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The Chartered Tax Adviser Examination

November 2018

VAT on Cross Border Transactions & Customs Duties

Suggested solutions

QUESTION 1

Memo

To: Catherine McCallum

From: Anne Adviser

Date: 6 November 2018

Subject: Shark Clothing Ltd: VAT treatment of overseas web sales

Dear Catherine,

I set out below my advice on the UK VAT treatment of Shark Clothing Ltd.'s ('Shark') projected web sales to overseas customers.

Distance Sales

Shark's web sales to individuals in other EU Member States will be distance sales for VAT purposes. The place of supply of goods which are supplied and delivered from a taxable business in one Member State to an individual in another Member State is the Member State from which the goods are supplied, i.e. the UK in this instance. Accordingly, UK VAT should be charged at the standard rate, and accounted for on Shark's UK VAT return. However, when the value of distance sales to a particular Member State exceeds a set threshold in a calendar year (€35,000 in each of these Member States), there is an obligation to register for VAT in that Member State and to account for local VAT on supplies to individuals. It is therefore important to monitor sales, as Shark will be required to notify its obligation to register in the Member State where it breaches the threshold.

The distance sales thresholds apply to each entity regardless of whether a UK VAT group is in place; therefore, I have looked at the sales for Shark Menswear Ltd and Shark Womenswear Ltd separately.

Italy

Distance sales of €35,505 for each trading entity during 2018 will take both entities over the distance sales threshold so there will be an obligation to register in Italy and account for local VAT from December 2018. As web sales continue to expand in Italy, both entities should continue to account for local VAT on web sales during 2019.

France

Distance sales are below the threshold during 2018, at €18,200 for each entity, therefore Shark should account for UK VAT on web sales to France during December 2018. Although there is no obligation to register in France in 2018, Shark may elect to register when it is operating below the distance sales threshold. During February 2019 both trading entities will exceed the annual cumulative French distance sales threshold, so a French VAT registration will be required to account for VAT on sales made from the day of breach in February, and local VAT should be accounted for going forward.

Spain

Based on the forecast figures there is no requirement for a registration in Spain. However, if sales continue to increase in line with the trend shown in the forecast then it is likely that the trading entities will breach the Spanish distance sales threshold before the end of 2019, as the thresholds apply on a calendar year basis. Although Shark Womenswear Ltd currently has a Spanish VAT registration this does not impact the distance sales rules described above. However, Shark Womenswear Ltd may opt to account for Spanish VAT on distance sales to Spanish customers even when trading below the threshold.

UK reporting

Shark will be required to report its distance sales of goods delivered from the UK in Box 1 and Box 6 of its UK VAT return until such time as the threshold is breached for any particular Member State. When there is a local registration for distance sales, the supplies should be recorded in boxes 6 and 8 of the UK VAT return. It is not necessary to report distance sales on the EC Sales List.

If Shark trades above the UK Intrastat threshold of £250,000 for dispatches then it is necessary to report distance sales on the Intrastat declaration, even when the distance sales threshold is exceeded, and a local VAT registration is required.

Other points to consider

As customers will be required to pay for their goods at the time the order is placed on Shark's website, the time of supply is the date payment is made. If goods leave the UK in a period after payment is made, this does not alter the period in which Shark should account for VAT.

If goods are returned to the UK and Shark credits the customer for the sale, this will reduce the value of distance sales in the period of the refund, i.e. a negative amount in the respective boxes of the UK VAT return. Where UK VAT has been charged previously, a credit note, or similar document should be issued to evidence the refund.

There will be no UK VAT requirements when goods are returned by Shark to its supplier in Singapore. Although it may be possible to claim a refund of the import VAT paid originally, this would not be necessary if Shark recovered the import VAT in full when the goods arrived in the UK and were entered to home use.

When VAT is incurred in another EU Member State, this foreign VAT cannot be included on the UK VAT return. However, it may be recovered via the electronic cross border refund scheme. Claims should be submitted via HMRC in the UK; however, the request is determined under the rules of the Member State of refund. Certain conditions apply in order to make a claim, and claims must be made by 30 September of the calendar year following the refund year. Once a Shark entity is registered locally it should recover local VAT through its VAT return in that Member State. Therefore, Shark Womenswear Ltd should recover any Spanish VAT on its existing Spanish VAT return where the VAT incurred relates to sales subject to Spanish VAT.

