Chartered Institute of Taxation
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The Chartered Tax Adviser Examination

May 2019

Cross-Border Indirect Taxation

Suggested solutions

1. PROJECT PECUNIA

Daniel White
Betoak Ltd
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Manchester
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Simone Jackson
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1 May 2019

Dear Daniel,

PROJECT PECUNIA

Thank you for your letter of 25 April 2019.

VAT liabilities and place of supply

When services are sold using an internet platform it is those underlying services which determine the VAT liability of the services provided by the platform. As a result, Betoak Ltd will be undertaking the services of financial intermediary for the benefit of the foreign currency sellers, as it will be bringing them together with persons, who are interested in buying the currencies with the view to concluding the currency transactions. In addition to being an introducer, Betoak Ltd will also undertake work preparatory to the conclusion of foreign currency purchases by it performing ID checks and conducting credit worthiness verification. The service of an intermediary in financial transactions is exempt from VAT under VATA 1994 Sch 9 Group 5.

You mentioned in your letter that the making of payments will be provided by Betoak Ltd free-of-charge to the sellers and buyers. The handling of payments is an exempt supply; however, as no consideration will be received for these services, they will not be considered as supplies for VAT purposes and will have no implication for Betoak Ltd's VAT position.

The advertising services Betoak Ltd will be making will be standard rated for VAT purposes, even if the subject of the advertising is a Pecunia currency seller and its currency offerings, because advertising does not fall within the scope of exempt financial intermediary services, even if it relates to VAT exempt services. The place of supply of advertising services will be:

- B2B – the place of supply is where the customer belongs
- B2C to EU customers – the place of supply is in the UK
- B2C to ROW customers – the place of supply is where the customer belongs

The project management charges from Betoak Inc to its UK branch will not be treated as supplies for VAT purposes as the UK branch is not a separate legal entity from Betoak Inc, which is something that the ECJ confirmed in the case of *FCE Bank (C-210/04)*. The VAT grouping provisions in VATA 1994 s 43 therefore apply to the legal entity (i.e. Betoak Inc and its branches) and Betoak Inc is a member of the UK VAT group in its entirety, not just its UK branch. Because of this, even if an invoice is issued by Betoak Inc to its branch there will be no requirement to apply reverse charge VAT.

The recharge of services bought by Betoak Inc from DMZ Inc will be different as these are not services generated within the VAT group. Such services will fall within the scope of VAT under VATA 1994 s.43 (2a) as they are bought-in services supplied through an overseas member of a partially exempt VAT group. The value of DMZ Inc's services will be subject to reverse charge VAT but no VAT is due on the 10% mark-up charged by Betoak Inc – VAT of £10,000,000 will be due as prescribed by VATA 1994 Schedule 6, para 8A.

Recoverability of input tax

Betoak Ltd will have no right of recovery of input tax incurred in relation to it making the exempt intermediary supplies to customers belonging in the UK and in the EU. Supplies of financial intermediary services made to customers belonging outside the EU are not considered as 'exempt' but as 'outside the scope' under the Specified Supplies Order 1999 and they carry the right to recovery of input tax. As a result, Betoak Ltd will be able to recover input tax related to supplies to these customers. For Betoak Ltd

to be able to benefit from this input tax deduction it will need to be able to verify the status of its customers and maintain the records accordingly.

Input tax incurred on costs relating to the supplies of advertising services will be recoverable in full.

Partial exemption

The Pecunia website services (platform trading and advertising) will form a separate sector in Betoak Ltd's partial exemption method. Based on the projections for year 1, using the values based method, this sector will need to apply PE fraction of 54.91% to its inputs. The details of the calculation are as follows:

The total value of services, which can be treated as taxable supplies with right to recovery of input tax will be £80million and it is made up of:

- Advertising services: £31million
- Specified supplies (B2C to customers outside the EU): £49 million

The total value of services, which are treated as exempt with no right of recovery is £65.7 million which represents intermediary services to UK and EU customers.
(£80 million/ (£80 million+£65.7 million) = 54.91%)

