment of Zac Finesides, either directly or indirectly, there is no VAT consequence for the UK group.

Time of Supply

The time of supply for both sales and purchases (reverse charge) will be the earlier of the completion of the service and the date on which it is paid for. Continuous supplies will be supplied at the end of each billing or payment period, or the date of payment if earlier. The time of supply for the reverse charge on Jacques Xepec's secondment will be the date of payment each month or the end of the month, as it will be a continuous supply of services.

The time of supply for Gregory Simpson's secondment will be the receipt of the payment at the beginning of the period, because it is earlier than the performance of the services.

The application of the rule is not completely clear in relation to Jane Collins. As there is only a single payment, the supply does not fall within the UK definition of a continuous supply of services. It therefore appears that the time of supply will be the earlier of the end of the secondment (the completion of the service) and the payment by the Polish company.

Reporting Requirements

The reverse charge in respect of Jacques Xepec requires entries of the VAT in Box 1 of the VAT return and any recoverable input tax in Box 4. The amount of the deemed supply will be entered in Box 6 and Box 7, but not in Boxes 8 or 9 because those only relate to supplies and acquisitions of goods.

The supplies relating to Gregory Simpson and Jane Collins will not affect the VAT boxes on the return, but they are supposed to be entered in Box 6 to show the total business income of the UK group.

The supply relating to Gregory Simpson must be reported to HMRC on an EC Sales List. This has to be returned for calendar quarters (or monthly, at the taxpayer's option) within 14 days of the end of the quarter (21 days if submitted electronically). The amount of the supply and the VAT registration number of the customer must be reported.

The situation with the unregistered Polish customer is less clear. The purpose of the EC Sales List procedure is to exercise control on supplies which are treated as outside the scope of VAT because the customer will account for a reverse charge; but HMRC have advised that if the customer does not have a VAT registration number, the sales should be omitted from the EC Sales List because the system cannot deal with transactions which are not related to a VRN. As long as there is adequate alternative evidence of the business status of the customer, it is still correct to treat the transaction as outside the scope.

The other transactions are not supplies and are therefore not required to be reported.

Tutorial Note:

Note that this model answer does not have a marking guide as the question was set before the CIOT started publishing their marking guides. You will also find this is the case for a few of the other model answers in this bank.

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Candidates must expect to be able to deal with several pieces of information quickly and to appreciate that there must be particular points in each of them that the examiner is looking for. It is unlikely that any two items in a question will be identical. Basic examination technique should therefore help candidates to identify what particularly should be said about each of these five scenarios.

Basic examination technique would also identify that the question has asked for some specific pieces of information in respect of the scenarios – "whether anyone has to pay any VAT, if so who and when, whether it's recoverable, and what reporting requirements we have to watch out for". That is a great deal of information to provide, but at least it gives a structure to the answer and suggests that accurate and sensible comments across that range of subjects will score marks. Very few candidates commented on time of supply or reporting issues. Given the introduction of EC Sales List responsibilities for suppliers of services and changes to the time of supply rules for reverse charge services this year, it was surprising that candidates did not seize the opportunity to write about them.*

Given that this paper is intended to test specialist knowledge of cross-border VAT issues, the standard of answers was disappointing. Again, given the topicality of the VAT Package changes, the following were surprising:

- *fewer than half the candidates appreciated that there can be no supply between a head office and a branch – this was established in a relatively recent ECJ case (FCE Bank)*. The majority regarded the situations in (1) and (2) as simply the reverse of each other.*

- *nearly half the candidates thought that the use of the supply in (3) for non-business purposes made this a B2C supply. That was one of the crucial changes in the VAT Package and was also established by a recent ECJ decision*. The question is very clear that the customer is VAT registered, and it therefore must be a RBP for the purposes of the place of supply rules.*

- *the majority of candidates ignored the clear statement in the that there is no consideration "either directly or indirectly" for the secondment of the employee from America. Some insisted that a reverse charge arose anyway; some wrote that it would arise on his salary, or on market value of the supply. One candidate correctly said that HMRC might try to find some indirect consideration that has not been identified, but if there really is none, there cannot be a supply or a VAT charge.*

- *a few candidates thought that there are "thresholds" for submitted ECSLs. Again, this is a basic piece of knowledge about a very topical and central rule.*

**Tutorial Note:*

This question was set straight after a change in VAT law/relevant case law on the subject so was topical

6. SPEXRA LTD

Principles of 'abuse of law'

From the information provided, the arrangements were effected either to avoid the incidence of VAT falling on SRS's retail customers, or to minimise the impact of irrecoverable VAT incurred by SFS and SMS, and therefore may be caught under the abuse of law principle.

The principle of abuse of law was initially acknowledged by CJEU in its ruling in *Halifax plc*. Briefly, the principle precludes a taxpayer from taking advantage of, or seeking to rely upon a right contained in the Principal VAT Directive (or an entitlement in UK VAT law which flows from the Directive), for example, the right to credit for input tax directly linked to a taxable supply, if arrangements have been effected which circumvent the purpose of the Directive. Note that a tax advantage must be identified and if it hasn't then the abuse of rights law will not be invoked. (*Kursu Zeme 2019 CJEU case.)*

Halifax plc had sought through a series of linked transactions to recover VAT in full on the construction of call centres when, in the absence of the arrangements, it would have been able to recover no more than 5% of the tax incurred.

The CJEU ruled that EU law cannot be relied upon for abusive or fraudulent ends where:

- the arrangements (or a part of them) result in a tax advantage which is contrary to the purpose of the VAT Directive (or UK VAT law which implements it); and,

- objectively (for example, by reference to the substance of the arrangements; the legal, personal and economic links between the parties, etc), it is apparent that the essential aim of arrangements is to obtain a tax advantage. No account should be taken of the taxpayer's motives in considering this issue.

Where both of these criteria are met, then the Courts are required to ask themselves whether there are any special features of the arrangements which should prevent the abuse of law principle from applying. If not, they are required to redefine the transaction to remove the abuse.

The CJEU made two noteworthy points in its ruling: firstly, the fiscal authorities are precluded from levying penalties on parties which have entered into transactions which are found to be abusive (but they may seek interest on tax over claimed) and secondly, it is perfectly proper for a taxpayer to structure its business so as to minimise its liability to VAT.

The CJEU commented that the contractual terms are important but that they should not be followed if they constitute a "purely artificial arrangement" which does not correspond with the economic and commercial reality of the transactions. *(*followed by the FTT in the *American Express case in 2019)* It is for the referring court to decide whether this is the case.

1) Relief from VAT on importation of goods.

Under the VAT scheme, VAT is chargeable on goods imported from a country outside the EU. Under an administrative easement contained in VAT (Imported Goods) Relief Order 1984/746 Schedule 2, Group 8 para 8, goods (other than alcoholic beverages, tobacco products, perfumes and toilet waters) are relieved from VAT on importation where their value is less than £15. Since the products purchased by online customers are allocated to them in Norway and SRS has the necessary wherewithal to supply them, on the face of it, HMRC will have to look to the abuse of law principle if officers consider that the arrangements are contrary to the underlying purpose of the VAT system.

It should be noted that from 1 April 2012 the £15 easement does not apply to arrangements involving the Channel Islands. Consequently the competitors with similar arrangements within the Channel Islands do not benefit from this relief from this date.

On the reasoning above, the establishment of SRS in Norway to ensure that its supplies are outside the scope of UK VAT does not constitute an abuse. Furthermore, since the underlying purpose of the relief on low value consignments is to provide an administrative easement for the fiscal administrators, it should not be considered to be an abuse if traders avail themselves of the relief. This situation is distinguishable from the *Nissan Motor Manufacturing (UK) Ltd* case where Nissan sought to reduce VAT payable on importation by allocating cars to purchasers while the vehicles were on the high seas. In contrast to SRS, there Nissan sought to avoid the incidence of VAT by taking advantage of the valuation rules contrary to the purpose of the VAT legislation.

2) Place of supply of loan brokerage and advertising services.

Before even considering the abuse of law principle, officers are likely to look critically at which entity provides the loan brokerage services, and to whom the advertising services are supplied.

To establish where services are supplied or received, the UK legislation has adopted the concept of "belonging". A supplier or recipient of a supply usually "belongs" where its "business" or "fixed" establishment is situated, or in the absence of such an establishment, where it is incorporated. The "business establishment" is its principal place of business, usually its head office or "seat of economic activity". For an establishment to constitute a "fixed" establishment, it must have the necessary human and technical resources to supply the services in question on a continuing basis. In general, a fixed establishment will only displace a business establishment as the place or receipt of a supply where the adoption of the latter establishment produces an irrational result. Where the facts point to the existence of more than one establishment, it is necessary to look to that which is most directly concerned with making or receiving the supply in question.

On the basis of the information, it seems that it is SFS, rather than Plc that provides the brokerage service, and receives the advertising services. HMRC will initially concentrate on this aspect and a copy of the service agreement, specimen copies of information collated by call centre staff, a completed application pack, details and evidence of the due diligence undertaken on borrowers, specimen documents completed by SFS when approving and finalising an application, etc will be needed to confirm this. If the documentary evidence supports the assertion that SFS provides the service, then HMRC may invoke the abuse of law principle.

