

**IIT 2010/11 ASSOCIATE EXAMINATION
PAPER III – POTENTIAL SOLUTION**

Question 1

1. Anti-dumping duty is imposed on imported goods to protect EU industries from cheap imports flooding the market. Anti-dumping duty is levied in addition to normal customs duties.
2.
 - a. The goods must originate in the beneficiary country,
 - b. The goods must travel direct from that country, and
 - c. The goods must be accompanied by a Certificate of Origin.
3. Three years from the date of export.
4. 22% of the net profit being the difference between payments made for playing the games less winnings paid out.
5.
 - a. General storage and distribution warehouse, and
 - b. Trade facility warehouse.

A general storage and distribution warehouse is only allowed where the average duty due on a month's stocktaking does not exceed £0.5m or £2m annually.
6. GBD is charged at 15% on the net stake receipts being the difference between money receivable by the bookmaker from bets, less the amounts paid out in winnings, on a monthly basis.
7. £14
8.
 - a. No
 - b. No
 - c. Yes
9. Non-taxable. (FA 1994, Schedule 7A, para 3)
10. Yes. (FA 1996, s 65A)
11.
 - a. Maximum weight of container
 - b. Volume to weight conversion ratio
12. The transfer of a business as a going concern enabling the new owner of a site to take over the seller's landfill tax registration number.
13. £900 up to a maximum of 6% of his landfill tax liability (5.5% from 1st April 2010)

14. A quantity of aggregate is subjected to exploitation if –
- it is removed from a registered site
 - it becomes subject to an agreement to supply it to any person
 - it is used for construction purposes
 - it is mixed, otherwise than in permitted circumstances, with any material or substance other than water.
15. When an un-registered person forms the intention of carrying out taxable activities that are registrable. (FA 2001, Schedule 4, para 1(1)).
16. Petroleum gas and lignite are taxable commodities.
17. a. No
b. No
c. No
18. A combined heat and power station produces electricity but also heats premises from, for example, the heat coming from the electricity that it produces or steam produced from such heat.
19. a. exempt
b. exempt
c. taxable
20. The time of supply is governed by the issue of a CCLAD. The time limit for the issue of this accounting document is 15 weeks for small users and 6 weeks if not a small user.

Question 2

Wines Limited

Dear Joe Bean,

In response to your query please find my summary below.

REDS stands for Registered Excise Distributors and Shippers- s100G CEMA 1979. The main UK legislation relating to REDS can be found in the Excise Goods (Accompanying Documents) Regulations 2002 and the Excise Goods (Holding, Movement, Warehousing & REDS) Regulations 1992.

The key conditions of registration of REDS are set out in Regulation 12 of Excise Goods (Holding, Movement, Warehousing & REDS) Regulations 1992 and include:

- A REDS shall notify HMRC immediately in writing of any change to the particulars contained in his application for REDS
- A REDS may not hold of consign any excise goods under duty suspension arrangements

- A REDS who has arranged the importation of excise goods from another member state shall enter in a record the date of arrival of those goods, the quantity and description immediately after arrival

The documentary requirements for a REDS trader to receive goods from El Vino are set out in Regulations 12 & 14 Excise Goods (Accompanying Documents) Regulations 2002.

The goods will normally be accompanied by an Accompanying Administrative Document (AAD) or commercial equivalent. Four copies are required. The consignor will retain one copy and the other three will accompany the goods.

The REDS must send a Certificate of Receipt back to the consignor. The Certificate of Receipt is made out using copy 3 of the AAD. The receipt must be sent back by the 15th of the month following receipt of the goods. The certificate must show the date that the goods were received and signed.

Copies 2 and 4 of the AAD must be kept by the REDS.

When goods arrive by seaport or airport they must be declared to customs (Article 38 & 40 of 2913/92). The agent will make a customs declaration using SAD/C88. A sample is set out in Annexe 31 of 2454/93.

The agent will also submit a commercial invoice, where appropriate an import licence or origin certificate and a valuation declaration.

Once the goods have been declared to Customs, the duty needs to be paid or secured before they will release the goods into free circulation. On acceptance of the declaration, Customs will issue an E2 which is an entry acceptance advice slip. This is generated by Customs' computer called CHIEF, which stands for "Customs Handling of Import and Export Freight."