Looking at the cost projections:
The amount of irrecoverable VAT will be £6,523,440.80, (or £6,475,825.80, if IT services are attributed wholly to advertising services) made up of:

- Reverse charge VAT on DMZ's costs (Betoak Inc mark-up not included): £10,000,000 x 45.09%= £4,509,000
- Legal and statutory services: £90,000 x 45.09%= £40,581
- IT services £105,600 x 45.09% = £47,615 or nil as wholly relating to advertising services
- Overheads: £4,272,000 x 45.09% = £1,926,244.80

The amount of recoverable VAT will be £7,944,159.20 (or £7,991,774.20, if IT services are attributed wholly to advertising services), made up of:

- Reverse charge VAT on DMZ's costs (Betoak's mark-up not included): £10,000,000 x 54.91% = £5,491,000
- Legal and statutory services: £90,000 x 54.91% = £49,419
- IT services £105,600 x 54.91% = £57,985 or £105,600 as wholly relating to advertising services
- Overheads: £4,272,000 x 54.91% = £2,345,755.20
-

I trust this answers your query but if you have any questions or would like to discuss anything in more details then please do not hesitate to contact me.

Yours sincerely

Simone

MARKING GUIDE

TOPIC	MARKS
Liability of platform services	
1) Liability of what is being supplied via the portal	1
2) Financial intermediary analysis	2
3) Payment handling	1
4) Advertising services incl. not falling within fin. intermediary scope	2
Place of supply of services	1
Intra VAT group supplies	
1) Whole entity is a member of a group	1
2) Non-supply of internally generated services	1
3) Bought-in services through a group member s. 43 2a	2
4) Valuation of bought-in services Sch. 6 para 8A	1
Recoverability of input tax	2
Partial exemption – outputs analysis	2
Partial exemption – irrecoverable inputs	2
PHS	2
TOTAL	**20**

2. GRUNEWALD GMBH

To: Nicole.Adler@Grunewald.de

From: Laura.Booth@VATEC.co.uk

Date: 8 May 2019

Subject: UK VAT queries

Hi Nicole

To consider the UK VAT implications for Grunewald we need to determine if any supplies of goods the company will be making take place in the UK. For the purpose of my analysis, I have assumed that the contracts with Turbler and Shaftsland will be for the supply of designed components, but it is possible that these supplies could be seen as a mix of goods and design services. If the design work was to be a separate supply of services, they would fall within the general rule for place of supply of services and reverse charge VAT would need to be accounted for by Grunewald under its German VAT registration. This would apply under each of the manufacturing options (UK and Ireland).

1. Manufacturing of components in Ireland

The alternative supply chain involving the components being manufactured in Ireland would be more efficient from a VAT perspective and it could be structured to avoid UK VAT registration obligations for Grunewald. The required tooling does not need to be supplied as it is already on site, and the modification undertaken by Turbler will be a business to business service and as such will be outside the scope of Irish VAT and subject to a reverse charge in Germany.

The Irish manufacturer will make a supply to Grunewald, when the goods are still in Ireland and treat it as a domestic supply in Ireland. Grunewald can then transport the components to the UK for use by Top Gears. The UK legislation provides for 'call-off stock' simplification, which allows Grunewald to move goods to the UK as stock for Top Gears and treat this as an intracommunity supply, without the need for Grunewald to register for VAT in the UK. This simplification is available provided Grunewald does not make supplies from this stock to any other customers. There are no restrictions regarding the warehouse, which works with the contractual need for you to supply goods to Top Gears when they are required. Top Gears will account for UK VAT on the acquisition from Ireland on the earlier of invoice date or 15th day of the month following the month of movement.

Self-storage is mandatorily standard rated in the UK so if the landlord is VAT registered (very likely) VAT will be charged on the storage facility. Grunewald will be able to recover this VAT from HMRC through the EU refund scheme, which it will lodge through the German Tax Authority on-line portal.

