

**IIT 2009/10 ASSOCIATE EXAMINATION
PAPER III CUSTOMS ROUTE - POTENTIAL SOLUTION**

Question 1

1. A taxable supply is a supply of goods or services made in the United Kingdom that is not an exempt supply. VATA 1994 s.4(2)
2. An acquisition refers to a supply of goods between businesses in different Member States. An importation is a supply to a business from outside the Community.
3. Following non-payment to the supplier of the goods or services within six months of the relevant date. VATA 1994 s.26A
4. Not more than three years after the end of the prescribed accounting period. VATA 1994 s.77(1)
5. When they are supplied for use in domestic accommodation by persons aged 60 and over. VATA 1994 Schedule 7A, Group 10
6. The supply is exempt from VAT. VATA 1994 Schedule 10, s.8(1)
7. Tax is charged on a taxable disposal which is defined as a disposal
 - (a) of material as waste
 - (b) made by way of landfill
 - (c) made at a landfill site
 - (d) made on or after 1st October 1996
8. £40 per tonne. Finance Act 1996, s.42
9.
 - (a) The date of disposal of the waste to landfill
 - (b) The date of issue of a landfill tax invoice if made within fourteen days of disposal.
Landfill Tax Notice LFT 1, Part 6.
10. Advising HMRC of any changes to site details e.g. the closing of a site, or the opening of a new one.
11. Insurance Premium Tax is a tax charged on the receipt of a premium by an insurer if the premium is received under a taxable insurance contract on, or after, the 1st October 1994.
12. Any four from
 - a. Contracts of re-insurance
 - b. Contracts constituting long term business
 - c. Contracts relating to motor vehicles for use by handicapped persons
 - d. Contracts relating to commercial ships
 - e. Contracts relating to lifeboats
 - f. Contracts relating to commercial aircraft
 - g. Contracts relating to risks outside the United Kingdom
 - h. Contracts relating to foreign or international railway rolling stock
 - i. Contracts relating to the Channel Tunnel

13.
 - (a) Higher rate
 - (b) Standard rate
 - (c) Higher rate
 - (d) Standard rate
14. An agreement between energy-intensive industries and the DETR for a negotiated energy efficiency climate change levy agreement which results in an 80% reduction in the levy payable by those industries.
15. A supply is excluded from the levy if it is for domestic, or non business use by a charity.
16.
 - (a) the end of the period of fifteen weeks if the consumer is a small scale user.
 - (b) the end of the period of six weeks if the consumer is not a small scale user.
17. A Renewable Source Declaration means a declaration that, in each averaging period, the amount of electricity supplied by exempt renewable supplies made by the supplier in the period will not exceed the difference between that acquired or generated by the supplier, and so much of that total amount as is allocated by the supplier otherwise than to exempt or renewable supplies made by him in the period.
FA 2000, Sch.6, s.19(2)
18. Any rock, gravel or sand, together with whatever substances are for the time being incorporated in the rock, gravel or sand or naturally occur mixed with it.
FA 2001, s.17
19. When it is commercially exploited in the United Kingdom.
FA 2001, s.19-20
20. Any four from
 - (a) Material returned to stock in the same state
 - (b) Aggregate is exported in the same state
 - (c) An exempt process is applied to that aggregate
 - (d) Aggregate is used in a prescribed industrial or agricultural process
 - (e) The aggregate is disposed of by dumping or otherwise in such manner as not constituting its use for construction purposes.
 - (f) The whole or any part of a debt due to a person responsible for subjecting aggregate to commercial exploitation is written off in his accounts as a bad debt.
FA 2001, s.30

Question 2

Yellow Skip Company

Interaction of LFT and VAT

The Yellow Skip Company Ltd.,
Yellow Yard,
Yellowstone by the Sea.
Sussex.

Dear Sirs,

Landfill Tax / VAT issues

Thank you for your request for advice in reducing your customers' liabilities in respect of tipping charges for your skip business.

First of all, a person who at any time forms the intention of carrying out taxable activities for landfill tax purposes and is not registered, shall notify HMRC of his intention. I have, therefore, enclosed forms LT1 and LT1 A to enable you to notify HMRC of your intention.

