The Chartered Tax Adviser Examination

November 2017

VAT on Cross Border Transactions & Customs Duties

Advisory Paper

Suggested Solutions

1.

To: S Nordheim, s.nordheim@NorskeJerrod.com
From: Anne Adviser, anne.adviser@taxfirm.co.uk
Date: 7 November 2017
Re: Due diligence and Business plans – UK VAT

Dear Strom,

I am replying to your email of 31 October 2017 regarding aspects of UK VAT.

Tromso SA (Tromso)

From the information you have provided it appears that Tromso does not have a fixed establishment in the UK. The use of a storage depot in Liverpool would not be sufficient to create a fixed establishment as the company does not appear to have sufficient human and technical resources in the UK to enable it to be considered to have created a fixed establishment.

As a non-established taxable person Tromso should have registered for VAT within 30 days of making its first sale of a container to the local charities in June 2015. This is because the sale of tangible moveable property, such as freight containers, located in the UK at the time of sale are treated as a UK taxable supply for VAT purposes. There is no VAT registration threshold for a non-UK established entity and immediate registration is required.

You advise that container leasing in the UK commenced in 2014 – this could possibly require an earlier VAT registration date if containers were leased to non-taxable persons such as individuals, clubs and charities. However, if the only activity undertaken was to lease containers to business customers, there would have been no compulsory obligation upon Tromso to register for VAT at that time because any business customers would account for VAT on the leasing charge in the country in which they are established using the "reverse charge" mechanism.

In view of the strong possibility of a belated VAT registration penalty I recommend that you ensure that the vendors notify HM Revenue & Customs ("HMRC") of the company's failure to notify liability to register for VAT and provide an indemnity to you to address past VAT liabilities and potential penalties that may arise.

Recovery of VAT by Norske Jegerrod ASA (NJASA)

NJASA is established in Norway because of company incorporation and management taking place there. In a similar way to Tromso therefore there would be no UK establishment for VAT purposes. As a consequence of not having a UK establishment the company may be eligible to recover VAT under the non-EU VAT refund scheme. However, if it was regarded as having a UK establishment, it would be able to recover the VAT via a normal VAT return.

The scheme requires:

1. the claimant to not be VAT registered or have an establishment in the UK, or in another EU country;
2. there to be a reciprocal arrangement for VAT refund with the Norwegian tax authority;
3. that you do not make supplies in the UK other than those such as leasing where the customer accounts for any VAT under the "reverse charge" arrangement.

Any claims must be made with accompanying invoices to HMRC within 6 months of the end of the "prescribed year" which runs 1 July to 30th June, i.e. claims to be made by 31st December 2018 and 2019.

I have calculated the recoverable VAT to 30 June 2018 as follows:

	VAT exclusive £	Incurred £	Allowable £
Lease premium for storage facilities.	40,000	8,000	8,000
Annual charge for depot security.	28,000	5,600	5,600
Travel expenses of visiting manager from Norway.	12,500 per annum x 6/12	2,500 x 6/12	1,250
Accommodation rented for visiting manager.	18,000	0	0

The recoverable VAT for the remainder of 2018 will need to be claimed in the year to 30 June 2019 and will be:

	VAT exclusive £	VAT Incurred £	VAT Allowable £
Travel expenses of visiting manager from Norway.	12,500 per annum x 6/12	2,500 x 6/12	1,250
Accommodation rented for visiting manager	18,000 per annum x 6/12	0 x 6/12	0
Car Hire for manager's wife (non-employee)	1,000	200	0
Business entertainment - existing and potential UK clients	5,000	1,000	0
Business entertainment - Norwegian and American existing clients	3,000	600	600
Total allowable VAT reclaim			**1,850**

All VAT except for that relating to private use Car Hire and Business entertainment of UK clients should be refundable. The total VAT recoverable for each period will be £14,850 plus £1,850 = £16,700.

Providing NJASA solely makes future supplies to business customers it will not be required to register for VAT in the UK but will be able to recover VAT incurred for business purposes through the non-EU VAT refund process.

I trust the above points address your enquiries and I would be pleased to assist you with any registration or refund procedures, please contact me if you require any further assistance.