With regards to the shipment to Denmark, the chain transaction can be broken into a domestic supply in Ireland made to Grunewald and then a triangular supply (see below for explanation) by Grunewald (using its Irish VAT registration) to the Danish subsidiary, with Top Gears being the intermediary party.

2. Manufacturing of components in the UK

When Grunewald makes a supply to Top Gears, without removing the goods from the UK, this supply will be subject to UK VAT. This will therefore trigger a VAT registration obligation in the UK for Grunewald and it will need to be registered from the date when the first supply to Top Gears is made as there is no registration threshold for non-established traders. Grunewald will have 30 days from that date to notify HMRC although the registration will be effective from the date of the first delivery and UK VAT will be due on all supplies. Grunewald is not required to appoint a fiscal agent or a VAT representative to deal with its UK VAT affairs but this is an option.

As Shaftsland will be supplying components which are located in the UK, it will have to charge UK VAT to Grunewald. Additionally, if Shaftsland makes a charge for storing goods until they are collected from

its warehouse by Top Gears then the cost of storage will also be subject to UK VAT as self-storage. The VAT on both these supplies can be recovered as input tax on the Grunewald's UK VAT return.

The movement of Grunewald's tooling from Germany to the UK for use in the manufacturing process in the UK would need to be reported as an acquisition in the UK by Grunewald and UK VAT will be due on the deemed supply of own goods. Since the tooling is not intended to be returned to Germany at the end of the contract, the movement from Germany will not qualify for an exemption as temporary movement of goods. An EC Sales list will need to be filed in Germany and the Intrastat thresholds considered in both countries, once the value of the tooling is known. If the tooling was purchased for consideration then the value of the transfer will be the purchase price, otherwise it will be the cost of manufacturing, if it was made by Grunewald.

The transaction involving shipments to Denmark involves four parties and three supplies and there is no simplification available to avoid VAT registrations. In a chain transaction only one of the supplies can be treated as a zero-rated, as established in *Euro Tyre Holding BV (C-430/09)*. Because the right to dispose of goods as owner passes to Grunewald and Top Gears when the goods are in the UK only the supply from Top Gears to its Danish subsidiary can be zero rated – this means that Grunewald will charge UK VAT on the supply it makes to Top Gears. You may consider removing Top Gears from the supply chain and supplying directly to the Danish subsidiary, which would allow for zero-rating as an intracommunity dispatch.

3.Sale of a gearbox from Poland

You should be able to make this proposed supply to Top Gears applying the VAT triangulation simplification. Triangulation can be used where three taxable persons (registered for VAT in different Member States) take part in a transaction, which involves an intracommunity movement of goods – the obligation to account for acquisition tax in the country of arrival can be shifted from the intermediary party to the final customer.

If Grunewald has a registration obligation because the UK manufacturing contract in scenario 2 is used, the triangulation simplification will not be available, and Grunewald will need to account for the acquisition from Zieleniec in the UK and make a UK domestic supply to Top Gears, instead.

With the Irish manufacturing option adopted, Grunewald is the intermediary in this chain transaction, the requirement for it to register for VAT in the UK will be removed. Zieleniec would treat its supply to Grunewald as an intracommunity dispatch and it will need to quote our German VAT registration number on their invoice. When Grunewald invoice Top Gears you will need to quote Top Gears VAT number together with some triangulation simplification narrative. Top Gears will then be obligated to account for UK VAT on the acquisition. Grunewald will be required to notify HMRC of its intention to apply the triangulation simplification to this supply.

If you have any questions or would like to discuss further, then please let me know.