For the avoidance of doubt, VAT is calculated on the value of the tipping charge including landfill tax, and I have set out two examples below based on a five tonne load delivered for landfill.

	Standard Rate £40 per tonne	Lower Rate £2.50 per tonne
Tipping Charge	100.00	100.00
LFT on five tonnes	200.00	12.50
VAT @ 15%	45.00	16.88
Total	345.00	129.38

As you are currently registered for value added tax, and will remain so, VAT will have to be added to any tipping charge that you levy at the quarries as per the above examples. Savings can only be made, therefore, by reducing the value on which VAT is charged. This could be achieved by reducing your customers' liability to landfill tax. There is currently a very large difference between the standard rate of £40 per tonne and the lower rate of £2.50 per tonne which only applies to inert waste that is listed in the Landfill Tax (Qualifying Materials) Order 1996. It is important, therefore, from your customer's viewpoint, that wherever possible they segregate inert material into separate skips as mixed loads are liable at the standard rate.

It should be pointed out that very small amounts of active materials in an otherwise inert load are ignored and the whole load can be treated as qualifying at the lower rate but this is not seen as a planning opportunity.

You may wish to take advantage of applying to HMRC to have part of your site designated as a tax-free area. Approval would only be given if you intended to carry out any of the qualifying uses within the boundaries of your site.

Qualifying uses	Period that waste can be stored before bearing tax
Recycle waste (including composting)	up to twelve months
Incinerate waste	
Sort waste pending its use at a place other than at a landfill site	
Sort waste pending its disposal	
Use waste at a landfill site	
Store qualifying material for subsequent use in restoring the landfill site	up to three years

The main benefit to your customers of operating a tax free area is that you would only charge them landfill tax at the standard rate on degradable waste put to landfill. Any materials which you are able to sort from each skip which can be recycled or sorted pending its use elsewhere than at the landfill site, would not be liable to the tax.

Clearly not every mixed load that you receive at your site will be suitable for sorting/recycling etc. It will therefore be of benefit to both you and your customers if, on delivery of the empty skip to your customer, you were to supply them with a leaflet explaining the landfill tax costs that would be incurred on a mixed load not suitable for sorting. If you required any assistance with drafting such a leaflet, I would be only too pleased to assist.

Finally, if you consider that the approval of a tax free area on your site would be beneficial, I would be happy to help with the application to HMRC. The detail required is set out at paragraph 7.2 et seq of the LFT Notice (LFT 1) a copy of which I have enclosed for your use. Put simply, the difference between the standard rate and lower rate of £37.50 per tonne is substantial, particularly on large or regular contracts, and with the co-operation of your customers and the use of a tax free area, this should result in a reduction in your clients' overall tipping costs.

Thank you for giving me the opportunity to advise on this issue.

Yours faithfully,

Independent Tax Advisor

Question 3

IPT

1. UK IPT enabling legislation is set out in the Finance Act 1994 ss48-74, Schedules 6A, 7 and 7A. Secondary legislation setting out the detailed application of the tax and can be found in the Insurance Premium Tax Regulations 1994 (SI 1994/1774). Tertiary legislation exists in the form of a number of extra statutory concessions.

All policies of insurance are subject to IPT (FA1994 s70) unless they are non taxable ("exempt") by virtue of falling within FA 1994 Schedule 7A.

In relation to this business there are two principal factors that will impact on the UK IPT treatment.

Firstly the location of the risk, i.e. is it a UK risk?

Risks situated outside of the UK are not subject to UK IPT (FA1994 Schedule 7A para 8).

The location of risk rules are defined under Regulations made under FSMA 2000 s424(3), which implement Article 2d of the EU 2nd Non Life Directive 73/239/EEC. In the EEA the location of risk for policies covering ships and ships liability is determined by reference to the country of registration of the ship. Therefore if the ship is not registered on a UK registry it will not be a UK risk.

Secondly is there any other "exemption" that the policy could fall under

There is a specific provision that covers ships hull and liability business. Policies written in relation to commercial ships are non taxable if they are written under a relevant class of insurance (FA1994 Schedule 7A para 4(1)).

A relevant class of insurance is: 1 - Accident, 5 - Ships and 12 - Liability of ships (FA1994 Schedule 7A para 4(2)). A commercial ship is defined as one with a gross tonnage of 15 ton or more and not designed or adapted for use for recreation or pleasure (FA1994 Schedule 7A para 4(3)).

