The Chartered Institute of Taxation

Advanced Technical

Domestic Indirect Taxation

November 2025

Suggested answers

Question 1

Part 1

Dr Ibrahim

Burn victims – **5 marks for this part as below**

The consultations and procedures carried out for the burn victims are exempt (item 1, Group 7 Schedule 9 VATA 1994). The service consists in the provision of medical care by a registered doctor. **(1 mark)**

'Medical care' is defined through case law. In *d'Ambrumenil v C & E Commrs; (Case C-307/01)*, the CJEU held that the medical care exemption is for services intended principally to protect (including maintain and restore) the health of individuals. Later cases have distinguished between care provided for a medical need and those provided for cosmetic purposes, or to help a person 'feel good' about themselves. **(1.5 marks)**

Medications supplied for the burn victims are zero rated under item 1 Group 12, Schedule 8 VATA 1994. However, it is Dr Ibrahim's intention to issue a single invoice for all services/goods supplied to each patient. In the case of *Spectrum Community Health CIC v HMRC [2024] UKUT 00162 (TC),* the Tribunal concluded that drugs and sexual health products supplied in conjunction with healthcare services represented a single composite supply of exempt medical care (having regard to the well-established principle in Levob).**(1.5 mark)**

If Dr Ibrahim needs to be VAT registered (see below), then it does matter whether the supplies are exempt or taxable. He will incur VAT on set up costs, and on running and maintaining the annex which could be at least partly attributable to taxable supplies. He would be advised to show that he is making separate supplies of the exempt medical services and standard rated/zero rated cosmetic procedures/medicines. **(1 mark)**

Cosmetic procedures – **5 marks for this part as below**

The aesthetic treatment procedures will not fall within the medical exemption above. Various cases show these are standard rated supplies, for example, *Skatteverket v PFC Clinic AB Case C-91/12* and *Aesthetic-Doctor.com (TC9030) 2024.* **(0.5 marks)**

In the former case, purely cosmetic treatments where there is a lack of evidence that the treatment has been carried out in response to an appropriate medical diagnosis, does not consist of the provision of medical care. **(0.5 marks)**

Procedures including botox and dermal fillers, and other cosmetic procedures where people are made to feel better about their appearance and are due to them worrying about ageing are not health conditions, and they are not 'medical.' In Dr Ibrahim's case he carries out the procedures to increase the confidence of his patients, which is not a medical need. *Aesthetic-Doctor.com* is the latest case concerning medical care where making people feel better about the consequences of ageing was held not to be 'medical care'. **(1 mark)**

In addition, *Epem Ltd* (UKFTT 627 (TC)) 2023) concerned a similar argument. In that case the clinic treated skin conditions and removed skin lesions. The taxpayer argued that it was improving the quality of people's lives in a similar way to doctors or dermatologists in a hospital. The Tribunal said that patients attending because their skin condition affected their mental health was not 'medical care.' The Tribunal accepted that some of the supplies might have qualified for the exemption but as there was no evidence on which to make an apportionment, the assessments made by HMRC were upheld in full. **(1.5 marks)**

If Dr Ibrahim can prove that there is more than body confidence/mental health improvement as a result of some of the procedures, then they might benefit from the exemption. This would need evidence of a medical diagnosis and clinically why the procedure is required. **(1 mark)**

Based on the numbers provided, Dr Ibrahim would not have a liability to register as yet even if all of his cosmetic supplies were standard rated. This could change however when the turnover increases in year 3. Accordingly, it would be worth confirming the liability of the supplies made. **(0.5 marks)**

Mrs Ibrahim – **4 marks**

As a sole trader, her lectures would fall within the education exemption as a 'subject ordinarily taught in school' (item 2, Group 6, Schedule 9, VATA 1994.) There has been case law over the years on what this encompasses, and although mental health and body confidence has not specifically come before the courts, there are indicators from cases as to what 'subjects' are included. **(1.5 marks)**