Kind regards

Laura

MARKING GUIDE

TOPIC	**MARKS**
Goods versus services /mixed supply consideration	1
Liability of design services	0.5
Scenario 1: Manufacturing of components in Ireland	
Tooling modification service liability	0.5
Call-off stock conditions, incl. Top Gear's premises	1
Call-off stock time of supply	1
Storage services liability	0.5
Recoverability of VAT on self-storage via EU refund scheme	0.5
Supply to Denmark: domestic supply in Ireland and triangulation	1
Scenario 2: Manufacturing of components in the UK	
Place of supply of goods	1
UK registration obligation for Grunewald	1
UK registration obligation: application deadline and registration effective from date	1
Recoverability of VAT charged by Shaftsland as input tax	1
Chain transaction	
Zero-rating of chain transactions (*Euro Tyre*) – discussing principles	1
Identification of zero-rated supply in the chain and UK VAT liability of supply to Top Gears	1
Consideration of an alternative supply chain excluding Top Gears	1
Movement of tooling	
Consideration of temporary movement exemption incl. conditions	1.5
Reporting obligations incl ESL and intrastat	1
Valuation of tooling	1
Sale of a gearbox from Poland	
Triangulation with conditions under scenario 1	1
UK supply under scenario 2	0.5
PHS	2
TOTAL	**20**

3. SWIFTPOST LTD

To: AJSmith@Swiftpost.co.uk
From: James.Cannon@ctaf.co.uk
Date: 01 May 2019
Re: Loper BV transaction

Hi Alex,

It was good to meet you and discuss the exciting developments at Swiftpost. I know you want to move quickly regarding the Loper BV transactions so below is my analysis.

1)

It is important to consider the Transfer of Going Concern (TOGC) rules, which treat certain business sales as outside the scope of VAT, and any VAT charged incorrectly would not be recoverable by you. The acquisition by Swiftpost will comprise the contractual rights and obligations and bespoke software installation - no other assets or resources will be included. However, for TOGC treatment to apply, the trade transferred must be capable of separate operation and include the totality of assets needed to operate a business (Zita Modes). Swiftpost would not be able to provide the transportation services without utilising the assets it has in its existing business and therefore the TOGC conditions will not be met.

The fee of €280,000 will be subject to reverse charge VAT either when the service is completed or when the payment is made (bespoke software is a service).

The on-going royalties fall within reg 91 of the VAT Regulations 1995. The royalties are taxable supplies of services, which take place at the earlier of service completion or the time of payment but HMRC accept the invoice date unless the payment is made earlier. The place of supply of the royalties will be the UK and they will be subject to reverse charge.

Charitable organisations are not excluded from the definition of a 'taxable person' in the EU Directive and supplies made to them are not subject to any special provisions. However, charities can engage in business and non-business activities and their taxable status should be carefully reviewed. Swiftpost will need to obtain the VAT registration number or otherwise ascertain if the client is in business. There is no requirement to have the customer's VAT registration number for the B2B outside the scope treatment to apply and alternative evidence of the business status from the Dutch tax authority will be acceptable.

If no evidence of taxable status is available, the supplies will be treated as supplies to non-businesses with the place of supply where the transport begins – this may expose Swiftpost to registration obligations if goods are moving from non-UK locations.

If the customers are registered for VAT or are able to provide alternative evidence of their business status then the supplies of transportation to the UK customer will be subject to VAT unless the goods are exported outside of the EU or the goods are moving wholly outside of the EU. The supplies of transportation to the Dutch customer will be outside the scope of UK VAT, regardless of the route of the goods. The Dutch business customer would have a mandatory reverse charge obligation in this instance.

With regards to the import agency services these will be supplied with VAT to the UK customer and outside the scope to the Dutch customer. Swiftpost will need to be careful that any amounts of importation VAT paid on behalf of the customers are not treated as Swiftpost's input as only the customers, as importers of record, have the right to recovery of VAT.

2)

Swiftpost can act as an intermediary of an insurance company based either in the UK or elsewhere. As Swiftpost would help arrange insurance to its own clients, undertake the preparatory and administrative activities and collect premiums this service would qualify for the insurance exemption in VATA 1994, Sch 9 (Group 2). Regardless of where the insurance company belongs the VAT implications would be the same.

Swiftpost becoming an insurance agent would make it partially exempt. It is only the commission for its services to the insurance company, which would be exempt and the premiums collected would not be Swiftpost's outputs.

