

THE CHARTERED INSTITUTE OF TAXATION

APPLICATION AND PROFESSIONAL SKILLS

VAT and Other Indirect Taxes

TIME ALLOWED
3 HOURS 30 MINUTES

- In order to secure a pass in this exam, you will be required to demonstrate competence in each of three skills.

You will be assessed across your answer as a whole for Structure. A pass or fail grade will be awarded.

You will be assessed for competence in a number of broad topics for the following skills:

- Identification and Application
- Relevant Advice and Substantiated Conclusions

For each topic for each of these two skills, a grade will be awarded. The grades for those topics will be weighted and averaged to produce a final grade for each skill of 0, 1, 2, 3 or 4. A grade of 3 or 4 is required to demonstrate competence.

- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should indicate this where relevant.
- Scots Law candidates may provide answers referring to Land and Buildings Transaction Tax rather than Stamp Duty Land Tax.
- Unless otherwise indicated by the provision of additional information, you may assume that 2019/20 legislation (including rates and allowances) continues to apply for 2020/21 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.
- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

You are David Chin, a Tax Consultant in a firm of Chartered Tax Advisers. You have recently received a letter (**EXHIBIT A**) from Rosa Behar, the Projects Officer of Frictionless Trade Association. Frictionless Trade Association is a membership organisation, established in the UK, which supplies membership services and other goods and services and has been a client of your firm for a number of years.

FTA (Properties) Ltd, the Association's subsidiary company, is proposing to enter into an agreement for the lease of new offices in Cobtown, situated in the UK. The Landlord, Paulton Estates Ltd, will replace the lift system and fire escape before occupation and has also agreed to contribute to the cost of installing a new air conditioning system.

It is also proposed that Frictionless Trade Association should change its Constitution.

Rosa would like advice on these two matters.

The following exhibits are provided to assist you:

EXHIBIT A: Letter from Rosa Behar

EXHIBIT B: Draft Heads of Terms between FTA (Properties) Ltd and Paulton Estates Ltd

EXHIBIT C: Email from Shofra Solutions Ltd to Verity Goode of FTA (Properties) Ltd

EXHIBIT D: Pre-seen information

Requirement:

Write a letter to Rosa advising her on the tax implications of the proposals and recommending the most tax-efficient structure for the lease and for fitting-out of the new offices.

Continued

Continuation

EXHIBIT A

Letter from Rosa Behar

David Chin
Tanith Tax LLP
Ten Old Change
London
WC1P 3CD

Frictionless Trade Association
11 Station Approach
Cobtown
CN10 1BB

5 November 2020

Dear David

New Offices and Change of Constitution

As you may have heard, the Association will have to move offices during 2021, as our current building is being demolished. In the absence of our Group Finance Officer, Ian Ayling, who is on extended sick leave, I am writing to seek your advice and recommendations on tax issues relating to this as it is some years since I was involved with tax!

We are in the process of agreeing terms for a new 25-year lease of part of Cobden House, which is also located in Cobtown, which will be entered into by our subsidiary company, FTA (Properties) Ltd. Please see the enclosed draft Heads of Terms (**EXHIBIT B**), which were prepared by the Landlord's consultants.

Cobden House will require some renovation and fitting-out to be done before we can move in. The lift system is very old and the fire escape is dangerous: the Landlord has therefore agreed to replace these, and will appoint its own contractor to undertake the work.

The property has no air-conditioning and we feel that this is now an essential item for the comfort of our staff and so will install a new air-conditioning system at our expense, although the Landlord has agreed to contribute £200,000 excluding VAT towards this. We are also proposing (with the Landlord's approval) at our expense to create new toilets on the Ground, First and Second floors, at a cost of £90,000 plus VAT. My colleague, Verity Goode, has received a quote (enclosed) from a local Contractor, Shofra Solutions Ltd (**EXHIBIT C**) for these works. It is proposed in the Heads of Terms that FTA (Properties) Ltd will enter into a single contract for these works, which will be carried out before we move in. Since FTA Properties Ltd isn't VAT registered, a more VAT efficient way of dealing with the invoicing arrangements may be:

- 1) We could request that Shofra Solutions Ltd invoice the Landlord directly for the air-conditioning element of the works and we then pay the Landlord the balance of the cost over the amount it is contributing; or
- 2) Shofra Solutions Ltd could invoice Frictionless Trade Association, which would recover the VAT in full and re-charge the Landlord for its contribution.

In the last few days the Landlord has told us that it will be charging VAT on the lease. I am concerned that this will increase the net cost significantly.

Can you have a look at the enclosed documents and let me know the tax implications of what is proposed as well as any changes that could be made to minimise the tax costs relating to the new lease and the fitting-out of the property?

Finally, in case it is relevant, I should mention that the Association is considering changing its Constitution to become a company limited by guarantee, and we may also become a registered charity, as this would give us more access to grant funding in the future.