Question 3

Parallel Processing Ltd

To: paula@parallelprocessing.co.uk
From: Candidate 23456
Subject: **EUR1 issuance on the US/Mexico contract**

Dear Paula

As mentioned in our conversation earlier, my initial scrutiny of the arrangements for raising the EUR1 form to accompany our movements of goods to the US gives cause for concern on the following three fronts:

- 1) Direct Consignment.** It is a condition of preferential origin agreements that the goods should be consigned directly from the country of export to the country of import. It is recognised that the exigencies of international shipping operations may require that an indirect route be taken; where this is the case, the goods are required to remain under customs control in the intermediate country. It is not clear whether the goods are taken into Bond in Miami, or are merely stored there without being under customs control. Nor is it clear whether they are genuinely in transit there, or whether they may potentially enter the US as commercial goods. If the latter is the answer to either point, then the Direct Consignment rule is breached, and the EUR1 cannot properly be issued.
- 2) Supplier Declarations.** The goods sourced from Germany are all covered by valid Suppliers' Declarations (SD), which means that they are considered originating goods for the purpose of the origin rule. By contrast, there is no indication that the UK-sourced goods are similarly covered by a SD. If not, they are treated the same as the Japanese goods; non-originating for the purposes of the rule. When the rule mentions "materials", it means non-originating materials – i.e. for all practical purposes, those not covered by a valid SD. If there is no SD, then the origin rule is not met, as the Japanese goods (£5) and the UK goods (£7) combined amount to more than 50% of the £20 income derived from them. It is worth noting that the origin rule speaks in terms of an ex-works price, whereas PPL earns a processing fee. In practice, customs administrations are flexible on this point, seeking to derive an effective EXW price even where none actually exists under the commerciality of the deal.
- 3) IPR on Japanese goods.** Under all the EU's bilateral preferential origin arrangements, IPR and preferential origin status are mutually exclusive; an importer may avail itself of either, but not both. The fact that the Japanese goods are entered to IPR, and that regime is closed off by the export of the goods, means that Parallel Processing has elected to take the benefit of IPR in the UK, and cannot then also issue EUR1 in respect of the shipments. To the extent that IPR goods are incorporated in goods requiring an EUR1 certificate, the IPR trader must renounce its right to terminate the IPR movement unsuccessfully; the Implementing provisions to the Customs Code recognise this as a special situation, justifying exemption from the normal compensatory interest charge in such circumstances.

In the event that any of these concerns is confirmed as a problem, then the consequence is that the EUR1's already issued are invalid. As our customer is using these documents to justify a claim for preferential duty rates in Mexico, he is potentially liable for penalties and a retrospective claim for the duties relieved. Given that the contract requires us to issue EUR1, then we may well be liable for damages for breach of contract. In addition, we commit a criminal offence in the UK under CEMA 1979 Section 167(3) by issuing a document that is false in a material particular. While this is unlikely to be pursued as a criminal matter, it may well give rise to a civil penalty in respect of each occurrence.

Question 4

Shawn Shaver Company Ltd

To: John The Intern @ ShawnShaver.co.uk

Subject: **Shawn Shaver customs warehouse application**

John

Attached is our recent application for customs warehousing. I'd like you to put yourself in the shoes of the customs officer considering this application. Look at Public Notice 232 and the relevant Internal Guidance (R5-3 is out of date, but still useful) and come back to me with a written recommendation from HMRC's perspective as to whether this application should be accepted or rejected.

As with all warehouses, HMRC will consider whether the financial benefit to the company (which is primarily cashflow) justifies the cost of control HMRC will have to exercise over the warehouse. I'll leave it to you to ascertain how to make that assessment. They will also need to consider whether the company's revenue history is such that they are prepared to permit it to engage in suspensive arrangements. Also relevant is the amount of duty and VAT at risk from the warehousing of the stock, which HMRC may wish to protect by taking a guarantee.

Assuming those checks show nothing untoward, the main issues then revolve around the processing operation. You'll need to consider the following factors:

- Is it appropriate for the company to mix duty unpaid stock (the boxes, shavers etc) with duty paid materials such as the instruction manuals, brushes and boxes within the warehouse?
- The various imported components all have their own commodity codes; these may be different from the finished product (i.e. the boxed shaver). Is it appropriate for the process within the warehouse to change the commodity code of the items within the warehouse?
- Given that the item crossing the duty point is the boxed shaver, is it appropriate for the warehouse management system to report movements across the duty point of the various imported components?
- The wholesale value of the boxed shaver will considerably exceed the value of the components – not least, because EU components have been added. Is it appropriate for the warehouse management system to report the value of components when the finished item moves across the duty point?
- The components are not being sold on removal; the boxed shaver is. Assuming it is legitimate to make a declaration in respect of the components, how are they to be valued for customs purposes?

