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The Chartered Tax Adviser Examination

May 2017

Suggested solutions

VAT on Cross Border Transactions & Customs Duties

Advisory Paper

QUESTION 1

Evermore Clothing Ltd
Chapel House
31 Whitegate Street
Birmingham
B32 1ZA

D Jenkins
Tax Adviser
72 Mulberry Grove
Birmingham
B31 1YZ

6 May 2017

Dear Philip

Thank you for your letter dated 4 May 2017 in relation to your new business supply chains. My advice is set out below.

Purchases from Anything Clothes Pty

Goods entering the UK from outside the EU are imports. Imported goods must be declared to HM Revenue & Customs ("HMRC") and import VAT paid at the appropriate rate, namely 20% on adult clothing and 0% on children's clothing (which is zero-rated). Import VAT is calculated on the value for customs purposes plus any incidental expenses (e.g. commission, packing, transport and insurance) up to the first destination in the UK, plus duty (12%).

Provided payment is made in line with the discount terms, the discounted value can be used for the duty and VAT calculation. Whilst the coat hangers have been provided free of charge, it is necessary to include them in the value for customs duty and therefore import VAT, so the value needs to be added.

The value of the first consignment for import VAT is £ 73,864 ((£65,000 – 2%) + £150 (free goods) + £10,014 duty at 12% (£7,644 + £2,352 on children's clothes). The import VAT payable at 20% is £14,772.80.

As importer, you will need to apply for an Economic Operator and Identification (EORI) number. Goods are declared using the Single Administrative Document ("SAD"). Where goods are subject to import VAT, you should be able to recover this as input tax. Import VAT is payable at the time of importation. You could potentially apply for deferment to assist cashflow but it is probably not worthwhile at the moment, though we could keep this under review.

Supplies to Bon Apparel SA in France

Goods imported into the UK before their supply to Bon Apparel SA will be treated as imports (see above). You should be entitled to claim relief from import VAT, known as Onward Supply Relief ("OSR"), where (as here) goods are imported in the course of an onward zero-rated supply to a VAT-registered person in another EU Member State and are removed within one month of the date of importation. The goods must be despatched in the same state as they were imported. Therefore, the adults' clothing that will have a football logo printed will not qualify (as you are altering them), but the clothing without a printed logo added will qualify. As the children's raincoats are zero rated, there is no impact for these. The relief must be claimed on the SAD. For the goods that do not comply with the OSR conditions, import VAT will be payable which (although deductible) would have a cash flow implication.

The despatch of the goods to France will be a zero-rated supply by Evermore Clothing Ltd and a taxable acquisition by Bon Apparel SA in France (provided the latter is VAT-registered in France). The movement of goods should be reported on your EC Sales List and Intrastat Declaration.

Supplies to Switzerland

You can zero-rate the supply of goods to Switzerland provided the goods are exported to Switzerland and you obtain and keep evidence of the export within three months from the time of sale. As these goods are being sold on sale or return terms, the time of supply is the earlier of

- (a) When payment is received by Evermore Clothing Ltd;
- (b) It is certain a supply has taken place; or
- (c) 12 months from the date the goods are exported.

Any goods coming back into the UK from Switzerland are imports. Using Returned Goods Relief (RGR), it is possible to re-import goods into the UK and obtain relief from import VAT, saving the need to pay and reclaim VAT on goods taken outside the EU and brought back unsold.

In order to benefit from the relief, the goods must be imported into the UK in the same state as when they were exported, and must be reimported within three years of the original export. Even though Bon Apparel S.A. will change the zips on some of the garments, as the purpose of this is solely to restore the clothes to good working order and not to upgrade the goods, these would still be eligible for RGR, if they were to come back to the UK after the 6 month period in which Bon Apparel S.A. will seek to sell them.

You still need to declare the importation and claim RGR on the SAD.