Goods sent direct from Singapore

Goods which are sent direct from Singapore are imports and distance sales rules will not apply. Shark will be importing goods into the Member State of the customer and a local VAT registration will be required in accordance with the principal established in *Schmelz CJEU (C-97/09)* in order to account for local VAT on the onward domestic supply of those goods. Shark may also incur import VAT which it can recover on its local VAT registration, subject to local rules. There will be no UK VAT reporting requirements for goods supplied direct from Singapore.

I hope I have covered the points required for your meeting however please do contact me if I can assist further.

Kind Regards

Anne Adviser

MARKING GUIDE

TOPIC	MARKS
Acknowledgement of place of supply rules for goods	1
Acknowledgement of distance sales and thresholds (in general)	1
Acknowledgement of application of UK VAT until calendar year threshold reached, and then local VAT rate applies, unless election made to register under threshold	1
Registration requirement in Italy based on projected sales	1
Recognition of value of sales to each country	1
Application of threshold on calendar year basis and threshold applying to each group member individually. Bonus mark may be awarded for comments on potential disaggregation challenge.	2
Comment on impact of existing VAT registration in Spain i.e. no effect on DS position.	1
Time of supply	0.5
Returned goods – impact on turnover for distance sales thresholds	0.5
UK VAT treatment of goods returned from EU customers, and subsequently returned to supplier in Singapore	1
UK VAT return reporting requirements (before and after reaching distance sales threshold in another EU country)	2
Acknowledgement of imports if shipped direct from Singapore and UK VAT implications. 2nd mark will be awarded for comment on principal established in Schmelz case requiring immediate registration for a non-established entity i.e. no registration threshold.	2
Recovery of foreign VAT via electronic cross border refund scheme including claims being made to HM Revenue & Customs but determined under local rules	2
Deadlines for cross border refund claim	1
Recovery of foreign VAT via VAT return once registered locally	1
Presentation and higher skills	2
TOTAL	20

QUESTION 2

Hotel Design Groupe s.r.l
10 rue Nationale
Paris
France

J Birth
Tax Adviser
12 Spring Drive
London

6 November 2018

VAT treatment of supplies by the Hotel Design corporate group

Dear Delphine

Thank you for taking the time to meet with me last week. My advice is set out below.

HDG's services will not be considered land related services on the basis that there is no direct connection with a specific property under the contracts, as the interior design services apply to customers in a more general, global nature. The basic place of supply rules will therefore apply, i.e. the place of supply is where the recipient is located as these are business to business (B2B) supplies. It is important to establish the place of belonging of the supplier, along with the location where the services are received, in order to determine where VAT should be accounted for. For specific contracts which relate to specific properties, the place of supply would be where the land is situated.

Supplies by HDG

Supplies to UK customers are delivered by employees of HDUK. Case law establishes that the use of another company's human and technical resources can constitute a fixed establishment for VAT purposes *Welmory sp. z o.o. v Dyrektor Izby Skarbowej w Gdanacute* CJEU (C-605/12). It follows that HDG has a UK establishment and my view is that this UK establishment is most closely concerned with making the supply. I conclude that this is a UK domestic supply by HDG to the UK customer, subject to UK VAT. HDG will therefore be required to register in the UK and charge UK VAT at 20%. If HDUK made these supplies direct to the UK customers (with HDG not being involved in the contract management) then HDG would not be required to register for VAT in the UK, which may be preferred by management. The charge by HDUK to HDG for the use of its resources would be received by HDG at its fixed establishment in the UK and therefore UK VAT should be charged by HDUK but should be recoverable by HDG. It would be possible to form a VAT group to avoid VAT on these transactions.

Supplies by HDUK

Supplies to UK customers are subject to UK VAT. Supplies to Irish hotel chains are treated as supplied where the recipient belongs, therefore the Irish customer will be responsible for accounting for VAT in Ireland under the reverse charge procedures. HDUK should issue an invoice which includes wording to show that the recipient is required to account for the VAT due under the reverse charge. Such supplies should also be included on HDUK's EC Sales List. For property specific supplies in Ireland, the place of supply will be in Ireland where the land is located, and it will be necessary to seek local advice in relation to whether the customer may reverse charge land related services, or if the branch's Irish VAT registration can be used.

