Chartered Institute of Taxation
Excellence in Taxation

The Chartered Tax Adviser Examination

May 2018

VAT on Cross Border Transactions & Customs Duties

Suggested solutions

1. ALF COOKIDGE

Our address

Client address

1 May 2018

Dear Alf,

VAT on Satellite services

Thank you for your letter regarding the application of VAT to satellite launching and related services.

One of the most important aspects of cross border services such as those you will perform is to identify where the place of supply will be for VAT purposes. This is important because it determines, amongst other things, the country in which VAT needs be accounted for and from which it may be reclaimed.

Your company already has a business establishment in the UK since you are UK incorporated and have your head office here. The position with each of the launch sites is slightly different and even though you intend to operate each as a branch of your company, the EU VAT rules require us to consider whether each of them, with the exception of the UK launch site, could be regarded as a fixed establishment in their own right and effectively independent of the UK established business establishment for VAT purposes. This would mean that the place in which the fixed establishment was located would in some circumstances determine VAT registration, whether VAT needed to be charged to the recipient of supplies and whether they could recover any VAT incurred under the cross border refund scheme.

Establishments and place of supply

For an establishment to be considered a fixed establishment capable to making and receiving taxable supplies it must have the human and technical resources necessary to perform those functions. Obviously, local VAT advice will be needed, but the proposed French site would not appear to create a fixed establishment as it has no permanent staff and cannot function without staff and technical support from the UK; it follows that activities conducted at the site cannot be attributable as supplies from a French fixed establishment. However, the Italian site has staff and satellite launching and monitoring capability and in my view is more likely to be considered a fixed establishment in Italy and would require registration and VAT to be charged to any Italian business customers.
Because of the absence of a fixed establishment in France it should be possible to recover any VAT incurred in France through the cross border refund scheme.

Supplies to Italian business customers

The launch and monitoring services which rely on both the UK and Italian locations need to be considered closely so that you can determine which of those locations is most closely connected with the overall supply. Generally when making such supplies to business customers located in other member states the place of supply will be where your customer is established. However, since you will have Italian established business customers this will become a critical issue because the rules generally require you to charge local VAT if the customer is established in the same country as the supplier. The exception to this only applies if the local (Italian) fixed establishment takes no part in the supply – which clearly would not apply in your case.

Recharges to sites in France and Italy

The proposed recharging to these sites will not be a taxable supply because they are merely recharges of costs within the same legal entity and do not represent supplies; this point was subject to a CJEU decision in *FCE Bank plc* CJEU (C-210/04). The only exception to this would occur if the overseas branch was a member of a VAT group in the member state but for practical purposes I have assumed that will not be the case.

VAT incurred on calibration services

Your Italian supplier of calibration services currently invoices work on the UK launch site and so it should not be charging you Italian VAT as this is a reverse charge service for which the place of supply is treated as the UK where your company and launch site are located.

If similar services are performed in the future at the sites in France and Italy they will also be subject to reverse charge provided they are not classed as services related to land – which I do not believe they can be on the information you have provided. However, if the French site does not constitute a fixed establishment the supply will be treated as made to your UK business establishment and the reverse charge will be due in the UK. Work at the Italian site should be outside the scope of UK VAT as it will be a supply performed in Italy between two Italian established businesses. The Italian VAT chargeable on this should be recovered through any Italian VAT registration or subject to a cross border refund claim.

Vessel purchase in Finland and fitting out etc. supplies

The arrival in the UK of a qualifying vessel from Finland will be treated as an acquisition at the time of arrival - although no VAT will be due as the vessel is a “qualifying ship” subject to zero rate. There are options regarding the fitting out and adaptations which if performed in Germany would be a B2B supply for which you would normally need to account for VAT under the reverse charge mechanism – but for which for the reverse charge will be nil as the services would fall within zero rating if performed in the UK. If additional works are performed by a UK established supplier in a UK dockyard the supplier will not charge UK VAT because the modification and maintenance of a qualifying ship is allowed to be zero rated.