Alternatively, Swiftpost can offer indemnity to its clients by compensating them for any losses under the transportation contract. Swiftpost can take out an insurance cover in its own name for the cost of indemnifying its clients. A compensation clause can be added to the contract and the cost of the service can be included in the overall price. Any compensation payments made to customers would be outside the scope of VAT.

If you have any question please let me know.

Kind regards,

James

MARKING GUIDE

TOPIC	**MARKS**
TOGC considerations	2
Liability of contract transfer and software	1
Royalty payments	
1) Liability	0.5
2) Place of supply	0.5
3) Time of supply, incl. continuous supplies consideration	2
Charity status for B2B rules	2
VAT registration obligations if charity status not confirmed	0.5
Importation VAT	1
Place of supply of transportation services	1
Insurance agent considerations	1.5
Insurance agency VAT implications	1
Indemnity provided by Swiftpost	1
PHS	1
TOTAL	**15**

4. UCHOC PLC

To: John.w.sweetman@uchoc.co.uk
From: Amanda.Black@bcta-uk.co.uk
Date: 01 May 2019
Re: Your recent queries

Dear John

Further to our telephone discussion, below is my analysis of the transactions and their implications.

1) Errors Made

Sale to BCE

For a supply of goods to qualify for export exemption:

- the goods must be exported within 3 months of the transaction,
- the supplier must hold satisfactory evidence of removal; and
- the customer must have no UK establishment for VAT purposes.

As BCE has no fixed establishment in the UK, then the export exemption would have applied despite BCE's UK VAT registration but, since the goods did not get exported outside of the EU within the prescribed time limit, Uchoc should have accounted for UK VAT in March, when this time limit was exceeded.

The fact that the goods were dispatched to Croatia within 3 months does not provide for zero-rating of the supply to BCE. Uchoc will need to make a correction to account for £11,000 of output tax.

Rum Import

The import VAT value used on the VAT return was understated as the importation value declared on the C88 would have included the excise charge. The deferment account statement by itself does not give the right of recovery and the C79 certificate is required for importation VAT to be recovered as input. You will need to make a correction to reduce the input by £40,900 and recover the correct amount of VAT (£71,077) as shown on the C79.

The process for correcting misdeclaration errors made in VAT returns is to make a disclosure to HMRC either on form VAT 652 or by letter. Alternatively, Uchoc can correct errors through its VAT return provided the net of VAT value of these errors is no more than 1% of turnover (subject to an upper limit of £50,000). The net value of Uchoc's errors is £19,177 (11,000+40,900-71,077) so unless there are other errors to correct, Uchoc can include them in its May VAT return.

2) Team Building Activities

UK VAT law allows zero-rating of intracommunity supplies of goods from the UK but it requires the customer's VAT registration number in the country of destination to be obtained and shown on the invoice. The VAT number's validity should be verified on VIES (Europa website) and if there is no valid VAT number available for the supply then UK VAT must be charged, even if proof of removal to another EU country is available. In your situation, having your customer's Irish VAT registration number is not sufficient to allow zero-rating of supplies delivered to France.

There is no absolute requirement for a VAT number to be shown on the invoice for cross-border services and the commercial evidence you will have for your customer should generally be sufficient to support the outside the scope business to business service although you ought to verify their VAT registration number and hold it on record from now on.

The delivery of a workshop in Ireland falls within the general rule under which a service is taxable where the customer belongs, and the customer is required to apply reverse charge in Ireland by accounting for this supply on its VAT return by including the VAT amount in its input and output tax totals and declaring the net in its purchases and sales totals. The tax point of this supply is 20 March 2019 as the basic tax point when the service was completed shifted to the invoice date. The chocolate used does not constitute a separate supply of goods and there are no reporting obligations with regards to its removal to Ireland.

The reimbursement of travelling costs is a part of the consideration for the workshop and there is no separate supply of travel.