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

Yours Sincerely

David

MARKING GUIDE

TOPIC	MARKS
Identifying goods imported and, in principle, liable to import VAT	0.5
Explanation of value for import, recognising zero-rate children's clothes	1
Calculation of import valuation and import VAT, correct treatment of discount and free goods and reasoning	2
EORI required and goods declared using C88	0.5
Payment of import VAT and possibility of deferment	0.5
Recovery of import VAT	0.5
Goods Supplied to Bon Apparel SA France	
Identifying Onward Supply Relief (OSR). Conditions of OSR – Goods in same state and one month time limit	1.5
Identifying that goods which had been altered would not be eligible for OSR and import VAT payable	1.5
VAT treatment of onward supply to France, ECSL and intrastat requirement	1
Goods Supplied to Bon Apparel SA Switzerland	
Goods supplied to Switzerland zero-rated exports and conditions	1
Time of supply for sale or return	1
Identifying Returned Goods Relief (RGR). Conditions of RGR – Goods in same state as exported and three year time limit	1.5
Identifying that work to remedy defects is allowed and doesn't constitute altered	1
RGR - declaration still required, claimed on SAD	0.5
Presentation	1
TOTAL	15

QUESTION 2

Memo

To: Alan Adair, Keep Britain Young

From: Anne Adviser

Date: 3 May 2017

Subject: Keep Britain Young Ltd: VAT treatment of proposed transactions

Dear Alan,

It was a pleasure to meet you recently and discuss the activities of Keep Britain Young Ltd ("KBY").

As requested, I set out below my advice on the UK VAT treatment.

UK VAT registration

KBY's activities will comprise a mixture of business ("economic activity") and non-business activity. If supplied free-of-charge the yoga classes are non-business, as are charitable activities such as soliciting donations. If KBY makes a charge for the classes, this is likely to be an economic activity even if it is intended only to recover costs. However, as KBY is a charity, I consider that if a charge is made, the classes may fall under supplies of "welfare services" and therefore may be VAT exempt. Sales of goods in the shops is also an economic activity, because it involves making taxable supplies for consideration. Where the value of taxable supplies exceeds the VAT threshold, registration is required. Some of your supplies, however, will be taxable at the zero rate (see below). A business making only zero-rated supplies can claim exemption from VAT registration. The likelihood, however, is that registration will actually benefit KBY since it will entitle it to recover VAT on certain costs (see below). I recommend, therefore, that you apply for registration immediately, and I can assist you with this.

Donated goods

Goods imported from a place outside the EU, such as Canada, are in principle liable to VAT at 20% on importation. However, where such goods are donated for sale in KBY's shops, zero-rating (VAT at 0%) applies on importation and on their supply in the shops. The other goods which KBY is purchasing from Canada are also imports. Books and maple syrup are zero-rated in any event. No VAT is chargeable on import or sale. However, the gifts and yoga mats are liable to import VAT at 20%. VAT on sale ("output VAT") must be charged at 20%. As to VAT recovery, see below.

Donated goods from AB Clothes GmbH are not imports but are intra-Community "acquisitions" of goods. KBY must account for acquisition VAT at 20% unless the clothing is for resale, when acquisition and onward sale are zero-rated. When the goods are donated, the value for calculation of VAT would be the value of identical or similar goods.

KBY will incur VAT at 20% on the purchase of the diagnostic goods. Zero-rating would only apply if KBY is "an eligible body" (such as a hospital, UK health authority or research institute), which appears not to be the case. Lending the items without charge is a non-business activity. For VAT recovery, see below.

Transactions with Keep Ireland Young Ltd ("KIY")

KBY will send some of the diagnostic items to KIY. As the goods form part of the assets of KBY, their disposal free-of-charge is a deemed supply for VAT purposes. Provided, however, KIY is VAT-registered in Ireland (and KBY issues an invoice showing KIY's VAT number), the supply is zero-rated as an intra-Community despatch of goods. Liability to account for acquisition VAT is then "shifted" to KIY. If KIY is not registered for VAT in Ireland, then UK VAT at 20% would need to be accounted for on the purchase price of the goods or of similar goods or in absence of the purchase price the cost price of the goods when the movement takes place.

KIY will second instructors to KBY to run the yoga courses. In principle, KIY will be making a supply of services because KBY is providing consideration by meeting the instructors' hotel costs. KBY would be liable to account for output VAT under the reverse charge procedure, but would recover a similar amount of input tax. However, if the instructors are involved in providing free classes (i.e. non-business), KBY will not be receiving the instructors for a business purpose, and the supply of staff from KIY to KBY would be outside the scope of VAT as non-business, thus no reverse charge would apply.