Supplies by HDI

The charge to HDUK for HDI's services is not a supply for VAT purposes as it is within the same legal entity (*FCE Bank Ltd* (Case C-210/04)).

The charge to HDG for HDI's services will be subject to VAT in the location of the recipient, therefore HDG should account for VAT in France under the reverse charge procedure. However, where the services relate to contracts delivered by HDG's fixed establishment in the UK, the services will be received by that establishment (as it is most closely concerned with the supply) and HDG should account for the reverse charge on its UK VAT return in this case.

Subcontractor's services

Although HDI contracts and pays for the subcontractor's services, they are to be used by the whole business for the purpose of onward supplies made by HDUK. The supply made by the subcontractor is therefore made to the business establishment (i.e. HDUK which belongs in the UK), not the fixed establishment created by the branch (which is likely to be treated as belonging in Ireland). This is the case even though HDI recharges the subcontractor's costs to HDUK.

HDUK should therefore account for VAT under the reverse charge procedure on receipt of these supplies from subcontractors. Please note that if any of the subcontractor's services are related to land in Ireland then they will be treated as supplied where the land is located, rather than under the general rule for B2B services. If this is the case HDUK will incur Irish VAT and we would need to seek local advice as to whether this can be recovered under the branch registration.

I trust that this advice meets your immediate needs, if you have any questions please contact me.

Yours Sincerely

Jenny

MARKING GUIDE

TOPIC	MARKS
Conclusion that these are not land related services	1
Acknowledge place of supply rules for B2B services	1
Comment on importance of place of belonging of supplier, establishment most closely concerned	1
HDG has a fixed establishment in the UK through use of HDUK's human and technical resources per <i>Welmory Sp. z o.o. v Dyrektor Izby Skarbowej w Gdansku</i> CJEU (Case C-605/12)	2
HDG requirement to register in the UK and account for UK VAT on supplies to UK customers	1
HDUK charge for services supplied to HDG's UK fixed establishment as UK domestic supplies	1
HDUK supplies to UK customers subject to UK VAT	1
HDUK supplies to Irish customers subject to reverse charge by recipient; report on EC Sales List and invoice wording	2
No supply – kitchen design services from Irish branch HDI to HDUK per FCE	1
Services from Irish branch HDI to HDG either received in France or by UK establishment (establishment most closely concerned)	2
Establishing who is the customer for subcontractor's services and relevant place of supply	1
Presentation & higher skills	1
TOTAL	15

NB – no requirement to name cases for credit and other relevant cases will earn marks

QUESTION 3

Tekpro KK
Otome Road
Tokyo
Japan

S Williams
Tax Adviser
10 Oxford Road
London

6 November 2018

VAT analysis of Tekpro KK's supply chains

Dear Kaito

Thank you for talking me through the reorganisation of Tekpro KK's ('Tekpro') supply chain. My advice is set out below.

VAT treatment of supply chain prior to movement of stock to the UK

When the distribution hub was located in the Netherlands, the place of supply of goods for supplies to UK business customers would be the Netherlands as the goods moved from the Netherlands to the UK. Tekpro would have had a zero rated Dutch supply when moving the goods to the UK providing it obtained the customer's UK VAT registration number to show on its invoice and evidenced the removal of the goods from the Netherlands.

VAT treatment of current supply chain

The movement of stock from the Netherlands to the UK was a movement of own goods for VAT purposes, which is a deemed intra-community supply and Tekpro is required to account for acquisition VAT in the UK based on the value of the stock transferred. This is effectively treated as an input and an output on the UK VAT return therefore this would not lead to an under payment of VAT (as Tekpro is a fully taxable business) but is still necessary to correct the position. This should be included in the Notice of Error Correction detailed below. The movement of own goods should be declared in boxes 2 and 4 (acquisition VAT) and boxes 7 and 9 (value of goods). It would also be necessary to declare the movement on the UK arrivals Intrastat for Tekpro (as the value of the transfer exceeds the arrivals Intrastat threshold of £1,500,000).