The decision in *Paul Newry T/A Ocean Finance* may be relevant here. In that case the Tribunal (after extensive litigation where the case went to the CJEU and was remitted back to the FTT) concluded that a company based in Jersey was making loan brokerage services to UK resident individuals. Since the place of place of supply was Jersey, its supplies were not within the scope of UK VAT, and accordingly there could be no abuse by effecting arrangements to ensure that it did not suffer VAT on advertising services supplied to it by a Jersey advertising agency.

3) Lease of assets – SLS

The leasing charges are set at a market rate. That being so, HMRC will not be able to direct the parties to adopt an open market value, but officers may invoke the abuse of law principle.

The ruling of the Tax Tribunal in *Weald Leasing* is perhaps helpful. Weald, whose directors were also directors of the Churchill insurance group of companies ("Churchill"), purchased assets which were leased through an unconnected party, Suas Limited, to Churchill. Churchill provided an interest free loan to Weald to fund the

acquisition of the assets, the leasing charges levied by Weald and Suas took no account of the economic life of the assets (significantly HMRC placed no evidence before the Tribunal as to what the open market value of the charges would have been), Weald had no employees and it traded only with Churchill, albeit through Suas. The Tribunal found that the arrangements had been effected to defer the VAT cost on the assets since Churchill could recover less than 1% of VAT incurred by it.

The Tribunal ruled that although the essential aim of the arrangements was to obtain a tax advantage, there had been no abuse. In the absence of evidence that the parties intended to collapse the arrangements early to obtain an absolute VAT saving, it was permissible for Churchill, as a partly exempt trader, to defer the cost of irrecoverable VAT over an extended period.

On appeal, the case was referred to the CJEU to rule on whether a deferral of VAT via a leasing arrangement that creates a tax advantage can be construed as abusive if the lease is not undertaken as part of the taxpayer's normal commercial operations.

The CJEU issued its decision in December 2010, effectively passing the matter back to the domestic courts. They have ruled that obtaining a tax advantage by entering into a leasing agreement for assets instead of outright purchase does not itself contravene the EC 6th Directive (as it was). They have indicated that the national court needs to consider whether the contractual terms of the transactions, particularly those concerned with setting the level of rentals correspond to arm's length terms and that the involvement of an intermediate third party company in these transactions is not such as to preclude the application of these provisions.

It therefore appears to support the view that the inclusion of the outside intermediary leasing company is an abusive practice because it prevents the imposition of arm's length rates. However, it is not clear how the re-characterisation of the transactions should be carried out; it seems clear that the assessments raised by HMRC (denying input tax credit to Weald) cannot be sustained. The redefinition could involve ignoring the intermediary, so that Weald is treated as leasing directly to Churchill or ignoring the fact that the intermediary is outside the group, making a Sch.6 para.1 direction possible.

Tutorial Note:

This answer is more detailed than a student would be expected to produce in the time available. A reasonable answer would have utilised the information available in HMRC Brief 56/09 Paragraph 4 (page 2,815 of the 2020/21 Orange Part 1 handbook) and focused on abuse of rights first. The second part of the question was applying the abuse of rights tests to the three scenarios. Good exam technique is required to score well on this question.

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This question was not well answered. While the facts may have been difficult for candidates to absorb quickly, the thrust of the question was unambiguous: it called for an analysis of the abuse of law principle and its application to the scenarios set out within it. Less than one in four candidates referred to Halifax plc. A significant number of candidates failed to read the question and launched into a detailed exposition of the distance selling arrangements.

7. SPACETECH LTD

Requirement or entitlement to register

The rules on registration will be affected by whether Spacetech Ltd is regarded as being established or having a "fixed establishment" ("FE"), in the UK. The fact that the company is incorporated in the UK does not make it necessarily liable to register for VAT.

The place of establishment is regarded as where the essential decisions concerning its general management are taken and where the functions of its central administration are exercised (*Planzer Luxembourg Sàrl v Bundeszentralamt für Steuern*, CJEU Case C-73/06). The essential management seems to be in Australia, and Mr Cochrane's place of residence appears likely to be the "main establishment".

The "fixed establishment" rule is still defined by the leading case of *G Berkholz v Finanzamt Hamburg-Mitte-Altstadt*, CJEU Case 168/84. A business will be regarded as having an FE in a different place to its main establishment if both the human and technical resources for the provision of its services are present there on a permanent basis and it is not appropriate to deem those services to have been provided at the place where the supplier has established his business. It seems clear that the accountant's office does not constitute a fixed establishment within this definition because the services cannot be provided from there.

However, there are cases in the UK Tribunal, both before and after *Berkholz*, in which the Tribunal has held that the registered office of a UK company was "some other fixed establishment" for the purposes of deciding whether supplies to it could be regarded as outside the scope of UK VAT (eg *Binder Hamlyn* 1983; *Marks Cameron Davies* 1998). Even if the company has a fixed establishment in the UK, however, it still seems likely that the consultancy services are not supplied from it but rather from the main establishment in Australia.

A non-established trader will be required to register for VAT in the UK if it makes any taxable supplies in the UK. As discussed below, it appears that none of the company's supplies will be treated as made in the UK, so it will not have taxable supplies here.

A trader is entitled to register in the UK if it makes supplies outside the United Kingdom which would be taxable if they were made in the UK and he has a business establishment in the United Kingdom or his usual place of residence is in the United Kingdom (VATA 1994 Sch.1 para.10). Even if the business does not appear to have a "Berkholz" fixed establishment in the UK, para.10(4)(b) provides that "usual place of residence" for a company is where it is legally constituted. Spacetech Ltd would therefore be entitled to register in the UK under this provision.

Consultancy supplies

Supplies of consultancy to "relevant business persons" (RBPs) are treated as supplied where received. Since Spacetech's customers are all VAT-registered in their respective member states, they are all RBPs for UK purposes. Spacetech Ltd will not have to charge VAT or register in the state in respect of these supplies. The customer will account for a reverse charge on its own VAT return.

This will apply whether or not Spacetech exercises its choice to register under para.10. Spacetech should include the appropriate reverse charge narrative on its invoices to EU business customers. Spacetech should also be aware of its EC Sales Lists obligations when invoicing its EU registered business clients.

Training courses

Due to the CJEU Srf case in 2019, the courses are likely to be treated as services in relation to 'admission to educational events' and supplied according to where the event takes place. This means VAT must be accounted for in the various member states. This could create a liability for Spacetech Ltd to register in each member state unless the rules allow the recipient to do a reverse charge. This is subject to the point below.

Single supply?

From the description, it seems at least arguable that the training courses are an incidental part of a consultancy supply. If there is in fact a single supply of consultancy, the whole service would be subject to the reverse charge anyway. This would have to be assessed on the basis of contracts, the relative importance of the two elements, and the relationship between them (ie is the training "for the better enjoyment" of the consultancy?).

Purchases by Spacetech Ltd

HMRC argued in the cases quoted above that supplies of UK consultants and accountants to a UK incorporated company were chargeable to UK VAT because they related to the UK "other fixed establishment", ie the registered office. HMRC are likely to argue the same in respect of the administration services provided by the firm of Accountants particularly as they appear to include meeting UK statutory requirements (filing accounts etc.). Such supplies are necessary for the UK establishment rather than the Australian management.

On the other hand, it appears that the consultancy services provided by the third parties are not received by the UK establishment, so they should still be regarded as outside the scope of UK VAT.

The accommodation costs are likely to be incurred in the first instance by the consultants and reimbursed by Spacetech Ltd. They will be chargeable to local VAT in the country in which the hotel is situated.

Travel costs such as passenger transport will be chargeable where the journey takes place. Short-term car hire (up to 30 days) are chargeable where the vehicle is made available to the customer. Local VAT is therefore likely to be incurred on these costs as well (passenger transport is generally zero-rated in the UK, but that is not the case everywhere in the EU).

If the supply is made by the hotel/car hire company to the consultant, recovery of any VAT will be a matter for the consultant who will have to submit a 13th Directive claim to authorities in the country concerned. The recharge to Spacetech will be part of the overall fee from the consultant, and it will follow the liability of that fee (covered above). If Spacetech contracts directly with the hotel/car hire company, it will incur the VAT itself and will have to attempt to recover it as set out in the next section.

Supplies of telecommunications services to relevant business customers are generally "supplied where received", but they are also subject to the "use and enjoyment rules". If the contracts for mobile telephones are between a UK provider and a UK company, it seems likely that the UK provider will charge UK VAT on all supplies, regarding the registered office as the recipient of the supply. The charges will only be taken outside the scope of UK VAT if the services are used and enjoyed outside the EU (ie use elsewhere in the EU will not change the treatment).

The changes with effect from 1 November 2017 which removed the use and enjoyment provisions for mobile phone services, only affected business to consumer (B2C) supplies of mobile phone telecommunication services and not B2B, so the use and enjoyment provisions will impact B2B mobile phone services.

Recovery of VAT

If Spacetech registers for VAT in the UK, it will be entitled to make claims using the electronic cross border refund system. Claims will be submitted through the UK "portal" to cover VAT incurred in all the member states. Up to five claims can be submitted for a calendar year. The business can submit claims up to nine months from the end of the calendar year in which the VAT was incurred. Tax authorities have four months to make repayments, unless further information is requested in which case the deadline is extended to eight months. The refunding member state will pay interest where the business has met all its obligations, but the authorities fail to meet their deadlines.