Purchase of the stationery is a supply by Magritte to KIY, part of which is on-supplied to KBY by KIY. This is an intra-Community movement of goods involving three parties ("triangulation"). Normally, KIY would be treated as acquiring KBY's part of the order in the UK and making an onward supply to KBY liable to UK VAT. However, KIY may opt for a simplified procedure. Where this is used, KIY need not register for UK VAT but KBY must account for acquisition VAT on the stationery it receives in the UK.

VAT recovery

In principle, KBY can only deduct, as input VAT, VAT on expenditure attributable to taxable supplies (whether standard rated or zero-rated) which it makes or intends to make. VAT on expenditure attributable to exempt supplies or non-business activities is not deductible. Accordingly, KBY can recover any input VAT attributable to its shop sales and on diagnostic items supplied to KIY as an intra-Community despatch. It follows that VAT will not be deductible on:

- 1) yoga mats (unless KBY makes a charge to class participants);
- 2) instructors' hotel costs as although KBY is paying for the accommodation, the supply is not made to KBY but rather to KIY;
- 3) clothing given away;
- 4) diagnostic items loaned free in the UK;
- 5) stationery used for writing to donors.

For all, or any, of 1), 3) to 5) above, KBY could choose initially to deduct input VAT. However, when disposing of (or, in the case of 4) above, lending) the goods, KBY would be liable to account for output VAT on a deemed supply. This could offer a minor cash flow advantage. However, it is probably simpler to treat these goods as part of KBY's non-business activities and attributable VAT as non-deductible.

I hope I have covered all your questions but please do not hesitate to contact me if I can assist further.

Anne Adviser

MARKING GUIDE

TOPIC	MARKS
KBY is a charity, whose activities are a mix of economic activity and non-business	1
Sales of donated goods are zero-rated.	1
Yoga classes are non-business (or, if a charge is made, exempt welfare services).	1
A business whose supplies are zero-rated may claim exemption from registration. However, registration is likely to be advantageous	2
Goods from Canada are imports. Liable to import VAT (but zero-rated if donated for resale).	2
Books and food are also zero-rated, even if purchased. Sales of other non-donated goods liable to VAT.	1
Donated clothing from Germany not an import but an acquisition. The acquisition is zero-rated where goods are to be sold (but not if given away).	2
Purchase of diagnostic items liable to VAT. KBY/KIY not eligible bodies.	2
Sending diagnostic items to KIY is a zero-rated intra-Community despatch. Free loan in the UK is non-business.	1
Secondment of instructors is a supply (KBY bearing hotel costs is consideration). But is outside the scope of B2B supply if instructors are for a non-business activity.	2
Purchase of stationery involves triangulation; a taxable acquisition by KBY if KIY opts for simplified procedure.	1
VAT generally recoverable if attributable to taxable supplies (sales, despatches), otherwise not recoverable.	1
Could recover VAT on yoga mats, clothing given away and UK diagnostic items; but there would be a corresponding VAT charge on deemed disposal/non-business use of assets.	1
Presentation and higher skills.	2
TOTAL	20

QUESTION 3

From: a.taxmanager@countersllp
To: j.sommer@worldwide.de
Date: 3 May 2017
Subject: United Kingdom VAT

Dear Joachim,

Thank you for your email dated 2 May 2017.

I have set out below my advice on the UK VAT issues which you raise.

UK VAT registration

Sales of goods to UK business customers by Worldwide GmbH ("Worldwide") are intra-Community movements of goods and as such there are no UK VAT implications for Worldwide provided the customer demonstrates that is UK VAT registered. However, when the value of sales from an EU country to UK non-business customers (including non-VAT registered businesses) exceeds £70,000 in a period of a calendar year, the business is required to register with HM Revenue and Customs ("HMRC") for distance selling. The registration threshold of £70,000 was breached by Worldwide at the end of September 2016 and UK VAT rather than German VAT should have been charged on these sales from 1 October 2016.

It is probably unrealistic for Worldwide now to invoice these customers for any additional VAT (even if the contract allowed). For the future, Worldwide will have to consider whether to increase its online prices to UK non-business customers, or whether to absorb the 1% difference between the UK and German rates.

As VAT will be due in the UK from the date that the distance selling limit was breached, it is likely that you wrongly paid the German VAT and a refund is due. You should take local advice on the mechanics of recovering this, though you may be asked to demonstrate first that VAT has been correctly accounted for in the UK.