Yours sincerely,

Anne Advisor

MARKING GUIDE

TOPIC		MARKS
1.Liability to register for VAT (Tromso)	Tromso not established in the UK and no VAT threshold applies. A reasoned analysis that a FE exists will gain a mark.	1
	Registration required within 30 days of sale of first container or B2C supply.	1
	Past supplies to taxable persons don't require UK VAT registration if accounted for under the "reverse charge" procedure. A reasoned alternative analysis that Tromso has a UK fixed establishment and therefore needs to charge VAT solely to any UK established B2B customers will gain a mark.	1
	Liability to register at June 2015, but potentially earlier depending on status of customers, if B2C could be 2014.	1
	Advise vendors notify HMRC of company's belated registration liability and/or seek indemnities.	1
2.Recovery of VAT incurred by NJASA	Conditions for recovery of VAT under non-EU scheme.	4 x 0.5 = 2
	No fixed establishment in the UK due to absence of human and technical resources	1
	"Prescribed year" and need for two claims	1
	Time limits for claims	1
3.Calculation of VAT recoverable in 2018	Restriction on Non-business expenditure and Business entertainment for UK clients.	1
	Correct recoverable amount in total and for each claim period. (1 mark each)	2
4. NJASA VAT registration position	No compulsory registration required providing all future supplies are to business customers.	1
	Presentation and higher skills	1
TOTAL		15

2.

M Crespo
Financial Controller
Industries Formpro (UK) Ltd
47/49 Rail Cross Plaza
London NW10 3HJ

D Prosperi,
Debree LLP,
Cellicon Place
Luton LU1 5FF

7 November 2017

Dear Mr Crespo,

Re: HMRC letters

In reply to your letter dated 1 November 2017 concerning the requests by HM Revenue & Customs (HMRC) I am pleased to advise as below.

Request for hotel invoices

HMRC can request information and documents as part of their compliance checks to ensure the accuracy of tax returns or check a taxpayer's tax position. Although it is unusual for HMRC to begin a check into employment taxes and then request copies of invoices on which VAT has been recovered, legislation allows an officer to require a person to provide information, or to produce a document, if reasonably required for the purpose of checking the taxpayers tax position. Requests must be by written notice and a person's tax position includes the person's past, present and future liability to pay tax.

Having received a written request, you are required to provide invoices which support the VAT claimed as these are part of your statutory records which must be kept for 6 years. You have no right of appeal against a notice for statutory records and may be liable to a penalty if you do not provide them as well as having your claim disallowed.

The right to recover VAT only exists for the entity that has entered into an agreement to be supplied with hotel accommodation. If that is Industries Formpro (UK) Ltd, you can recover the VAT, otherwise you cannot and your parent would need to make an EU refund claim. If you recharge the hotel accommodation cost, you will need to charge UK VAT because hotel accommodation is a service related to land located in the UK and the recharge cannot be subject to the reverse charge procedure. Alternative treatments such as treating as a disbursement or a TOMS supply will not overcome the fundamental issue of the inability to get an input tax deduction.

Sales to Germany

Sales invoices to German customers form part of your statutory records and should be produced to HMRC upon request as they relate to supplies you made in the UK. The request for information is reasonably required to check your tax position.

Before providing anything to HMRC you should check that you have correctly determined the VAT liability of your supplies. To validly zero rate a supply of goods your invoice must display the customer's VAT registration, you must also complete an EC sales list and holding evidence of removal from the UK. If an error has been made I recommend that you belatedly seek details from your customer and re-issue sales invoices. You should draw this to the officer's attention as they may have copies of your invoices and it could be favourable if penalties are considered. If you cannot provide valid details you could be liable for UK VAT. If the supply was one of services providing evidence that the customer was in business in Germany would be sufficient to support your position.

Legal advice

It appears the UK law firm supply was to your Italian parent and was being used to determine how it might invest in the UK and what structure would be most appropriate. The fact that you have also not been required to pay the invoices, although not completely determinative of eligibility to recover input tax, is also a strong indicator that the supply was made to your parent and not you. However, it is possible that UK VAT should not have been charged if your parent is “a relevant business person” who conducts business activities or is registered for VAT in Italy. It is also important that it was not established in the UK at the time it received the supplies.