If it registers for VAT in the UK, it will recover the UK VAT charged by the Accountants on administration fees by entering it in Box 4 of its VAT return. It will be entitled to recovery because its supplies would be taxable if made in the UK.

If Spacetech does not register for VAT in the UK, it may be able to make 13th Directive reclaims, which are subject to different rules. It will need to investigate the procedures for these claims in each member state in which VAT is incurred, because it will have to make separate claims everywhere rather than using the single UK "portal". This would include a claim for the UK VAT charged by the Accountants, which must be claimed for years to 30 June by 31 December following.

In the UK, a 13th Directive claim can only be made if the business does not have an establishment anywhere in the EU. If the registered office location is counted as an "establishment" for VAT purposes, as discussed above, then a 13th Directive claim is not possible. The only way to recover UK VAT would be to register in the UK.

Effect of opening an office

Even if the company opens a more permanent and independent office, rather than using the firm of Accountants, it does not appear greatly to change the above analysis. It would more clearly be a permanent presence in the UK, and it would strengthen the argument that supplies by the Accountants to the company are chargeable to UK VAT; but it should not change the question of where the consultancy services are either supplied or received, because they do not appear to relate to the UK "establishment".

Examiner's report:
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This was a difficult question with a great deal of information to deal with, but even so the general standard of answers was disappointing.

The first surprise was the lack of organisation and basic examination technique. What are "the VAT issues" for a foreign business which has its first, currently unregistered, presence in the UK? One would have expected answers to start with something about VAT registration – compulsory or voluntary.

The question gives some information about the nature of the presence in the UK (just a company – the work will be done from Australia). This demanded a discussion of where the business is established and whether a fixed establishment exists in the UK. The question describes the supplies that the business will make: what is the place of those supplies? The question describes the costs the company will incur: what VAT will be incurred, and how can it be recovered? The question specifically asks for the consequences of setting up an office in the UK: there must be a comment about that. Making sensible and accurate comments on any of these issues will earn marks. Making them in a logical order under appropriate headings will earn a large number of marks.

The second point of examination technique relates to balance. Too many candidates concentrated on the VAT treatment of the training supplies to the detriment of the other aspects of the question.

Most surprising was that some candidates sitting this exam described cross-border services as "zero-rated" rather than outside the scope and others described the reverse charge for B2B services as an "optional" mechanism which "may" be used to avoid the foreign company having to register in the member state of the customer.

8. AB HEALTHCO LTD

Management charges - US Branch

On the basis of the ruling of the CJEU in *FCE Bank plc*, transactions between a head office and a branch are not generally seen as giving rise to supplies chargeable to VAT because the entities are not independent of each other. Given that accounting services are being provided here, the company has correctly not accounted for VAT on the services provided to its branch.

Services supplied to NGHC

a) Services supplied to "a relevant business person" are chargeable to VAT in the country in which the recipient of the service belongs

b) Services supplied to a person who is not a relevant business person are subject to VAT in the country in which the supplier belongs - in this instance, the UK. By way of exception, where the following services are supplied to a person who belongs outside the EU - for example, Norway - then they treated as supplied in the country in which the recipient of the service belongs (VATA 1994, Sch 4A, para 16):

- the supply of staff;
- the services of consultants.

Given that the service(s) have been supplied to NGHC, it will be regarded as a "relevant business person" (and therefore the company's service(s) will be chargeable to VAT in Norway) if NGHC is a "taxable person" within the meaning of Article 9 of the Principal VAT Directive. The Directive defines taxable person as "any person who independently carries on any economic activity".

Article 13 of the Directive then goes on to say that government bodies are not regarded as acting as taxable persons in relation to activities or transactions undertaken in the discharge of their statutory obligations - such activities or transactions are therefore outside the scope of VAT except either where this treatment will result in distortion of competition or the activities are specifically excluded from the treatment set out in Article 13.

Where a government body carries out activities/transactions which are both within the scope of VAT - because it is regarded as a taxable person - and outside its scope, it is considered to be a relevant business person even if the service supplied relates exclusively to activities or transactions outside the scope of VAT. (HMRC Notice 741A para 2.7 provides useful guidance.)

As NGHC is not dissimilar to the Department of Health in the UK, it will probably not be a taxable person under the Directive but this point needs to be checked. In this case it will not be a relevant business person. The company's service(s) to NGHC is therefore chargeable to VAT in the UK, unless the supply comes within the scope of VATA 1994, Sch 4A, para 16 (or in the case of a multiple service, an identified service) such as a supply of staff or is in the nature of services supplied generally by consultants, in which case the place of supply is shifted to Norway.

The contract identifies three discrete elements. It must be decided whether the service represents a single supply or discrete, multiple supplies. This issue has long been exercised the Courts and is fraught with difficulties in practice. See *Card Protection Plan* and *Levob Verzekeringen & OV Bank* which set out the principles: 'every supply should be regarded as distinct and independent and a supply which comprises a single supply from an economic point of view should not be artificially split; one should ascertain the essential features of the transaction to determine whether the taxpayer is making to the typical customer several distinct principal supplies or a single supply; in

particular, there is a single supply where one or more elements can be regarded as the principal service, with the others ancillary to it or two or more elements supplied by the taxpayer are so closely linked that they form, objectively, a single, indivisible economic supply.'

On balance, there are least two, and perhaps three, separate services being supplied under the contract:

- a supply of staff represented by the recharge of employment costs. For there to be a supply of staff, it is essential that NGHC controls or determines how seconded staff conduct themselves when working for it - see *CGI Group (Europe) Ltd.* On the information supplied there appears to be a supply of staff here, rather than some other form of service;

- consultancy services. Although "consultancy services" cover a wide range of activities, for a service to fall within their scope it must be one principally and habitually supplied by consultants (see the ruling of the CJEU in *Von Hoffman v Finanzamt Trier*). Drawing from rulings handed down by the Tax Tribunals, the characteristics of consultancy services have been identified that they are generally advisory in nature supplied over a defined period of time, the advice is specialist or expert in nature, the service need not be supplied by a member of liberal professions and it should be independent of the recipient's ongoing managerial processes (see *Sumitomo Mitsui Banking Corporation Europe Ltd, Gabbitas Educational Consultants Ltd, American Express Services Europe Ltd, Vision Express Ltd*).

On the basis of these decisions, advice in connection with the development and implementation of a treatment programme is likely to be accepted by HMRC as in the nature of consultancy services, but the same cannot be said of strategic advice and managerial services supplied in connection with the rationalisation of healthcare resources and changes to hospital procedures after the introduction of the programme.

On the basis of these conclusions, the contract sum needs to be apportioned - that relating to the supply of staff and consultancy services is chargeable to VAT in Norway, with the balance of the contract sum chargeable to VAT in the UK.

Since the place of supply of part of the services is deemed to be Norway, local advice needs to be sought on whether ABH is required to register for VAT there, or whether the obligation to account for VAT is shifted to NGHC.

Supply and install contract in Spain

The supply of the Gamma Knife, its installation and commissioning is regarded as a supply of goods in Spain, and therefore is not chargeable to VAT in the UK. Since its customer is not VAT registered in Spain, ABH should have registered for VAT in Spain, accounted for the tax due on the supply and claimed credit - to the extent allowed under Spanish VAT law - for VAT on expenditure incurred there. ABH will need local advice on its position in Spain on the scope for retrospective registration for VAT there, or alternatively whether - despite the fact that it is not VAT registered - its customer should account for the tax. It should also consider whether under the contract it may pass on the VAT charge to the customer.

ABH is not entitled to reclaim on its UK VAT returns VAT incurred in Spain. The tax claimed must be repaid to HMRC in accordance with the regulations governing the correction of errors.

Evidence of Export - Russia

A supply of goods may be zero-rated where HMRC is satisfied that the goods have been exported to a place outside the EU. The evidence of export should take the form of a copy of the SAD (form C88) endorsed by Customs' authorities on departure of the goods from the EU, evidence of the physical movement of the goods, for example, a completed CMR, as well as normal commercial evidence in support of the supply made. In the absence of evidence of export, zero rating will be denied, and the supplier should account for VAT due.

Where evidence of export is not available or cannot be located at the time of supply but is subsequently found, a taxpayer may adjust its returns and recover VAT previously paid over to HMRC - see Notice 703, paragraph 11.3. On the basis that the company has evidence of export, it may either write to HMRC to request that the assessment be set aside or in accordance with HMRC's published guidance make an adjustment on a current VAT return (given the quantum of the adjustment, if ABH adopts the latter approach, it would be advisable that it informs its local VAT office of that fact). A charge to default interest is likely to stand on the basis of the decision of the Tax Tribunal in *Aleris Recycling (Swansea) Ltd*.

Sale of Gamma Knife to France on approval

The transfer of the Gamma Knife to France represents a temporary movement of goods to France and the details should be reflected in a register of temporary movements of goods maintained by the company, for example, the date of dispatch of the Knife, a description sufficient to identify it and the agreed sale price.