HMRC's view is that if a subject is taught infrequently, it does not necessarily make it a subject taught in school. However, Mrs Ibrahim will be providing lessons as part of the psychology curriculum. Psychology would be a subject ordinarily taught in schools and the lessons she will give are covered by that curriculum. *Simon Newell t/a Chiltern Young Riders (TC04689),* determined that just because something is on a school curriculum is not decisive but as the Psychology course is a one year course in this respect it is not 'infrequent.**' (2 marks)**

Being self-employed, these supplies are exempt from VAT. **(0.5 marks)**

Limited company – **3 marks**

If they set up a limited company, Mrs Ibrahim will no longer be able to take advantage of the education exemption as it does not apply to directors. Her supplies will be standard rated. **(0.5 marks)**

With her income of £35,000 and Dr Ibrahim's supplies for the 'cosmetic' procedures (assuming they are all standard rated), the company will have a liability to register. His taxable income would be £70,500 [£50,000 + £12,500 + £8,000 (assuming all medicines are zero rated)], so together the combined income is £105,500. **(1.5 marks)**

The schools/colleges would be unlikely to recover VAT charged to them, and neither would Dr Ibrahim's private clients, so keeping their businesses separate would be beneficial from a VAT perspective. **(1 mark)**

Part 2 – Insurance – **3 marks**

Dr Ibrahim is not supplying insurance himself. This is being provided by the insurer to his clients. The insurance is not really 'free' as the insurance company will receive £80 from Dr Ibrahim's clients. The insurance would be liable to the standard rate of IPT of 12%. **(1.5 marks)**

Dr Ibrahim receives a commission but as this is a standard rate contract for IPT purposes the £8 wouldn't reduce the premium for the insurance company. Dr Ibrahim would not need to account for IPT on the commission as it is not a fee in relation to a higher rate contract. The commission is also exempt for VAT. **(1.5 marks)**

[Flexibility would be given for case law references as there are more cases on medical care than the ones referred to above.]

MARKING GUIDE

TOPIC	MARKS
Part 1 – 17 marks	
Burn Victims – 5 marks	
Consultations and procedures are exempt medical care	1
Definition of medical care, with reference to case law	1.5
Medications – zero rated, risk of composite supply (Spectrum case)	1.5
Advice – show separate supplies being made of medicines/procedures in case he has to be VAT registered	1
Cosmetic procedures – 5 marks	
Aesthetic treatments are not medical care	0.5
Reference to case law (eg PFC, Aestehtic-doctor.com, Illuminate etc)	1.5
Epem case – similar to Dr Ibrahim	1.5
Conclusion – proof of medical need	1
No liability to register even where cosmetic procedures are SR	0.5
Mrs Ibrahim – 4 marks	
Sole trader – education exemption, ordinarily taught in school	1.5
HMRC's view – reference to case law and conclusion	2
Supplies exempt	0.5
Limited Company – 3 marks	
No educational exemption	0.5
Combined income over registration threshold	1.5
Impact on schools/colleges	1
Part 2 – 3 marks	
Insurance not a supply by Dr Ibrahim, not 'free', 12%	1.5
Commission – no IPT, doesn't reduce IPT for Insurance co, Ex for VAT	1.5
TOTAL	**20**

Question 2

Part 1

Option 1 – **7.5 marks**

The properties will be transferred to the limited company at their market values for SDLT, as Thalli and the company will be connected parties (s53 FA 2003). The SDLT cannot be reduced by the company paying Thalli 75% of the market value. The SDLT consideration will therefore be £1,170,000, being the current valuation for the three properties. **(0.5 mark)**

In addition, the properties will be part of a 'linked' transaction" as this is a single arrangement between the same vendor and purchaser, which will result in more SDLT (see below) (s108 FA 2003). A single land transaction return (within 14 days of completion) and payment (made at the same time as the return) can be made by Thalli, if she wishes, as all properties are being transferred on the same date. **(1.5 marks)**

There is also anti-avoidance legislation where high value residential properties are transferred into a company with a value exceeding £500,000. Where this applies, a 15% rate applies to the property that exceeds this value (but not to any others under the limit). Meadow View is over the £500,000 threshold, so potentially would incur the 15% rate. **(1.5 marks)**