You may wish to check with your parent before considering next steps. If your parent was in business and did not have an establishment in the UK when advice was taken, I suggest an approach is made by them to the law firm explaining its position and requesting a credit note for the VAT incorrectly charged. The incorrect VAT recovery by your company needs to be advised to HMRC as an error correction, which if below £10,000 VAT or less than 1% of your box 6 figure and below £50,000 VAT, can be corrected on your next return.

Recommendations

1. Produce invoices to support input tax claimed in relation to overseas secondments.
2. Determine recipient of accommodation supplies and add VAT if recharged to parent.
3. Provide details of your sales to the German customer, but before doing so check whether your German customer can provide a valid VAT number.
4. Suggest law firm is approached to consider if VAT properly charged.
5. Disclose invoice error and incorrect VAT claim (if required) to HMRC.

I hope that the above advice enables you to respond accordingly.

Yours sincerely,

Diana Prosperi CTA

MARKING GUIDE

TOPIC		MARKS
1.HMRC Information Powers	HMRC may undertake “compliance checks" to check returns are correct and to ensure the correct amount is paid or repaid.	1
	Requirement to keep Statutory VAT records, including invoices (Reg 31 SI 1995/2518 – mark will be given without reference)	1
	Inability to appeal information notice request for statutory records.	1
	Recommendation that invoices are produced	1
2. Hotel accommodation VAT	Hotel accommodation VAT recovery dependent on identification of recipient of supply.	1
	Any recharge subject to VAT as service related to land in UK (cannot be reverse charged). Alternative view that within TOMS or to be treated as a disbursement will gain the mark.	1
3. Invoices and information for sales to Germany	Requirement to provide information and details which would include evidence that customer registered in Germany, removal of goods from the UK and correct invoice documentation – irrespective of supply being zero rated. Candidates who interpreted the supply as one of services and who suggested how the client could evidence the supply as being to a business customer will gain the mark.	1
	Seek to establish if your customer can provide a valid German VAT number belatedly	1
	Recommend that you disclose both irregularities to HMRC at an early stage to minimise potential penalties	1
	UK VAT may be chargeable if ultimately unable to provide German customers VAT number.	1
3. VAT claim on legal advice	Logical and credible analysis to determine the actual recipient of the supply.	1
	Requirements for supply to be considered to be made outside the UK – 1) Relevant business person and 2) No UK establishment of parent at time of supply.	2
	Recommended approach to law firm to gain credit for VAT incorrectly charged.	1
	Presentation and Higher Skills	1
TOTAL		**15**

3.

Mr N McNickel
Group Finance Director,
MacRosta Group,
Belfast

P Raines,
Tax Partner
Strongfirm LLP
Dunstown DT7 6PP

7 November 2017

Dear Mr McNickel,

VAT – Place of Supply issues

Thank you for providing the information regarding the MacRosta group together with your request for advice regarding VAT place of supply and input tax issues.

I have laid out my views on of each of the activities below and for convenience have followed the sequence used in your memo.

Almond Ltd

Under EC and UK law the place of supply of catering services is determined according to where the service is physically carried out (para 5, Sch 4A VATA 1994). This means that Almond Ltd would be expected to register for VAT in both the UK in respect of Belfast and Glasgow outlets and Republic of Ireland in respect of Dublin outlets. In addition, catering supplies made on the Belfast – Dublin train would be expected to be accounted for in the country from which the train departs. This means sales made on trains travelling between Belfast to Dublin should be accounted for at UK VAT rates on the UK VAT return and on Republic of Ireland returns for sales made on the Dublin – Belfast services. However, the UK takes the view that on-board catering is a supply of goods and not services and does not apply the findings in *Faaborg-Gelting Linien A/S (ECJ C-231/94).* Consequently, it remains UK policy to not apply VAT to catering provided on passenger transport departing from the UK (VATPOSTR 2300).

It is important to also recognise that any sales of goods for consumption on board the train are also likely to be treated by the UK as outside the scope of UK VAT (para 6 SI 2004/3148). I suggest you may wish to establish the view taken by the Irish Tax Authority as it may be different.