For the supply of chocolates to France to be zero-rated the Irish company would be required to provide a VAT registration number in France. As there is no French VAT registration number available then UK VAT is due. The receipt of deposit created a tax point and VAT of £500 should have been accounted for on the April 2019 VAT return.

As an alternative, for the supply of chocolates to France to be zero-rated the Irish VAT registration could be used. The receipt of deposit should have been accounted for as an intracommunity supply of goods on the April 2019 VAT return.

I trust this answers your queries. Please do not hesitate to contact me if you have any questions.

Kind regards

Amanda

MARKING GUIDE

TOPIC	**MARKS**
Section 1- sale to BCE	
Conditions of zero-rating exports	1
UK VAT status of export customer	1
Dispatch instead of export impact	1
Time and quantum of the error	1
Section 1 – Rum import	
C79 certificate requirement	1
Excise charge in importation value	0.5
Time and quantum of the error	1
VAT errors	
Mechanism of error corrections: disclosure and VAT return	1
Section 2 – team building	
Status of the customer: VAT number and alternative evidence of business status	1
Place of supply	0.5
Time of supply	0.5
Chocolates used not a supply of goods	0.5
Travel expenses as disbursements	0.5
General rule service and reverse charge .	0.5
Section 2 – dispatch to France	
Conditions of zero-rating dispatches	1
VIES VAT number checks	0.5
Deposit for supply of goods	0.5
Time and quantum of error/ fallback rule option	1
PHS	1
TOTAL	**15**

5. EVERYPRINTER LTD

Jasmine Hawks
Everyprinter Ltd
Main Street
Bolton
BL1 1AR

Josh Fry
CTA Advisers
11 Castle Lane
Preston
Lancashire
PR1 0LD

8 May 2019

Dear Jasmine

Possible Duty Savings

Thank you for your query. There is a Duty relief that would suit your situation.

Under the Union Customs Code (UCC) there is a Special Procedure called "Processing" which, if used correctly, could save you some money. You would need to be authorised and to obey the conditions but I can help you with that. The relief would help you in two ways.

[1 mark]

Benefits

First it allows the Customs Duty and Import VAT to be suspended on imported components while you use them to manufacture a printer, referred to as the compensating product. At the end of the manufacturing process you make another import entry to release any printers to free circulation and pay Customs Duty and Import VAT at this stage.

[1 mark]

This entry uses the value of the compensating product, arrived at using one of the normal methods of valuation, and so will include the imported components plus EU-sourced components. As a result, it will be higher than the value of the components imported to free circulation. However, it also uses the Commodity Code applicable to the finished compensating product, which for your printers is 0%, so you will pay no Customs Duty.

[1 mark]

You must bear in mind though that the value for Import VAT is also based on the Customs value of the compensating product so would be considerably higher than if you paid this on the imported components. However, as the Import VAT is reclaimable through your VAT return as normal this is usually just a cash flow issue, not a real cost.

[1 mark - VAT]

The second way that the relief will help you is with the printers which you re-export from the EU. For these goods the Customs Duty and Import VAT are suspended at import and provided the finished printers are re-exported and you comply with the conditions of the regime they never become payable.

[1 mark]

Application Process

You will need to apply (form SP3 – IP) to HMRC to be authorised for Processing. HMRC have 30 days from receipt of all necessary information to issue the authorisation, but see Guarantees below.

[1 mark – form number not required for mark]

When considering your application HMRC will consider whether you are financially solvent, have a good record of compliance and will maintain the records necessary to prove compliance with the conditions of the relief. In addition, you need an Economic Operator Registration and Identification (EORI), but as you already import you will have this.

[1 mark]

HMRC will also consider whether they can grant your authorisation without it creating a level of administration to them which is disproportionate to your economic need. It is highly unlikely that this would be the case if you have sufficient records and are compliant. They will most likely visit your premises to discuss this and look at your premises.

[1 mark]

Lastly, HMRC must consider whether granting you an application to use the relief would harm the interests of other EU producers. The economic test is deemed to be met, except for some agricultural products, unless there is clear evidence that granting your application will harm the interests to other EU economic operators, so this should not affect you. The authorisation may last for up to five years.