Supplies from the UK distribution hub to customers in other EU Member States should be declared on the UK VAT return (boxes 6 and 8), on an EC Sales List, and on the dispatches Intrastat if such supplies exceed the £250,000 threshold. These supplies would have been zero rated providing they obtained their customers EU VAT number and evidenced the removal of goods to the EU. Penalties would not apply.

Tekpro has been making supplies in the UK since its distribution hub moved on 1 May 2018. UK VAT should be accounted for on these supplies when they are made to UK customers. As such, there is likely to be an under declaration of output tax on the UK VAT return for the quarter ending 31 May 2018.

VAT incurred on subsequent imports of goods direct from Japan will be recoverable as a credit on the VAT returns.

Correcting UK VAT accounting and Consequences

Due to the value of the error in May it is unlikely that this can be corrected on Tekpro's current VAT return, so a separate Notice of Error Correction form should be submitted to HM Revenue & Customs (HMRC). To reduce the risk of penalties and interest, I would advise to submit this as soon as possible.

If Tekpro has identified other VAT errors these may reduce the value of the net error and should be considered when making the notification.

As an incorrect VAT return was submitted for the May 2018 VAT period, a penalty will be due on the amount of the VAT liability. The penalty is a percentage of the VAT owed (the 'potential lost revenue'). In this instance, the penalty may be up to 30% of the VAT due because, in my view, Tekpro has failed to take reasonable care. However, penalties and interest can be reduced by disclosing the error and based on the 'quality' of the disclosure, which is determined by considering three factors; telling, helping and access.

Invoicing

I would recommend issuing a VAT only invoice to UK customers who have, prior to the correction of the liability error, purchased goods fulfilled from the UK distribution hub. Going forwards a UK VAT invoice should be issued, with standard rate VAT, to all UK customers. For sales to other EC member states, invoices should generally show the customers VAT number to demonstrate that they can be free of UK VAT.

Late VAT return and late payment of VAT

The deadline for submitting and paying the VAT return for the quarter ending 31 August 2018 was 7 October 2018. Tekpro has therefore missed these deadlines and will enter the default surcharge regime.

Assuming that all of Tekpro's UK VAT returns have been submitted on time for periods prior to August 2018, and this is Tekpro's first late return and payment, then there should be no penalty due. Tekpro will be automatically issued with a Surcharge Liability Notice. If Tekpro fails to submit another VAT return or payment within 12 months (i.e. within the default surcharge scheme), then the second late return/payment will result in a 2% surcharge of the VAT due or outstanding at the payment date. The 12 month period will be extended until Tekpro has submitted VAT returns and payment on time for 12 consecutive months. The surcharges increase, up to a maximum of 15%, on each subsequent failure to submit a return or pay before the due date.

I recommend that the UK VAT position is corrected by submitting the overdue return, and to calculate the VAT liability correctly for the August 2018 period. If Tekpro knowingly submits an incorrect return, there may be further inaccuracy penalties, so I do not recommend that an estimated or nil return is submitted.

As Tekpro owes VAT to HMRC, interest will be due from the due date of submission to when payment is received by HMRC (although if HMRC accepts that Tekpro's customers are in business and able to fully recover input tax, interest may not be applied). Therefore, it is likely to be beneficial to submit a correct UK VAT return as soon as possible. In addition, if Tekpro does not submit timely returns HMRC may issue an estimated UK VAT liability for the business, called a central assessment.

Moving distribution hub to Ireland

If the business moves its distribution hub to Ireland and uses a UK agent to manage its UK consignment stocks, the UK VAT registered agent should account for acquisition VAT on the goods transferred to the UK by Tekpro. The agent should also account for UK VAT on onward sales to UK customers. Tekpro may be required to deregister for UK VAT if its supplies in the UK fall below the deregistration threshold of £83,000.

I trust that this advice meets your immediate needs, if you have any questions please contact me.