Hazelnut Ltd

Supplies of goods to UK customers, including to Almond Ltd's UK outlets, are considered to have a place of supply in the UK as their supply does not involve their removal from the UK, (s7(2) VATA 1994). Similarly, supplies to Almond Ltd's Dublin outlets and to customers in the Republic of Ireland are also treated as made in the UK under s7 (7) VATA 1994 since the supply requires the removal of the goods to another member state by Hazelnut Ltd. Supplies to Republic of Ireland customers will be zero rated and will require identification of the customer's VAT number on the sales invoice and completion of EC sales lists and possibly Intrastat declarations depending on annual sales values.

The supply of rights to use the MacRosta name and associated franchisee terms is a supply of services, which when made to "relevant business customers", as indicated by overseas VAT registration, results in the place of supply being the country in which the customer belongs or is established, (s 7A(2)(a) VATA 1994). In the case of the Gibraltar based franchisee, the same treatment would apply provided the franchisee can provide evidence to Hazelnut Ltd that they are in business in Gibraltar. Franchisees established in the UK will not need to be charged UK VAT on your supplies (despite the fact that you are UK VAT registered) as they are being supplied from a business established in the British Virgin Islands.

Brazil Ltd

The treatment of leasing goods for hire to business customers is a supply of services for which the place of supply is where the business customer belongs, (s7A (2) (a) VATA 1994 as above). If this is outside the UK, there is no requirement to charge UK VAT. In contrast, all UK established customers should be charged VAT as the place of supply will be the UK.

The commission earned on insurance related intermediary services will be treated as relating to a supply made where the customer belongs, which in this case appears to be Guernsey and does not require a VAT charge to be raised. Furthermore, the input tax relating to such supplies is recoverable under SI 3121/1999 Value Added Tax (Input Tax) (Specified Supplies) Order 1999 as Brazil Ltd is acting as an insurance agent providing intermediary services of introducing the customer and the overseas insurer, Nutmeg Ltd.

The majority of input tax incurred by Brazil Ltd appears to relate to the importation and purchase of coffee machines which are subsequently leased to customers as taxable supplies; consequently, this will be fully recoverable, s26(2) VATA 1994. The input tax on overhead costs can only relate to the making of taxable and specified supplies (as above) and will also be recoverable in full.

The correct VAT treatment of any “penalty” charges is a difficult area because for a supply to exist there needs to be a nexus between something done by the supplier and the consideration. A statutory penalty would not usually be subject to VAT, however in this case the penalty is raised due to a breach in the contractual relationship between the parties and could be viewed as the further consideration for allowing the continuation of the leasing arrangement. Alternatively, the approach of the Court of Appeal in *Vehicle Control Services Limited v HM Revenue & Customs [2013] EWCA 186* resulted in penalty charges on errant motorists being considered to be outside the scope of VAT despite a contractual relationship between the parties allowing rights to park a vehicle. On balance, I suggest that any charges raised on UK customers (for which the place of supply would be the UK under the general rule) are subject to VAT. As this is likely to be recoverable by your customers it should not cause them any difficulties. For overseas customers, no VAT needs to be charged because the place of supply is outside the UK.

Repairs under Insurance contracts

The place of supply of repairs under insurance changed on 1 October 2016 when supplied to a person other than the person insured, repairs under insurance contracts are now considered to be supplied where the repairs are used and enjoyed, in the majority of cases these will be subject to UK VAT. (SI 2016/726).

I trust the above enables you to review your current arrangements and obligations, please do not hesitate to contact me if I can assist further.

