Institution **CIOT - CTA**
Course **Adv Tech Domestic Indirect Tax**

Event **NA**

Exam Mode **OPEN LAPTOP + NETWORK**

Answer-to-Question-_1_

Lennartz

Previously, the Lennartz mechanism could have been used which would permit full recovery on purchase followed by otuput tax charges for exempt use in subsequent periods.

While this may be beneficial for cash flow, unfortunately this is no longer available for land and property which instead falls under the capital goods scheme.

Capital Goods Scheme

As the clubhouse is capital expenditure on property exceeding £250,000 which is subject to VAT, it will be a cpaital goods scheme asset. This means that the input tax recovery must be adjusted over a an adjustment period of ten years based on the taxable use of the asset over this period.

This means that in the first year input tax will be recoverable on the input VAT of £600,000 based on the partial exemption method, and sdjusted over the 9 remaining intervals. The adjustment period will start on first use of the building, which is assumed to be May 2026 when it completed.

Therefore, costs recoverable in relation the club house prior to first use are recovered in line with partial exemption method.

As VAT was incurred before the first interval, must work out the

the percentgae of total input tax to which St Jude's intitially entitled:

		2024	2025	2026		Total
Input tax		160,000	200,000	220,000		580,000
Recovery %		27%	27%	27%		
Recovered		43,200	54,000	59,400		156,600
Baseline recovery percentage					(156,600/580,000)	27%

The baseline recovery percentage is therefore 27%

In the following interval, there will be an adjustment of:

600,000/10*(27%-31%)= £24,000

As such, St Jude will be able to recover an additional £24,000 as input tax in 2027.

It must also be noted however that where recovery of input tax based on use differs substanitally from recovery from standard method (£50,000 or 50% residual input tax incurred and £25,000), there will be a standard method override and the difference must be accounted for in the same period as the annual adjusment (last VAt return of the period or the first VAT return of the following year). It is likely that as the club house is going to be majorly used for catering and bar income which are taxable supplies, that recovery based on use will be significantly higher than the standard method, therefore a special method will be required to be agreed with HMRC in order to allow for the fair and reasonable recovery of input tax.

(Following the case of Bridport and West Dorset, green fees charged to visitors are also exempt from VAT)

SPECIAL METHOD

Unloess taxpayer's have agreed a special method (PESM) with HMRC, the standard method of partial exemption must be used. This first involves direct attribution, with input tax directly attributable to taxable supplies deductible, input tax directly attributable to exempt supplies irrecoverable, and residual input tax then apportioned and recoverale on a use or value basis for first year year PE calculation, or value basis or using the prior years recovery percentage going forward, with an annual adjustment at the end of the year.

However, may be more beneficial for St Jude to agree a new PESM with HMRC. This cannot be used without prior approval with HMRC, and must provide a more fair and reasonable recovery of residual input tax than the standard method to be permitted. There are various basis that can be used for PESMs, such as turnover, head count, etc., but it appears that in this case a floor space method may be useful.

It is worth noting that HMRC have been historically opposed to the use of floor-based PESMs - for example, VisioNExpress's was overriden as it is particularly difficult for retailers to identify areas of floorspace which make exclusively taxable or exempt supplies.

However, a floorspace Method was approved for London Clubs Management. One characteristic that supported this approval was that a large proportion of their residual costs were properly related, which may be the case here and would support the case for the PESM.

Under a floor based method, Input tax on floor space directly used to make taxable supplies is deductible, floor space used to make exclusively exempt supplies is irrecoverable, where common areas are residual, such as toilets, cloakrooms and staff offices.