Yours Sincerely

Simon Williams

MARKING GUIDE

TOPIC	MARKS
VAT treatment of cross border B2B supplies NL to UK prior to transfer of stock	1
Movement of own goods including how should have declared on UK VAT return and Intrastat	2
Correct invoicing for supplies from UK distribution hub	1
VAT credit on imports from Japan	1
Acknowledge under declared output tax on sales from UK since transfer of stock	1
Incorrect VAT return for May 2018 including error correction threshold, procedure for disclosure	1
Late return for August 2018 including dates/timings	2
Implications of default surcharge regime, issue of Surcharge Liability Notice and timings	2
Application of interest for late payment of VAT due to HMRC and potential for HMRC to issue estimated VAT return (central assessment)	1
Likely penalties for under declared output tax. Marks will be awarded for alternative views on 'reasonable care' if supported by reasoning	1
Reduction for quality of disclosure, telling, helping, access	1
Recommendations for mitigating/minimising inaccuracy penalties and how to correct position	2
Irish distribution hub: UK VAT registered agent to account for acquisition VAT and UK VAT on onward sales to UK customers	2
Presentation and higher skills	2
TOTAL	20

QUESTION 4

To: S.Daniels@Intlog.co.uk
From: T.Adviser@Intlog.co.uk
Subject: Customs entry information
Date: 6 November 2018

Dear Sheena,

Thank you for your email dated 2 November 2018

VAT is treated as a duty of Customs at import and is collected in a similar way, either by immediate payment or deferment. If goods are liable to standard rate VAT on UK supplies the same rate will also apply at import.

In the circumstances you describe the place and time of import is as follows:

- 1) For goods arriving by air, importation occurs where the aircraft lands, in this case at Heathrow.
- 2) For goods imported into the EU in Germany and transported to the UK the time of import is when the goods enter a UK port/within 12 miles of the UK coast or upon entering the UK sector of the Channel tunnel.
- 3) In the case of goods imported by ferry from Jersey - for VAT the time of import occurs when the ferry comes within the limits of a port/within 12 miles of the UK coast.

CD and Perfume imports

Commercial imports valued below £15 are not subject to a VAT charge at import due to low value consignment relief (LVCR). However, following perceived abuse of the relief, since 1 April 2012 "mail order" consignments from the Channel Islands are no longer eligible and are all subject to VAT at import. In contrast, the CDs from Switzerland would remain eligible for VAT relief.

Imports of excisable goods such as perfume are ineligible for VAT import reliefs when imported as freight and need to be entered with VAT declared at the standard rate.

Value for VAT

The value for VAT needs to include the value of the goods, any Customs Duty thereon and the cost of transport, packing, insurance and other incidental expenses (where these are not already included in the value for Customs Duty), up to first point of destination of the goods in the UK, where these costs are known at the time of import. In your example the goods are imported into the EU in Germany, entered into free circulation upon payment of Customs duty then transported on to the UK. For UK VAT the value will include the costs of the goods, transport, insurance and any incidentals up to the point of entry into the EU plus the additional transport and other incidental costs up to the first destination in the UK. If a further destination in the UK is known at the time of import, costs relating to the transport of the goods to that destination must be included.

"First destination" means the place mentioned on any consignment note or other importation document or, in the absence of such documentation, the first place of transfer of cargo in the UK. The value for VAT at import can include a discount for prompt payment offered to the customer where that is included in the terms on which the goods are imported and the price payable for the goods is agreed before the import takes place.

Consequently, you will need to obtain valuation information from the importer.

Repackaging services

The value of repackaging services performed in Ukraine, which is outside the EU Customs and VAT territory, should be included in the value for Customs and VAT purposes when the goods enter the

EU. This is because repackaging is included under the incidental costs which are required to be added to the value of goods and other costs for import purposes.

If the services were performed in Poland (EU) by a Polish established business, they would be subject to the reverse charge mechanism by the recipient in the UK as the service is provided following importation into the EU. Any subsequent movement of the goods to the UK will be an acquisition by the UK customer. Intrastat filing may also be required depending on the UK customer's annual value of arrivals

If the value of the repackaging service is not known at the time of UK arrival, HMRC allow published estimated rates for incidental expenses to be used instead of the actual costs. There is no need to submit a revised declaration when actual costs are later established. Alternatively, the importer may enter an estimated cost and amend the entry when actual costs are known – this may be advantageous for importers who are not VAT registered or those unable to recover all VAT incurred.

I hope this information is helpful but please contact me if I can be of any further assistance.