However, there are exclusions from the 15% rate in certain circumstances, including where the property(ies) are used in a property rental business. Under this option, as the rental business is going to continue after the transfer, the conditions for relief would be met and the 15% rate would not apply to Meadow View. **(2 marks)**

As the purchaser is a company, the additional 3% rates also apply to the transaction. **(0.5 mark)**

Calculation: **(1.5 marks)**

Band £	Rate	SDLT £
0 - 250,000	3%	7,500
250,001 – 925,000	8%	54,000
925,001 – 1,170,000	13%	31,850
	Total	£93,350

Option 2 – **5.5 marks**

The same rules above concerning linked transactions apply equally here. However, as the extension of Caxton Close will have been completed before the property is transferred to the company, the value of this property will be higher for SDLT. It will increase the SDLT considerably, as Caxton Close is now above the £500,000 threshold for high-value residential properties and with Thalli's occupation it will incur 15% (see below) (£515,000 - being £395,000 valuation + £120,000 increase in market value)). The total value of all properties will now be £250,000 + £515,000 + £525,000 = £1,290,000 **(2 marks)**

Where Thalli occupies Caxton Close, this would not make it part of the property rental business any longer, although High Street and Meadow View would still count as properties to be used in a rental business. Meadow View would therefore continue to be treated as part of the linked transaction rules with High Street and not liable to the 15% rate. **(1 mark)**

Caxton Close will be treated on its own at the 15% rate and is not 'linked' to the other two transactions. Where the 15% rate applies, the additional 3% rate does not apply. In contrast, High Street and Meadow View are linked transactions, the total consideration being £775,000 (£250,000 + £525,000). **(0.5 marks)**

Calculation: **(1.5 marks)**

Band £	Rate	SDLT £
High Street & Meadow View:		
0 - 250,000	3%	7,500
250,001 – 775,000	8%	42,000
Caxton Close:		
515,000	15%	77,250
	Total on all three	£126,750

The extra SDLT under option 2 is £33,400 (£126,750 - £93,350). **(0.5 marks)**

Part 2 - Recommendations to reduce SDLT – **2 marks for any well-reasoned recommendation – two examples below**

The extension on Caxton Close will cost £70,000 but also an extra £33,400 in taxes under option 2.

The options to negate this extra charge are:

1. Thalli should not complete the extension before the property is transferred into the company. This would keep the value of the property under the 15% threshold. If she moves into it temporarily without the extension having been completed it won't affect the SDLT due as the 15% rate would no longer apply to this property. The SDLT would remain at £93,350; or

2. If the extension is completed before the transfer to the company, Thalli should not move into Caxton Close. Due to the 15% rate applying if she moves in, there is an extra £33,400 in SDLT due. The parties would be considerably financially better off if she rented a property elsewhere. In addition by not moving into Caxton Close, the 15% rate would not apply as it would still be part of the rental business, just temporarily empty awaiting a new tenant. There would still be extra SDLT due to the higher value with the extension added. This is an additional £15,600 (£120,000 x 13%) which would need to be factored in.

MARKING GUIDE

TOPIC	MARKS
Option 1 – 7.5 marks	
Transfer into company at MV (not 75%)	0.5
Linked transaction rules, single return, payment 14 days	1.5
Anti-avoidance 15% rate – application to Meadow View	1.5
Exception from 15% rate – rental business	2
3% rate applies to company	0.5
Calculation of SDLT (based on analysis above)	1.5
Option 2 – 5.5 marks	
Same rules on linked transactions but Caxton Close now into 15%	2
Thalli occupies Caxton Close = not rental business	1
Caxon Close 15% not linked to other two	0.5
Calculation (based on analysis above)	1.5
Extra SDLT under this option	0.5
Recommendations to reduce SDLT – 2 marks	
Any sensible discussion eg complete extension after moving to company; Thalli should not move into Caxton Close	2
TOTAL	**15**

Question 3

1. Car parking for staff – **2.5 marks**

The college has treated the supplies as exempt. In the absence of payment by staff for use of the car park, a supply does not arise, nor is there a deemed supply. The asset is used in support of the College's business and non-business activities, with related input tax deductible at the College's residual recovery rate. Accordingly, VAT of £910 is recoverable on the new barrier at the residual PE rate (13% x £35,000 x 20%). The college did not recover any VAT, so an adjustment of £910 extra input tax is required.