Since the Knife will be situated in France when the sale occurs, the place of supply will take place there, necessitating the company's registration for TVA in France and it accounting for the net tax due there. The transaction should be reflected on its UK return as a dispatch by it to France, with details also reflected on its EC Sales List and dispatches Intrastat return.

Tutorial Note:

Students treating the sale of the Gamma knife as "goods sent on sale or approval or similar terms" within Notice 725 Para 15.5 would be given credit.

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Aspects of this question were handled well by candidates; particularly, the issue of the supply and installation of equipment in Spain on behalf of a non-VAT registered customer. However, many candidates lost marks on the part of the question that covered services supplied to a Norwegian statutory authority. Here the examiner was looking for candidates' analysis on whether the customer was a "relevant business person"; was AB Healthco Ltd making a single or multiple supply; and finally the nature of the service(s) supplied. Very few candidates addressed the point whether the customer was purely a statutory body or might be undertaking some form of economic activity, and even fewer considered in any depth the nature of the supplies being made. Given that the revised place of supply rules now have been in place for some time, candidates should expect questions which go beyond testing the basic rules but incorporate other principles of the tax.

9. CIBFSA

Reverse Charge Mechanism

The reverse charge or "tax shift" mechanism is primarily a measure directed at avoiding distortion of competition. It requires UK recipients of supplies of prescribed services made by persons established abroad to account for VAT in the UK. Legal and accountancy services are among the services which are subject to the charge. In the absence of the tax shift mechanism, UK businesses which are not VAT registered, or which cannot recover VAT on their business expenses in full, might be inclined to source such services from abroad rather than from UK suppliers in order to avoid the incidence of UK VAT.

Under the legislation, where the recipient is carrying on an economic or business activity in the UK (which the Association is) and the "imported" service would, under the normal rules, be chargeable to VAT in the UK, then the recipient is deemed to have supplied the service in the UK in the course or furtherance of its business, and is required to account for VAT where it is taxable in the UK. These services would be "supplied where received" if the facts show that they were supplied to the Association rather than to the members.

If the recipient is not VAT registered, the value of such taxable supplies must be taken into account in determining its liability to register for VAT. Subject to the recipient meeting the usual rules for recovery of VAT incurred on business expenses (input tax), it is entitled to a credit for the tax charge.

Is the Officer correct?

There are two issues: firstly, whether the services were in fact supplied to the Association and, if so, secondly, when the Association should have – or is required to – notify HMRC of its liability to register for VAT.

In determining to whom the services are supplied, there are a number of factors which strongly suggest that they were supplied to the members: for example, it is the member who directly benefits from the advice since it is his/her livelihood and reputation which is at stake. The defence to a claim is likely to be entered in the name of the member and the professional firm is engaged by the member, so it owes a duty of care to him/her. Where the Association refuses or is unwilling to meet the firm's fees, the firm is likely to look to the member to settle them (it may be worthwhile reviewing the terms of business included in panel firms' engagement terms).

On the other hand, the degree of control exercised by the Association over the conduct of claims might persuade HMRC (and ultimately the Courts) that the legal services were supplied to the Association itself. There is a precedent for this. In judicial review proceedings brought by the *Medical Protection Society* where the facts were somewhat similar to those here, HMRC had ruled that services provided by overseas lawyers were made to the Society to enable it to make a more comprehensive service to its members.

HMRC's decision was primarily based upon the degree of control that the Society exercised over the conduct of members' claims. Although the Court in that case was not concerned with whether HMRC's decision was well founded, the judge thought that the manner in which the Society dealt with claims by members was akin to that of a claims handling service, and arguably the Society was the direct and main beneficiary of the services supplied by the overseas lawyers. HMRC might adopt the same position here. That said, the Association's case has a number of features which are distinguishable from the facts found in the MPS case.

Tutorial Note:

Marks would have been awarded on the basis of the student's analysis even if he/she came to the conclusion that the Association was not the recipient of the supplies. Specific reference to Medical Protection Society was not required to secure good marks.

Is there a liability to register for VAT?

Given that HMRC are likely to adopt the same position as it did in the MPS case, have the services prompted a requirement to register for VAT? In determining when the Association became liable to register for VAT, regard must be had to the tax point of the deemed supplies.

Where the services are supplied for a period for consideration where the whole or part of the consideration is determined or payable periodically or from time to time, VAT becomes chargeable on effectively the earlier of the issue of an invoice by the supplier or payment.

Assuming that the Association has not made any other supplies of goods and services in the periods covered by these imported services, on the figures supplied, it appears that the Association exceeded the registration limit at the end of September 2020 on account of the fact that it had reverse charges in the period 1 October 2019 to 30 September 2020 totalling £87,000.

The time of supply for continuous supplies of services subject to the reverse charge is the end of each periodic billing period (or payment if earlier). HMRC are likely to regard the periodic billing period as the end of each calendar month rather than the date of the invoice as the policy is to bill for time incurred in the calendar month.

If so, the Association should have notified HMRC of its obligation to register for VAT by 30 October 2020, with registration taking effect from 1 November 2020. Given that the liability to register has been prompted by a very significant invoice for September 2020, HMRC may exempt the Association from registration if it is satisfied that the value of taxable supplies to be made from all sources in the 12 month period from 1 October 2020 will not exceed £83,000. This does not absolve the Association of the need to notify HMRC of its liability to register for VAT, but it may be exempted from registration.

Can VAT be reclaimed?

Finally, if the Association is required to register for VAT and account for VAT on payments made to overseas advisers under the reverse charge mechanism, since HMRC has agreed that services supplied to members are in the nature of insurance, to the extent that such services are supplied to members who are resident or established outside the EU, the Association is entitled to claim the tax arising under the reverse charge as "input tax".

Tutorial Note:
Notice 741A Paragraph 5 provides useful guidance on the reverse charge. The time of supply relevant statutory provisions are within SI 1995/2518 Reg 82.

Examiner's report:
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Surprisingly, this question was answered badly by many students. Essentially all candidates were being asked was to outline the scope of the reverse charge, its application to non-VAT registered entities, to provide an opinion as to whom the overseas services were supplied and finally, if a candidate concluded that the services had been made to the Association, whether the input tax was recoverable on the basis that it related to supplies of insurance services made by the Association to members in Australia and South Africa. Very few students addressed the point as to whom the supplies were being made, nor that the input tax may be fully recoverable.

10. SIGMA

1) Under UK VAT legislation there is a liability to register for VAT here where in any calendar year the value of goods transferred from Germany to non-VAT registered persons resident in the UK by, or under the direction of Sigma, exceeds £70,000 (VATA 1994, Sch2, para1(1)). In quantifying the value of the supplies made, any element relating to tax to be accounted for in another member state shall be disregarded (VATA 1994, Sch2, para1(6)). When Sigma becomes liable to be registered, it is required to notify HMRC within 30 days, with registration taking effect on the date that the limit was exceeded or such earlier date as agreed between Sigma and HMRC (VATA 1994, Sch2, para3).

   Where Sigma arranges for the transport of consignments as agent of the customer, on the face of it they fall outside the distance selling arrangements and are chargeable to VAT in Germany where the goods are allocated to the customer. Accordingly the value of such supplies should be disregarded in considering the registration limits (VATA 1994, Sch2, para10(a)).

   Given that sales accrue evenly, in the calendar year commencing 1 January 2019, the value of sales made into the UK was £68,000, represented by the aggregate of four months sales at the rate of £5,000 per month (£60,000/12) and eight months sales at the rate of £6,000 per month (£72,000/12). These are total sales excluding those where delivery is arranged by the customer. In the year to 30 April 2021, the monthly sales were £7,500 (£90,000/12) and given that the sales in the period 1 January to 30 April 2020 were £24,000, the registration limit of £70,000 would have been breached sometime during early November 2020, and accordingly Sigma should have notified HMRC of this fact within 30 days.

2) In the absence of any reasonable excuse for Sigma's failure to notify HMRC, it may be subject to a penalty determined by reference to its degree of culpability and the potential tax lost as a result of Sigma's failure. It is questionable whether Sigma's failure can be regarded as deliberate - if it is regarded as merely careless, the standard penalty will be up to 30% of the potential lost revenue. In assessing the potential lost revenue, credit will be given for VAT paid in Germany on the supplies chargeable to VAT in the UK - see FA 2008, Sch41, para7(8)(b). Given that notification could be said to have been prompted by HMRC's letter, the amount of the penalty may be mitigated to not less than 10% of the potential lost revenue if HMRC are advised of Sigma's failure within 12 months. If the disclosure is taken to be unprompted (unlikely), full mitigation is possible as long as the situation is rectified within 12 months.

   Given the rate of VAT in Germany is 19% it is unlikely that there will be any potential lost revenue on which to calculate a penalty. As such the penalty for late notification is likely to be nil.

   As an aside, given that a proportion of its sales into the UK are zero-rated and that it now has to register for VAT in the UK, perhaps Sigma should reconsider its policy of encouraging customers to arrange delivery of stock purchased. The overall tax liability in the UK will, if the mix of sales is maintained, be less than that in Germany. Although Sigma will receive a credit for tax paid in Germany in assessing the penalty payable, there will be no such allowance when assessing the tax payable on supplies chargeable to tax in the UK - there may be a mechanism under which Sigma can recover the tax incorrectly paid in Germany, but will need to seek local advice on this aspect.

