

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

Question 1

1. Cider is defined as cider or perry of a strength exceeding 1.2% alcohol by volume (ABV) but less than 8.5% ABV obtained from the fermentation of apple or pear juice.

Alcoholic Liquor Duties Act 1979 s.1(6)
2. An AEO is a business involved in the international supply chain which has proved themselves to be compliant and trustworthy and, where applicable, to be safe and secure.
3. (a) 3%
(b) 15%
4. £0.3419 per litre. (20p less than ultra low sulphur diesel) (*a mark was given for giving the pre 01.04.09 figure of £0.3235 per litre*)
5. A Free Zone is a designated area in which non-community goods are treated as outside the customs territory of the Community for the purposes of import duties. This means that import duties are not due provided the goods are not released for free circulation.
Public Notice 334 para 1.2
6. REDS are revenue traders who are approved by, and registered with, HMRC to receive and account for duty on suspended goods received from other Member States. REDS must account for duty when the goods are received in the UK.
Public Notice 203 s. 3.1
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

Jagdeep Kurmar

Mr Jagdeep Kumar
USA address
United States of America

Dear Mr Kumar

Transfer of residence from USA to the UK

Regarding your proposed return to the UK following a protracted stay in the United States, I can confirm that You are entitled to a full relief on duty and VAT for any possessions you may bring to the UK. The details of this relief are set out in the attached Customs Notice 3, and I would draw your attention to Section 5 in particular.

I understand that your belongings will be imported in two separate tranches, of which the first will be the higher-value items you bring with you in hand luggage when you arrive at the UK. For these items, a customs declaration must be made by walking through the Red Chanel at the port or airport of arrival, and declaring the goods to the officer on duty there, telling him or her that you wish to claim the duty and VAT relief on transfer of residence. In the unlikely event that they ask the legal justification for the relief, it is enshrined in EU law: Council Regulation 918/1983. The Officer will help you to complete any paperwork required.

To claim the relief, you must::

- be moving your normal home to the EC
- have had your normal home outside the EC for a continuous period of at least 12 months
- have possessed and used the goods for at least 6 months outside the EC before they are imported
- not have obtained them under a duty/tax free scheme
- keep them for your personal use in the EU, and not intend to sell them on within 12 months.

As regards the bulk of your possessions that will be shipped by DHL, DHL will act as your clearance agent on importation, submitting a C88/SA document and [any other relevant information, such as CPC, DV1, purchase invoices etc]. Provided you meet the criteria mentioned above, you will need to instruct them (I suggest in writing) to claim the duty and VAT relief on transfer of residence (ideally referring them to the law mentioned above). In order to do this, DHL will require you to complete Form C3, available from www.hmrc.gov.uk in the library section. I recommend that you download and complete the form in advance, and provide it to DHL along with your instructions for them to clear the goods on your behalf. The form requires you to confirm that the conditions of the relief (noted above) are met, and to list out in detail the goods that are moving. This will be the burdensome part of the task, though books, for example, need not be individually detailed, but may be listed as "various books".

You will not be allowed to claim the relief on any items suffering excise duty, nor on restricted and prohibited items such as weapons. Such items will suffer customs duty, excise duty where applicable and VAT.

Looking specifically at your bottle of vintage port, it is an excisable item, so cannot claim the above relief as explained in the preceding paragraph. As a single bottle, it falls within your personal allowance for excise, customs duty and VAT purposes, so it should be hand-carried through Heathrow rather than going in the DHL luggage. Note that the allowance is quantitative rather than value-based, so the precise value of the bottle is an irrelevance.

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 de minimis 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. Ofgen issues the generator with a Levy Exemption Certificate (see CCL Notice 1/4 Para 3.4.)

Question 5

Toyco Ltd

Consultant

Logistics Manager
Toyco Ltd
London
W2

Customs

1 High Road
London
W1

1 November 2009

Dear Sir,

Further to your recent questions please find detailed below my response to the issues raised.

Background

I understand that you are intending to begin a new process of manufacturing teddy bears in your customs warehouse and you would like some advice on the customs implications of doing this.

Question 1

By way of background as I'm sure you are aware a customs warehousing is a customs procedure which allows both duty and import VAT to be postponed. In some circumstances, where the warehoused goods are subsequently re-exported for instance it enables complete relief from import VAT and Customs duty.

A customs warehouse may be either a physical area or an inventory system (ie, a virtual warehouse) located in the EU which is treated as being outside of the EU. This means that goods in a warehouse are not in free circulation in the EU and are effectively still under customs supervision.

In order to run a warehouse you require authorisation as I am aware you already have for your Type C warehouse (as defined below). This authorisation will determine all the processes which can take place in the warehouse and these are very restricted. Whilst it is possible to make some sales whilst the goods are in the warehouse, it is necessary to remove the goods from the customs warehouse and pay the attendant customs duty and import VAT before making a retail sale. Warehouses may be public (where anyone may store their products) or private (where you may only store your own products).

The types of customs warehouse in the UK are:

- Type A. Public warehouse
- Type C. Private, physical warehouse
- Type D. Private warehouse. Can be physical or virtual. In this warehouse the duty is calculated based on the value and quantity at the time the goods enter the warehouse but it is not payable until the goods leave the warehouse.

