

(Ensure this number matches your candidate number on your desk label and on your candidate attendance form)



am Date of Examination

- Tick box if you have answered in accordance with Scots Law
- Tick box if you have answered in accordance with Northern Ireland Law

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Institute of
Taxation**
Excellence in Taxation

Please tick which Advisory Paper you have attempted (if not already ticked below)

- | | |
|---|--|
| <input type="checkbox"/> Taxation of Owner-Managed Businesses | <input type="checkbox"/> Taxation of Individuals |
| <input checked="" type="checkbox"/> VAT on UK Domestic Transactions, IPT & SDLT | <input type="checkbox"/> VAT on Cross-Border Transactions & Customs Duties |
| <input type="checkbox"/> Inheritance Tax, Trusts & Estates | <input type="checkbox"/> Taxation of Major Corporates |
| <input type="checkbox"/> Human Capital Taxes | |

Please tick here if you have used an extra answer booklet (ensure you attach your second answer booklet to the first using a treasury tag which will be provided).

Advisory

You must ensure that the Advisory Papers chosen are not the same as the corresponding Awareness Modules you have sat or will be sitting.

- For those candidates on the Indirect Tax Route you must sit the VAT on UK Domestic Transactions, IPT & SDLT Advisory Paper.
- For those candidates on the Indirect Tax Route you must sit the VAT on Cross-Border Transactions & Customs Duties Advisory Paper.

Instructions

Your script will be scanned electronically. Failure to comply with these instructions may lead to your script not being marked. You must:

- (a) Complete the details on this page and in the booklet using BLACK or BLUE ballpoint pen only.
- (b) Write on both sides of the page.
- (c) Not write in the margin areas indicated.
- (d) Start a new page for each question you answer and indicate the question number in the box provided at the top of each page.
- (e) Not remove any pages from this answer booklet or damage it in any way.

Please do all of the above before the end of the examination.

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DO NOT WRITE ON THIS PAGE

From: Barnaby, Jack

To: Tommy Barnes

Date: 30 April 2018

Subject: Confidential - Project Big Bulldog

Dear Tommy,

Thank you for your email. I have provided below our advice regarding the new investment project.

Share acquisition

Under VATA 1994, Sch 9, Group 5, the purchase of shares is exempt for VAT purposes.

Professional fees

I understand that Biaco 456 Ltd and Big Bulldog Holdings Ltd will engage with certain professional service advisors in order to complete the transaction. These fees will be subject to VAT at the standard rate (currently 20%). On this

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basis, Bidco 456 will incur £60,000 of input VAT and BigBulldog Holdings Ltd will incur £40,000.

I note that £6,000 of this will, however, relate to personal tax advice sought by Jimmy (£30,000 x 20%). Input tax according to VATA 1994 s. 26, is only recoverable where it is made in the course or furtherance of business and relates to the onward taxable supplies.

On the basis that this is personal advice and not business, we would not expect this to be recoverable and we would advise to not attempt to recover this.

VAT recovery

As you mentioned in your email, the VAT recovery on deal fees is a tricky area of law and there has been a lot of case law in this area.

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HMRC has updated its guidance in relation to input tax recovery in this area, following the Court of Appeal decision in BAA Ltd, and other decisions such as Kretztechnik, Larentia & Minerva, which are also relevant to this.

~~It was held~~ Kretztechnik related more when you issue shares to raise capital - ~~not~~ and they were entitled to treat the VAT on these costs as input tax.

~~BAA Ltd case brought about~~

The principles arising from the cases, BAA in particular is that VAT is only recoverable when there is a direct and immediate link to taxable supplies.

Similarly in this case, a company made a bid to acquire entire share capital of BAA & hence, incurred costs on professional services. Following the takeover, it joined the BAA VAT group and then attempted

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to recover the VAT incurred on the services

The 2 conditions noted by the courts was that to recover the VAT, it must be incurred by a taxable person in the course of an economic activity.

Secondly, the goods and services on which the VAT is incurred must have a direct and immediate link with taxable supplies made by that person.

By Bidco 456 acquiring the shares, this does have economic consequences, however this does not necessarily mean it is engaged in an economic activity for VAT purposes.

I would advise ensuring that Bidco 456 intends to make/receive supplies ~~to~~ rather than merely being a procurement vehicle for the acquisition.

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^{to intention}
This could be demonstrated by transferring staff to Bidco 456 Ltd and have the resources to make/receive supplies. This could include transferring contracts over to it.

All invoices should be addressed to Bidco 456 in order for it to be receivable.

~~If it joined the VAT~~
If a VAT group was formed, the single VAT registrations of the Big Bulldog group would be cancelled and the group would receive a new number.

The representative member would be responsible for completing the one VAT return required for the group.

All group members would be jointly & severally liable for the debts of the group.

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By BigBulldog Holdings Ltd joining the VAT group, I note it is fully taxable and once it joins VAT recovery then becomes in line with the group's partial exemption method (which shall be referred to as MRC). This would restrict VAT for BigBulldog and this should be considered before making the decision.

Any intra-group supplies between VAT group members would be disregarded for VAT purposes therefore this would be beneficial for the management services between BigBulldog Holdings Ltd to BigBulldog Ltd.

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I trust the above is helpful. If you have any questions, please let me know

Kind Regards
Barclay Jack

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Imraan Aldersley
Helpthousing Ltd
Lodon

My address
XXX

28 April 2018

VAT

Dear Imraan

Following our meeting, I have drafted my advice re the VAT issues discussed. Please find this below

Change of use

The purchase of lease in 2014 would have been zero rated under VATA 1994 sch 8 group 5 item 1a(ii) on the basis that it was to be used for a relevant charitable purpose.