Costs incurred so far and possible penalties

This is a belated registration. HMRC may impose a penalty of up to 30% of potential lost revenue. Mitigation may be available if, for example, HMRC were not already investigating Worldwide's activities and provided you co-operate fully. There is no penalty if "reasonable care" was taken. This is narrowly interpreted. To reduce potential exposure, therefore, you should register with HMRC immediately. Once registered, HMRC may impose the penalty noted above and at this point Worldwide would be able to provide further details as to circumstances that lead to belated registration to enable HMRC to consider whether there are grounds for reduction in any penalty to be applied.

Potential lost revenue is the net amount due (i.e. output VAT less deductible input VAT) from the effective date of registration ("EDR"), namely 1 October 2016, to the date of notification.

UK legislation allows VAT on expenditure incurred before the EDR to be treated as input VAT (if it was correctly charged) on supplies of:

- a) goods, which have not been consumed; and
- b) (save as HMRC may otherwise allow) on services supplied not more than six months before the EDR.

The Advertising services were supplied more than six months before the EDR and so the VAT could not be recovered. In any event, if supplied to Worldwide in Germany, they should have been treated as a business-to-business ("B2B") supply, with Worldwide accounting for VAT in Germany. Worldwide should therefore ask the supplier to refund the UK VAT charged incorrectly.

Accordingly, (assuming the flash drive is still owned by Worldwide), deductible VAT is limited to £30 on the flash drive and £140 for the hotel giving a total of £170. The potential late registration penalty (payable in addition to the VAT due) could, therefore be:

UK VAT on sales to individuals from the EDR to date = £155,373 x 1/6 = £25,896

Less Input tax of £170 = Potential lost revenue of £25,726

Penalty £25,725.50 x 30% =£7,718.

Possible future structure

Worldwide has a choice between setting up a branch or a subsidiary. A branch forms part of the same legal entity as its head office (unless it is organisationally and financially autonomous). A subsidiary is a separate legal person, capable of entering into contracts as a principal in its own right. For VAT purposes, in order to make or receive a supply of services, the branch must consist of a reasonably permanent combination of human and technical resources sufficient to make (or receive) the services.

Depending on what activities it undertakes (for example holding a stock of goods in the UK from which supplies are made, or making, or receiving, B2B supplies of services), a UK subsidiary will require VAT registration. The same applies to a branch (although, as Worldwide will already be registered for its distance sales, this registration will require amendment).

If Worldwide uses Mr Anson as an agent, it must decide whether he has the power to bind Worldwide under a contract to supply the goods and, if so, whether he is acting as a “disclosed”, or an “undisclosed”, agent. If he is the latter, HMRC treat a supply made by an undisclosed agent as a supply to, and by, the agent. If acting for an overseas principal, this may avoid the need for the overseas principal to be registered. However, the undisclosed agent will need to be registered and account for any UK VAT due. Given that Worldwide already has an established UK customer base (and will become registered for its distance sales), it is difficult to see what advantages might be gained from using a structure involving an undisclosed agent. A disclosed agency would require Worldwide to account for sales of UK-held stock.

Therefore, a branch or a subsidiary would offer a simpler structure from a VAT accounting perspective. However, consideration should be given to Worldwide’s medium to long term plans in the UK. For example, if Worldwide wishes to build greater presence in the UK and expand its business, then a subsidiary may be a more appropriate option in the long term.

Whichever UK structure Worldwide decides to adopt for its business, it is necessary to take into account corporation tax, on which Gordon will advise you.

Best regards,

Andy

MARKING GUIDE

TOPIC	MARKS
Treatment of Supplies to UK customers	
Intra-Community despatches and acquisition rules contrasted with distance selling rules.	0.5
UK distance selling threshold and EDR September 2016	1
Liable to UK rate, not German. Recovering VAT from customers?	0.5
Impact on pricing for the future	0.5
Account for UK VAT; reclaim overpaid German VAT	0.5
UK compliance:	
Liability to late registration penalty.	1
Potential lost revenue is output VAT less deductible VAT. Possible mitigation but notify without delay.	1
Pre-registration VAT: goods/services.	1
VAT on flash player (if still owned) and hotel accommodation recoverable.	1
Advertising services not recoverable, because incorrectly charged (B2B). Request repayment of UK VAT.	1
Calculation of late registration penalty	2
Structuring UK operations	
Difference between branch and subsidiary	1
If branch, VAT registration requires amendment	1
Treatment of disclosed/undisclosed agent.	1
Recommendation as to the best way to proceed.	1
Presentation and higher skills	1
TOTAL	15

QUESTION 4

Notes for a meeting with Peter Baron re Union Customs Code (“UCC”) changes.