Yours sincerely

Peter Raines

Partner

MARKING GUIDE

TOPIC		MARKS
1.Almond Ltd	Place of supply of catering services (para 5, Sch 4A VATA)	1
	Place of supply of catering services on trains, including UK position to view as supplies of goods and not liable to VAT	2
	Suggestion to seek clarity from Irish Tax Authority for Dublin – Belfast route	1
2.Hazelnut Ltd	Place of supply of goods supplied to UK and Republic of Ireland outlets (Almond and third parties) s7(2) and (7) VATA 1994	2
	Customer's VAT No, ESL and Intrastat obligations	1
	Place of supply of franchise rights to UK, EU and non-EU businesses (Gibraltar). s 7A (2) (a) VATA 1994. UK and EU businesses subject to reverse charge treatment.	2
	Requirement to be satisfied customer is a "relevant business person"	1
3. Brazil Ltd	Place of supply of leasing services	1
	Place of supply of Insurance intermediary services	1
	Input tax treatment for imported goods s 26(2) VATA 1994	1
	Input tax treatment for costs associated with other "specified" supplies with reference to SI 3121/1999.	1
	Input tax on admin services and overheads recoverable in full as all outputs are either taxable or "specified" supplies for which deductions are allowed. NB No Partial Exemption.	1
	VAT treatment of penalty charges made under leasing contract (marks allocated according to quality of analysis and possible case law reference) Requirement is to determine whether a supply exists and if so where it is made recognising UK and non-UK payers.	2
4. Repairs under Insurance	Change of place of supply of Insurance related supplies since 1.10.16 to place where "used and enjoyed". (SI 2006/726 not required to achieve the mark)	1
	Presentation and higher skills	2
TOTAL		20

4.

To: DDimple@SnowCabins.co.uk
From: CTAdviser@exams.com
Date: 7 November 2017
Re: SnowCabins VAT queries

Dear Mr Dimple

I am responding to the request for advice concerning the correct VAT treatment of your activities in the UK and other EU member states.

Cabins sold in kit form

Sales of cabins in kit form for which you are responsible for delivery to private individuals in France and Germany are treated as distance sales of goods and require you to register in each member state in which your sales in a calendar year exceed specified turnover thresholds of either €35,000 or €100,000. Sales made before the threshold is reached should be subject to UK VAT.

I have calculated the cumulative sales in 2016 and 2017 (to date) as below:

	France €		Germany €	
	Cumulative annual sales €		Cumulative annual sales €	
2016 October	5,000		9,000	
November	12,000		25,000	
December	29,000		43,000	
Annual Total	29,000		43,000	Below relevant national thresholds
2017 January	0		24,000	.
February	12,000		46,000	
March	29,000		79,000	
April	34,000		107,000	German threshold exceeded (100,000€.)
May	96,000			French threshold exceeded (35,000€.)

These levels of annual sales require you to notify your liability to register for VAT in France and Germany no later than 30 days following the date on which you exceeded the relevant national threshold. There is no requirement to register overseas in respect of sales made in 2016 as they are under the relevant thresholds. For sales made in Germany you were required to register from April 2017 and in France from May 2017; you will note they each have different thresholds of €100,000 and €35,000 respectively. The registration will be effective from the date the liability to register arose.

As you will have on-going responsibilities to make VAT returns in Germany and France you will need to consider how you wish to meet those obligations including dealing with any enquiries from tax authorities. Your options are to appoint a company or personal representative located

in each of these countries to act on your behalf to meet your VAT obligations. Alternatively, you could handle all overseas VAT matters from the UK by correspondence and email. In either case, I would be happy to provide details of tax professionals who will be able to assist you meet your overseas obligations.

Cabins supplied and erected in customers' location

When goods are removed from the UK with the intention of them being assembled and installed in another member state there is an obligation for the UK supplier to register for VAT in the country to which they are removed. However, some member states allow a simplification arrangement in which the overseas customer accounts for any VAT due. To use this procedure, it is essential that you apply to the relevant tax authority, in advance of the first supply, for every customer who will account for the VAT on your supply. The details that need to be provided include your name, address and UK VAT number, the name, address and EC VAT number of your customers and the date on which you will begin installation. It is also a requirement that your invoice displays appropriate wording to notify your customer of their reporting obligations.

VAT registration requirements

The simplification for assembled and installed goods is only available if you are not otherwise required to be registered in a member state. Since registration is required in Germany from 1 May and France from1 June 2017 because of Distance selling obligations (above), you will only be able to use the simplification procedure for sales to the Netherlands and those made in Germany during January – April 2017 - before the obligation to register under distance selling rules. You therefore need to register for VAT in France and Germany but are not currently required to register in the Netherlands (although this may change if you start making distance sales to Dutch customers).