Turning to the additional information that Sigma has requested:

(3a) Sigma should register for VAT by completing a form VAT 1A, and in the absence of the appointment of a tax representative or agent appointed to act on its behalf in the UK, the completed form should be sent to the Non-Established Taxable Persons Unit, HM Revenue & Customs, Ruby House, 8 Ruby Place, Aberdeen AB10 1ZP. Ideally the form should be accompanied by information sufficient to enable officers to determine the penalty applicable to Sigma's belated notification;

(3b) Broadly the following records should be retained for at least six years:

- business and accounting records;
- the VAT Account which supports the net VAT payable each VAT accounting period;
- copies of all the following documents issued by it:
  a) invoices;
  b) credit notes, debit notes and other documents which evidence an increase or decrease in payments made by customers;
- the following documents received by it:
  a) VAT invoices,
  b) credit notes, debit notes or other documents which evidence an increase or decrease in consideration paid to suppliers (VATA 1994, Sch11, para6, as read with SI 1995/2518 VAT Regulations 1995, reg31).

(3c) it will be required to submit VAT returns quarterly under Making Tax Digital, and on registration it may request that the quarters coincide with its year end ;

(3d) VAT returns must be made electronically, accompanied by electronic payment;

(3e) in practice the tax point will be payment. The Distance Selling Regulations do not affect the general tax point rules – see the decision of the Court of Session in *Robertsons Electrical Ltd;*

(3f) although at present Sigma is below the threshold for completion of Intrastat Arrivals returns, it should ensure that its accounting records are able to readily produce the required information.

Examiner's report:
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This question was well answered, and candidates generally picked up the marks which could be easily accumulated. Students showed a good appreciation of the distance selling arrangements and the new penalty regime, save for the fact that the tax paid in Germany reduced the potential lost revenue, and hence penalty due to nil.

CUSTOMS DUTIES & EXCISE DUTIES ANSWERS

11. HAGRID

1) In 2018, Hagrid was importing goods from Umbridge and Duty was payable on the £10 amount at 5% = 50p per kit. VAT was charged at 20% on £10.50 = £2.10 per kit. No duty was chargeable on the goods acquired from Fluffy, but a VAT charge would have been made on the acquisition of goods of £2 per kit. This input tax would have been reclaimable in each instance. Output tax was due on each kit of £4.17 (£25 x 1/6).

2) In 2020, UK VAT was not due on direct sales from a supplier in the EU, but local (Spanish) VAT was due. If Fluffy exceeded the Distance Selling registration threshold it would have been required to register for UK VAT, and would no longer have charged Spanish VAT. Fluffy could have opted to charge VAT in the UK and register before this limit was reached and no longer charge Spanish VAT. When considering VAT registration (compulsory or otherwise) account would need to be taken of all sales into the UK to non-business customers and this included those to Fang.

3) The changes implemented in 2020 would not have allowed £10 to be used as the value of the imports from the Far East. This is because (for imports from 1st May 2016,) the value for duty is based on the 'last sale' prior to the goods arrival in the EU. This would be the £25 paid by the final consumers.

4) Excise duty will be due on the champagne in the UK, as the UK will be the country of consumption. Hagrid Ltd could become a Registered Consignee, which will allow it to buy the champagne without excise duty having first been paid in France and they would account for the UK excise duty on a monthly basis. There are strict criteria that Hagrid Ltd would need to meet in order to obtain approval as a Registered Consignee and the goods would need to travel via an electronic system called the EMCS. Hagrid Ltd would need to use a duty deferment account to pay the UK excise duty.

5) If Fang acquires goods from Fluffy in excess of the VAT registration threshold (£85,000) in any year commencing 1 January it must register for VAT, unless Fluffy has registered for VAT – probably due to the distance sales rules (see above).

12. JUST FOR BIG KIDZ LTD

1) Basic procedure for classifying a product:

1. Obtain sample of the product, plus details of technical specifications. If no sample, obtain photograph.

2. Start with the General Interpretative Rules (GIRs). Rules that may be of most use:

   a) Rule 1 (&6) – Titles of sections/chapters etc have no legal status. Look at the section and chapter notes. May need to look at notes for electronic equipment as well as the notes for the chapter for toys, given that this is a highly sophisticated piece of equipment. We could have two or more conflicting headings.

   b) Rule 2(a) – disassembled/unassembled products, or incomplete products having the essential character of the finished product are classified with the finished article. The toy is 'rather large' – it might be imported disassembled or incomplete? Need to check if it is coming in as a complete 'set' for one toy. Could it be coming in as boxes of like parts, which may have a different classification? Need to find out from Jim the process being undertaken abroad and how the imported product will arrive.

   c) Rule 3. If this toy is capable of carrying out a number of functions, it might fall under two or more headings. Rule 3(a) probably not going to help – if it carries out more than one function classified in two or more headings, each heading is deemed to be as specific as the others. More likely rule 3(c) – classify under heading in last numerical order. This might be the toy chapter.

   d) Rules 4-5 look at but probably not as relevant.

3. Look at the Explanatory Notes to the Combined Nomenclature and Harmonized System, to see if there is any commentary about products such as this. Need to bear in mind they are not as current as quickly as technology itself changes.

4. Check out the BTI database to see if a BTI has already been issued for this product; although only the holder of a BTI can invoke it.

5. Apply for a Binding Tariff Information (BTI) Ruling from Customs.

   - Need to submit electronic application, maybe send a sample, or if not available, a photograph, and technical specifications.
   - Not given retrospectively.
   - Apply before first import due.
   - If this is not possible, consider importing to a Customs Warehouse if the toy is not going to be sold straight away?
   - Legally binding for three years throughout the EU.
   - If the law changes may be able to continue using it for a further period if there are binding contracts in place.
   - If Customs revoke it, still rely on it for a further period, again if we have binding contracts. (In both of these cases, the 'further period' is a maximum six months)

2)

Jim can appeal against the ruling issued by Customs. He has two options available to him. He could accept Customs offer to carry out an independent review of their decision. If he wishes to do this he should ask for a review within 30 days. Customs then have 45 days to complete the review. If they do not reply within 45 days then they are deemed to have affirmed the original decision. Customs can vary, affirm or withdraw the original ruling. If Customs affirm the ruling, Jim can appeal to the First Tier tax tribunal. He should do this within 30 days. Alternatively, Jim can appeal direct to the tribunal, without first requesting a review. If he wishes to do this he should appeal within 30 days.

Tutorial Note:

Other options such as ADR would receive credit too.

MARKING GUIDE

TOPIC	***MARKS***
Presentation and Higher Skills	*1*
Basic Procedure	
– *Obtaining sample*	*½*
GIRs	
– *Identification of GIR 1(&6)*	*1*
– *Application of GIR 1(&6)*	*1*
– *Identification of GIR 2(a)*	*1*
– *Application of GIR 2(a)*	*1*
– *Identification of GIR 3*	*1*
– *Application of GIR 3*	*1*
– *Identification of rules not relevant*	*1*
Explanatory Notes	*1*
BTI database	*1*
BTI ruling	*½*
– *Application online*	*½*
– *Not retrospective*	*½*
– *Application before first import due*	*½*
– *Legally binding 3 years*	*½*
– *Change in Law continue to rely on it if contracts in place*	*1*
– *Withdrawal and continuance to rely on it if contracts in place*	*1*
Consideration of Customs Warehouse	*½*
Max	*15*
Appeal	
– *Two options*	*½*
– *Accept offer to carry out independent review*	*½*
– *Review within 30 days*	*½*
– *45 days to complete*	*½*
– *Deemed affirmation - no reply in 45 days*	*1*
– *Vary, affirm, withdraw*	*½*
– *Appeal to FTT*	*½*
– *Time limit 30 days*	*½*
– *Appeal direct to FTT*	*½*
– *Other options (eg ADR and explanation of it)*	*1*
Max	*5*
TOTAL	***20***

13. MR BERRY

1) Principal Duty Relief

Inward Processing

Inward Processing offers total relief from customs duties and import VAT where an item imported into the EU, such as the chemical from China, is incorporated into goods in the EU prior to then being re-exported outside the EU. There used to be two ways to operate the relief, but now the only option is 'Suspension'.

Under suspension, the duty and import VAT are suspended upon importation. If the processed product is not re-exported duty and import VAT must be paid. Returns are required (see below) and a guarantee must be provided for the potential charges due.

Authorisation – economic conditions, throughput

To use IP, as with most customs 'special procedures', an authorisation from HMRC is needed. Various conditions must be met such as a company being financially solvent and having a good history of compliance with the law. Sometimes there is the need to pass certain "economic conditions" aimed at protecting EU producers from unfair competition. Usually however these only apply to agricultural products and in all other cases are deemed fulfilled. They would be deemed fulfilled for the chemical from China.

HMRC need to know the 'throughput period' - ie how long is needed to import, process and re-export the finished product. The default period is six months, which should cover the company's needs.

Rate of Yield

The "rate of yield" is needed – ie the quantity of imported goods to be used in the stain remover manufacture, the quantity of stain remover to be produced and details of any by-products (eg 400 litres of imported chemical will be used to make 600 litres of final product with 30 litres of waste by-product).