The floor space of the new club house could therefore be regarded as the following:

Ground Floor

1) Player facilities - taxable
2) Common areas - residual
3) Plant room - residual
4) Admin areas - Residual
5) Bar and catering store - taxable

First Floor

1) Kitchen and allied areas - taxable
2) Service restaurant - taxable
3) Bar and associated area - taxable
4) Lounge and relaxationa rea - residual
5) Common areeas and toilet facilities - residual

			Tax (m2)	Exempt(M 2)	Residual(M2)	
Player facilities			155			
Common areas					40	
Plant room					20	
Admin					65	
Bar & catering			20			
Kitchen			65			
Service restaurant			60			
Bar			20			
Lounge					95	
Common area & toilet					60	
TOTAL			320		280	600

Therefore, there seem to be a lot of residual areas (47%) which cannot be directly related to the making of either txable or exempt supplies, which may negate St Jude's argument that a floor-space base dmethod is fair and reasonable.

Per the London Clubs Management case, it should also be considered whether food is given away free to staff or players, as this may affect the catering areas as being regarded as fully taxable, however it isnt indictaed in this example.

Overall, therefore it is likely that floor space method would not be agreed and a sectroised method may be more fair and reasonable.

It may also be noted that this case is similar to that of

Hurlingham Club, which was unable to agree a floor space method as it did not prove that it was more fair and reasonable than its previously agreed PESM or standard method.

OTHER NOTES

--------------ANSWER-1-ABOVE---------------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

In the first instance, it is important to consider whether Gary actually is bona-fide self employed or if he would be considered an empployee.

Factors to consider are the following:

- PPSZ was not required to offer Gary work and he wasnt required to accept offers. As there is no mutality of obligation here, this points towards self-employment.

- PPSZ could not supervise/dictate how his services were performed. As Gary has control over how his services were carried out, suggests self-employment. However, as plumbing may be considered specialised, control here may be given less weight when considering employment v self-employment

-he was required to purchase personal liability insurance at his own cost, points towards self-employment as you would usually consider than an employer would meet these costs for an employee. The fact that both he and PPSZ are the insured persons suggests he may face some financial risk which points towards self-employment.

- he had to provide his own equipment, suggests self-employment

- The fact that he had to wear the company's branded unifrom, drive its logo'ed van and carry its identity card points towards employment, given that he appears to be integrated to the company to a higher extent than would be expected of self-employment.

- The fact that Gary is able to appoint a substituiton is useful in pointing towards self-employment - however, per the case of Hall v Lorimer, HMRC would place emphasis on evidence that substituiton actually occurred, rather than it just being written into a contract. The fact however that he may only appoint other company operators may however make this less of a strong argument and point towards employed.

- the fact that oayment deferred until client paid supports self-employment, as he doesnt receive regular salary/wages adn

therefore seems to bear some financial risk

As this is a multi-factoral test, the above factors must each be considered, overall, it is fair to conclude the factors as a whole point towards self-employment.

As self-employed contractor, must consider whether he was supplying plumbing servuces as a principal (with PPSZ agent) or as an agent of PPSZ who is principal.

The fact that Gary is able to contract his own clients, has a high level of control over his services (PPSZ cant dictate or supervise) suggests that he is acting as principal. As such, he should have accounted for VAT on the full value of the supplies he provided to the customer, excluding the 40% which PPSZ took as commission.

This is different to the case of A1 Loft Conversions - in that case it was clear that A1 weren't providing 'project management services' and were instead making supplies of loft conversions to customers rather than their contractors. Here,PPSZ are providing mere agency services in the form of its brnading, with a normal customer regarding Gary as the principal supplier of the plumbing services he was receiving.

ERROR

Gary has therefore made an error in his VAT returns by underdeclaring output tax on the receipts from PPSZ, as these were receipts for taxable supplies rather than outside of the scope salary as he believed.

Gary will therefore be liable to penalties for incorrect VAT returns as output tax has been understated.

Gary has been invited to make submissions to HMRC. This is likely to be an Information Notice. Under an information notice, HMRC can request information and documentation if it is reasonably required to assess a taxpayer's position. If he fails to comply with an information notice, he may be laible to a penalty of £300.