Continued

Continuation

I look forward to receiving your advice and recommendations. There is some urgency as the lawyers will need to be instructed to draft the lease.

Yours sincerely

Rosa Behar, Projects Officer

Frictionless Trade Association

Attachments

Draft Heads of Terms between FTA (Properties) Ltd and Paulton Estates Ltd
Email from Shofra Solutions Ltd to Verity Goode of FTA (Properties) Ltd

EXHIBIT B

Draft Heads of Terms between FTA (Properties) Ltd and Paulton Estates Ltd

Fairway, Wynn & Morris
Property Consultants

Heads of Terms

Basement, Ground Floor, First and Second Floors of Cobden House, Peel Street, Cobtown
CN33 1AA

SUBJECT TO CONTRACT
WITHOUT PREJUDICE

- | | |
|----------------|--|
| 1. Landlord | Paulton Estates Ltd. |
| 2. Tenant | FTA (Properties) Ltd, as nominee for Frictionless Trade Association. |
| 3. Guarantor | Frictionless Trade Association. |
| 4. Demise | Basement, Ground Floor, First and Second Floors of Cobden House, Peel Street, Cobtown CN33 1AA. |
| 5. Sub-letting | The Tenant may not sub-let or assign the Lease without the prior consent of the Landlord (such consent not to be unreasonably withheld), save that the Landlord hereby grants permission to the Tenant to allow occupation of the premises by the Guarantor. |
| 6. Term | Commencement date 1 April 2021, for a term of 25 years expiring on 31 March 2046. The lease is to be granted with the benefit of the security of tenure provisions of the Landlord and Tenant Act 1954. |

Continued

Continuation

7. Rent
- The annual rent is £150,000 per annum, excluding service charge, on a full repairing basis, payable quarterly in advance. The lease will incorporate an upward only market value rent review at five yearly intervals, commencing on 1 July 2026, subject to the usual assumptions and disregards.
- However, the rent review is to take account of all works undertaken by the Tenant at the Landlord's cost. The lease is to include a Tenant only option to determine the lease after 10 years subject to six months prior notice.
8. Rent Free Period
- The Tenant will be granted a rent-free period of 24 months from the Commencement to 31 March 2023.
9. Capital contribution
- The Landlord will provide a capital contribution capped at £200,000, plus any VAT which the Tenant is unable to recover (to a maximum of £40,000), which is to be placed in an escrow account. The agreed sum is to be used to install an air-conditioning system by the Tenant (the Tenant's Ventilation Works) in accordance with the specification agreed between the parties' respective consultants.
- For the avoidance of doubt, the Landlord's contribution is to include all professional costs and statutory fees relating to the Tenant's Ventilation Works, provided such fees are reasonably representative of those which would have been incurred by the Landlord should the Landlord have undertaken the work itself. The Landlord's Consultants, Fairway, Wynn & Morris, shall approve all such costs on the Landlord's behalf.
- The Tenant will enter into the Contract and pay the Contractor as provided in the Contract. The Tenant will then invoice the Landlord for recovery of the moneys on a monthly basis, up to the maximum of the Capital Contribution.
- Funds will be released to the Tenant from the escrow account subject to the Tenant providing to the Landlord the relevant Payment Certificate issued by the Architect and a VAT invoice. Subject to the above, payment from the escrow account will be made within 10 days. The Tenant will agree to complete the Tenant's Ventilation Works within an acceptable period of time – estimated to be not later than 1 August 2021.
10. Capital allowances
- The Landlord shall be entitled to make claims for capital allowances in respect of the Tenant's Ventilation Works and for the avoidance of doubt the works are deemed for these purposes to be the Landlord's. Any other works carried out by the Tenant (with the Landlord's approval) outside the scope of the Tenant's Ventilation Works are deemed to be the Tenant's works and therefore disregarded at rent review.

Continued

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|----------------------|--|
| 11. Landlord's Works | Prior to Completion, the Landlord will undertake, at its own expense, a replacement of the lift system and fire escape to the specification agreed between the parties' consultants. |
| 12. Tenant's Works | The Landlord grants permission to the Tenant to replace, at its own expense, the toilets on the Ground, First and Second Floors. |
| 13. VAT | All figures are quoted exclusive of VAT where applicable. |

Note: For Stamp Duty Land Tax purposes the Net Present Value for the lease is £2,624,727.

Continued

Continuation

EXHIBIT C

Email from Shofra Solutions Ltd to Verity Goode of FTA (Properties) Ltd

From: a.chiloute@shofra.com
To: v.goode@ftaprops.co.uk
Sent: 31 October 2020 at 19.03
Subject: Quote for Job No. 000321

Hi Verity

Further to our recent meeting, please find below our quote for the fitting-out works to the new offices at Cobden House, Cobtown, to commence on 1 April 2021.

Ventilation

Supply and install air-conditioning plant, Model "Archvente Super" No. XA124, to service the Basement, Ground, First and Second Floors to the building, as per Specification already provided.