I trust the above is helpful and please do not hesitate to contact me if I can be of further assistance.

Yours sincerely

D Gibb

MARKING GUIDE

TOPIC		MARKS
1. General rules	Key issue identification of PoS for taxing rights and means of recovery of input tax.	2
2.Determination of business and fixed establishments	Features which determine UK Business establishment – incorporation, head office functions, etc.	1
	Features which determine whether French and Italian fixed establishments exist	2
	Human and Technical resources essential for receiving supply. Absent in French site but present in Italian site.	2
	Requirement to identify which of Italian or UK establishments are making "composite" launch and monitoring supplies and reason why this is important.	2
	Exceptional rule where fixed establishment takes no part in the supply in territory in which it is established (force of attraction rule)	1
3. Recharges from UK to Italian and French sites.	No supply as within same entity as determined by FCE case. Exception if fixed establishment in VAT group (per Skandia) (No requirement to quote case names to gain marks)	1 1
4. Calibration services received from Italian supplier	Nature of supply of calibration services received – land/engineering/other – and resultant treatment for UK VAT purposes.	1
	Identification of correct treatment of VAT incurred by Italian and French sites – reverse charge, in country claim and cross border refund.	2
5. Proposed purchase and fit out of vessel	Acquisition of the vessel purchase upon arrival of vessel in the UK although allowed as zero rate, Treated as a B2B supply of goods by Finnish shipyard	1
	Contrasting treatment between reverse charge supply if made by German established business although no VAT calculated or supplied in the UK by UK established business but qualifying for zero rate Grp8, Sch8 VATA 1994.	2
	Presentation and higher skills	2
TOTAL		**20**

2. CHRIS SPAWSON

To: Chris Spawson, Commercial Director, cspawson@cpb.com
From: ctadviser@cpb.com
Subject: New Ideas for fiscal warehousing
Date: 1 May 2018

Dear Chris,

I am replying to your email of 17 April 2018 regarding fiscal warehousing and potential opportunities it could bring. As requested I have outlined the arrangements in the following note.

Fiscal warehousing is a regime in which certain commodities, which must already be in free circulation within the EU can be traded VAT-free, subject to conditions being met. Free circulation refers to goods produced in the EC or imported with all duties and taxes paid and could potentially benefit all of our EU, Swiss and Central American suppliers and other dealers in eligible commodities. Wholesale sales of eligible goods are allowed when those goods are in a fiscal warehouse, but retail sales are not allowed while goods are under Customs control in a fiscal warehouse. Consequently, it will not be possible to offer this facility to customers.

Coffee is one of the commodities which can be included within the regime but only when in an unroasted state and so fiscal warehousing could have some relevance to our business. Any roasted coffee could be stored physically alongside but not within the VAT relieved fiscal warehousing regime and would be subject to the normal VAT rules which we currently apply.

The most attractive feature for our business would be the ability for our suppliers and other third parties to trade coffee VAT free whilst in our fiscal warehouse and for which we could raise storage income. The individual traders would not be required to register for VAT if that was their only UK supply or to charge VAT on sales of coffee between themselves and us.

VAT is only charged when goods are finally removed from the fiscal warehousing regime and is calculated on the value of goods as determined either upon their entry into or from the final supply whilst in warehouse, plus the value of any services relating to them after the final supply.

It is of course the case that coffee is zero rated in the UK and can already be sold without VAT being charged by the supplier, however it can benefit from VAT free storage if in a fiscal warehouse and so really this is a key difference and would be particularly beneficial to overseas coffee traders who are not VAT registered.

I must make you aware that there are many obligations we would be required to meet as a fiscal warehouse keeper which include keeping detailed stock records, retaining evidence of receipt and removal, regular reporting to HMRC, accountability for any VAT on stock discrepancies while goods are in the warehouse and a potential joint and several liability for any VAT unpaid on goods removed from warehouse. You may therefore need to indemnify the warehouseman (through say an insurance policy) for potential losses in the event of a liability arising. The costs and liabilities of these additional functions should be considered against any potential additional income we could receive from storage and other permitted services such as repacking, sorting, grading, sampling etc. for which we would expect each recipient to provide us with a certificate to enable us to zero rate our invoice.