Yours sincerely

Tim Adviser

MARKING GUIDE

	TOPIC	MARKS
1. General rules	VAT generally treated as a duty of Customs at import.	1
	Time and place of import determined by means of the importing transport mode– correct identification for air, road/sea/tunnel and ferry ex Jersey (1 mark each)	3
2. Low value consignments	<p>Low value imports below £15 are not subject to VAT except those imported from the Channel Islands for which VAT applies (wef 1.4.12).</p> <p>Perfume imports are not eligible for low value VAT relief irrespective of the place from which they are imported and therefore attract VAT at import.</p> <p>Examiners note SI 746/1884 Grp8, item 8 as amended by FA 2012 s199</p>	2
3. Value for VAT	<p>The value for VAT upon entry to home use needs to include the value for Customs duty plus incidental expenses etc. up to first destination in the UK. (S21 VATA 1994.)</p> <p>Incidental expenses include commission, packing, transport and insurance etc. incurred up to the first place of destination.</p>	1
	The value for VAT must also include any costs of transport to a place of destination within the EU, if that other place is known at the time of importation.	1
	Meaning of First destination - the place mentioned on any consignment note or other importation document or in the absence of such documentation the place of transfer of cargo in the UK.	1
4. Goods from Russia	<p>The correct answer is that cost of simple repackaging should be included in the value for Customs duty and VAT at import into the EU</p> <p>If the value of the repackaging service is not known at the time of importation, estimated published rates may be used or estimate and amend declaration later with actual costs is allowed.</p>	2
	<p>If the repackaging is performed in Poland after the import into the EU the repackaging will need to be dealt with as a reverse charge supply to the UK business customer and will not relate to the value of the goods for VAT purposes.</p> <p>Credit will be given if candidates outline alternatives involving goods not having entered free circulation in Poland e.g due to warehousing etc</p>	2
	The movement of the repackaged goods from Poland to the UK will be an acquisition in the UK and may also require completion of an Intrastat return if the customer's value of EU arrivals exceeds £1.5m per year.	1
	Presentation and higher skills	1
TOTAL		15

QUESTION 5

John Jones
Geranium Fashions Ltd
High Street
Bath
BA1 1QQ

Mark Reed
Local Tax Advice
25 High Street
Keynsham
BS99 7RT

6 November 2018

Dear John

Thank you for your enquiry about Customs Warehousing.

Customs Warehouses are premises authorised by HM Revenue & Customs (HMRC) to allow the storage of goods imported into the EU without the payment of Customs Duty and Import VAT. These become due when the goods leave the warehouse to enter the EU market.

[1 mark]

It is important to note that since the introduction of the Union Customs Code (UCC) on 1 May 2016 a financial guarantee is required to operate a Customs Warehouse. The financial guarantee must be backed by a recognised financial institution such as a bank. They agree to pay HMRC your liabilities up to an agreed limit if you are unable to meet them. Alternatively, a Joint Contractual Liability guarantee can be provided by a non-financial third party.

[1 mark]

This guarantee must be sufficient to cover the potential Customs Duty due on all the goods in the Customs Warehouse at any one time. The amount of guarantee may be reduced if Geranium Fashions Ltd can demonstrate compliance with some of the Authorised Economic Operator – Customs Simplifications (AEOC) criteria.

[1 mark]

Upon application, HMRC will examine Geranium Fashions Ltd's compliance with the AEOC conditions and depending on the levels of compliance that can be shown with these, the guarantee amount may be reduced to 50%, 30% or waived entirely.

[1 mark]

Under the UCC there are two types of Customs Warehouse, as follows:

- A public warehouse which allows the authorised warehousekeeper to store goods belonging to anyone; and
- A private warehouse which only allows the warehousekeeper to store their own goods.

[1 mark]

Temporary Storage

Temporary Storage is a status that goods have, although it is operated almost as if it were a regime.

Goods are in Temporary Storage from the point at which they are presented to HMRC (that is, in effect, when the ship's manifest is sent to HMRC) until such time as the goods are released to free circulation with payment of Customs Duty and Import VAT or are put into a regime such as Customs Warehousing.

[1 mark]

Whilst in Temporary Storage, the goods must be stored in an approved facility, these are usually at a port. As with Customs Warehousing, operating a Temporary Storage facility requires an authorisation and a financial guarantee.