The UCC and its implementing legislation apply from 1 May 2016, but transitional arrangements mean that elements of the old legislation and decisions made under the old legislation continue to apply beyond that date.

Inward Processing

Suspension authorisation has an end date – 31 December 2018. May continue to use the authorisation until that date if there are no major changes (such as moving premises or adding new commodity codes.¹) to your circumstances affecting the authorisation which would require you to have a new authorisation.

Customs Freight Simplified Procedures (“CFSP”)

CFSP authorisation does not have an end date and is treated slightly differently. It can run until 30 April 2019, the last date of transition but must be re-assessed by then so that a new authorisation can be in place to run from 1 May 2019.

Other relevant points:

- *Need AEOC authorisation on re-assessment to continue to benefit from waiver for notifying presentation of goods to a customs procedure (links to benefits below)*

Guarantees

The UCC makes guarantees mandatory when you move to UCC authorisations, so the longer you can keep your Code authorisations, the better. It would make most sense to apply for a comprehensive guarantee covering all activities, otherwise, each import would need a separate guarantee.

Calculations would have to be made to determine how large an actual and potential debt you could incur in a period. This amount must be guaranteed and is described as the “reference amount”. Guarantee reductions are described by reference to this amount.

Whether the debt is ‘actual’ (Duty incurred) or ‘potential’ (Duty suspended) is relevant for reductions in guarantee levels. Both actual and potential guarantees may be reduced but by different amounts and with different conditions.

Guarantees for actual debts may be reduced to 30% of the reference amount but only an Authorised Economic Operator – Customs Simplifications (“AEOC”) receives this reduction. AEOC is only granted to businesses which amongst other things have demonstrated high standards of compliance with Customs and other taxation rules.

Guarantees for potential debts may be reduced to 50%, 30% or zero (a guarantee waiver). Applicants must demonstrate that they meet certain AEOC criteria. The more criteria you meet the greater the reduction you receive.

Need to weigh the possible administrative costs in applying against the potential savings of paying less for a reduced guarantee. I can help you but would need more information.

Businesses that go through the AEOC application process often find incidental business benefits by reviewing and documenting their procedures. Also other AEOC benefits, such as Self-Assessment and Centralised Clearance when these procedures are implemented; and as AEOC is an internationally recognised standard it might help secure new business.

Other benefits of being an AEOC

- *Generally – simplifications under Customs legislation*
- *Fewer physical and documentation controls*
- *move goods in TS*
- *For many authorisations and simplifications need to meet the criteria anyway*

MARKING GUIDE

TOPIC	MARKS
UCC start date and that transitional arrangements exist.	1
IP end date 31 Dec 2018 as long as no major change (with example).	1
CFSP end date 30 April 2019 as long as no major change.	1
<u>Guarantees</u>	
Mandatory with UCC authorisations, apply for comprehensive guarantee.	1
Two elements, actual and potential.	1
Calculation of amount and different levels of reduction – actual v potential.	1
Actual to 30% for AEOC.	1
Potential to 50%, 30% or 0% - AEOC conditions.	1
Weigh costs of being an AEOC against savings for reduced guarantee.	1
Any two benefits of being an AEOC other than guarantee reductions.	1
TOTAL	10

QUESTION 5

FROM: reg@taxadvice.co.uk
TO: patty.w@pastelkitchens.com
DATE: 6 May 2017
Re: Imports of Kitchenware and Coffee

Dear Patty

Thank you for your recent email with the various Customs queries in respect of your importations.

Customs Valuation Method

All the goods imported by Pastel Kitchens fall within Method 1 (Transaction Value). The Customs Value is therefore based upon the price paid, or payable, by Pastel Kitchens at the time of import.

I note below some particular features of your importations and the impact they have on use of Method 1.

Cardboard boxes supplied free of charge

The law lays down elements that must be added to, or deducted from, that value to arrive at the Customs Value. The cardboard boxes supplied by you to Nanjing Kitchenware Company Ltd are free of charge and therefore fall into the category commonly called 'assists'. The amounts invoiced to you by Guandong Crates Ltd (including the costs of delivering them to Nanjing Kitchenware Company Ltd's factory) must be added to the Customs Value of the goods you import from Nanjing Kitchenware Company Ltd.