2. Car parking charged to the public – **5 marks**

The college is not a 'public body governed by public law' (*The Chancellor, Masters and Scholars of the University of Cambridge* [2008] UKVAT V20610]*).* Therefore, it does not fall within the 'special legal regime' and cannot rely on cases such as the Court of Appeal decision in *Northumbria Healthcare Trust* [2024] EWCA Civ 177] where VAT was held not to be due on car parking. Therefore, the normal business/non-business test has to be applied to see whether VAT should be charged. **(1.5 marks)**

The car parking charges to the public have been treated as non-business. The college would argue that there is no intention to make a profit (even though it does) and that it simply wants to cover costs. The tests in *Wakefield College* [2018] BVC 22] would be applied here. The first test of whether there is a reciprocal legal arrangement where services are supplied for a consideration is met. The second test is whether the purpose is to derive income from this legal arrangement. The College would argue that there is not. HMRC consider that the receipt of payment is not, in itself, sufficient to make it an 'economic' activity; what is looked at is whether there is a purpose to receive remuneration (and that can be a 'below cost' charge). **(2 marks)**

The fact that the College charges a subsidised rate to try and encourage people to park there and enjoy other facilities in the college, like the restaurant, hairdressing salon and gym, does suggest there is a business purpose in receiving the remuneration. If HMRC contends it is business use, then the charges will be standard rated, so output tax of £833 (1/6 x £5,000) needs to be declared, but input tax of £9,000 (£45,000 x 20%) can be recovered on the pay and display machines. **(1.5 marks)**

3. Restaurant meals **2.5 marks**

In *Fareham College v HMRC UKFTT 214 (TC)* this was held to be closely linked to education where the training was to assist students on catering courses. The purpose was not to obtain income and it was therefore an exempt supply. (**1 mark)**

As Sotton College's restaurant is for students to gain work experience for their final grade on their diploma and the restaurant is highly subsided, this would suggest it is not taxable income. The output VAT that has been overpaid can be recovered (£1,200 (20% x £6,000), but the inputs relating to the restaurant would be attributable to exempt supplies. This should not have been recovered and £120 (£4,000 x 15% x 20%) needs to be paid back. **(1.5 marks)**

4. Creche – **1.5 marks**

HMRC have confirmed in their internal guidance on charities supplying creche facilities that the tests in *Wakefield College* (as mentioned above) would be used to determine whether there is a business supply. **0.5 marks**

The intention here appears to be to merely cover the costs, so that there is no intention to derive income from it. Although merely covering costs can amount to consideration, it is likely this is viewed as a non-business activity. Accordingly, VAT incurred on the play equipment is irrecoverable, but as none was recovered, there is no adjustment required. **1 mark**

Calculation of net error: **- 2 marks**

Outputs:	Output VAT £	Input VAT £	Net input tax to recover
Public car park	833		
Restaurant meals	(1,200)		
Input VAT to recover:			
Car park barrier		(910)	
New pay machines		(9,000)	
Over recovery for restaurant		120	
Total	(367)	(9,790)	£(10,157)

The error can be corrected on the next VAT return where it is within 1% of VAT turnover (as it exceeds the maximum £10,000 limit). Ifit exceeds 1% of turnover, then a separate claim will need to be made. **(1.5 marks)**