The country of establishment or residency of the insured will not impact on the UK IPT treatment - however other countries taxes may be applicable.

2 - UK IPT Treatment for specific scenarios.

- a. As the vessel is registered in Panama it is not a UK or EEA risk as defined under FSMA 2000 s424(3) and Article 2d of the EU 2nd Non Life Directive 73/239/EEC so therefore is a non taxable insurance contract (FA 1994 Schedule 7A para 8). No UK IPT is due.
- b. Location of risk is determined by reference to the registration of the vessel, for UK IPT purposes it does not matter from where the vessel operates - therefore it is a UK risk. As the yacht is being used for private recreational and pleasure purposes it is a taxable policy as it does not meet all the criteria to be treated as non-taxable (FA1994 Schedule 7A para 4 (3)(b))
- c. Location of risk is determined by reference to the establishment of the insured so this is not a UK risk even though the goods end up in the UK.

- d. Location of risk is in the UK as it is the property's location that is the determining factor. The period of stay exceeds 60 day allowance commonly featured in a goods in transit policy. UK IPT will always be due irrespective of how the risk is written.
- e. Although this is a UK risk the policy is not subject to IPT as it qualifies to be treated as a non-taxable contract. The fact that the yachts are used by the charter company's customers for pleasure purposes is not relevant as it is the charter company that is the insured and they are using them for a business purpose, i.e. chartering them out for profit.
- f. The location of risk is the UK as the insured is UK based and contracts of insurance covering commercial goods in international transit are non-taxable (FA1994 Schedule 7A para 12).
- g. In the absence of a registration the default location of risk rule (last indent of Article 2d) is applied, i.e. location of risk is determined by reference to the country of habitual residence of the insured. The risk is a UK risk and subject to IPT irrespective of gross tonnage as the yacht is being used for private purposes.
- h. The risk is located in the UK as the owner of the property is currently habitually resident in the UK and although the property is in international transit it fails the "commercial" test so cannot be treated as non-taxable (FA1994 Schedule 7A para 12(1)). IPT is due.
- i. There are multiple locations of risk for this policy so the premium will need to be apportioned between the German and UK risks (FA1994 s69). On the face of it 5% of the premium relates to a UK risk (based on a just and reasonable approach to apportioning the premium (FA1994 s69(11))). Despite the UK registered yacht being used for business purposes it does not meet the tonnage condition for the premium to be treated as non-taxable. UK IPT would appear to be due on 5% of the premium, however as the UK element of the premium is 10% or less of the total and the premium is £500,000 or less the deminimis extra statutory concession may be applied (ESC 4.2) and no UK IPT is payable. German premium tax will apply to the German element of the premium at 19%.

Question 4

Eco Power Generation Co

The primary law on Climate Change Levy is contained in the Finance Act 2000 Part II, clause 30 and in Schedules 6 and 7.

The Act also provides for secondary legislation that deals with the implementation aspects of the tax, such as registration and accounting procedures.

In order to ensure that **domestic consumption** of energy is not caught by the levy and to keep compliance costs to a minimum, the levy is imposed at the **time of supply** to industrial and commercial consumers rather than at the time of consumption by end-users.

This means that **suppliers** of taxable commodities are required to register and to pay to HM Revenue & Customs (HMRC) the levy that is due. The levy is therefore a single-stage tax that is charged only on taxable supplies to end-users within its

scope.

The levy is chargeable on the industrial and commercial supply of taxable commodities for lighting, heating and power by consumers in the following sectors of business:

- industry
- commerce
- agriculture
- public administration, and
- other services

The levy does not apply to taxable commodities used by domestic consumers, or by charities for non-business use.

The levy is charged on taxable supplies. Taxable supplies are certain supplies of a taxable commodity as defined in the legislation.

Taxable commodities are as follows:

- electricity
- natural gas as supplied by a gas utility
- petroleum and hydrocarbon gas in a liquid state
- coal and lignite
- coke, and semi-coke of coal or lignite
- petroleum coke, and
- from 1 January 2010, low value solid fuel with an open market
- value of no more than £15 per tonne, for example coal tailings
- and sweepings.
- The following examples are not taxable commodities for levy purposes:
- oil
- road fuel gas
- heat
- steam
- until 31 December 2009 low value solid fuel (for example, coal
- tailings and sweepings) with an open market value of not more
- than £15.00 per tonne, and
- waste as defined in statute.