The cost of freight and insurance only need to be included in the Customs Value up to the point of entry into the EU. As you have been adding the freight and insurance to get the goods to your premises you may be entitled to a repayment on the balance, if you can separate the amounts out. You should also alter the amounts declared going forward.

Other relevant points:

- *They are including freight and insurance to their premises in the UK and not just the EU border – might be some post importation charges to deduct*

Commissions

The 10% commission that Mr Zhang charges you should not be included in the Customs Value. He represents you in the transaction and is therefore your buying agent. Buying agency commissions do not form part of the Customs Value.

Miss Yang, however, is not a buying agent. She represents Yang's Electricals Ltd and is, therefore, a selling agent. Her commission must be added to the Customs Value of the imported goods. It does not matter at what interval she invoices you.

As you know that she will charge you 10% of the factory invoice value of the goods, you must add this amount to the declared value at import, even if she invoices you at a later date.

Coffee Machines

The new deal with the factory supplying coffee machines will involve some complexity. It does not matter that the company is charging Pastel Kitchens 75% of the price it charges all its other customers. You are not related to them and have arranged a good deal, so the price paid or payable is the one you should declare as this is the price you are required to pay.

However, the 10% of Pastel Kitchens' sales price that will subsequently pass back to the seller forms part of the Customs Value.

As this cannot be accurately quantified at the time of import because the price you sell at may vary from import to import, you will need to contact HM Revenue & Customs (HMRC) to agree a method for accounting for this.

I can assist you with this.

This will probably involve adding a notional amount to the Customs Value at import and periodically declaring the actual amounts to HMRC so that adjustments can be made.

Coffee - Prior Sales

The Union Customs Code (UCC) and its implementing legislation abolished the use of prior sales to reduce the Customs Value. However, there are transitional rules (known as "the sunset clause") allowing some prior sales to be used until 31 December 2017.

Prior Sales can only be used from 1 May 2016 where the importer is bound by a contract which was entered into before 18 January 2016.

Kona Java

It is unclear whether Pastel Kitchens has a formal contract with Kona Java Inc. Each transaction is dealt with separately, so the prior sales you have declared in the past are unlikely to be acceptable.

I suggest we contact HMRC to discuss whether your general agreement with Kona Java constitutes a contract for the purposes of the sunset clause, although I think this unlikely. It will be difficult to argue that you are bound by a contract to buy any goods at a specified price. However, even if we could convince HMRC that you have entered into a contract with Kona Java Inc, I would expect them to challenge your use of the Roasting Java Inc to Kona Java Inc price as a prior sale.

To be used as a prior sale, the transaction value must be the value of a sale at which goods were sold for export to the EU. It is not enough for Kona Java Inc simply to sell you some of this stock and for you to use the value which it paid for the whole stock. To meet the requirements, the goods would either have to be:

1. made to your specification, and have clearly been ordered by Kona Java to fulfil your order; or
2. manufactured in such a way that the goods were clearly destined for the EU at manufacture (for example, by being produced and packaged in line with EU legal requirements).

This would be very difficult to prove for coffee.

Even if you can overcome these first two hurdles, one more remains. Prior sales are subject to the same level of audit as other Customs Values. This means that you have to satisfy HMRC that, for example, the amount shown on the Roast Java Inc invoice represents the full amount that Kona Java Inc paid for the coffee. That is impossible to do without access to their records and accounts. I think it unlikely Kona Java Inc would provide you with this level of information.

Coffee – Guatemala

The price the Guatemalan roaster pays for raw beans cannot be used as a prior sale value as this related to a sale of raw beans. The imported product is not the same goods, as the beans have been processed after the sale to the roaster.

Toasters

As your contract with the Wong Electricals Ltd was entered into after 18 January 2016, it will not be possible to use a prior sale whatever the contract says.

I expect you will be required to amend all entries where you have used a prior sale made in the last three years to show the Transaction Value which you paid on the sale to you and also to pay the

additional Customs Duty. I suggest we contact HMRC to discuss your use of prior sales and to confirm whether they agree with my assessment of the situation.

I hope this answers your questions. If I can be of any further assistance, especially in discussing your use of prior sales with HMRC, please do not hesitate to contact me.