- Type E. Private, virtual warehouse. This is an inventory based system where no specific physical location is required to be authorised.

Given that Toyco is currently importing products for later sale both inside and outside the European Union (EU) there is a tangible benefit to maintaining the warehouse operation.

Question 2

The warehouse manager is justified in his concerns about the customs implications of the new teddy bear manufacturing. Customs warehouses are principally used for the storage of goods alone. Any form of handling or processing on the goods whilst under the warehousing procedure may require prior authorisation. The operations which may be carried out in a customs warehouse are called the 'usual forms of handling'.

These usual forms of handling generally are designed to preserve products or prepare them for sale but should not, typically, change the Harmonised System classification code of the product.

Given your description of the proposed process it seems likely that the manufacture of the teddy bears would constitute something more than the usual forms of handling. The usual forms of handling which are allowed within any customs warehouse should be stated on the authorisation for that warehouse. You should check your authorisation and compare it to the manufacturing process which you intend. If this process falls outside of the scope of the authorisation then you must either amend the authorisation to reflect the new process (if possible) or perform the process out of the customs warehouse to avoid jeopardising the current warehousing authorisation.

Question 3

There are a number of options open to Toyco for the new manufacturing operations. The following table outlines each one and discusses the relative merit of each with regard to customs duty.

Option	Merits
Abolish the customs warehouse. Clear the raw materials into free circulation and process the goods whilst not under customs supervision	This would no longer enable Toyco to gain the benefit of postponed payment of duty and VAT, nor will it be able to remove the duty liability on those items which are subsequently exported. The cost of operating and guaranteeing the warehouse will, however, be removed.
Consider Inward Processing Relief. This enables goods to be imported, processed and then exported without payment of duty or import VAT	There will be some costs in becoming authorised as there are several conditions to fulfil. All duty and import VAT will be avoided on those raw materials used to manufacture teddy bears for the non-EU market place. Given uncertainty about sales in the first year of operation there may, however, be a need to divert some items to sales within the EU. This may give rise to compensatory interest payments alongside the duty and import VAT ordinarily payable.
Manufacture teddy bears outside	This would mean that there would be no need to

of the EU and import the finished products into the customs warehouse.	change from the current operation aside from potentially amending the authorisation if the products stored are mentioned. There may, however, be commercial sensitivities in changing the location of the manufacturing operation.
Utilise Processing under customs Control. (PCC)	It may be possible to use PCC to reduce the amount of customs duty payable. Under PCC the raw materials are imported as if they are the finished product. If the duty rate on teddy bears is lower than that on raw materials this may be an option. There will be a need to track the goods throughout the process and put in regular returns to HMRC.

Given my understanding of the proposed operation, at this stage we would recommend that you consider the possibility of using Inward Processing Relief on the imports of raw materials. This would enable duty and import VAT to be entirely eliminated for sales into the non-EU market place.

In the fullness of time it may also make sense to investigate the other duty reliefs mentioned above once more to ensure that the most effective duty position is obtained.

Question 4

If Toyco was to consider changing the customs operations it uses then it will also need to consider the transitional arrangements for the shipment of raw materials which has already been shipped into the warehouse. This would mean that there will be a need to determine the appropriate documentary requirements for this transition and any appropriate authorisation.

If Toyco was to transfer the raw materials to IPR there would be several options available to it in terms of the documents required. Once authorised for IPR you will require authorisation to transfer the goods from the warehousing procedure to IPR. Toyco could use the 2 copy SAD, 3 copy SAD or potentially the commercial documentation to change the process applicable to the goods. Alternatively it may also be possible to remove the goods from the customs warehouse and subsequently and immediately enter them to IPR.

Should you require any further information then please do not hesitate to contact me.

Yours sincerely

A Consultant

Question 6

Alcohol Liquor Duties

The report should contain the following points:-

1. The Alcoholic Liquor Duties Act 1979 [ALDA] defines beer as:-

- Ale, porter, stout and any other description of beer, and
 - Any liquor which is made or sold as a description of beer whose alcoholic strength exceeds 0.5% ABV
 - But, no duty is chargeable on UK beer that does not exceed 1.2% ABV
2. Beer becomes liable for duty when it is produced and the following legal definitions of 'produced' are in place [the earliest of any of the following events]:-
 - Beer is put into any package
 - Beer is removed from the brewery
 - Beer is consumed
 - Beer is lost, or
 - Beer reaches a state of maturity at which it is fit for consumption
 3. Duty is based on the quantity [dutable volume] and alcoholic strength [ABV] of the beer when it passes a duty point
 - A worked example would produce the following duty liability [or close to]:-
 - i. 18 gallons x 4.54609 = 81.8 litres
 - ii. x 25 = 2045 litres / 100 = 20.45 hectolitres [HL]
 - iii. x 4 [ABV] x £16.47 [duty rate per HL]
 - iv. = £1347.24 duty
 4. For duty purposes:-
 - The ABV at the expected time of consumption must be established [to take into account that cask beers continue fermenting after removal from the brewery].
 - Duty need not be charged on any undrinkable sediment in cask beers provided the customer is advised in writing [at or before the duty point] of the quantity of beer on which duty has been charged