£

Installation, commissioning and testing of the above.

210,000.00

New Toilets

Create new toilet facilities on the Ground, First and Second Floors, as per Detailed Drawings.

Supply and install Mirabeau X30 sanitary ware in the above (in brilliant white) and Dayrona V8 high-speed hand air dryers.

90,000.00

300,000.00

60,000.00

VAT @ 20%

Total

£360,000.00

Payment to be made as follows:

On or before 1 April 2021

£
60,000.00

On or before 1 May 2021

60,000.00

On or before 1 June 2021

120,000.00

Within seven days of completion of work
(estimated to be 25 June 2021)

120,000.00

£360,000.00

All the above subject to our Standard Terms & Conditions.

I hope you find the above satisfactory and wish to assure you of our best attention at all times.

Regards

André

André Chiloute
Director

Continued

Continuation

EXHIBIT D

Pre-seen information

Client Name

Frictionless Trade Association

Client Background

Founded on 1 July 2016 by two philanthropists, Sir Nils Tarif and Professor Genevieve Gatt, to promote frictionless trade between nations of the Western World. The first accounts were made up to 31 March 2017. Subsequent accounts are made up to 31 March each year.

Under its Constitution dated 1 July 2016, the Association is an unincorporated membership body. Membership is open to businesses engaged in international trade. Its activities are controlled by its General Council, comprising seven elected members:

Sir Nils Tarif (deceased 2 August 2019)
Professor Genevieve Gatt, OM
The Rt. Hon. Dame Freda Mayne-Heading, DBE
Noah Border (elected 1 September 2019)
Ivor Carnet
Grant Ogil
Verity Goode
Peregrine Courier-Swift

The association employs a Secretary-General, a Financial Officer, a Projects Officer, a Publications Officer and seven other staff.

Its place of business is at:

11 Station Approach
Cobtown
CN10 1BB

Business

Providing services to its individual and corporate members by making representations to Government on legislation to promote and facilitate frictionless trade.

The business also organises conferences and seminars and makes sales of publications and merchandise (pens, badges, stationery).

Corporation Tax

HMRC accept that net income, plus apportionable overheads, derived from membership services is non-trading for Corporation Tax purposes.

VAT

The Association was VAT-registered with effect from 1 January 2017.

Registration number GB 099 8877 65.

VAT returns are made for the quarters ended 31 March, 30 June, 30 September and 31 December.

Continued

Continuation

The Association does not operate any special VAT accounting schemes. It has not currently waived VAT exemption over any land or buildings.

In respect of VAT recovery, the Association apportions VAT on its expenditure between business and non-business income and calculates recoverable input VAT using the standard method. This has, typically, allowed total VAT recovery in the region of 60% to 61%.

Other information

Subsidiary Company.

The Association owns the entire share capital of FTA (Properties) Ltd, which was incorporated in the UK on 1 July 2016 and has its place of business at 11 Station Approach, Cobtown, CN10 1BB.

FTA (Properties) Ltd is dormant and has undertaken no transactions since its incorporation. As nominee for Frictionless Trade Association, it holds the lease of the business offices at:

11 Station Approach
Cobtown
CN10 1BB

FTA (Properties) Ltd is funded as necessary by Frictionless Trade Association, which also acts as guarantor.

The Directors are:

Verity Goode
Peregrine Courier-Swift (who is also Company Secretary)

The company employs no staff. It is not VAT registered.

Extract from the Financial Statements for the year to 31 March 2020

Income

	<u>Year to 31/3/20</u>	<u>Year to 31/3/19</u>
	£000s	£000s
Membership subscriptions	4,800	3,000
Grants	600	1,000
Conferences and seminars	4,800	5,000
Publications	600	500
Sales of merchandise	1,200	500
Total income	12,000	10,000

Expenditure

	<u>Year to 31/3/20</u>	<u>Year to 31/3/19</u>
	£000s	£000s
Operating expenses	9,755	8,450
Staff costs	575	525
Premises	205	190
Total expenditure	10,535	9,165
Investment gains (losses)	(100)	50
Surplus (Loss) before taxation	1,365	885

Continued

Continuation

VAT Return for the Period 1 July 2020 to 30 September 2020

	£
VAT due in this period on sales and other outputs	365,000.00
VAT due in this period on acquisitions from other EC member states	0.00
Total VAT due	365,000.00
VAT reclaimed in this period on purchases and other inputs (including acquisitions from the EC)	152,500.00
Net VAT to be paid to HMRC or reclaimed by you	212,500.00
Total value of sales and other outputs excluding any VAT (including box 8)	3,575,000.00
Total value of purchases and all other inputs excluding any VAT (including box 9)	2,015,000.00
Total value of all supplies of goods and related costs, excluding any VAT, to other EC Member States	75,000.00
Total value of acquisitions of goods and related costs, excluding any VAT, from other EC Member States	0.00