Equivalence

In relation to the problem with the Chinese supplier the rules would allow the company to store the stain remover produced from the Chinese and French chemicals together and treat the stain remover sold to the US as the one produced from the Chinese chemical (so that full benefit from IP is received). This is known as "equivalence" and must be requested from HMRC – usually at the same time as applying for authorisation.

If the Chinese delays get worse it is even possible to export goods made from the French chemical first and then match these to later imports of the Chinese chemical to claim IP relief. This is known as 'prior export equivalence'.

Authorisation - types

The procedure could initially be applied for at the time of import on the C88 Single Administrative Document – which sometimes is called a "simplified authorisation". This can be advantageous for imminent imports but is only available for three importations to the procedure in the first year. It would be better to apply for an authorisation online using form SP3 and HMRC will give the company a number which can be quoted on the C88. Such an authorisation would usually be granted for around three years (the legislation allows a maximum of five years but HMRC's practice is to authorise for three).

A retrospective authorisation may in theory be granted for a maximum one year prior to the application as long as the company has complied with all the conditions of the procedure and there is no obvious negligence or deception on its part. (A retrospective authorisation is not available for the 'simplified' authorisation or where an economic test is required.)

Discharging IP

If for any reason the stain remover is not exported there are a number of other options to avoid losing the duty relief –

- sell the goods to another IP trader
- move the goods into another approved customs procedure (eg customs warehouse or temporary admission)

PCC

PCC is 'Processing under Customs Control'. It used to be a procedure in its own right but is now part of Inward Processing, so the above conditions still apply. If the finished products are released into free circulation in the EU - so in relation to the UK sales - they can be released at either the duty rate for the imported product or for the finished product. Where the latter is done, the processing costs have to be included in the value for duty.

Again, it allows the import of raw materials without paying customs duties or import VAT upfront. Instead the products can be processed in the UK with only duty and VAT paid at the rate applicable to the finished products when the goods are released into free circulation.

Returns and records

HMRC will expect to see detailed records sufficient to allow them to verify that the duty and import VAT reliefs are being properly claimed. The records should be maintained for four years. They should show:

- Details of goods in the regime – commodity code, quantity, technical characteristics
- Transfers of IP goods to other IP traders
- Processing undertaken on goods
- Rate of yield
- Manner of disposal of goods (export, customs warehouse etc)

Returns to HMRC are required either monthly or quarterly, detailing goods received and their destination after processing. These are often called 'bills of discharge'.

Failure to comply with the rules of procedures can result in customs debts being incurred, therefore, it is very important to make sure that all documentation is kept showing the export of goods under IP, for example.

2) AEO/EORI

Authorised Economic Operator ('AEO') is a status which is recognised across the EU and allows the importer to take advantage of certain simplifications and easements in the Customs rules (an AEOC). (It can also provide simplifications for imports into the USA as well as a result of a reciprocal agreement with the EU and there has been mutual recognition of the AEO with other countries in the last year, for example, Japan.)

An AEO is an economic operator who, by satisfying certain criteria, is considered to be reliable in their customs related operations throughout the EU and is therefore entitled to certain benefits. One of these is the reduction in certain guarantees.

Depending on the level of certificate required, a trader may need to demonstrate:

- An appropriate record of compliance with Customs requirements
- A satisfactory system of managing commercial and transport records that allows appropriate Customs controls
- Financial solvency
- Appropriate security and safety standards

HMRC will communicate the application to other Member States. The certificate is not retrospective and takes effect on the 10th working day after issue.

'EORI' is the acronym for the 'Economic Operator Registration and Identification Scheme which replaced the old TURN system. Under EORI, each importer, known as an economic operator, is given a unique identification number which they will use in all communications with any EU customs authorities where a customs identifier is required - for example customs declarations.

As the company has already been importing, it will have an EORI, as the first freight agent will not have been able to import on the company's behalf without one. The EORI number can be found by logging into HMRC's online system.

Tutorial Note:

This answer is an indication of the points that students could make to gain credit. It is longer than what is expected to be produced under exam conditions. Form numbers are not required to gain full marks.

MARKING GUIDE

TOPIC	***MARKS***
Presentation and Higher Skills	*1*
IP	
– *Types – only Suspension*	*1*
– *Explanation of how suspension works, guarantee*	*1*
– *Authorisations*	*2*
C88 - Simplified	
SP3	
– *Retrospective 1 year*	*1*
– *Economic conditions*	*1*
– *Throughput period*	*1*
– *Rate of Yield*	*1*
– *Equivalence*	*1*
– *Discharging IP*	*2*
Sell to another IP trader	
Move to other approved procedure	
Max	*8*
PCC	
– *Now part of IP*	*1*
– *Same authorisation*	*1*
– *Same Conditions*	*1*
– *Calculation of duty and choices*	*2*
Max	*4*
Returns and records	
– *4 years*	*1*
– *What they should show*	*2*
– *Monthly/quarterly returns*	*1*
Max	*3*
AEO/EORI	
– *AEO certificates*	
Benefits of certificates	*1*
Criteria to apply	*2*
How application works	*1*
– *EORI*	
Need one to import	*1*
Will already have one – can check number on HMRC online system	*1*
Max	*4*
TOTAL	***20***

14. LANCS LTD

CUSTOMS WAREHOUSING

Background

These arrangements are simply a storage procedure whereby the payment of customs duties and import VAT can be suspended or delayed when non-EU goods are stored in a defined location or under an inventory system authorised as a "customs warehouse".

There are two key types of warehouse, public and private, which differ as regards the responsibilities of the different parties.

Responsibilities

If a person makes a declaration depositing goods in a warehouse they are responsible as 'holder of the procedure' under the law and will need to ensure that:

- the goods are sent directly to the warehouse shown on the declaration, and
- the customs warehousing procedure is discharged by appropriate declaration of the goods to another customs approved treatment or use.

If, as a "warehouse keeper", a person operates a warehouse, they are the 'holder of the authorisation' and responsible for:

- the security and proper control of the warehoused goods, including maintaining stock records for those goods throughout the customs warehousing procedure and accounting for any shortage

- ensuring that the conditions of the customs warehouse authorisation are met

- fully co-operating with HMRC in their supervision of the warehouse authorisation, and

- allowing HMRC access to the warehouse premises, records and goods at all reasonable times.

Private warehouses are for the storage of goods deposited by an individual trader, authorised as the warehouse keeper. They are both the authorisation holder and the holder of the procedure.

By contrast, a public warehouse is authorised for use by a warehouse keeper whose main business is the storage of other trader's goods. The person depositing the goods in the warehouse is the holder of the procedure and has the responsibilities outlined above.

COMPLIANCE BURDEN

Public Warehouse

A person wishing to use a Public Warehouse must check with the warehouse keeper that it is authorised to store the type of goods they wish to deposit.

Running a warehouse can represent a heavy compliance burden which will be reflected in the prices charged for depositing goods in a Public Warehouse.

Private Warehouse

If a person wishes to operate their own warehouse, they will first require UK authorisation. In addition, they will also need to have a Customs Comprehensive Guarantee (CCG), see below.

An application to HMRC (form SP2) is required and demonstrates that a person:

- intends to use the warehouse primarily for storing goods
- has sufficient duty involved such that there is a genuine economic benefit in running the warehouse, and
- satisfies HMRC that they will meet any other conditions imposed, for example, they are financially solvent and have a good history of compliance (for example VAT returns and payments must be up-to-date)

HMRC will arrange a site visit to check the application. Provided they are satisfied that the conditions are met and that they have sufficient resources available to police the operation of the warehouse they will issue an Authorisation Number. This must then be quoted on all customs warehousing entries to the premises.

Either a physical location is authorised as the warehouse, or the warehouse can be 'virtual' where the inventory system is the authorised warehouse.

HMRC will expect, for example:

- the administration and organisation of the business to be sound and strictly managed
- the company's accounts and stock controls to be robust and managed to ensure that all commercial transactions are properly handled and recorded
- the system to be capable of identifying the location and quantity of a given item held under duty suspension at any stage under a controlled inventory system

Record Keeping & Stock Taking

It is a condition of a customs warehousing authorisation that sufficiently detailed stock records are maintained to identify:

- receipt
- stockholding
- handling and
- removal

of warehoused goods held under the customs warehousing procedure. The records must provide a complete history of the goods from the time of their entry to the warehouse to the time of their exit.

Stock records and any associated documentation must be kept for at least four years after the date of removal of the goods from the customs warehousing arrangements.

Guarantee

A guarantee is required for all new warehouse applications. A Customs Comprehensive Guarantee can be applied for on form CCG1. This will be granted provided that the company:

- has no serious or repeated infringements of customs or tax rules
- has no record of serious criminal offices that relate to its business activities

HMRC will check the history for the last three years.

Customs Freight Simplified Procedures (CFSP)

As an alternative to using normal procedures (Form C88) for entering goods to and removing goods from a customs warehouse authorisation can be made to use Customs Freight Simplified Procedures (CFSP). Under CFSP, formalities at the frontier are kept to a minimum with the bulk of fiscal and statistical data being supplied electronically to Customs at a later date.