[1 mark]

<u>Returns, throughput and records</u>

As said above, you will be required to keep records to show an audit trail from import through to re-export or release to free circulation. In addition, you will be required to submit returns, or Bills Of Discharge, usually quarterly demonstrating how you have met the conditions of the relief.

[1 mark]

You will need to agree a throughput period with HMRC. This is the length of time that goods may remain in Processing. This may be extended on application.

[1 mark]

You would also need to agree a rate of yield for each component that is used in the finished product. For some parts this would be very simple and would simply require a list of parts required for the finished item. For example, each printer might require four hinges for panels that open.

For others such as metal sheeting that is cut and shaped, you would need to agree how many components can be made from each sheet taking waste into account.

[1 mark – for rate of yield and an explanation or example]

If there is any waste or scrap which has a commercial value, such as off-cuts of metal, these must be declared to free circulation using the appropriate commodity code for the item.

[1 mark]

Failure to submit returns (Bills of Discharge) on time will create a Customs debt even if you have re-exported the goods. Failure to complete the regime within the throughput period will also lead to a debt as you will be deemed to have released the unprocessed goods to free circulation at the end of the throughput period.

[1 mark]

Guarantees

Under the UCC you must have a guarantee in place to operate a Special Procedure. You may apply for this at the same time (form CCG1) and HMRC have 120 days to approve this, so the decision on the guarantee may take longer than the authorisation decision.

[1 mark – form number not needed to score mark]

You may also apply for a reduction in the guarantee depending on the levels of compliance that you can demonstrate. This may be reduced to 50%, 30% or waived entirely for potential debts, such as that on goods that will be re-exported.

[1 mark]

For actual debts, such as goods released to free circulation, the only reduction available is to 30%. However, this is only available if you are an Authorised Economic Operator – Customs Simplifications (AEOC).

[1 mark]

Retrospective Authorisation

It is possible to apply for a retrospective Processing authorisation which may start up to one year before the date of your application although this will only be granted in exceptional circumstances.

It is more normal for it to be backdated to the date of your application, so it is important that you put the necessary records in place and submit your application as soon as possible to get the maximum advantage from the relief.

[1 mark]

I hope this answers your queries but please do not hesitate to contact me, if I can be of any further assistance.

Yours sincerely

Josh Hart

[PHS 2 Marks]

MARKING GUIDE

TOPIC	MARKS
Use Processing – it offers help in two ways	1
Benefits	
Allows suspension of Customs Duty and Import VAT while you manufacture a compensating product. Once made another entry is made to release to FC – Customs Duty and Import VAT paid then.	1
Use normal valuation method to arrive at value of finished product – so higher value than just imported components. Also uses Duty Rate of compensating product, 0% in this case.	1
Import VAT is also based on value of Compensating Product so will pay more. However, reclaimable, subject to normal rules, so this is a cash flow issue, not a true cost.	1
Second area of relief relates to compensating products which are exported – Customs Duty and Import VAT never become due.	1
Application Process	
Must apply to HMRC. (Form number not required.) They have 30 days to issue authorisation.	1
They will consider your financial solvency, record of compliance, and whether you have suitable records.	1
They will also consider whether your application would create a disproportionate level of administrative burden for them to administer.	1
They must consider the economic test – would granting you the authorisation harm EU producers. Deemed to be met except for agricultural products, so not an issue.	1
Returns, throughput and records	
Must keep audit trail from import to release to FC or re-export. Must submit BOD showing how completed relief.	1
Must agree throughput – period to complete regime with HMRC.	1
Must agree rate of yield – explanation or example needed.	1
Any scrap must be released to FC using appropriate commodity code.	1
Failure to submit returns on time creates debt even if re-exported goods. Failure to complete regime within throughput period creates debt as deemed release to FC.	1
Guarantee	
Will need a Guarantee. (Form number not needed.) May apply at same time, HMRC have 120 days to decide.	1
Reduction: Potential to 50%, 30% or waiver for goods to be exported.	1
Reduction: Actual to 30% but only if you are an AEOC – for release to FC.	1
Retrospective Authorisation	
Will usually be backdated to date of application – so apply as soon as have records in place. In exceptional circumstances, may go back one year before that – but this is unlikely.	1
PHS	2
TOTAL	**20**

6. JOE BRYDON

Dispute with HMRC over classification

I recommend that you consider the potential merits and costs of fighting the case against the amount at stake before deciding whether to and how to contest this decision.