2 & 3. CCL applies to A & B at the rate of 0.456p per kwh of electricity produced up to 30.3.09. and 0.470p per kwh thereafter (plus VAT). The charges apply to all customers, except those Exempted or Excluded. Certificates are needed for Exempt supplies (e.g. CHP schemes and electricity from renewable sources) but no certificates are needed for Excluded supplies (e.g. domestic and charity (non-business) customers). The domestic & charitable exclusions are based on those in the VAT "Qualifying use" provisions VAT Act 1994 Sch 7A, Group 1.

Item B is subject to CCL because it is a supply of electricity generated from burning waste. The supply of waste to the power station is not a taxable commodity for CCL purposes. (Item 3(2)(b) Sch 6, FA2000)

In Item A the supply of coal & gas to the power station is a "wholesale supply" which is outside the scope of CCL (provided the supplier holds a supply licence). No certificate needed from customer. See CCL 1, para 2.12.

In Items 3 & 4, the electricity generated is Exempt from CCL (Electricity from Renewable sources). This is exempt from CCL. Ofgem issues the generator with a Levy Exemption Certificate (see CCL Notice 1/4 Para 3.4.)

Question 5

Big Dig Ltd

Big Dig Ltd
Excavation Yard
Durham.

Date as Postmark

Dear Sir,

Aggregates Levy Assessment

First of all, I will set out the procedure for challenging this assessment. There is a two stage process for taking an appeal to the Tribunals Service Tax.

The first stage is a mandatory review by HMRC. The review procedure is intended to allow for a genuine re-examination of the decision. The review is carried out by a nominated person, independent of the officer who made the decision under review, and who has had no previous involvement in the decision. The reviewing officer has the power to vary, overturn, or uphold the decision.

Any request for a review of an assessment or an officer's ruling must be made in writing within thirty days of the issue of the assessment or ruling. HMRC must undertake the review within forty five days of receipt. If you are not satisfied with the outcome of the review, an appeal to the Tribunal can be made within thirty days of the review decision being made.

Turning now to the basis of the assessment, HMRC appear to be arguing that a hole was dug in the ground to construct the lake rather than it being formed by the dredging of a water course. If this were so, the excavated material would not be from the result of dredging and thus aggregates levy would be properly due on the commercial exploitation of the rock, sand and gravel extracted.

On the basis that you believe that the material was obtained by dredging, can you supply HMRC and/or myself with any large scale maps of the area which show that, at the very least, a water course existed before the excavation took place. Any photographs of the area that you may have available would also be helpful. It would obviously help your case if, after the excavation process was completed, there was a stream(s) entering the lake, and an overflow facility whereby the level of the lake could be maintained at a constant level. Obviously, if the water exiting the lake took the form of a river either at the discharge point or nearer the sea, this would be important evidence to justify your claim for the aggregate to be exempt from the levy as a result of dredging.

Your position appears very similar to the appeal by Humberside Aggregates and Excavations Ltd (L 00021) although I have to point out that in that case the Tribunal decided that the taxpayer had failed to establish that the excavated lake was a water course.

It is important, therefore, if an appeal is to be submitted following a review request to HMRC, that we obtain as much information as possible on the water courses in the area prior to the works taking place. It would obviously be helpful if we could obtain some independent professional advice - possibly from the local water authority, on the water courses in that area prior to your excavations.

Please don't hesitate to contact me immediately on receipt of this letter if you would like me to submit the request for a review of the assessment on your behalf when I would be only too pleased to assist.

Yours faithfully,

Indirect Tax Advisor

Question 6

Mr Electronic

8 September 2009

Dear Mr Electronic

I am writing further to our recent meeting to confirming the advice that I gave concerning the VAT liability of the business activities.

Basic principles

Firstly I will describe in general terms the VAT rules that apply to your sales and purchases.

The sales of the electronic gadget are subject to VAT at the standard rate – currently 17.5%. This is known as output tax.