You requested my recommendation whether fiscal warehousing provides us with an opportunity to increase storage income – on balance I find it difficult to envisage that we could raise significant amounts of additional storage income by applying for fiscal warehousing authorisation. This is because our primary commodity, coffee, can already be traded VAT free in the UK and most coffee dealers who might require warehousing and other services will already be registered for UK VAT in order to recover VAT on ancillary costs associated with making zero rate coffee sales in the UK or for export. There is therefore a very limited market for coffee that is likely to find fiscal warehousing an advantage above and beyond the zero rating that is allowed for foodstuffs generally. Having said that a repacking service may be valuable to an overseas

supplier wishing to supply into the UK and avoid registration. It is also worth considering complimentary goods such as raw sugar, cocoa and tea which are also eligible for fiscal warehousing and for which we could potentially earn storage and repackaging income in a similar way to coffee.

If having considered my note you think there may be benefits in exploring this further I would be happy to assist.

Kind regards

Bob

MARKING GUIDE

TOPIC		MARKS
1.Fiscal warehousing	Description of fiscal warehousing regime and requirement for goods to be in free circulation	2
	Define free circulation with reference to EC and non-EC origin goods	1
	Eligible commodities include coffee, although only unroasted coffee and not if subject to retail sale in warehouse.	1
	Ability to store roasted coffee physically alongside unroasted but not within regime	1
	General description of how VAT is relieved on supplies of goods and limited range of relieved services including storage and repackaging while made in fiscal warehouse	2
	Description of basis of VAT charged upon entry or removal to home use	1
2. Commercial benefits/costs of fiscal warehousing	Comparison with same supplies not in fiscal warehousing and identification of main commercial benefit being VAT free services of storage etc. to non-VAT registered businesses	2
	Recognition of compliance costs and stock discrepancy/joint and several liability for VAT upon removal if not properly dealt with	2
	Obligation for recipient of services (other than storage) to furnish certificate in advance of each supply in warehouse	1
	Reasoned recommendation of the case for developing fiscal warehousing of coffee or complimentary eligible goods. Reasoned arguments for or against may attract the mark.	1
	Presentation and Higher Skills	1
TOTAL		**15**

3. ANDREW FLINT

Our address

Client address

1 May 2018

Dear Mr Flint,

Re: Request for advice on VAT recovery proposals

Thank you for your letter dated 30 April 2018.

VAT legislation applying to motor cars, including electric cars, means that except in limited circumstances, the VAT on the purchase, import and acquisition of a car is "blocked" if the car is made available for private use.

Your proposals to enable full VAT recovery are likely to attract HMRC scrutiny as they don't view the intention of the legislation to facilitate VAT recovery by businesses that are not generally able to do so.

Description as "mobile batteries"

There is no VAT legislation restricting input recovery upon the purchase of mobile batteries. However, the practical problem you face is the apparent misdescription, of what by common standards, would be recognisable as a car – with all of the features and requirements which apply to cars.

The obstacles you face are related to the apparent misdescription and the reasons you chose to describe a car in this way. HMRC are likely to hold that it is an abuse and will highlight the inconsistency between the requirements for insurance, registration, licensing etc. which would commonly be associated with a car and not a mobile battery.

The courts have considered "abuse of law" cases in which a tax advantage was sought by way of misdescription or structuring. A notable case is *Halifax plc* CJEU (C-255/02) in which the court found that artificial arrangements which have the gaining a tax advantage as their sole or main purpose and in which it was contrary to the intention of the law to grant such an advantage should be re-characterised to establish the situation that would have applied in the absence of the abusive practice.