If your researches suggest that anything is untoward in the proposed arrangement, HMRC tries to help traders by providing constructive alternatives. Have a look at

Processing under Customs Control, and consider whether that arrangement might resolve any concerns that you may have. IPR, which is commonly used for complex processing within warehouse, is unlikely to be acceptable here, as the goods are destined predominantly for the EU market.

Question 5

Greenbank Quarries Ltd

Waste

Waste arising from mining and quarrying operations and disposed of to landfill is exempt from landfill tax. To qualify for exemption the waste must:

- Be naturally occurring in the course of a commercial mining or quarrying operation, including the reworking of tailings to extract further minerals. The term “commercial” does not mean that a profit has to be made, but the operation has to be a business activity.
- Have the same chemical composition as it had when it was in the ground, and
- Not be produced from a process separate from the mining/quarrying operation, so the exemption can apply to waste arising from winning the primary material from the spoil, but it does not apply to waste arising from the working of minerals from mines/quarries.

A certificate is not required from HMRC to qualify for this exemption but commercial documents showing the source of the waste must be kept.

FA 1966, s.44

Quarries

For both VAT and Landfill Tax points of view, a quarry takes its common usage being an excavation or system of excavations for the purpose of the extraction of minerals.

Where a quarry was in existence before the 1st October 1999 and when quarrying operations ceased, there was planning consent to fill the quarry, the filling of the quarry with qualifying materials was exempt from landfill tax. Where quarrying operations ceased before the 1st October 1999 and there was no planning consent on or before the 1st October 1999 to fill the quarry with waste, the subsequent filling of the quarry, even with qualifying materials, was taxable.

The granting of planning consent in 2009 to fill the old quarry with qualifying material would normally mean that landfill tax at the low rate of £2.50 per tonne would be payable by the site operator on the disposals, but the exemption for disposing of waste from mining or quarrying into landfill over-rides the low rate charge, and would thus remain exempt.

FA 1996, s.44A

Registration for landfill Tax

Greenbank Quarries Ltd are treated as being the site operator by way of the licence they hold from the farmer. A site operator who has, or has the intention, of making taxable supplies is liable to be registered. Unlike VAT, there is no registration threshold for landfill tax.

However, as all the material to be used to fill the quarry is exempt from landfill tax, there is no expectation to make taxable disposals and registration is not, therefore, required.

FA 1996, s.47

Value Added Tax

The grant of a licence to occupy land containing the old quarry is an exempt supply for VAT purposes and the £2 per tonne tipping charge is payment for that grant and is therefore exempt from value added tax. There are thus no direct VAT implications for either party as a result of the filling of the quarry.

VATA 1994, Schedule 9, Item 1

Question 6

IPT

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.

The tax is under the care and management of the Commissioners of Customs and Excise. s48 (Now known as HM Revenue and Customs)

The basic premise of UK IPT is all insurance premiums are taxable (FA 1994, s70) unless they are specifically identified in FA 1994 Schedule 7A as being non taxable.

In relation to the specific queries raised by the broker the first consideration is to establish what class of insurance the contract is being written under and who or what is insured. This will enable the risk's location to be confirmed and whether or

not it qualifies to be treated as non taxable as a contract falling within the descriptions set out in Schedule 7A.

The principal “exemptions” that may apply to the business are:

- Contracts relating to commercial aircraft, i.e. those falling within classes 1 (accident) or 5 (aircraft hull) or 11 (aircraft liability) and the aircraft weighs 8000kg or more and it has not been designed or adapted for use for recreation or pleasure. FA 1994 Schedule 7A paragraph 7.
- Contracts relating to goods in international transit. FA 1994 Schedule 7A paragraph 12.
- Contracts relating to risks outside of the UK, i.e. as determined under regulations made under section 424(3) of the Financial Services and Markets Act 2000. FA 1994 Schedule 7A paragraph 8.

The situation (or location) of a risk rules are set out in the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 (SI 2001/2635) which are derived from the EU 2nd Non Life Directive, Art 2d and Art 25.