Sale or return, including destroyed goods

Goods sent to another EC member state on sale or return terms should be treated as a movement of own goods. To enable zero rating in the UK you or your distributorwill be required to account for acquisition tax in the Belgium. The alleged loss of goods is unlikely to give rise to any UK VAT liability providing you have retained sufficient evidence of removal from the UK which I understand you arranged. There may be greater interest from the Belgian tax authority as you will be required to have registered there to account for the acquisition and subsequent £30,000 sale of adopted goods. In these circumstances, I suggest you contact the distributor to obtain evidence of the destruction of the goods and advise your insurance company of the loss of stock as both are likely to be required to satisfy the tax authority that there is not a further liability for VAT in Belgium. The partial payment for adopted goods would not require any additional entry on your UK VAT return if the original movement was reported on the return and export sales list (ESL).

Work performed on third party's goods – roof trusses

The physical work performed on goods belonging to a third party is generally regarded as a supply of services for VAT purposes. Where the customer is a relevant business person the supply is treated as made where the customer belongs, in this case in France. There is no requirement to obtain the EC VAT number or enter details on your sales invoice for the supply of services to St Gremain as you would be required to for a supply of goods. However, you are required to enter the details of your service on an EC Sales List and maintain a record of the temporary movement of goods to and from other member states. You also need to ensure that your customer's goods have been removed from the UK after your work.

Please do not hesitate to contact me if you wish to clarify the steps you need to take or if I can be of further assistance.

Regards

Tax Advisor

MARKING GUIDE

TOPIC		MARKS
1. Cabins in Kit form	Recognition of potential Distance sales liability.	1
	Requirements for liability to register for VAT under Distance Sales rules, incl 2 EU optional levels of annual turnover	1
	Requirement to charge UK VAT on supplies until Distance Sales threshold reached	1
	Accurate and correct determination of cumulative annual sales for each member state and year	1
	Recognition of no requirement to register in respect of pre-April 2017 German sales and B2B Netherlands sales (subject to monitoring DS).	1
2.Supplied and Installed Cabins	VAT treatment of supplies to business customers, basic position and optional simplification procedure.	2
	Customer business evidence and notification obligations in respect of each business customer.	1
	Inability to apply simplification if otherwise required to be registered in a member state	1
3. EC VAT registration requirements (in respect of items 1 and 3)	Overall VAT position in respect of each of the 3 member states and relevant dates.	3 x 1 = 3
	Options available to address on-going overseas VAT obligations e.g. tax reps etc.	1
4.Goods supplied to EC on Sale or Return	Zero rate initial despatch of goods and acquisition tax accounted for by registration/tax representative in Belgium.	1
	Belgium VAT registration accountable for VAT on partial payment received.	1
	UK VAT zero rating supported by self-delivery but allegedly destroyed goods may be subject to challenge in Belgium.	1
5. VAT treatment of work performed on third party goods	Supply of Services. Physical work applied to third party goods generally treated as supply of services with B2B place of supply where customer belongs. Full mark includes recognising reporting requirements and temporary movement of goods rules.	2
	Presentation and higher skills	2
TOTAL		20

5.

From: darren@ctataxllp.co.uk

Sent to: exports@impsandexps.co.uk

Date: 6 November 2017

Subject: Inward Processing Relief Suspension

Dear Martyn

Late return / returns not submitted.

Exporting processed products is the main way of discharging Inward Processing Relief (IP). However, the ECJ case Dohler (C262/10 *Döhler Neuenkirchen GmbH v Hauptzollamt Oldenburg*) confirmed that it was equally important to submit the return (called a Bill of Discharge) on time.

[1 mark]

The Bill of Discharge is due at the end of the month following the end of the period. Dohler showed that all goods imported during the relevant period covered by the Bill of Discharge were liable to Customs Duty if the return was not submitted on time; even if it could be proved that all of the goods had been exported. Consequently, submitting the returns now will not automatically cancel the Customs Debt notified on the Demand Notes.

[1 mark]

We might however be able to reduce or eliminate the Demand Notes if we can satisfy HM Revenue & Customs (HMRC) that “special circumstances” apply to your situation. The law allows HMRC to extend the deadline for submission of a Bill of Discharge where “special circumstances” apply.

[1 mark]

The law also allows a debt incurred by failing to submit a return to be cancelled if an extension to the time limit to submit the return would have been granted, had you applied for it before it was due for submission.