Re-characterisation in these circumstances is likely to lead to HMRC objecting to full input tax recovery by your clients and assessing them for the VAT reclaimed, with related penalties. Your position will become difficult if you have advised them to seek full recovery.

Legitimate expectation

Legitimate expectation describes the doctrine where a taxpayer can place reliance upon the position of a tax authority. It has been applied to VAT by the CJEU, in *Marks & Spencer* CJEU (C-62/00) where it was held that national legislation retrospectively curtailing the period for exercise of a right was incompatible with the principle.

In *Sudholz* CJEU (C-17/01) it was held that a law was invalid when it allowed for a change of tax treatment, to the detriment of the taxable person, retrospectively.

The favourable response to a Non-Statutory Clearance (NSC) does not automatically create a legitimate expectation beyond the limited facts and circumstance provided to HMRC in the clearance request. You should be very cautious about deriving any certainty from a NSC beyond the specific facts and application solely to the business on whose behalf it was sought. I would however be happy to review the documentation and advise further.

Fiscal neutrality

Fiscal neutrality seeks to avoid distortion of competition by ensuring that VAT is not a charge upon businesses who are intended not to bear the burden of the tax, provided that their activities are subject to VAT.

It is regarded as consisting of two principles:

1) VAT is a tax on consumption and the deduction of input tax applies to relieve the burden of the tax, whilst taxing the final consumer.

2) Businesses should be treated similarly for tax purposes and the amount borne by an ultimate consumer cannot be greater than the VAT on the consideration paid.

Fiscal neutrality applies to:

1) Unjust enrichment, unjustifiably applied to payment traders but not repayment traders selling the same product; *Marks & Spencer plc* CJEU (C-309/06),

2) Financial products, where similar products were treated differently for VAT; *JP Morgan Fleming Claverhouse* CJEU (C-363/05)

3) Car parking supplied by public bodies and private businesses in potential competition with each other - *Isle of Wight Council* CJEU (C- 288/07).

The comparison between the VAT treatment of vans (deductible) and that of cars (non-deductible) could appear to infringe the principle which precludes treating similar supplies in competition with each other differently. However, the inability to recover VAT on cars relates to the expected element of dual or private use which exists but is dealt with differently in the case of a van (by charging output tax). You could not therefore rely upon the comparison you make to challenge the situation that currently exists.

There is a body of case law and EU principles which will make it difficult for you to achieve the input tax recovery for your clients.

I suggest you give careful thought to the position you adopt going forward.

Yours sincerely

T Taylor

MARKING GUIDE

TOPIC		MARKS
1.Abuse of law	Outline of the current VAT recovery position concerning private use of motor vehicles	1
	Probability that HMRC will regard proposals as abusive because of apparent misdescription of electric vehicles as mobile batteries and features that would illustrate abuse/seeking a tax advantage	2
	Reference to relevant EU Halifax tests and case law concerning abuse which could include, Weald Leasing, Ocean Finance, Muys'?	2
	The effect of recharacterisation and the difficult position of the adviser who has encouraged full VAT recovery	1
2.Legitimate expectation	Definition of EU principle of Legitimate Expectation.	1
	Legitimate expectation explanation including the aspects of retrospection and detriment (1 mark each)	1
	Reference to relevant case law closely aligned to the scenario	1
	Inability to rely on LE in relation to NSC except in narrow circumstances confined to specific facts and case in which clearance sought.	1
3. Fiscal Neutrality	Description of EU principle of fiscal neutrality and 2 part test	1
	Reference to EU cases and decisions related to the facts of the letter	2
	Reasoning why the principal is not likely to be reasonable applicable to the facts of this case i.e. comparison between private use of cars and vans.	1
	Presentation and higher skills	1
TOTAL		**15**

4. BOB

From: annadviser@taxknowledge.co.uk
To: bob@whateverimports.com
Subject: Preference
Date: 6 May 2018

Dear Bob

Thanks for your email.

First it is important to understand that there are three inter-connected parts to claiming preference: whether the goods "originate"; not processing after export and having the correct paperwork.