MARKING GUIDE

TOPIC	**MARKS**
Car parking for staff – 2.5 marks	
No supply in the absence of consideration and not a deemed supply	1.5
VAT on barrier is residual, calculation	1
Car parking – public – 5 marks	
Not a public body so cannot rely on *Northumbria* case, apply normal business/non business test	1.5
Discussion of *Wakefield College* tests and application to scenario	2
Conclusion on business and calculation	1.5
Restaurant meals – 2.5 marks	
Comparison to Fareham College case – exempt supply	1
Calculation of output VAT recovery and paying back input tax	1.5
Creche – 1.5 marks	
Business test	0.5
Conclusion of non-business	1
Error – 3.5 marks	
Calculation of net error	2
Explanation of how to adjust for error	1.5
TOTAL	**15**

Question 4

Construction services supplied in the course of and in connection with the construction of a building designed as a dwelling or number of dwellings or intended to be used solely for a relevant residential or charitable purpose are zero rated (item 2, Grp. 5, Sch. 8, VATA 1994).

"Dwelling" is not defined but is interpreted as a place where the occupant lives and regards as his/her home and, for the purposes of zero rating, it must be designed as such in accordance with note 2, Grp 5, Sch.8, VATA 1994.

A building intended for use solely for a relevant charitable purpose includes use by a charity otherwise than in the course or furtherance of a business.

Zero rating is precluded in relation to:

a) the conversion, reconstruction or alteration of an existing building – note 16(a) Grp 5, Sch.8, VATA 1994; or

b) any enlargement of or extension to an existing building, except to the extent that the enlargement or extension creates an additional dwelling(s) – note 16(b). The override applies "to the extent" that an extension creates an additional dwelling or dwellings. Accordingly, zero rating does not extend to works in the Institute building which serve the residential accommodation i.e., the porters' lodge and residents' services office and, if the reasoning adopted by the Tax Tribunal in *Agudas Israel Housing Association* (VTD 18798) applies, to common parts, such as corridors. However, HMRC say in their internal guidance (VCONST02300) that zero rating will apply to common areas linking two or more dwellings in an extension.

By virtue of note 18, a building only ceases to be an existing building when demolished completely to ground level, save where the part remaining above ground level consists of no more than a façade, the retention of which is a condition or requirement of statutory planning consent.

In concluding the extent to which the proposed building works may be zero rated, the following matters fall to be considered:

1) The scope of "in the course of construction of a building" for the purposes of item 2. On the basis of *London Diocesan Fund* [1993] STC 269, this phrase is not restricted to the formation of a wholly new structure – it is wide enough to include work done to an existing building which results in the creation of a new building.

2) Note 16(b) precludes zero rating of the enlargement of an existing building. It is clear from both *London Diocesan Fund* and *Marchday Holdings Ltd* [1995] EWCA Civ. 1171 that zero rating will apply where, as a matter of fact and degree and considering the size, shape, function and character of the completed building, the resulting building cannot be said to constitute an enlargement of or extension to the original building.

   Applying this reasoning, the Upper Tax Tribunal concluded in *Astral Construction Limited* [2015] UKUT 0021 that the construction of a new nursing home which incorporated a redundant church with a floor area of 315m² compared to 2,910m² of the new part resulted in a new building. Accordingly, the works were zero rated.

   Given these precedents, it seems clear that the completed building would not be seen as simply an enlargement or extension of the original Institute building.

3) In relation to note 18, the Tribunal in *Astral* considered that demolition to ground level was not decisive. While it defined when a structure ceases to be an existing building; it said nothing on what is or not an extension or enlargement. It did not mean that all works, no matter how extensive, undertaken out on the site of a building that had not been completely demolished to ground level represented an enlargement or extension. Having found that the works resulted in a new building, the works completed by *Astral* were zero rated.

Although the Upper Tax Tribunal in *J3 Building Solutions Ltd* [2017] UKUT 253 came to a different conclusion where the works represented "alteration" of an existing building, subsequently HMRC confirmed in information sheet 07/17 that *Astral* will be followed where the size of an addition to an existing building greatly exceeds the original building and the function changes.

Since the new residential accommodation here will be 5 times larger than the retained Institute building, it is considered that *Astral* applies equally here.