There are two types of procedure:

Entry in the Declarant's records - EIDR (formerly operated as Local Clearance Procedure (LCP))

In warehousing, goods can be removed from the frontier using a simplified declaration (called a C21) and moved inland to an authorised warehouse. On arrival the goods are entered in the records without the submission of a supplementary declaration.

Simplified Declaration Procedure (SDP)

This allows the release of goods from the frontier to the warehouse on acceptance of a Simplified Frontier Declaration (SFD). The frontier declaration must be followed by a supplementary declaration (SD) that must be transmitted to the authorities electronically.

Tutorial Note:

CFSP Public Notice 760 is contained at the end of Volume 2A of the Blue Customs & Excise Duties Handbook and details the two procedures.

Further possibilities or alternative – Duty deferment & SIVA

Once the goods have been removed from the warehouse and the duty has been calculated cashflow can be helped through the use of the duty deferment scheme. This allows payment of the duty to be deferred until the 15th (or next nearest working day) of the calendar month following the date of removal.

HMRC require security in the form of a guarantee from an independent approved third party guarantor (the CCG can be used for this). Upon authorisation a Deferral Approval Number (DAN) is given and entered on removal/import documentation. The advantages are deferral of payment of the duty for 30 days on average, charges are taken with a convenient monthly direct debit and goods are cleared more quickly by HMRC as they do not have to wait for payment each time.

Simplified Import VAT Accounting (SIVA) can reduce the level of the deferment guarantee required – ie as regards the import VAT on the goods. To obtain approval to use SIVA a person must:

- generally have been VAT registered for three years
- have a good compliance history for VAT
- have sufficient financial means to meet any amount deferred under SIVA
- have a good HMRC offence record
- have a good Compliance record for International Trade

[Notice SIVA1 – *Tutorial Note: not reproduced in the Orange Handbook*]

Where reduced security applies, a schedule (form SIVA 2) of anticipated deferred charges per calendar month must be provided in order to determine the level of guarantee and set a Deferment Account Limit.

Input VAT deduction

If the registered for VAT and the consignee on removal of the goods, import VAT is deductible as input tax, subject to the normal rules. To reclaim this tax on the next VAT return official evidence must be held that the VAT shown has been paid or deferred.

Evidence is normally in the form of a monthly VAT certificate on Form C79. HMRC send this direct to the VAT registered address on or about the 12th day of the month covering transactions for the previous calendar month and they can be downloaded from the 'Customs Declaration Service' (CDS).

Tutorial Note:

This answer is far more detailed than students would be expected to produce in the time available. It shows the range of points that students could have made. Credit would also be given for discussing:

- *Applying for AEO status and the resultant conditions and benefits – eg this could benefit an importer with speedier clearance, customs simplifications and reduction in guarantees*

- *Other benefits of having a customs warehouse eg unlimited storage time, usual forms of handling, transfers between customs warehouses*

MARKING GUIDE

TOPIC	***MARKS***
Presentation and Higher Skills	*1*
Customs Warehousing	
– Definition of procedure	*1*
– Private v Public	*1*
– Responsibilities of Warehousekeeper	*1*
– Compliance burden	*1*
– Record keeping & stock control	*1*
– Guarantee	*1*
– Other benefits	*1*
CFSP	
– Definition	*1*
– EIDR and SDP	*2*
Duty Deferment & SIVA	
– 15th day of next month	*1*
– Cash flow benefit	*1*
– Application	*1*
– Security	*1*
– SIVA conditions	*1*
– Input VAT deduction	*1*
AEO /Other relevant points	*2*
TOTAL (MAX)	***15***

Examiner's report:
[Being reproduced with the permission of The Chartered Institute of Taxation]

The answers to this question were generally satisfactory with more candidates demonstrating awareness of the simplified procedures and SIVA than has been the case in previous years. Candidates were also aware of the practical benefits of warehousing and several made sensible comments about Free Zones which were rewarded with marks. Most candidates presented their answers well, but a few lost the presentation marks available with answers that were a disorganised jumble of comments.*

*<u>*Tutorial Note:</u>*

When this question was set many Free Zones were still in operation. Comments about Free Zones today would not score marks as there is only one in operation on the Isle of Man.

Notice 3001 on Special Procedures contains information on Customs Warehouses and is reproduced towards the end of Volume 2A of the Blue Customs & Excise Duties Handbook.

15. SMALL CONSIGNMENTS

Most personal reliefs are contained in Regulation 1186/2009.

1) Personal property belonging to persons transferring their normal residence to the Union can be imported free of customs duties.

   - The goods should generally have been used for six months outside the Union and the person should have lived outside the Union for 12 months.
   - Relief is not given for certain items, including, alcohol, tobacco products or commercial means of transport.

2) Wedding clothes and household effects belonging to a person transferring his normal place of residence from a third country to the EU, imported on the occasion of marriage, can be imported free of customs duties.

   - Wedding presents sent separately benefit if they do not exceed 1,000€.
   - The person should have lived outside the Union for 12 months.
   - Relief is not given for alcohol or tobacco products.
   - Goods should generally be imported within two months before the wedding to four months after.

3) Inherited goods can be imported free of customs duties.

   - Relief is not given for certain items, including, alcohol, tobacco products, commercial means of transport or articles used in a business.
   - Goods should generally be imported within two years of the inheritance being finalised.

4) Consignments of a maximum 150€ can be imported free of customs duties where dispatched direct from a third country to a consignee in the EU. Relief is not given for alcohol, tobacco or perfume products.

5) Non-commercial consignments sent from one private individual in a third country to another living in the EU can be imported free of customs duties where they fall within the 150€ limit above and benefit from import VAT relief, where they do not exceed £39. There are other limits for products such as tobacco.

6) Goods contained in a traveller's personal luggage can be imported free of customs duties and import VAT in certain circumstances. There are maximum limits for alcohol, tobacco products and perfumes. Other goods qualify up to a maximum 300€ (if the person did not travel by air or sea.)

MARKING GUIDE

TOPIC	***MARKS***
Personal property relief:	
– Conditions	*1*
– Exclusions	*1*
Marriage relief:	
– Conditions	*1*
– Exclusions	*1*
Inherited goods relief:	
– Conditions	*1*
– Exclusions	*1*
Consignments of negligible value	*1*
Non-commercial consignments	*1*
Goods contained in traveller's personal luggage:	
– Conditions	*1*
Other relevant relief, including conditions	*Max 2*
Presentation and Higher Skills	*½*
TOTAL (MAX)	***10***

16. VALUATION

1) The six methods of valuation are:

Method 1 the transaction value,
(price paid for the goods when sold for export)

Method 2 the value of identical goods
(eg the same goods sold by the exporter to an unconnected third party),

Method 3 the value of similar goods
(eg commercially interchangeable goods sold by the exporter to an unconnected third party),

Method 4 the sales minus method,
(sales price of goods in the EU minus post import costs)

Method 5 the cost plus method,
(cost of the goods, admin and labour costs etc for the exporter including normal profit),

Method 6 the 'fall-back' method.
(Any reasonable means of valuing the goods)

2)

The transaction value cannot be used when there are factors that influence the price. A common example of this is where the purchaser and vendor are related and the price has been influenced by the relationship, as in this question.

The transaction value cannot be used where there are restrictions on the purchaser's ability to sell or dispose of the goods purchased. The transaction value cannot be used where there is no 'sale'.

3) Any four from Art 71 of the UCC, for example:

- Delivery costs to the EU including insurance and handling,
- Selling commissions,
- Royalties and licence fees, unless they don't relate to the goods and are not a condition of sale, (but if related to a right to reproduce goods imported or in respect of distribution rights (if not a condition of sale) the value can be excluded),
- The value of goods or services provided free or at a reduced rate by the buyer to the seller for use in the production of the imported goods.

4) Any six from Art 72 of the UCC, for example:

- Delivery costs incurred within the EU
- EU Duty and taxes
- Buying commissions
- Interest costs
- Payments for the right to reproduce the imported goods
- Construction and assembly costs incurred post importation

Tutorial Note:

Credit would have been given in part 2) for discussing the other restrictions on the use of Method 1, for example where the goods are supplied free of charge, or where the goods are leased. However, given that this part was only worth 2 marks a detailed analysis was not necessary.

MARKING GUIDE

TOPIC	***MARKS***
Methods of Valuation	
– *Method 1 & description*	*½*
– *Method 2 & description*	*½*
– *Method 3 & description*	*½*
– *Method 4 & description*	*½*
– *Method 5 & description*	*½*
– *Method 6 & description*	*½*
Sub-total	*3*
Restrictions on Method 1	
– *Relationship and artificial price*	*1*
– *Restrictions on sale*	*1*
– *Goods supplied free of charge*	*1*
– *Leased goods*	*1*
Max	*2*
Additions:	
– *Transport*	*½*
– *Insurance*	*½*
– *Selling Commissions*	*½*
– *FOC goods supplied to seller*	*½*
– *Any others from list (art.71)*	*½*
Max	*2*
Deductions:	
– *Inland freight*	*½*
– *Buying commissions*	*½*
– *Interest*	*½*
– *Reproduction rights*	*½*
– *Construction/assembly costs*	*½*
– *Any others from the list (art.72)*	*½*
Sub-total	*3*
Presentation and Higher Skills	*½*
TOTAL (MAX)	***10***

17. SUPAKARTS LTD

Inward Processing

Inward Processing (IP) can provide total relief from customs duty (and import VAT) in respect of goods imported into the UK for processing, where the resulting product is subsequently exported from the EU.