As such he shpuld provide his business accounts or any information requested by HMRC. HMRC are therefore required to make an assessment to the best of their judgement based on the amterial available. While HMRC are not required to do the job of a taxpayer, this must not be arbitrary or guesswork, and must take into consideration whether it is a representative period,

etc (per the Chrisovalandis Giorgou case)or else Gary will have grounds to appeal on the basis that best judgement wasn't used.

The penalty payable by Gary will be a percentage of potential lost revenue. It is likely that this will be seen as a careless error,and as it is a prompted disclosure the penalty will be between 15% and 30% of potential lost revenue, being the output tax that Gary has underdeclared.

However, Gary will be able to reduce this penalty to the minum of 15% by the quality of his disclosure. This is achieved by telling HMRC about the error, giving HMRC help in quantifying the error and giving HMRC access to records.

gary's penalty may be reduced to nil where he has a reasonable excuse - however, it doesnt appear that Gary sought any advice on this issue at any time, or anything other factors that would suggest reasonable excuse.

HMRC have an overarching 4 year time limit to make an assessment or up to 20 years if the error is due to dishonesty or fraud. This time limit is later of 2 years from the end of the VAT period containing the error, or one year from obtaining the sufficient information upon which to raise an assessment.
As the information was obtained by HMRC upon PPSZ going into liquidation, reasonable to assume thet werent aware of the information until April 2024 and therefore the one year time limit runs from then.

If Gary disagrees with HMRC's assessment, he can request a review from HMRC within 30 days of receiving the assessment. If he disagrees with the review, he can appeal to the First tier Tribunal within 30 days. Alternatively, he can appeal directly to the Tribunal.

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_

1)

The purchase of the undeveloped land would be exempt and no VAT charged, unless there was an option to tax in place. If VAT was charged, he would have been able to recover the input tax as pre-registration input tax given the timing of the supply

Supplies in the construction of dwellings are zero-rated. It does not matter that they are going to be used as holiday homes for the zero-rating for construction to apply, as they meet the criteria of dwellings per VATA Sch 8 Grop 5.

The work of subcontractors will also be zero-rated as it is a dwelling and a certificate is not required for zero-rating. Note that the domestic reverse charge wont apply as it is a zero-rated supply.

The transfer of the partially completed dwelling from Robert to *acorn p*roperty Ltd would be zero-rated. This is a result of the golden-brick principle - as work has progressed beyong foundation level, Acorn Property will acquire person constructing status and will also be able to obtain zero-rating on supplies of construction services.

The first grant of a major interest of the holiday home to Mr and Mrs Delaine will be standard rated, as supplies of holiday homes are excluded from zero-rated as the planning consent specifies that the grantee cannot use the home as its principal residence.

It may also be noted per the case of Ashworth, that exemption may still be permitted provided that the holioday home is actually lived in as a dwelling year round and is not in a holiday park or an area held out to be a holiday park. However, it does sgtate here it is in a holiday village therefore standard rating would still apply.

2)

The purchase of the undeveloped land would have been subject to SDLT at the non-residnetial rates as it is undeveloped land.

The transfer of the property from Robert to Acorn Property is a transfer to a connected company. As such, under s.53 SDLT is chargeable on the market value of the property.
it should be noted that grant relief is not available as the sale is from Robert to Acorn Property, and Robert is a sole trader and not a corporate body so it can't apply.

Taking on a debt counts as chargeable consideration for SDLT - assuming this is the market value, SDLT will be due on

3%*80,000= £2,4000.

Note that 3% rate must alwasy apply where residential property is purchased by a company.

The sale of the property to Mr and Mrs Delaine is subject to the residential rates plus the additional 3% surcharge given that it is that is additional to the main residence they already own. As such, SDLT will be due as follows:

3%*220,000= £6,600

it is clear that Mr and Mrs Delaine will not benefit from First Time buyers relief, as they already own another home.

The effective date by which a land transaction return (including a self-assessment of the SDLT due) and accompanied by the payment must be sent within 14 days of is generally completion, except from where it is substantially performed before then. Doesnt appear to have been substantially performed, so must so form and payment must be sent within 14 days of 3 May 2024.