4) Finally, while the proposed rooms are dwellings (given that they are adapted for use as a place where occupants live, regarding and treating it as their home) the absence of a sink, food preparation area, a fridge with the means for cooking limited to a hard-wired microwave oven may be viewed by HMRC as not self-contained living accommodation as required by note 2(a). However, the Tax Tribunal in *Agudas Israel* concluded that, nowadays, premises with a front door, ensuite bathing facilities and the ability to cook with a microwave cooker and a kettle represented self-contained living accommodation. While HMRC consider (VCONST14120) that bed-sits are not self-contained living accommodation given that elements of living, for example, kitchen, washing and toilet facilities are shared with the other occupants, here the shared use of the basement facilities do not represent joint use of the essential elements of living. Consequently, given that the other criteria will be met, these rooms are designed as dwellings.

In conclusion, the proposed works are zero rated, with the relief extending to the common and shared living areas in the basement.

In relation to the costs attributable to the part of the Institute building to be used as an archive with free access, subject to the Trust (as a charity) certifying that the archive will be used for non-business purposes, zero rating will be available based on the reasoning in *Wakefield College* [2018] EWCA Civ 952. The archive will be used for non-business purposes given firstly, the absence of reciprocal performance between the Trust and visitors and secondly, the use of the archive is not concerned with obtaining income therefrom.

MARKING GUIDE

TOPIC	**MARKS**
Legislation - scope of zero rating - item 2, Grp. 5, Sch. 8, VATA 1994	1
Legislation – limitations on zero rating – notes 16 & 18, Group 5, Schedule 8, VATA 1994, including override relating to dwellings created in an extension	2
Do the proposed works meet the conditions of item 2,disregarding notes 16(b) and 18, but having regard to *London Diocesan Fund.*	2
Application of notes16(b), *Marchday Holdings Ltd*	2
Scope of *Astral Construction Limited*	2
Does *J3 Building Solutions Ltd* override Astral? – No	1
Application of Information sheet 7/17	2
Scope of "dwelling" and "designed as a dwelling"	2
Self-contained living accommodation and conclusion based on reasoning in *Agudas Israel Housing Association*	2
Conclusion that works qualify for zero rating	1
Relevant charitable purpose: Principles derived from *Wakefield College* and associated caselaw. Conclusion on VAT relief	 2 1
TOTAL	**20**

Question 5

Since VAT registration is predicated on activities undertaken by natural and legal persons, some traders may seek to avoid VAT by conducting activities through a multitude of separate independent persons.

When enquiring into perceived artificial separation of business as may be the case here, officers adopt a twofold approach:

1) Objectively, is the holiday letting/bed & breakfast business an integral part of the farming enterprise? If not, then
2) Should a direction be issued under the anti-avoidance legislation contained in para. 1A, Sch. 1, VATA 1994 whereby, from an agreed date, Amamda's business and the farming partnership are aggregated and VAT registered as a partnership?

Penalties and interest may be levied if it is concluded that the activity should have been reported on the farm's VAT returns. The penalties vary between 30% and 100% of the potential lost revenue where the failure to account for VAT is consequential upon careless or deliberate behaviour or a failure to notify HMRC of an obligation to register for VAT. Mitigation applies where a taxpayer has disclosed the matter and assisted HMRC in qualifying the tax loss. If an attempt is made to avoid tax by artificially separating business activities, invariably HMRC will impose a 100% penalty.

If Amanda has acted independently in the pursuit of her business, then the business will not be an integral part of the farming enterprise. Given the close relationship of the farming partners and Amanda, in practice an adverse inference will not be drawn from the absence of arm's length trading or normal commercial dealing. Accordingly, in the absence of additional factual evidence of the existence of a single entity, officers should proceed on the basis that there are separate entities, then consider if the businesses have been artificially separated.