Yours sincerely,

Reg

MARKING GUIDE

TOPIC	MARKS
All imports discussed are Method 1	1
<u>Cardboard Boxes</u>	
Assist – must be added to invoice from Nanjing Kitchenware. Mark for reasoning and explanation	1
Freight and insurance only due up to EU border, if can be identified.	1
<u>Commissions</u>	
Mr Zhang is a buying agent – exclude commission.	1
Miss Yang represents her father so must be a selling agent, dutiable	1
Doesn't matter what interval she invoices at, charge is known at import so must be included in Customs Value	1
<u>Coffee Machines</u>	
Declare 75% - this is the price paid or payable.	1
Additional 10% forms part of the Customs Value	1
Declare notional amount at import and true up once invoiced.	1
<u>Prior Sales</u>	
UCC says can only be used to 31 December 2017.	1
Can only be used from 1 May 2016 where entered into contract before 18 January 2016.	1
<u>Coffee</u>	
Kona Java – probably cannot use prior sale post 1 May 2016 - no formal contract.	1
But check whether HMRC sees agreement as a contract.	1
“Sold for export” likely to be an issue, what it means and would be difficult to prove for coffee.	1
Could they demonstrate price paid by Kona Java is full amount? – probably not	1
<u>Guatemala</u>	
Cannot use this value as it is not for the same goods.	1
Wong Electricals toaster – contract entered into too late, cannot use prior sale.	1
They probably need to amend declared prior sale entries and pay duty. Suggest that we contact HMRC.	1
Presentation and higher skills	2
TOTAL	20

QUESTION 6

To: Sally.Smith@AdvancePlc.com
From: Samuel.Jones,@AdvancePlc.com
Subject: VAT treatment of Madrid conference
Date: 2 May 2017

Dear Sally

In response to your email, I have set out my advice below.

Overseas VAT incurred

In principle, only VAT incurred in the UK can be claimed through the UK VAT return of Advance plc ("Advance"). In order to reclaim VAT incurred in other EU Member States, a claim must be submitted through the HMRC online portal. This procedure should be available for the Italian VAT which has been incurred, to the extent it has been correctly charged. However, VAT will only be refundable if it is deductible under the rules which apply in the Member State where the VAT was incurred. For example, some Member States do not refund VAT incurred on hotel expenditure. A claim may only be made for a period of not more than one calendar year or not less than three months. Claims must be submitted not later than 30 September in the year following the calendar year in which the VAT was incurred. The minimum refund limits have been satisfied being EUR 400 for refund periods between 3 months and less than a calendar year and EUR for a calendar year or the remainder of a calendar year.

I consider that the Spanish VAT charged by Viva has been incorrectly charged. Viva's supply was made to Advance as a relevant business person established in the UK. Accordingly, this was a business to business ("B2B") supply. A credit note and a refund should be requested from Viva. Advance should have accounted for UK VAT under the reverse charge mechanism. As the VAT appears to have been incurred for the purposes of Advance's taxable business, the reverse charge VAT should be deductible as input VAT.

Supply of the Madrid Conference

Admission (including ancillary services relating to admission) is treated as supplied in the country in which the event in question actually takes place. This rule applies whether the recipient is a relevant business person (as is likely to be the case here) or a non-business person. It follows that Advance will be required to register for VAT in Spain and account for VAT on delegate fees. It would then follow that any Spanish VAT incurred by Advance in relation to the conference would fall to be recovered through its Spanish VAT registration and not through the EU Refunds Directive procedure outlined above.

Recharge of costs

Recharge of costs to Dublin branch is not consideration for a supply for VAT purposes because a branch is treated as part of the same legal entity as its head office *FCE Bank plc CJEU (C-201/04)*.

Delegate fees/deposits

As the deposit is a part-payment in advance for the supply of admission to the conference/hotel accommodation, it is liable to VAT. As the place of supply of the admission is Spain, UK VAT should not be accounted for on the deposits or ticket income. Credit notes should be issued in respect of the UK VAT already accounted for and once the Spanish VAT registration is complete, Spanish VAT will need to be accounted for.

If, however, the delegate cancels and the deposit is forfeited, there will have been no supply. EU case law establishes that, in such circumstances, the deposit can be seen as compensation and outside the scope of VAT.