If the rules for one element are not complied with, the preference claim will fail.
[1 mark]

Originating

Goods qualify for preference upon entry into the EU if they "originate" in a country that is eligible for preferential rates of customs duty. The law sets out many rules of origin for different products and we would have to look at those that apply to the goods you intend to import to discuss exactly what is needed for those goods to qualify, however, I can explain the general principles to you.
[1 mark]

Goods originate in a country if they are "wholly obtained" there, for example if they are grown, harvested, or mined there.
[1 mark]

Obviously most goods are processed further than this and these goods must have undergone "sufficient working or processing" in the preference country to be "originating".

The term "sufficient working or processing" is the most difficult to understand. The exported goods do not have to consist solely of components which were wholly obtained in the preference country to qualify for preference, provided the goods have been "sufficiently processed".

What constitutes sufficient processing is set out in the law for each chapter of the Tariff. For example the law may require the finished goods to change chapter heading as a result of the processing, or for a specific process to take place (such as spinning raw cotton into yarn); or the rule may say that no more than 40% of the build-up value of the finished product may be non-originating.
[2 marks]

Under the relevant law, some simple processes (e.g. repacking; cleaning or preserving the items in good condition) that even if they technically meet the relevant rule will never confer preferential origin.
[1 mark]

No processing after export

The goods must not be processed between them leaving the preference country and them being entered to free circulation in the EU. Any processing will remove the preferential origin unless it is just something that is necessary to preserve the goods in the state that they were in when exported or is very minor such as adding labels to comply with local regulations.
[1 mark]

Documentation

The third element of claiming preference is having the correct paperwork. To claim preference you must enter the appropriate codes on your import entry and hold the GSP form or for low value imports an invoice bearing the relevant invoice declaration at the time of import.
[1 mark]

A Generalised System of Preference ("GSP") form is valid for 10 months from the date it was produced and goods must be declared to free circulation during this period to benefit from preference. A belated claim to preference may be made during this period if it was not made at import.
[1 mark]

Precision Parts - EU Components (Cumulation)

You may export components to the GSP country to be incorporated into the final product and still claim preference on the finished goods as long as certain rules are followed. This is known as cumulation.
[1 mark]

The components exported from the EU must originate in the EU – you cannot simply import a component into the EU from, say the United States and send it on to the GSP manufacturer. Provided the component originates in the EU, (i.e. grown here or sufficiently processed to gain origin in its own right), it can be sent to the GSP manufacturer accompanied by an EUR1, an EU preference certificate.
[1 mark]

The EU-originating component counts as originating in the GSP country for any calculation of what counts as originating and non-originating in determining whether the final exported product has been sufficiently worked or processed.
[1 mark]

REX – Registered Exporters

REX is being phased in over a number of years. Instead of GSP forms Registered Exporters will self-certificate commercial documentation stating that goods are eligible for preference. The importer will be able to check that the exporter is a Registered Exporter online.
[1 mark]

Guarantee

It is important to recognise that any claims to preference would require you to hold a guarantee for actual debts calculated at the higher, non-preferential rate of duty.

So although you may pay less duty than if you imported from non-preference countries there might be no beneficial effect on your guarantee.
[1 mark]

I would be happy to discuss the relevant rules for your products if you let me know what you are intending to import. I hope this has been helpful

Regards
Ann

PHS
[1 mark]

MARKING GUIDE

TOPIC	MARKS
Three elements required: originate; not processed after export and documentation.	1
Goods must originate and the rules vary by product.	1
Meaning of wholly obtained with two examples.	1
If not wholly obtained need sufficient working or processing.	2
Simple process that can never confer origin	1
Must not be processed after leave preference country.	1
Must have GSP or invoice declaration at time of import.	1
Period of validity 10 months.	1
EU Component (Cumulation)	
Can export EU part and have it incorporated and import finished item under GSP.	1
Exported part counts as originating in preference country for purposes of any calculation on originating materials.	1
EUR1 or Invoice Dec required.	1
REX	
Phased in; uses commercial paperwork which is self-certificated. Importer can verify online.	1
Guarantee Required	
Guarantee is required at highest, non-preferential rate of duty.	1
Presentation and higher skills	1
Total	**15**

5. PERI DANIELS

To: P.Daniels@funtime.co.uk
From: M.Adviser@tax.com
Subject: New Developments
Date: 2 May 2018

Dear Peri,

Thank you for your email of 20 April 2018 regarding your new business developments.