[1 mark]

There is a two-stage Review and Appeal process. The Review is undertaken by someone independent from the original decision maker in HMRC. Your request must be made within 30 days of the date of the C18. If you have missed that deadline you can request an out-of-time Review, but HMRC are not obliged to grant this.

[1 mark]

The second stage, the Appeal, is heard by a Tribunal, and is completely independent from HMRC. You may appeal direct to Tribunal without a Review but I would not recommend that.

[1 mark]

The HMRC Review will take place more quickly, usually within 45 days unless you agree an extension, and be cheaper for you than a Tribunal hearing. This also gives you an extra opportunity to have your case considered than if you appealed direct to Tribunal.

[1 mark]

Although you may represent yourself at Tribunal, you are likely to feel that you need professional representation, usually a barrister, to present your case as well as any professional consultants. HMRC might be granted costs if you lose and these could be considerable.

[1 mark – for any two points on why it makes sense to use the Review before Tribunal]

The Customs Duty element of the debt is a true cost to you – you can only mitigate this if you can pass this on to your customers. Import VAT may be reclaimed through your VAT returns, subject to normal rules so this is usually only a cash flow cost.

[1 mark]

You should also consider ADR – Alternative Dispute Resolution. This can take place at any stage in the process but is something that HMRC must agree to; it is not a right as Review and Appeal are.

[1 mark]

ADR is a form of mediation, the person running it aims to help you and the HMRC Officer reach an agreement or better understand each other's position. The ADR mediator will not make a decision but the process may help one or other of you to change your mind. Again you may feel that you need representation which is a cost to consider.

[1 mark]

It is important to note that for any Customs debts no Review or Appeal request will be accepted unless you pay the debt in full, arrange for a guarantee to cover the debt if you lose or if you apply for and are granted a hardship certificate. This states that both paying the debt and providing a guarantee would do irreparable harm to your business.

[1 mark]

In summary, consider a Review and ADR as your first steps. It is worth seeking a legal opinion on the likelihood of success before appealing to Tribunal. You may, of course, choose to concede at any stage, if the costs are mounting and you see no prospect of success.

[1 mark]

MARKING GUIDE

TOPIC	**MARKS**
Recommend client considers costs of fighting against amount at stake.	1
Two-stage Review and Appeals process. Review, independent person in HMRC, must be requested within 30 days but can ask for out of time Review.	1
Tribunal is part of Court system – independent from HMRC. May Appeal direct to Tribunal.	1
Review is quick, usually 45 days unless you agree an extension. Also gives an extra opportunity over going direct to Tribunal.	1
Tribunal takes a long time, preparation and waiting for hearing. May represent self but likely to need barrister and professional consultants. HMRC may be awarded costs. Therefore, more expensive option than Review. (Any two points for mark.)	1
Must consider Customs Duty is a true cost – unlikely to be able to pass on. Import VAT can be reclaimed subject to normal rules.	1
Consider ADR - can take place at any stage. Not a right, HMRC must agree.	1
ADR is mediation aiming to help both sides understand each other's position. Not a decision-making process.	1
For any Customs Review and Appeal the debt must be paid, a guarantee be in place or a hardship certificate in place before it is heard. Hardship Certificate says that paying or putting up a guarantee would do irreparable harm to the business.	1
<u>Summary:</u> Consider merits and likelihood of success. Consider Review and ADR first. Seek legal opinion before going to Tribunal. Can concede at any stage to avoid more costs.	1
TOTAL	**10**