[1 mark]

The best way to deal with this is to submit a request for an independent review of the decision to issue C18s, to HMRC, requesting to be allowed to submit the returns late, and we can do this on your behalf. This should however have been made within 30 days of the decision being communicated to you. (And in any event if you are subsequently issued demands for the imports to IP in 2017, this same procedure will apply to those demands.)

[1 mark]

HMRC will then have 45 days, unless you agree to a longer period, to uphold, vary or cancel the original decision. They will advise you of their decision in writing.

[1 mark]

If you are not happy with the result of HMRC’s independent review you may lodge an appeal to Tribunal with 30 days of the date of HMRC’s decision letter.

[1 mark]

The 30 days deadline for requesting an independent review will have passed for the C18s, if they were issued promptly. However, we can ask HMRC to consider an out-of-time review if we can show them that you had a reasonable excuse for not submitting your review in time and that you acted without unreasonable delay as soon your reasonable excuse ceased. Obviously much will depend upon the reasoning for not submitting the review request on time but hopefully we can persuade them to accept the review.

[1 mark]

However, regardless of whether they grant the request for an extension, HMRC will have charged duty on all goods that you imported to IP as they will not have known what you did with the products in the absence of the returns. Given that Josh's team have already submitted diversion entries for goods released to free circulation, you will now have paid Customs Duty twice on some imported goods.

If you provide details of these entries to HMRC, they will allow you to reclaim the overpaid duty. You can go back three years, so are in time. Again, we can help you with this.

[1 mark]

<u>Re-applying for IP</u>

You could apply for a new IP authorisation from a current date or you could apply for a retrospective authorisation renewal to start on the day after the last authorisation expired on 30 September 2016. (For the renewal of an authorisation, retrospection is allowed for a prior three year period, so you are within this timescale,)

[1 mark]

HMRC would be likely to grant this retrospective authorisation, which would give you the greater duty saving provided that you can demonstrate that you have suitable records to enable the correct operation of IP. As you said that you are still maintaining IP records this should not be a problem. It would also be advisable to produce the remaining four returns (December 2016, March, June and September 2017) to evidence that the procedure has been carried out correctly.

[1 mark]

This new authorisation for IP, now called "Processing", would be issued under the Union Customs Code and supporting legislation which came in to effect on 1 May 2016 and so would be subject to new rules.

The most significant of which is that you would be required to provide a guarantee for the amount of duty suspended while the goods are in IP. This is referred to as a guarantee for a potential debt.

[1 mark]

The amount of guarantee could be reduced to 50%, 30% or 0% of the duty, if you can demonstrate that you meet certain Authorised Economic Operator - Customs Simplifications (AEOC) conditions.

[1 mark]

It will no longer be a requirement that you have the intention to re-export goods entered to IP. You would be allowed to enter goods to IP, process them and then divert them to free circulation (release them to the EU market) without penalty.

As a result, Compensatory Interest will no longer be charged on goods diverted to free circulation from IP.

[1 mark]

I hope this helps, please contact me again if I can help with resolving the C18s.

Regards
Darren

Customs Duty Adviser

[Presentation – 1 mark]

MARKING GUIDE

TOPIC	**MARKS**
Dohler confirmed that submitting the Bill of Discharge is as important as exporting the goods. *Mark for the principle as opposed to naming the case*	1
If BoD is not submitted on time, Customs Debt is due on all goods; so submitting returns late won't cancel Demands.	1
Might be able to reduce Demand if can show you had "special circumstances" – this allows HMRC to extend deadline for submission.	1
Customs Debt can be reduced where an extension would have been granted, had it been applied for in time.	1
Request an independent review within 30 days of decision.	1
HMRC have 45 days (unless varied by agreement) to uphold, vary or cancel.	1
Then have 30 days to lodge Tribunal appeal.	1
30 days has passed – request out-of-time review, if have reasonable excuse and have acted promptly when excuse ceased.	1
Demand will have to be reduced by amounts already paid on diversion to free circulation – but you must provide details.	1
<u>Re-applying for IP</u>	
Could apply for IP from current date or retrospectively back to date of expiry of previous authorisation.	1
Likely to be granted if they can demonstrate suitable records to enable correct operation of IP.	1
Would be a UCC authorisation, so potential debt guarantee required.	1
Guarantee can be reduced to 50%, 30% or 0% depending on AEOC conditions met.	1
No longer need intention to re-export. Can divert to free circulation without penalty. Compensatory interest no longer applies.	1
Presentation	1
Note: Case name is not required to score marks	
TOTAL	**15**

6.