There may be instances where the completion of works is included in the consideration, thereby the payment for construction by Mr and Mrs Delaine may be considered consideration. However, as the works are carried out on land acquired under the purchase and it doesnt appear that the works were a condition of the contract, they will not form aprt of the consideration and no SDLT will be payable on the £180,000 for construction.

--------------ANSWER-3-ABOVE---------------

--------------ANSWER-4-BELOW---------------

Answer-to-Question-_4_

Supplies of consturction of residential new build properties would be zero-rated, including building materials when supplied by those providing construction services. The supplies of any professional working in a supervisory capacity such as architects will be standard rated, as well as the purchase of building materials in insulation.

The first grant of a major interest of a residential property is zero-rated, therefore allowing input recovery on costs, except from standard rated supplies from professionals above i.e. architects, and incorporated goods which are not building materials, such as white goods and carpets.

Flats will be considered dwellings where they are self-contained units which is generally the case, therefore certification wont be required for zero-rating.

The replacement of claddding on the high rise properties will be subject to VAT at the standard rate as it is not supplied in the course of consturction of the dwellings, it cannot benefit from the zero rate.

Where subcontractors provide services to the main contractor, the domestic reverse charge (DRC) may apply where both supplier and customer are VAT registered and the supply falls within the CIS scheme. The installation of cladding would be a supply that would fall within the DRC given that it is not zero-rated when installed on already constructed and sold buildings, therefore CompactHome must account for both output VAT and input VAT on the supply. CladSupply wont not charge VAT on the supply to CompactHome. This is a meausre to counter missing trader fraud. CompactHome would not have to account for VAT via the DRC if it confirms in writing to CladSupply that it is the end user, however it may not want to do this (it is optional) considering the cash flow benefit o using the DRC.

Legal Costs

It must be considered whether CompactHome is able to recover the input VAT on theselegal costs. Per the RedRow case, input VAT is

recoverable where a third party pays for the costs, where there is an identifiable supply provided to the business that is directly linked to its taxable business activities.

Per the Airtours case, the fact that CompactHome pays the fees is not determinative that they have received the supply and are eligible for input tax recovery.

In this case, it is clearly the homeowners wwho have instructed directed the legal advisers and have received the services of legal advice. As such, there is not an identifiable supply to CompactHome so they will not be able to recovee input tax on the supply.

Roof Insulation Upgrades

Insulation is considered an energy saving material, and therefore services of installation of insulation will be reduced rated, and the supply of the materials will also be reduced rated but only where provided by the person who will be carrying out the installation.

Per case law, where it is a whole roof system and insualtion is only an ancillary part of the system, it will not be reduced rated and instead a single standard rated supply of a roofing system. However, in this instance it does seem to just be insulation so the services (and materials where applicable) can be reduced ratd.

Where the roof insulation upgrades are provided as part of the consutrction of new properties, they will benefit from the zero-rating of the construction of new residential property and both the supply of installation and the cost of building material will be zero-rated given that roof insulation is obviously incorporated and is ordianrily incoproated. It is stated that it is a superior product to installed previously, but it is likely the materials and fittings are still what would be ordinarily incorpated in a residneitla proiperty. COmpactHome can recover input VAT on materials.

As the building amterials are sourced from a wholesaler rather than supplied by someone providing the services, they will be standard rated and cannot benefit from the reduced-rating as arent supplied by the person installing them(but recoverable as input tax). Additionally, as it is new employees being used rather than contractors there wont be any VAT cost for supplies of staff or the installation services.

Where this is provided free of charge to customerts, there will be no VAT charge given that supplies of services given freely are generally outwith the scope of VAT, considering nothing is given in return by the homeowner.

Where the customers who dont qualify for free upgrades pay the £5,000, this £5,000 will be subject to VAT at the reduced rate of 5% (giving rise to output VAT of £238 (5000*100/105)to be accounted for by CompactHome), including any energ-saving materials as they are provided to the homeowner by the person installing them so are also standard rated.