On the facts, it is considered that Amanda's business is independent of the farming enterprise for the following reasons:

1) From the outset, it was intended that the businesses be independent of, and not reliant upon the farm.
2) The business holds itself out as a standalone enterprise.
3) The nature of the businesses and their customer base are distinct and very different.
4) While family members periodically assist Amanda, here there are no joint employees.
5) Amanada alone bears the economic risk, accounting for tax and NIC on her earnings.
6) Amanada is not involved in the management of the farming enterprise.
7) The accounting records of the businesses are separate, albeit the same bank account was initially used, the rationale for which has been explained.
8) Farmhouse use to cater for visitors is insignificant. The partnership does not meet catering costs, and the joint use of the family home is not unusual where the occupants are self-employed.

The disaggregation rules are designed to prevent the maintenance or creation of artificial separation of business activities conducted by two or more persons resulting in the avoidance of VAT. In concluding that the separation of businesses is artificial, officers shall have regard to the extent to which the persons are closely bound to one another by financial, economic and organisational links. Before HMRC may issue a direction, officers must satisfy themselves that:

1) The named persons in the direction make taxable supplies.
2) Such taxable supplies form part of wider activities undertaken concurrently by the businesses.
3) The totality of disaggregated activities give rise to a liability to be VAT registered.

The first and third conditions are met here, with condition (2) to be considered. In concluding, HMRC do not have to prove an intention to avoid VAT; simply, the artificial separation has resulted in an avoidance of VAT having regard to the persons' financial, economic and organisation links.

1) Financial – on the facts given, no financial support is provided by farming partnership, with Amanda financially independent.
2) Economic – while Amanada's business may benefit from the location of the farm, it does not represent an economic link.
3) Organisational - common management, employees, premises and equipment are wholly absent.

In conclusion, Amanda's business is not an integral part of the farming enterprise. On the facts given, HMRC has not made a case for the artificial separation of the holiday letting/bed & breakfast business and the farming enterprise. A direction issued by HMRC therefore is unlikely to be sustainable in law and, in accordance with HMRC's internal guidance, no further action should be taken by HMRC. Accordingly, the question of penalties does not arise.

MARKING GUIDE

TOPIC	**MARKS**
VAT registration based on natural and legal persons lends itself to VAT avoidance	1
HMRC's approach to facts presented:(1) in reality, is the holiday letting/bed & breakfast business an integral part of the farming enterprise? If not, (2) on account of their financial, economic and organisation links, should the businesses be registered as a single business for the protection of the Revenue	2
Factors to consider in concluding whether Amanda's business is part of the farming enterprise (½ mark for each relevant factor identified, capped at 2 marks)	2
Criteria governing issue of a direction under para 1A, Sch. 1, VATA 1994: • Businesses linked financially, economically or organisationally. • Named persons make taxable supplies. • Taxable supplies form part of the wider activities undertaken concurrently. • Disaggregated activities give rise to a liability to be VAT registered. • HMRC not required to prove that the arrangements were undertaken to avoid VAT. (1 mark for each item, subject to maximum of 4 marks)	4
Identify financial, economic and organisational links	3
Comment on penalty regime applicable	1
Conclusion (marks awarded for any reasonable analysis)	2
TOTAL	**15**

Question 6

VAT status of acquisition of Stud assets.

Normally assets acquired on the transfer of a business are subject to VAT. However, where the following conditions are met, the transaction is outside the scope of VAT:

1) The partnership has transferred the business as a going concern.
2) Nancy will use the assets to conduct the same kind of business.
3) Nancy is a taxable person given that the partnership is VAT registered.
4) Since the sale involves the transfer of opted land, Nancy must opt to tax the land, notify HMRC of this and advise the partnership that the option to tax will not be disapplied under the anti-avoidance rules.

On the facts given, conditions (3) and (4) are met. Turning to the remaining conditions:

1) Transfer as a going concern.

The assets transferred must together constitute an undertaking capable of carrying on an independent economic activity, rather than a mere transfer of assets. Objectively, it must clear that Nancy will operate the business and not immediately liquidate it and dispose of the assets - *Zita Modes* (Case C-497/01). There is no requirement that the stud farm be commercially viable, nor substantial. It suffices that the business is operating with all the parts and features necessary to maintain its operation, as distinct from it being an inert aggregation of assets – HMRC Notice 709, paragraph 1.1. See, for example, *Dearwood Ltd* [1986] STC 327 and *Thruxton Parachute Club* (LON/84/331(.