The sales of the gadget that are exported outside the UK / European Union are zero rated – subject to conditions which I cover in detail below.

Both of the above are taxable supplies and there is an obligation to VAT register when at the end of any month (up to a maximum of 12 months) the value of taxable sales (both 17.5% and 0%) exceeded £67,000 prior to the 31 March 2009 and £68,000 post 1 April 2009.

There are penalties for a late notification of a liability to register for VAT.

HMRC must be notified within 30 days of the end of the month the threshold is exceeded and is registerable from the 1st of the month following – so if the turnover test is exceeded on the 31 January – notification is in February and registration is from the 1 March.

There is also a liability to register for VAT based on a future test – if at any time it is known or there are reasons to believe that during the following 30 days the value of taxable turnover will exceed the registration threshold. For example if on the 2 January it was known or there is reason to believe the value of taxable supplies in the next 30 days will exceed £68,000 (current threshold) registration is from the 2 January

It is possible to voluntarily register if the taxable sales are less than the registration threshold. VAT would have to be accounted for out of the income received so a retrospective registration would only be beneficial if you could recover more VAT on costs (known as input tax) than will be due out of income. See below for further description on VAT recovery.

In addition where you pay an overseas business for certain services these are also treated as taxable supplies in the UK and have to be taken into account when determining a liability to register for VAT.

Liability to register

From the information that you supplied there was a liability to register for VAT on (or about) the 21 January 2009 based on a future test. This is based on the fact that at the date of signing the contract with the Far East company (21 January) it was known that you would receive £55,000 on the 20 February and if the 21 January to 20 February sales were expected to be more than £12,000 The future test threshold would be exceeded.

If it can be shown that there was good reason to believe the UK sales would be less than £12,000 the registration date would be based on the historic test and there would be an obligation to register from the 1 April

This is based on the sales of £36,000 to the 31 December plus January £10,000 plus Hong Kong lawyer fee £5,000 plus February £65,000

VAT will have to be accounted for on all sales after the 1 April and monies received are deemed to be VAT inclusive.

There will be a penalty for a late notification of 5% of the net VAT due at the date of registration this is providing you make the notification before the end of October. If later the penalty will increase to 10%.

Sales to Hong Kong

These will be zero rated (0%) providing the goods are physically exported outside the UK / EU.

The condition that must be met is that there is documentary evidence to show that there has been an export; this will include,

- Normal commercial correspondence with the customer including an order form (or similar)
- Proof of payment;
- Evidence of export such as an airway bill, courier certificate, certificate of shipment issued by the freight company.

If posted certificate of posting.

You should also note that the goods must be entered with HMRC "for export" on form C88 the freight forwarder may deal with this on your behalf and the official notification is additional proof of export.

List is not exhaustive

Input tax

VAT on business costs is known as input tax and is recoverable (by offset against any output tax – on sales) when incurred directly or indirectly for making taxable supplies.

Input tax is not recoverable, in your circumstances) on costs not related to taxable supplies (e.g. personal expenditure), purchase of motor cars (which includes estate cars) unless used 100% for the business, business entertaining.

At the date of registration VAT will be recoverable on goods (stock assets) on hand that have been purchased within the previous three years. So you will be entitled to recover VAT on the purchase of computers and workshop fittings as no doubt these were still on hand at the 1 April

You will not be entitled to recover the VAT on the purchase of the estate car.

As regards services there is a six month time limit so the VAT will not be recoverable on Legal fees January 2008, Shop and fitting out costs in February 2008 (these are supplies of services)

I trust that this fully reflects our discussions but please do not hesitate to contact me if I may be of further assistance.

Yours sincerely

A Adviser

Question 7

Dental Europe Ltd

[MY ADDRESS]

[RECIPIENT'S ADDRESS]

Dear Name

Further to our recent conversation, please find below my reply to your queries.

What is distance selling

The Distance Selling legislation applies to sales to non-registered persons in other EU member states - so from one member state to another member state. Primarily, it affects mail order traders.

For example, a Republic of Ireland company selling clothes to non VAT-registered traders in the UK. Under the current rules the company makes a dispatch and would charge the Republic of Ireland rate of 21.5%, to those customers in the UK. This adds an extra cost on the recipient as the VAT rate in the UK is currently 15%. Thus there is a difference when it comes to VAT being charged on the goods. The UK customers may therefore find it cheaper to buy goods from their local shop.