A risk is situated in an EU member state if it falls within one of the following headings:

- *Buildings and contents*: where the insurance relates to a building, its contents or both (whether or not the contents are covered under the same policy) the property is situated in the member state.
- *Vehicles*: where the insurance relates to vehicles of any type and the vehicle is registered in the member state. A vehicle includes motor vehicles, ships and aircraft;
- *Travel and holiday risks*: in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned if the policy is taken out in the member state;
- *In any other case not covered above*:
Where the policyholder is an individual who has his habitual residence in the member state at the date the contract is entered into;
Otherwise if the business establishment to which the policy relates is situated in the member state.

Specific scenarios:

a. This insurance covers aircraft hull and falls within class 5. As the aircraft is UK registered it is a UK risk. As the insurance only covers the aircraft whilst it is being used for business purposes, i.e. during air show displays, and it meets the weight criteria it is reasonable to conclude that the contract qualifies to be treated as non

taxable as a contract relating to commercial aircraft, FA 1994 Schedule 7A paragraph 7.

It could be argued that the aircraft may be used for recreational or pleasure purposes as it is owned by a private person and it may have been adapted from its original form for this purpose. However HM Revenue and Customs have indicated in their guidance that the actual business use should be the determining factor when considering if it is a commercial aircraft for IPT purposes.

b. This insurance covers miscellaneous financial loss and falls within class 16. The risk is not an aircraft related risk for tax or regulatory purposes. The location of risk will be determined by the residence of the leasing company, i.e. the UK. As there is no other "exemption" under Schedule 7A that could apply to the insurance contract it will be subject to IPT at the 5% standard rate.

c. This insurance covers aircraft hull and aircraft liability and falls within class 5 and 11 respectively. The location of risk for registered aircraft is determined by reference to the country of registration of the aircraft. The aircraft is registered in the US so the risk is not a UK risk for tax or regulatory purposes. As the contract relates to a risk outside of the UK it is non-taxable, FA 1994 Schedule 7A paragraph 8. The fact that the aircraft is used in the UK by a UK resident is not relevant.

d. This insurance covers general liability and falls within class 13. The risk is not an aircraft related risk for tax or regulatory purposes. The location of risk is determined by reference to the country of residence of the insured which is Germany. The contract relates to a risk outside of the UK and is non taxable, FA 1994 Schedule 7A paragraph 8.

e. This insurance covers miscellaneous financial loss and falls within class 16. The risk is not an aircraft related risk for tax or regulatory purposes. The location of risk will be determined by the residence of the pilot, i.e. the UK. As there is no other "exemption" under Schedule 7A that could apply to the insurance contract it will be subject to IPT at the 5% standard rate.

f. This insurance covers property and falls within class 9. The risk is not an aircraft related risk for tax or regulatory purposes. The location of risk will be determined by the location of the property i.e. the UK. As there is no other "exemption" under Schedule 7A that could apply to the insurance contract it will be subject to IPT at the 5% standard rate.

g. This insurance covers goods in transit and falls within class 7. The risk is not an aircraft related risk for tax or regulatory purposes. The location of risk will be determined by the residence of the courier company, i.e. the UK. The contract relates to transits of commercial goods from the UK to overseas so an element of the contract is non taxable, FA 1994 Schedule 7A paragraph 12. The premium should be apportioned between the taxable non taxable elements on a just and reasonable

basis, FA 1994 s 69(11) and a record of the apportionment method must be kept [Notice IPT1].

h. This insurance covers aircraft liability and falls within class 11. The location of risk for registered aircraft is determined by reference to the country of registration of the aircraft. The aircraft is registered in the UK and is a UK risk for tax or regulatory purposes. However the aircraft does not meet the criteria to be considered a commercial aircraft so the contract is taxable at the standard rate. The residency of the insured has no bearing on the IPT liability.

Question 7

Duty Suspended Holding & Movement in Brewery Registered Premises

1. As a registered brewer, your client must have control of his beer at all times whilst it is in his registered premises. He must have the necessary systems in place to control and safeguard stocks and all discrepancies must be critically examined.
2. To avoid a duty charge on beer accidentally lost, he must satisfy HMRC that the beer was lost on his registered premises and that it has not been consumed.
3. For accidental losses, records must include:-
 - a. Date and time of the loss;
 - b. Description, volume and alcoholic strength of the beer lost;
 - c. The reason for the loss.
4. Duty becomes due on unexplained losses if beer cannot be accounted for at any point after the start of production and where there is no acceptable explanation.
5. In the absence of documentary evidence, losses can be offset against gains if it can be demonstrated that an individual loss was related to a corresponding like-for-like (or similar) gain. HMRC specifically prohibit the accumulation of losses and gains from various sources in order to net off the gross totals.