Although the business had declined pre-sale, nevertheless, condition (1) is met.

2) Same kind of business.

The Upper Tribunal in *Intelligent Management Services Ltd* [2015] UKUT 0341 concluded that the "same kind of business required an enquiry into whether the facts pointed to a transfer of a business, rather than merely a transfer of assets, with the intention of the transferee to continue the business being a factor to consider.

As HMRC acknowledge in Notice 700, paragraph 2.2.2, it is the continuation of an economic activity that is important, not necessarily that it be identical to that of the transferor. So where, as here, the transferee intends in future to undertake a different kind of business using the assets acquired, the TOGC conditions will be satisfied if the old business is operated post-sale, albeit for a brief period. Thus, in *Brian Oliver Jones* (VTD 6141), the Tribunal concluded that the conditions were met where the buyer converted a nightclub to a restaurant where the club remained open for just a weekend following the sale.

In conclusion, the TOGC conditions are met; accordingly, the transaction is mandatorily outside the scope of VAT.

SDLT computation and filing of returns.

Given that the land acquired by Nancy (in conjunction with Philippe) is not exclusively "residential property" and the transactions are "linked transactions," they are chargeable to SDLT at the non-residential/mixed property rate. There is no provision for an apportionment between residential and non-residential/mixed rates.

“Residential property” comprises a dwelling and its garden and grounds. Non-residential property is any land which is not residential property (s116(1) FA 2003). The land and buildings which are an integral part of the Stud cannot be construed as part of the House’s gardens and grounds.

“Linked transactions” are those which form part of an arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them. The fact that the transactions are the subject of separate contacts or differing completion dates does not prevent them from being linked transactions.

The acquisition of Talley Ho House and the stud farm are linked transactions (the vendor is Jennifer – and her daughter in relation to the sale of the stud farm, with Nancy the purchaser - in conjunction with her civil partner, Phillipe - in the case of the House) with the relevant land being mixed property. Accordingly, SDLT chargeable on the transactions is £89,500, based on the total consideration of £2m:

Purchase band prices	**% rate**	**SDLT** **£**
£0 – 150,000	0%	0
£150,001 – 250,000	2%	2,000
£250,001 – 2,000,000	5%	87,500
		£89,500

Although Jennifer opted to tax the Stud land, VAT was not chargeable on the transaction; accordingly, VAT is excluded in quantifying the consideration chargeable to SDLT. Also, whilst Nancy and Phillipe have another residential property, the 3% surcharge does not cover non-residential property.

SDLT returns must be filed withing 14 days of completion of the transactions i.e., 25 September and 24 October 2025 respectively, with each return highlighting that they are linked transactions, accompanied by payments of the tax due of £53,700 and £35,800.

MARKING GUIDE

TOPIC	MARKS
VAT	
1) Criteria applicable to TOGC treatment overriding normal VAT accounting, mandatory, etc (½ mark for each of the conditions identified, capped at 2 marks)	2
2) Conclusion on whether transfer represents a "going concern" in accordance with reasoning in *Zita Modes.*	2
3) Conclusion on whether assts are to be used in "same kind of business" having regard to reasoning in *Intelligent Management Services Ltd*	2
4) Relevant cases identified by candidates (½ mark for each relevant case, subject to maximum of 1 mark). (NB the "could have" test adopted by the High Court in *Dearwood Ltd* was superseded by *Zita Modes,* so credit should not be awarded for this case where relied upon)	1
5) Overall conclusion	1
Total – VAT	**8**
SDLT	
1) Relevant land classified as non-residential property	1
2) Transactions linked	1
3) Conclusion on rates applicable	1
4) Computation of SDLT due	1
5) Identify that 3% surcharge does not apply	1
6) Returns due	1
7) Due date of tax payments and quantum (credit will be given for any reasonable apportionment of the tax due on the linked transactions)	1
Total – SDLT	**7**
TOTAL	**15**