As you currently import toys into the UK from your Cambodian factories, I expect that you are familiar with the rules requiring you to enter the goods at the time of importation and pay the related Customs Duty and VAT based on their import value. It appears that your future import activity will remain very much as it exists under the current arrangements and import VAT will be fully recoverable as the toys are intended for onward taxable supplies to your business customers, either within the EU or for export.

Toy procurement and distribution

You may wish to use a simplification arrangement called "Onward sale relief" which allows goods entered from outside the EU to be transported to the ultimate EU customer who accounts for acquisition tax in the destination member state. The conditions to qualify for OSR are that the goods are despatched in the same state within 1 month of arrival in the EU and that you comply with all the obligations required of a normal intra EU despatch.

The specific questions asked by your EU customers can be answered as follows:

1) You can provide a stock of goods to be held at your customer's premises in the EU under arrangements referred to as "call-off" stock. This will mean that your despatch of goods from the UK will be treated as a zero rated supply conditional on you retaining your customer's EU VAT number and holding evidence of removal from the UK.

   There be will be an acquisition of the goods in the destination member state which, subject to the tax authority allowing such arrangements, your customer will account for the acquisition and any acquisition tax due provided title to the goods has not passed from you to them at that time. Any subsequent sale to your customer will not require you to complete any additional EU movement reporting although you will be expected to include the value of the sale on your UK VAT return. In addition, you will need to complete an EC Sales List (and possibly Intrastat returns if you dispatch more than £250,000 value of goods in any year).

   Alternatively, and essentially if your customer's member state does not allow the call-off arrangement, you will need to register for VAT in that member state to account for the acquisition and then charge VAT on the onward sale when title to the goods is passed to your customer. It may be necessary for you to appoint a tax representative to deal with returns and communicate with the local tax authority on your behalf.

2) Goods can be provided to EU business customers on a sale or return basis providing you treat the initial dispatch of the goods as a movement of own goods and account for acquisition tax in the country of destination. and include the value in Boxes 6 and 8 of your VAT return. This will require you to register in the destination member state and charge VAT if the goods are adopted by your customer. In the event that all of the goods are retained by your customer no further action is required. However, if some or all of the goods are returned to the UK you will need to account for them as a UK acquisition and enter details on your VAT return covering the date of acquisition. You may also have to complete Intrastat returns if your annual value of despatches and arrivals exceeds the annual thresholds of £250,000/£1,500,000 for dispatches and arrivals respectively.

3) Orders which require goods to be shipped from the UK to France to the order of a German business can be dealt with under a simplification procedure known as "triangulation". For triangulation to work, all parties must be established in their respect member states and the

goods should be treated as an acquisition in France. You will be able to zero rate the goods following the procedures outlined at 1 above and should complete an EC Sales List for the physical removal to France. It is particularly important that your German intermediary retains evidence that their French customer will account for the acquisition tax to avoid the possibility of incurring "fallback" acquisition tax in Germany.

Repackaging in transit in Cyprus

The repackaging of goods in transit whilst being removed from the EU will be treated as a reverse charge service to you by the supplier providing you can evidence that you are in business – providing a UK VAT registration number will usually satisfy this. You should account for output tax on the value of the supply received and recover an equivalent amount as input tax relating to the zero rated supply of goods exported outside the EU.