[1 mark]

Benefits and Drawbacks of Temporary Storage vs Customs Warehousing

The benefits of Temporary Storage for Geranium Fashions Ltd are that the authorisation, record keeping requirements and financial guarantee would be the responsibility of the Temporary Storage operator. If Geranium Fashions Ltd operates a Customs Warehouse these would all be the responsibility of Geranium Fashions Ltd.

[1 mark]

How long goods will be stored is a key consideration for whether Temporary Storage is better for Geranium Fashions Ltd than Customs Warehousing. Temporary Storage goods may be moved from one premises to another but may not stay in Temporary Storage for more than 90 days. Most goods may be stored in a Customs Warehouse for an indefinite period.

[1 mark]

Another important factor is whether Geranium Fashions Ltd will bring all goods that make up one shipment into free circulation at once. It is not possible to “break bulk” in Temporary Storage. This means that entire loads must be released to free circulation as they were imported. Goods stored in a Customs Warehouse may be released to free circulation in any quantity; this includes individual items, so individual items of clothing may be released to free circulation.

[1 mark]

Whilst goods are in Temporary Storage the only handling operations that may take place are ones designed to ensure that the goods are preserved in the state that they were in when they arrived.

[1 mark]

The “Usual Forms of Handling” permitted in a Customs Warehouse allow a greater deal of flexibility. The permitted operations include the repacking and re-labelling that you have mentioned. This would allow Geranium Fashions Ltd to repackage an entire shipment of goods and to release them as and when required.

[1 mark]

Geranium Fashions Ltd will need to keep detailed records to operate a Customs Warehouse, including stock records and details of which goods are duty paid. A bespoke computer system may therefore be required, which can be costly.

[1 mark]

Retail Sales

The Customs Warehousing regime does not allow retail sales to the public to be made. All goods must be removed in Geranium Fashions Ltd’s name prior to being sold on to the public. HMRC would not allow a Customs Warehouse on the same site as a retail premises.

[1 mark]

However, as said above, it does allow the flexibility to remove individual items to fulfil orders, so individual items can be removed to send to a shop or to fulfil internet sales. You might wish to consider internet sales rather than a physical shop.

[1 mark]

Recommendation

A Customs Warehouse gives Geranium Fashions Ltd much more flexibility and control rather than leaving goods in Temporary Storage. It also comes with more responsibilities, but I would expect that the benefits of the extra flexibility would outweigh the responsibilities.

[1 mark]

A Customs Warehouse also provides the greatest opportunity for cash flow benefits. The ability to store good indefinitely, carry out some processing and to remove the goods individually or in small quantities means that you may delay the payment of Customs Duty and Import VAT until goods are ordered by a customer. This would be especially useful if Geranium Fashions Ltd moves into internet sales.

If goods are stored in Temporary Storage, payment of Customs Duty and Import VAT can only be delayed by a maximum of 90 days and duty and import VAT would be paid on the whole consignment when any of the goods are required.

As a result, Customs Warehousing would give Geranium Fashions Ltd the best cash flow benefits.

[1 mark]

However, I recommend that you consider these benefits against the additional costs of running a Customs Warehouse. There will be immediate costs such as buying software for record keeping and there may be indirect costs of complying with the conditions of the authorisation.

You may find that the costs of operating a Customs Warehouse outweigh the cash flow benefits.

You could also consider using a public warehouse but the warehousekeeper would obviously charge for their services and there would be additional transport costs.

[1 mark]

I hope that this answers your queries. Please come back to me if you have any more or if I can assist you with applications for a Customs Warehouse and guarantee.

Yours sincerely

Mark

[PHS – 2 marks]