John Cook
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6 November 2017

Dear John

Subject: Customs Duties

Thank you for your enquiry. I will start by explaining these terms and then show you how the duties are calculated using your examples.

Candles

Anti-Dumping Duty (ADD) is an additional EU duty charged on products from certain countries, or certain suppliers in certain countries as a result of the products being sold for export to the EU at low values which may damage the interests of EU producers.

[1 mark]

Countervailing duty (CVD) is a similar charge but is levied to counteract a subsidy paid to the producers or exporters of products manufactured outside of the EU. A product may attract either ADD or CVD or both.

[1 mark]

Both duties are charged on the Customs Value in addition to the normal Customs Duty but are not levied on the Duty itself.

For your product:

Candles – CIF Customs Value £1,000.

£1,000 X 14% Customs Duty = £140
£1,000 X 53% Anti-Dumping Duty = £530
£1,000 X 17% Countervailing Duty = £170

Total Duties due = £140 + £530 + 170 = £840

Import VAT due:
Customs Value £1,000 plus Duties £840 = £1,840 X 20% = £368.

[3 marks – if Duty, ADD, CVD and VAT due are all correct]

Biscuits

The CAP or Common Agricultural Policy is an EU-wide measure designed to protect the EU farming industry and ensure the market for foodstuffs is kept stable.

It exists to ensure that EU farmers do not have to compete with cheap imports from outside of the EU

To protect farmers several types of additional charge may be levied at import as well as Customs Duty and Import VAT. These may be ad valorem (percentage of value), specific (an amount charged by weight or volume) or a combination of both of these.

[1 mark]

The Customs Duty and Import VAT due on the biscuits would be:

£25,000 X 10% ad valorem Duty = £2,500
5,000KG / 100KG X €24 = €1,200
€1,200 divided by 1.2 = £1,000

Duty Due = £2,500 + £1,000 = £3,500

VAT Due: Customs Value £25,000 + Duty £3,500 = £28,500 X 20% = £5,700.

[3 marks – if ad valorem duty, specific duty and Import VAT are all correct,]

Dates

Safeguard duties are like CVD but are imposed at short notice on particular CAP products where low value imports are detected.

[1 mark]

As ADD, CVD and safeguard charges are based on country of origin, and may even be producer-specific, they can be avoided by sourcing your goods from suppliers in other countries or suppliers whose products do not attract these charges. You would need to consider the usual commercial considerations before switching suppliers to avoid ADD and CVD.

[1 mark]

In particular you need to ensure that the new supplier is genuinely producing the product in a place that does not attract ADD or CVD and that the origin of goods is not being misdescribed to avoid ADD and CVD.

If the declared origin later turns out to be wrong, you could be liable to the ADD and CVD.

[1 mark]

Export Licence

This might be required for a couple of reasons. One is that some CAP goods may only be exported if an export licence is held, this allows the EU to monitor the amount of export subsidies spent in the agricultural sector.

[1 mark]

Another reason is that export licences are also required to ensure that export “refunds” are paid on those goods that attract them.

[1 mark]

I would need more information about the types of goods you wish to export to give more detailed information.

If you need any more assistance, please get in touch.
Yours sincerely
Mary
[Presentation – 1 mark]

MARKING GUIDE

TOPIC	MARKS
What ADD is and why ADD is levied	1
What CVD is and why CVD is levied	1
Calculation – Candles	
Duty, ADD, CVD and VAT due calculated correctly.	3
(If only three correct – 2 marks)	
Brief explanation of what CAP is and what types of charge may be levied at import	1
Calculation – Biscuits	
Ad valorem duty, Specific duty and Import VAT all correct	3
Dates	
What safeguard duties are.	1
Possibility of using new supplier to avoid ADD and CVD.	1
Risk of circumvention.	1
Export licence	
Some goods always require one to allow EU to monitor amount of support given to sector.	1
Others need one if you wish to receive a refund at export.	1
Presentation	1
TOTAL	**15**