The standard warranty on its roof insulation is not a supply for VAT purposes.

However, the extended three year warranty is exempt from VAT.

As a result CompactHome makes both taxable supplies of construction adn exempt supplies of insurance, adn is therefore partially exempt. As such, may want to consider agreeing a special method with HMRC as it is likely that the supplies of insurance will consume input tax disproportionally to the construction services as it is more passive, thereofre a special method may give a more fair and reasonable apportionemnt of residual input tax.

Finally, it may be considered whether the supply of insurance (i.e. the extended warranty) is a separate exempt supply or a single standard rated supply of roof insulation works. However, given that there is a option whether or not to be supplied with the insurance and there are clear separate prices and it is no articial to split (per the Levob case), clear that this is mutliplt supply and the insurance should be exempt.

2)

The standard one year warranty is not an insurance contract for IPT purposes and will not give rise to an IPT liability.

However, the extended warranty will be an insurance contract for IPT purposes it ahs the characteristics of an insurance contract, as there is a premium paid to the insurer in return for insurance against a loss from an uncertain future event, and the insured has an insurable interest i.e. it would suffer any loss (Prudential case).

The insulation insurance would be a standard rated supply of insurance at 12%, as it wouldnt be considered domestic appliance insurance which is liable to the higher rate.

Per the HomeServe case, the £50 paid to CompactHome is not included in the premium and liable to IPT by the insurer where it is provided under a bona fide separate contract which is identified in writing to the insured person. It is not a separate contract if -the following conditions are satisfied:
A- amounts charged to person entering into insurance cointract in their personal capacity, which is the case here.
B- the customer cant enter into the separate contract without entering into the insurance contratc, which seems to be the case here.
C- the insured cant negotaite prices, which seems to be the case here.
D-no comprehensive assessment of the individuals risk is undertaken to determine the premium under the contract, which is the case here.

Therefore, in this instance it isnt a separate contract. As such the £50 is included in the premium and liable to IPT by the insurer.

CompactHome does not need to register for IPT given it is not a higher rate contract.

--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_

5)

In the case of insolvency, where an insolvency practitioner is appointed they must notify HMRC within 21 days of the appointment via form VAT 769.

The insolvency practioner is required to account for output tax and input tax and prepare VAT returns as agent of the business.

VAT GROUP

As LocalTrade is representative member of a VAT group, it is responsible for the preparation and submission of a single VAT return on behalf of all group members.

As such, each member is jointly and severally liable to any VAT liabilities.

Any supplies between the group members will be disregadred for VAT purposes, and no VAT due on the supplies.

BAD DEBTS

Alan is eligible to make a claim for bad debt relief in respect of any supplies on which output tax was due and paid by LocalTrade to HMRC, but have not been paid by customers and have been written off as bad debts in the accounts, provided that 6 months has elapsed since the later of the date of supply, or it became due and payable. As the supplies have been made up to 12 months ago, it is likely that there will be supplies to which this applies.

However, there are spefific requirements for record keeping for bad debt relief claims to be paid by HMRC, with claims rejected by HMRC were a specific bad debt account was not kept per recent case law, so Alan should review the records kept.

Additionally, Alan would have to make a deduction to input tax recovered in respect of supplies on which input tax has been

recovered from HMRC but hasnt actually been piad to the supplier - as this is when 6 months has elapsed from later of date of supply and when it became due and payable, this wont be relevant currently as unpaid invoices only date back 3 months at present but Alan shoudl monitor this.

OPTION ONE

Generally, the sale of shares is an exempt supply and therefore input tax in respect of the sale will be irrecoverable.

However, one core case in this respect is Hotel La Tour - in this case, shares were sold with the proceeds to be used to fund a new hotel, therefore for the furtherance of the company's business activites. As such, it was held that the input tax on professional services was recoverable as there was a direct and immediate link to onward taxable supplies.