Transactions with the USA

The licence fee charged to you by the US film studio will be the consideration for the right to use intellectual property (IP). This will be subject to a "reverse charge" which means that you must account for VAT on your VAT return as output tax and may recover an equivalent amount as input tax as long as the reverse charge supply is received in connection with a taxable supply such as the sale of toys. You will need to account for the VAT in sterling which will require you to consistently use the US$: £ market selling rate of exchange or the period rate as published by HMRC. Because the licence fee is determined monthly, the reverse charge VAT will be due at the end of each periodic payment or billing period, or the date of payment where this is earlier.

US lawyers' fees – I am unable to provide a view addressing whether US Sales Tax was correctly applied, but there is a UK requirement for you to also account for VAT under the reverse charge procedure as detailed above for the license fee. The value to which you should apply 20% VAT is the gross amount paid and should include the US Sales Tax. It needs to be accounted for on the VAT return covering the date of completion of their service, irrespective of the fact that they are granting you 6 months from the date of invoice as a credit period.

I hope this is helpful but please do not hesitate to contact me if I can be of further assistance.

Yours sincerely

Mel Adviser

MARKING GUIDE

TOPIC		MARKS
1. Supplies to EU customers	Import VAT liability on goods which may be recovered in full.	0.5
	Onward sale relief may be claimed on import entry providing goods despatched within 1 month in same state for acquisition by customer in member state	1.5
Call-off stock	Outline of key requirements including goods dispatched from UK; evidence of customers EU VRN and removal. Goods to be kept at customers premises without title passing	1
	Customer to account for acquisition (in member states that allow for call off stock arrangements) otherwise supplier required to register in destination member state.	1.5
	Subsequent domestic onward sale needs to be accounted for and returns made possibly using tax representative.	1
Sale or return goods	Goods sent on sale or return terms should be treated as movement of own goods and supplier will need to register to account for acquisition tax and any onward sale.. Returns subject to acquisition tax etc. if returned to UK.	2
	ESL and possibly Intrastat apply to all of the above (max 1 mark)	1
Triangulation goods	Goods dispatched to a member state when invoiced to a business customer established in another MS. Zero rate conditional upon evidence of removal and German customer's VRN.	2
	ESL (and possible Intrastat reporting) required for physical dispatch to France	1
Repackaging in Cyprus	The supply of repackaging goods for removal from the EU will usually be subject to reverse charge treatment by the Cyprus supplier. The VAT due being recoverable in full.	1
2. US license fee	Subject to reverse charge calculation as service made where received (UK).	1
	Fully recoverable input tax as incurred in relation to taxable supplies of goods	0.5
	Requirement to convert to £ using market rate or HMRC period rate.	1
	Tax point determined monthly as continuous supply subject to periodic monthly payments.	1
3.US lawyer's fees	Subject to reverse charge on gross value inc US Sales Tax (converted as above)	1
	Tax point determined by date of completion of legal work, <u>not</u> invoice date or payment due date.	1
	Presentation and higher skills	2
TOTAL		**20**

6. JOHN

From: julie@customsadvice.com
To: john@wholesalers.com
Subject: Authorised Economic Operator
Date: 1 May 2018

Dear John

The status of Authorised Economic Operator Security and Safety (AEOS) will be granted to any EU established business involved in Customs operations who can demonstrate to HMRC that they meet the four sets of rules.

Compliance

To meet the compliance test you must not have committed a serious infringement or repeated infringements of Customs or taxation rules.

HMRC will judge this taking the size of your business and the number of transactions involved into account.
[1 mark]

Record Keeping

HMRC will consider whether you can demonstrate that you have processes and records in place that give you a good control over the movement of goods and the data related to those movements.