Movement of printer to Spain

Ordinarily, the transfer of own goods between Member States is considered a deemed supply for VAT purposes. However, provided Advance does not have a place of business in Spain, removal of the printer from the UK to Spain by Advance will be treated as a temporary movement of goods. The goods would need to be eligible for temporary importation relief if they were imported from outside the EU and must remain in Spain for no longer than 2 years. Provided these conditions are met, there are no VAT return or EC Sales list reporting requirements. However, Advance should retain evidence that the printer has left the UK and must also maintain a register of temporary movement of goods.

Supplies of mobile application downloads

The supply of a download is an “electronically-supplied service”. This is because it is automatically delivered over the internet or an electronic network with no human intervention. Advance is a taxable person established in the UK. However, the VAT treatment of this supply will depend on who is the recipient and where they belong for VAT purposes. If the supply is to Empowerco UK Ltd (“Empowerco”), then it falls to be treated under the B2B rule, in which case, Advance must charge UK VAT on all downloads. If, however, the individual employee is the recipient, VAT would be chargeable where the employee belongs in the UK but not if the employee belongs in the Far East (because the supply would then be outside the scope of UK VAT).

Based on the information provided, I consider that Advance is making the supply to Empowerco, not to the individual employees. A range of factors are relevant: who ordered the supply; the parties to the contract; for whose benefit the supply is made; and who is liable for payment. Clearly, therefore, on these facts, this is Empowerco. The supply is for its business purposes, namely to increase efficiency and reduce costs. The position is unaffected by whether Empowerco recharges a proportion of the costs to its branches.

Although Empowerco is the recipient of the supply, electronic services are subject to an additional “use and enjoyment” test. To the extent the effective use and enjoyment is outside the EU no UK VAT will be chargeable. (This is so whether “use and enjoyment” is regarded as by the Far East branches or by the employees themselves).

An apportionment should be made using any reasonable basis, such as the number of downloads split between the UK and Far East users, as follows:

5,789 downloads by employees resident in the UK at £10.49 each = £60,726.61 subject to UK VAT at 20%. UK VAT charge of £12,145.32.

5,040 downloads by employees resident outside the EU at £10.49 each = £52,869.60 outside the scope of VAT.

The invoice to Empowerco should be split in this way, ensuring the VAT due is itemised separately so that it may be reclaimed as input VAT by Empowerco. As Advance’s services will be continuously supplied to Empowerco as employees download the app and invoices will be raised monthly, the time of supply will fall within the rules for continuous supplies of services. The time of supply is the earlier of the date an invoice is issued or the date payment is received.

Please let me know if I can assist you further.

Kind regards

Samuel Jones

MARKING GUIDE

TOPIC	MARKS
<u>Overseas VAT incurred</u>	
Identifying overseas VAT can't be reclaimed through UK return and the overseas reclaim process.	1
Only VAT that has been correctly charged can be recovered and only deductible under the relevant Member State's law.	1
Refund periods and minimum limits for claims recognising claims can be made for Italian VAT.	1
VAT historically charged by Viva is incorrect as should be B2B, request for credit note. Account for it under reverse charge.	1
Recovery of Spanish VAT through VAT return once registered.	0.5
<u>Recharges of costs</u>	
Recharge to Dublin branch not consideration for a supply.	1
<u>Charges to attendees</u>	
Place of supply of admission is where the event takes place, exception to B2B rule with a liability to register in Spain.	2
VAT treatment of deposits received. UK VAT charged incorrectly, need to issue credit notes and when registered account for Spanish VAT.	1
Treatment of forfeited deposits.	1
<u>Movement of printer to Spain</u>	
Ordinarily a deemed supply but could be temporary movement of goods with no reporting requirements.	1
Requirement that must be eligible for temporary import relief, returned within 2 years and need to maintain register of temporary movements.	1
<u>Supplies of mobile application downloads</u>	
Place of supply electronic downloads is an electronically supplied service; little/no human intervention	0.5
Factors in determining recipient of supply and identifying who supply is to and supply being to Empowerco.	1
Identification that place of supply is UK but in this case is affected by use and enjoyment.	1
Basis for determining use and enjoyment - any reasonable basis e.g. number of downloads.	1
Calculation of downloads within the EU which will be subject to UK VAT.	1
Calculation of downloads outside the EU which are outside the scope of UK VAT.	1
Invoice to Empowerco should be split and itemised and time of supply	1
Presentation and higher skills – including email format; use of headings, clear presentation of options and recommendations.	2
TOTAL	20