Processing can be anything from repacking or sorting goods to the most complicated manufacturing. The import of the frames for assembly into the shopping carts along with the wheels would qualify as an eligible process for the purposes of IP.

There is now only one way of operating the procedure, called suspension. Under suspension, customs duties and import VAT are suspended when the goods are first entered to IP in the EU. Duty and import VAT will only be due on the shopping carts that are released to free circulation, in this case 30% of the imports.

An authorisation to enter goods to IP will be required. Application is made on the SP3 in advance and often granted for a three year period. For the imports in a fortnight's time application for IP can be made on the C88 import declaration itself. This can only be done three times though, so an SP3 application will be needed. A Customs Comprehensive guarantee (CCG) or a guarantee waiver will be needed.

SupaKarts Ltd will obtain the following duty relief on its imports for next year (estimate):

Frames £200,000 x 2* x 10% (duty rate) x 70% (re-exported) = £28,000 duty relief

*£200,000 of frames are anticipated in a six-month period, therefore for one year imports will be £400,000.

The purchase of the motors from France are not an import and no duty will be due on these.

Wheels £35,000 (actual duty) x 70% = £24,500 duty relief

A total of £52,500 of duty relief will be due. (SupaKarts will also obtain a cashflow benefit from not having to pay the Customs Duty and Import VAT at the time of import.)

SupaKarts Ltd will be required to keep records of all goods entered into IP, including details of the location where the goods are stored and where processing of those goods takes place. These records must be kept for four years after disposal of the goods. They will have to do either monthly or quarterly returns (also called 'bills of discharge').

Tutorial Note:

All relevant points would receive credit. For example:

- *the fact that the economic test would not need to be satisfied, rates of yield, throughput periods etc*

18. PREFERENCES

What is Preference?

Preference can be claimed where goods originate in the preference receiving country. Goods 'originate' in a country where they are wholly obtained in that country.

Conditions to be met

The legislation list products that can be regarded as being wholly obtained from a country, for example, crops grown in that country.

Alternatively, if the product does not satisfy the definition of wholly obtained, but has undergone sufficient working or processing, it can be regarded as having originated in that country. This depends on the Tariff code and country of origin and might be a value test (eg 'not more than 30% of the finished product may consist of non-originating materials').

In order to confirm origin status, the importer should present on importation a valid GSP Form A (or in certain circumstances an invoice declaration, or the exporter might be a registered exporter under the REX system).

The goods must not have been altered, transformed or subjected to operations after leaving the preference receiving country.

The GSP certificate must be in date in order to claim preference.

How an importer can protect themselves from back duty claims

To protect themselves from claims for back duty a business can;

a) insure themselves against claims,

b) contract terms with suppliers to recover duty from them if the goods fail to originate,

c) check that the goods originate according to the origin rules (as mentioned above),

d) visit the factory to see the processing being undertaken,

e) obtain a signed letter from the exporter that the rules have been met,

f) obtain a Binding Origin Information (BOI) ruling, or

g) pay the full duty rate and not claim preference.

Binding Origin Information rulings are legally binding on all EU Member States for three years. An importer applies to HMRC for a BOI.

If HMRC issues a back duty demand the importer may have a defence under Art 119 of the UCC. If he satisfies this provision he will not be required to pay the duty. This applies where an error has occurred on the part of the authorities, which the importer could not have reasonably detected and the importer has acted in good faith.

The error might occur where the exporting authorities have stamped certificates of origin, but the goods do not originate. If the importer has checked the origin rules, visited the factory and obtained a signed letter from the exporter that the rules have been met, he should have a defence to back duty claims.

19. ROUGE LTD

Classification

- Need to check codes being used by freight agent are correct for the individual items (lipstick and eye shadow) before thinking about any further planning. The blusher comes from Spain so there is no customs duty on this
- If a 'set' were imported, then the classification code may not be the same as the individual items
- Individually they might have different codes and different duty rates. The duty rate on the set could be lower than the individual items
- GIRs 3(a),(b),(c) are used to classify 'sets' such as this – maybe what gives the set its 'essential character' or
- last in numerical order if none of the components give the set its essential character

Customs Warehousing (CW)

- CW could delay duty and import VAT for the four-month period that the goods remain in the distribution centre
- The principal purpose of a warehouse is storage
- Rouge could undertake 'usual forms of handling' in the warehouse which could possibly include the shrink wrapping of all products together
- The finished product would dictate the classification code on removal from the warehouse
- The costs of the usual forms of handling can be left out of the value of the goods for Customs Duty purposes
- Rouge would need to undertake a careful cost benefit analysis to decide whether the costs of running the warehouse outweigh the duty savings
- New warehouse applications require a guarantee in place (CCG). This will represent an additional cost that will need to be factored in

Duty deferment

- It does not say whether Rouge operates its own Duty Deferment account – using the Freight Forwarder's is expensive and depending on volumes of imports it might be advisable to use their own – but need to think about having to get a guarantee (CCG)

Inward Processing (IP)

- If the duty rate on the finished product is lower than the duty rate on the imported components then IP might be of benefit (This used to be a procedure in its own right – called PCC - but is now part of the IP regime)
- This allows goods to be processed into a finished product and released to free circulation at the rate applicable to the finished product. However, the value of the processing must be included in the value for duty, so a calculation will need to be done to see whether it is beneficial or not.

20. EXCISE DUTIES SCENARIOS

Scenario 1

The legislation governing the promotion of this scheme is the Finance Act (No2) 2017. Schedule 17 imposes duties on promoters of certain avoidance schemes.

The avoidance scheme concerning alcoholic liquor duties falls within the legislation and in brief:

- the promoter of the scheme (ie you the indirect tax advisor) must provide certain information about the scheme to HMRC where they enable a person to obtain a tax advantage, the main benefit of which is a tax advantage and the arrangements fall within one or more of the 'hallmarks'
- A 'premium' fee (ie the contingent fee) is one of the Hallmarks
- HMRC may allocate a scheme reference number (SRN), which does not indicate HMRC's acceptance of the scheme
- the advisor needs to pass the SRN to its clients that are using the scheme
- there are penalties for non-compliance with the legislation, for example, failing to disclose a scheme

Scenario 2

Bullet points on AWRS:

- The registration scheme was introduced fully from 2017
- It is compulsory for all alcohol wholesalers
- The wholesalers must be registered with HMRC
- In order to be registered they need to demonstrate that they are fit and proper persons and have their supply chains tested by HMRC
- HMRC will look at a variety of things, such as, whether there have been seizures of duty unpaid goods. Has the company traded with unapproved persons?
- Retailers can only purchase their alcohol from registered wholesalers, so it is vital our company is compliant with the rules
- There are severe penalties for non-compliance

Scenario 3

Excise Warehouses:

1) They are places authorised by HMRC which allow the storage of excisable goods in duty suspension
2) The duty is payable when the goods leave the warehouse
3) There are various regulations that govern the operation of them (eg WOWG 1999, Excise Warehousing Regs 1988)
4) To obtain approval forms EX61 and EX68 need to be completed

5) A premises guarantee must be held and a movement security for goods moving from the warehouse

6) There are minimum throughput levels to meet for a General Storage & Distribution Warehouse

7) Due diligence 'FITTED' checks need to be adhered to (eg procedures in place to reduce the trade in illicit goods)

8) Certain operations can be carried out in the warehouse

9) Goods must be checked into the warehouse and logged into the stock system

10) Removals to other member states under duty suspension need to go via the EMCS

11) Losses must be accounted for

Scenario 4

Manufacture of tobacco products:

1) Apply to register factory, which will contain specific details such as, address, plan of premises, security arrangements

2) Comply with fiscal marking rules to show excise duty has been paid on products destined for the UK market

3) Keep records to show materials received in the factory, materials used in manufacture, materials disposed of etc

4) Keep a 'production account' which shows the quantity of tobacco produced, type, brand, size of pack and date of production etc

5) Ensure any requirements of the 'Users and Dealers in Raw Tobacco' scheme are adhered with

6) Ensure that any requirements under the 'Manufacturing Machinery Licensing scheme' are adhered with

7) Pay duty when products are released to home use

Scenario 5

Registered Consignees (RC) purchase excise duty suspended goods from other member states and account for the duty on arrival into the UK, on a monthly basis. They use a duty deferment account and must be VAT registered. Goods travel via the EMCS through the raising of an eAD.

A Temporary Registered Consignee does the same as an RC (duty suspended purchases via the EMCS) but do not have to be VAT registered and do not use a duty deferment account. They pay/secure the duty upfront. This is more suitable for one-off purchases.

A Registered Commercial Importer (RCI) buys excise duty paid goods and accounts for the UK excise duty on arrival into the UK, on a monthly basis. They use a duty deferment account. Goods travel via paper documents and not through the EMCS.

An Unregistered Commercial Importer is the same concept as a RCI (buys excise duty paid goods and paper documents are used) but pays the duty before the goods are dispatched and not through a duty deferment account. They are suitable for one-off purchases.

All types of persons are subject to comply with the due diligence 'FITTED' procedures to reduce the trade in illicit goods.