This includes proving that the records are appropriate for the type and size of your business; that systems are in place to detect and correct errors; that records are archived and are secure.
[1 mark]

Financial Solvency

You must demonstrate that the business is financially solvent and has over the last three years paid all customs duties and other taxes associated with the import or export of goods.
[1 mark]

Security and Safety

You must demonstrate that the company takes the steps necessary to secure the international movement of goods, both at import and export. This is commonly referred to as the international supply chain.
[1 mark]

This would include having procedures in place to ensure that goods are securely packed, access to goods is controlled for example by doors being locked, loads are sealed or secured when leaving the premises, and the logistical procedures are satisfactory.
[1 mark]

It would also cover the physical integrity of the premises, such as it being constructed in such a way as to make unlawful access difficult. This might include the use of fences or CCTV.
[1 mark]

For all of the criteria it is important to understand that the law is prescriptive about what is to be achieved but not on how the criteria are to be met.

All of the criteria are considered in light of the size and nature of your business and the measures necessary to meet the criteria can vary significantly depending on the type, size and location of the business and the goods handled.

For example, external CCTV might be appropriate at a large warehouse with many staff but is probably unnecessary at a business that only employs a handful of people.
[1 mark]

International Supply Chain

It is important to realise that as you manufacture goods that will be exported that the AEOS procedures might have to cover much of your operations. The supply chain is considered to start at the point when goods are identified as being for export.

As you export a lot of what you produce, your manufacturing process might need to be covered by the AEOS controls.
[1 mark]

Mutual Recognition

The EU has entered into a number of Mutual Recognition agreements with other countries under which they recognise our AEOSs as being more secure traders and we recognise their equivalent.

This could mean that you would benefit from faster clearance times or fewer checks on goods in the destination country.
[1 mark]

AEOC

If you decide to become an AEOS, I would recommend that you also become an Authorised Economic Operator – Customs Simplifications as there would only be two more criteria to be met.
[1 mark]

The first of these is very minor, there is an exception to the Record Keeping rule for AEOSs, they do not need to record which goods are Union Goods (in free circulation) and those which are not. An AEOC must do this.
[1 mark]

Additionally, to become an AEOC you would have to demonstrate professional competence, which can be done by demonstrating that the person in charge of your Customs operations has at least three years practical experience with customs matters.
[1 mark]

Benefits of being an AEOC

Were you to become an AEOC there would be other benefits to you such as easier access to customs simplifications in the EU and moving goods in temporary storage through different member states.

Also an AEOC benefits from a reduction in its actual guarantee for its deferment account to 30%. This reduction is only available to AEOCs.
[1 mark]

Benefits of being an AEOS

Were you to become an AEOS you would usually receive prior notification of the selection of your goods for examination, priority for examination over non-AEOs and the option to have goods examined at the location of your choice.

An AEOC is subject to fewer documentary and an AEOS fewer physical controls.
[1 mark]

I hope that this is helpful, please do not hesitate to contact me if you need anything clarified or if I can help you apply for AEO status.

Regards

Julie

PHS
[1 mark]

MARKING GUIDE

AEOS Criteria	
Compliance	
Must not have committed serious or repeated infringements of Customs or taxation rules (taking size of business into account).	1
Record Keeping	
Must have records and process suitable to control the movement of goods.	1
Financial Solvency	
Must be able to meet financial obligations and have paid taxes in relation to import and export of goods.	1
Security and Safety	
Must demonstrate steps to secure the international movement of goods.	1
Examples (any two for mark) relating to security of goods such as: securely packaging them; sealing loads etc.	1
Examples (any two for mark) relating to physical security of building such as physical construction of building; fences or CCTV.	1
Law is prescriptive on what must be achieved but not on the how. Size and nature of business taken into account.	1
International Supply Chain	
Need to cover goods from point identified as destined for export, so could include manufacturing process.	1
Mutual Recognition	
Potential for Mutual Recognition with other countries.	1
AEOC	
Recommendation to consider AEOC as only two more criteria.	1
Minor record keeping addition for AEOC of identifying Union and non-Union goods.	1
Professional Competence criteria of three years' experience with customs matters.	1
AEOC gives easier access to Customs Simplifications such as the Deferment Account guarantee reduction.	1
AEOS any two benefits or relevant points	1
AEOC and AEOS relevant benefits and other relevant points	2
PHS	1
Total	**15**