MARKING GUIDE

TOPIC	MARKS
<u>Customs Warehousing (CW)</u>	
CW are authorised premises allowing the storage of non-EU goods without payment of Customs Duty (CD) and Import VAT.	1
Guarantee required since introduction of UCC; backed by financial institution.	1
Guarantee must be sufficient to cover the potential CD in the CW at any point.	1
Guarantee may be reduced if can demonstrate compliance with AEOC conditions. Reductions available 50%, 30% or waiver depending on the criteria you can demonstrate compliance with.	1
Two types of Customs Warehouse under the UCC: public and private.	1
<u>Temporary Storage</u>	
Goods are in TS from when presented until released to FC or put into a regime.	1
Goods must be stored in a TS facility which requires an authorisation & a guarantee.	1
<u>Benefits and Drawbacks of TS v CW</u>	
Benefit of TS is that authorisation and guarantee are the responsibility of the TS operator.	1
Goods may be moved from one premises to another but may not remain in TS for more than 90 days. Most goods may remain in a Customs Warehouse indefinitely.	1
Can't break bulk in TS, can in CW, so must remove entire load from TS in one go.	1
TS – Only handling allowed is to preserve the goods.	1
CW – UFH provide greater flexibility including re-packaging and re-labelling.	1
CW – required to keep detailed records, may need a bespoke computer system.	1
<u>Retail Sales</u>	
Cannot make retail sales from Customs Warehouse and will not be granted a CW attached to a shop, must remove items in own name.	1
Can remove items individually to fulfil shop orders or internet orders.	1
<u>Recommendation</u>	
CW gives more flexibility and control than TS. Apply for CW.	1
CW gives best chance of cash flow benefit.	1
Must consider costs of running CW against cash flow benefits – is it worth it? Consider storing goods in third party warehouse.	1
PHS	2
Total	20

QUESTION 6

Notes for a meeting with Kitchen Sauce Ltd

Customs Representation

A customs agent, broker or freight forwarder may represent you in one of two capacities.

Direct Representation

A “Direct Representative” acts on behalf of you and in your name. In effect this means, from a legal standpoint, that they are just doing what you tell them to.

[1 mark]

Except in exceptional circumstances, you would be solely liable for any debt resulting from inaccuracies found on the entries they submit for you.

[1 mark]

Indirect Representation

When acting as an “Indirect Representative” the freight agent acts in their own name but on your behalf. Legally they are equally responsible with you for the accuracy of the declaration, even if you provide them with detailed written instructions.

[1 mark]

Being an Indirect Representative makes the freight agent jointly and severally liable with you for any debts that are identified from inaccuracies in the declaration after the goods have been released.

[1 mark]

This means that HM Revenue & Customs (HMRC) may issue demands for payment to you both and accept full payment from either, but not both, of you.

[1 mark]

So it is clearly beneficial for a freight agent to act as a Direct Representative whenever possible as it limits their financial exposure. It makes little difference to the importer in practical terms whether they are represented in a direct or indirect capacity.

[1 mark]

Written Instructions

HMRC may ask a freight forwarder to demonstrate that they are acting for a client. If they cannot do so, HMRC can deem the agent to be acting in their own name and on their own behalf i.e. as if they were both importer and representative. In this case the freight forwarder is solely liable for any debt that arises.

In practical terms this usually only happens when the importer cannot be traced, but it is obviously something that the freight agents try to protect themselves from.

[1 mark]

Freight agents will often ask for written instructions regardless of whether they represent you in a direct or indirect capacity. This may be written instructions for each import or standing instructions making it clear that the relationship is ongoing.

[1 mark]

It is beneficial for you to give detailed written instructions to your freight agent, including details of CPCs and Commodity Codes etc. This would allow you to take civil action against them if they fail to follow your instructions which leads to unexpected debts being incurred or HMRC raising Civil Penalties for incorrect declarations.

[1 mark]

As a result I would recommend that you always give clear instructions to any agent that you appoint, either entry by entry or clear standing instructions such as all imports of goods from particular suppliers are to be entered using specific information.

[1 mark]

MARKING GUIDE

TOPIC	MARKS
<u>Direct Representation</u>	
Freight forwarder acts on behalf of and in name of client. In effect the agent does as they are told.	1
Makes the client solely liable for any debt.	1
<u>Indirect Representation</u>	
The freight agent acts in their own name but on client's behalf. So responsible for accuracy of declaration.	1
Makes them joint and severally liable for any debt.	1
HMRC may take money from either agent or client.	1
Therefore better for agent to act as Direct Representative but makes little difference to client.	1
<u>Written Instructions</u>	
HMRC may deem freight forwarder to be acting in their own name if can not demonstrate that they are acting for a client.	1
Therefore agents may insist on written instructions.	1
Good practice for the importer as they can take civil action if instructions are not followed.	1
Advise client to give clear specific instructions to agent, either standing or entry by entry.	1
TOTAL	10