The distance selling legislation allows some mail order sales but once the cumulative value in a year of the mail order sales exceeds the distance selling threshold the trader is required to register for VAT in the UK. Then the sales are treated as going from the Republic of Ireland registered business to the UK customers, hence a requirement to charge the UK rate of VAT.

The distance selling threshold varies between different EU member states; it is either 35,000 ECUs or 100,000 ECUs. The UK has gone for the higher limit and in Sterling equates to a £70,000 threshold. For anyone from another member state selling mail order into the UK it is only once their cumulative turnover exceeds £70,000 that the distance selling legislation requires them to register for VAT in the UK. The test is on calendar year basis. [Sch 2 para 1].

A person who becomes liable under these rules must notify HMRC of the fact within 30 days after that day. [Sch 2 para 3].

A person who is not liable to be registered under VATA 1994 and is not already so registered may request to be registered under these provisions. [Sch 2 para 4].

A person who has become liable to be registered under these provisions ceases to be liable if at any time:

a) his relevant supplies in the year ended 31 December last before that time did not exceed £70,000;

b) HMRC are satisfied that the value of his relevant supplies in the year immediately following that year will not exceed £70,000 and will not include any such dutiable supply. [Sch 2 para 2].

What distance selling tries to achieve

Distance selling is intended to combat distortion of trade and unfair competition that can result from goods having varying rates across the member states, by transferring the place of supply to the member state in which the customer receives the goods.

Dental implants and tool kits - VAT liabilities

Based on the information provided in our telephone conversation, the products in question are liable to VAT at the standard rate in the UK either:

- under the acquisition rules if the dentist is VAT registered and provide DAL with their UK VAT registration number, *or*
- under the distance selling rules if supplied to non-VAT registered customers with a total of such sales in excess of £70,000 per calendar year.

It is possible for the supply of dental prosthesis to be exempt from VAT, but this only occurs where the supply is from dentist to patient as part of a course of treatment. From the facts presented this will not apply in this case. [Sch 9 Group 7 Item 2].

It is likely the majority of dentists will not be registered for VAT. Many were registered a few years ago to take advantage of a tax loophole, but this loophole has been closed removing the benefit of VAT registration.

The above provisions will apply equally to the toolkits, which are ancillary to the main supply of dental implants.

UK VAT registration

From the information you have provided, DAL is required to register for VAT in the UK and charge VAT to the dentists.

HMRC will require the registration to have effect from 1 July 1999 because of the value of distance supplies DAL has made to the UK from that time onwards. [Sch 2 paras 3, 9]. **(2 marks)**

Audit by the Irish Revenue Commissioners

Given the date of the audit made by the Irish Revenue Commissioners, I note that this does not provide any support for DAL's failure to apply for UK VAT registration from 1 July 1999.

Furthermore, HMRC would be reluctant to accept that advice given by an official in one member state necessarily requires another member state to not apply its own VAT legislation.

With effect from 1 April 2009, HMRC will not consider any claim of "misdirection" received on or after that date, following the withdrawal of extra-statutory concession 3.5, but the principle can still apply in certain circumstances.

Therefore, HMRC may not accept any claim that may be made that DAL had no knowledge of the legislation and so should not be registered with effect from 1 July 1999.

HMRC powers

Assuming that DAL will be registered for VAT with effect from 1 July 1999, HMRC will be able to evoke its power to raise an assessment where VAT returns have not been made or it appears to them that the returns are incomplete or incorrect. The assessment must normally be made within two years from the end of the return period in question or, if later, within one year of the facts on which the assessment is based coming to their knowledge. An assessment cannot be raised more than three years after the end of the return period except in cases of fraud. In DAL's case, the time limits will be accepted as the first VAT return period is likely to cover a long period exceeding ten years.

Failing the above, HMRC could evoke its powers to enter into international agreements relating to mutual assistance in the enforcement of taxes. The powers allow the UK to enter into arrangements for the exchange of information in relation to indirect taxes (as well as direct taxes) and permit such arrangements to include powers for mutual assistance in tax collection. [EC Mutual Assistance Recovery Directive].