This is also in line with the Frank Smart case, in which he operated a farming business and was in receipt of EU farming subsidies. He then purchased farming units for the furtherance of his business, and as such input tax was recoverable as there was a direct and immediate link to the furtherance of his business.

As such, it is likely that this principle would apply here. As the purpose of the share sale is to purchase new equipment with the intention of the survival of the busines, it may be argued that the professional fees associated with the sale would be recoverable as due to being directly and immediately linked to the furtherance of the business.

OPTION TWO

If Alan is to use the proceeds from the sale share to pay off debts, this is a different secanrio.

While it may be considered that paying off debts directly related to business activities would have a direct and immediate link to the furtherance of the business, Per the BLP case, professional services associated with the use of sale sahre proceeds for this purpose was not sufficient of a link to permit input tax recovery. Therefore, the costs were attributable to exempt supplies and therefore irrecoverable. This scenario mirrors this case therefore it is unlikely Alan would be able to recover input VAT on professional fees in this scenario.

--------------ANSWER-5-ABOVE---------------

--------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_

OPTION ONE

Given that the MerchToGo will be supplying clothing and as there is no agreement for anything to be provided in return for the clothing (i.e. no reprocity of obligation) given that only a request is made but no contractual agreement for advertisement review, it is likely this will be considered a sample.

This is because it is a gift of items which are currently in its range of stock available to buy and they are supplied in order to promote further sales of the goods. To be considered a sample, it is not required that the sample is designed to get the recipient i.e. the influencer themselves ot buy more of the product, but that they are able to influence other potential customers to purchase the goods, which is the case here.

MerchToGo can still recover input VAT on goods provided as samples

As such, following the EMI case, the supply of a sample is not a deemed supply and does not give rise to an output charge. Before this case, HMRC viewed that only the first sample could be suppleid without giving rise to a VAT charge, however it is now ruled that all samples given will not be a deemed supply.

Where the blogger is paid commission for sales made by customers by its link, it is acting in an intemediary capacity as an agent, therefore it will be a taxable supply of services from the influencer to MerchToGo and be subject to VAT at the standard rate. This input tax will be recoverable as MerchToGo is wholly taxable.

Where bloggers use the discount code, this is likened to a money off coupon and per the Boots Case, a money-off coupon cannot be considered consideration but instead merely evidence of a right to discount. Therefore, output tax at 20% will only chargeable on the discounted retail price.

The fact that the bloggers can keep the products regardless

whether they give a review is irrelevant and does not change the VAT position, it is still a sample adn therefore no output tax is due on the supply.

OPTION TWO

In this instance, given that there is a signed agreement for which the influencer must do something in return for the clothes, this is a barter transaction.

In return for the goods of retails value £1000 and the prototype item, the infuencer is agreeing to provide advertising services.

As there is no monetary consideration, the amount of tax due and input tax recoverable is absed solely on non-monetary consideration in this instance.

The output tax must be accounted for on the value that MerchToGo would otherwise pay in money for what it is receiving, i.e. the advertising services.

This may be difficult as it may be subhective, but it may be thatr the influencer has a price list somewhere for this type of content which would be used if available (NAturally Yours case).

In determining the amount of input tax for MerchToGo and output tax for the influencer (assuming VAT registered), this is based on the value of what was received by the influencer, i.e. the clothes and the prototype.

Per the Naturally Yours case, it is more simple to work out the value of the goods as there is a known retail value. I.e. this is £1,000. As such, output tax is due by the influencer (assuming VAT registered) on these goods at £166.66 (1,000*1/6).

However, as the prototype is not available for sale there is no known catologue value, therefore per the Empire Stores case, this must be valued at the cost to MerchToGo of productiom. As such, these would be valued at the cost to MerchToGo and the VAT fraction applied of 1/6.

In terms of the input tax recovery, MerchToGo would be able to recover inptu tax as it is a retail company and appears to be wholly taxable supplies.