Question 7

Production of fruit wine

Definition of fruit wine

Fruit wine is not wine of fresh grape, nor any other specified product within the Alcoholic Liquor Duties Act 1979 (ALDA) section 1, but *is* a fermented liquor defined as “made-wine” under the Alcoholic Liquor Duties Act 1979 (ALDA) section 1 (5), being: “*any liquor which is of a strength exceeding 1.2 per cent and which is obtained from the alcoholic fermentation of any substance or by mixing a liquor so obtained or derived from a liquor so obtained with any other liquor or substance but does not include wine, beer, black beer, spirits or cider*”.

Charge to duty

Duty is charged and payable on made-wine produced in the UK under ALDA section 55(1) in accordance with regulations under ALDA section 56 and with any regulations under section 1 of the Finance (No. 2) Act 1992 at the rates shown in Schedule 1 of ALDA. Under that Schedule, duty is charged a rate specified for “*Wine or made-wine of a strength exceeding 5.5 per cent. but not exceeding 15 per cent and not being sparkling*”

Duty on made-wine is subject to the duty charge immediately it is produced (ie the fermented product exceeds 1.2% abv), within the licensed and entered winery

premises but the duty must be suspended until the product is “put into consumption”. The duty is normally due, therefore, on delivery of the product to consumption from the winery premises (Under the Wine and Made-wine Regulations 1989 (SI 1989/1356) regulation 11(1): “*wine or made-wine in a winery shall be charged with duty at the time it is sent out of that winery and at the rate in force at that time*”

How the duty is charged, accounted for and paid

Under the Wine and Made-wine Regulations 1989 regulation 11(2), the duty charged under paragraph (1) of regulation 11: “*shall be accounted for and paid in accordance with the provisions of regulation 23*” (of the Wine and Made-wine Regulations 1989). Regulation 23(1) of the Wine and Made-wine Regulations 1989 states:

*Save as the Commissioners otherwise allow, every licensed producer shall-
(a) not later than the fifteenth day of every accounting period furnish to the Collector, or to such other person as the Commissioners may direct, a return in approved form of all wine and made-wine sent out from his winery for home use during the preceding accounting period and of the duty charged thereon;*

Provided that where the last day for furnishing a return and making a payment would, if determined in accordance with the foregoing provisions of this paragraph, fall on a day which is not a business day the return shall be furnished and payment shall be made not later than the last business day before that date.”

To do this, HMRC requires each made-wine producer to total up all the made-wine sent out from entered winery premises during each period (usually calendar month), work out the duty due, complete a duty account and transfer the appropriate totals to a monthly return - EX606 (Wine/Made-Wine/Cider/Perry Return). Instructions on completing the form are contained on the form itself.

Legal requirements - licensing and making of entry

In order to produce made-wine, the producer must hold an excise licence. ALDA s55(2) refers: “*..a person who, on any premises in the United Kingdom, produces made-wine for sale must hold an excise licence under this subsection in respect of those premises for that purpose.*”

A producer must also make entry of the premises. Under regulation 9 of the Wine and Made wine Regulations 1989 : “*A producer shall not begin to produce wine or made-wine on any premises in respect of which he is licensed until he has made entry of all rooms, places and vessels intended to be used by him thereon for that purpose.*”

Financial security - premises

HMRC may require financial security for product stored in duty suspense in the winery production premises, as is stated in Notice 163 (Wine and Made-wine production), though there is no further guidance on this possible requirement and there is no express provision in the wine/made-wine provisions to enable HMRC to require such financial security. The Commissioners of HMRC have general and broad powers to require any form of security under the Customs and Excise Management Act 1979 (CEMA) section 157(1), which states: “*Without prejudice to any express requirement as to security contained in the customs and excise Acts, the Commissioners may, if they see fit, require any person to give security (or further security) by bond, guarantee or otherwise for the observance of any condition in connection with customs or excise.*”

Financial security - accounting and payment

In relation to security for (deferred) duty payment, regulation 22(5) of the Wine and Made-wine Regulations 1989 states: *“As a condition of being approved or registered... the Commissioners may require a registered maker to provide security, or further security, for the duty”*. Security for the duty must be provided in the form and manner required by the Commissioners, as a condition of approval (regulation 22(6) of the Wine and Made-wine Regulations 1989.)

HMRC’s policy stated in Notice 163 is that security is required to cover any duty due on wine, removed from licensed premises to the UK home market, until it is paid to HM Revenue & Customs (no later than the 15th day of the month following the accounting period). This applies to all made-wine producers applying to be licensed for the first time, unless the producer is eligible to apply for authorisation to make payments without providing a guarantee under the Excise Payment Security System (“EPSS”). HMRC will only accept guarantees from approved third party guarantors as financial security.

The EPSS permits nil security for, inter alia, made-wine producers after three years satisfactory compliance across VAT and duties (and is similar to the SIVA system for deferred import VAT).