Therefore, ~~the~~ Helpthousing Ltd would have paid no VAT on the acquisition.

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However, as there is an increase of use for 2 of the floors, the change of use provisions in VATA 1994 Sch 10 para 35 will apply.

This states that where a change of use applies, there is a deemed supply for VAT purposes.

Essentially, this means that an output charge will be required to HMRC as it is no longer a zero rated supply. This should be apportioned.

The value of the supply is taken to be

$$\begin{aligned} \text{£1,000,000} \times 20\% &= 200,000 / 5 \times 2 = \\ &\text{£80,000 output charge} \end{aligned}$$

There is a 10 year 'relevant period' whereby if the change of use is allowed in this time, the output tax arises.

$$\text{so } \text{£80,000} / 10 \times 6 \text{ years} = \text{£48,000}$$

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£48,000 is the output charge to be due.

Project Phoenix

In house construction services is a self supply for VAT purposes and therefore DevCon Ltd would not be able to deduct input VAT on construction services by opting for this route instead.

The self supply would be what the business would expect to pay which I note is £120,000 per property ie £24,000 VAT per property.

This would be recoverable subject to normal input tax recovery rules eg if you are fully taxable, the VAT will be fully recoverable. ~~However!~~

The purchase of bare land will not incur any VAT costs as this will be exempt under §6 VATA 1994 sch 9 group 1. This also means that

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any costs incurred in relation to this purchase eg. professional fees will not be recoverable.

The construction of a dwelling will be zero rated for VAT purposes under VATA 1994 sch 8 group 5 item 2a. This is on the basis that it meets the conditions for 'dwelling'.

A building is designed as a dwelling or a number of dwellings where in relation to each dwelling the following conditions are satisfied.

- the dwelling consists of self contained living accommodation
- no provision for direct internal access from the dwelling to any other dwelling
- the separate use or disposal is not prohibited
- planning consent has been granted and construction will be carried out in accordance with this consent

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This will enable VAT recovery on
costs in relation to the construction.

SDLT

~~For residential sales~~

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Property Service

The construction of a dwelling, provided it meets the conditions detailed above will be zero rated. ~~It~~

The sale will also be zero rated as it is the first grant of a major interest.

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I Trust the above is helpful. If I
can help any further, please let me
know.

Yours sincerely
Tan Adriano

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To: Cgrant@xctas.com

From: 2clark@xctas.com

Date: 29 April 2018

Subject: Aycover Insurance Inc - UK IPT

Hi Charlotte

Thanks for your email. Please find my comments below.

Insurance Premium Tax (IPT)

IPT is a tax on premiums received under taxable insurance contracts.

Contracts can either be subject to the higher rate (20%), standard rate (12%) or exempt.

The premium that is liable to IPT includes:

- the risk insured
- admin costs
- commission / paid or retained by brokers / (intermediary)

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I will discuss commissions in more detail below.

- tax
- interest.

For UK purposes, only the risk covered in the UK is taxable, otherwise it is exempt.

Travel insurance

The policies that Anycover Insurance Inc intends to write for UK employees may not be classed as an insurance contract for IPT purposes.

If the employee has no right to claim itself and it's not their name on the policy, this is a ^{employee} ~~corporate~~ liability contract and IPT will not be due on this.

Travel insurance policies of duration of 4 months or less taken out by a

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Person in the UK by post, phone or internet is regarded as taken out in the UK, regardless of where Anycaer Insurance Inc is located.

If it is for more than 4 months is taxable where the traveller is habitually resident at the time the contract is entered into.

Travel insurance is all liable to the higher rate of 10% - 20%.

Car breakdown cover provided to travellers is regarded as relating to a motor or vehicle risk, not a travel risk.

This will not be subject to the higher rate. It will be subject to standard rate. ~~as it is not a~~

Higher rate only applies when it is supply

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by a supplier of motor cars or person
connected to a supplier of motor cars.

Mechanical breakdown

~~1/2~~ this

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~~Ator~~

Commission

Where an intermediary makes an additional charge in relation to an insurance contract. This is taxable at the standard rate of IPT, and this charge is made under a separate contract ~~and~~ to the contract of insurance then provided the existence of a separate contract & amount is identified to the insured, these charges are not liable to IPT.

There are special rules however meaning that IPT is liable if; the amounts are charged to individuals who enter into the contracts in their personal capacity, the separate contract is entered as a condition of entering into the taxable insurance contract, the insured cannot renegotiate the terms or price and no assessment of the individual's risk is undertaken to arrive at the premium.

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Registration/Compliance

Anycover Insurance Inc should register per IPT by notifying HMRC within 30 days of forming the intention of receiving taxable premiums.

It will be registered from the date it receives first taxable premium.

Penalties may apply for late registration.

To register, Anycover Insurance should complete the IPT 1 form.

As Anycover is an overseas entity, if it has no business or fixed establishments in the UK, it could appoint an agent to deal with the IPT affairs.

Where payments are received in foreign currency, they should be converted to Sterling on the date of receipt or the date at which the premium is written.

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IPT is due one month after the end of the accounting period in which the tax point occurs.

~~The tax point will be~~
Anycover Insurance will need to submit returns (IPT 100) quarterly.

If you have any questions, please let me know.

Kind regards

Arthur Clark

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From: Jude Duxbury

To: Alfred Balaw

Date: ~~30 Apr~~ 1 May 2018

Subject: Mellow Brock Modular

Dear Jude

Thank you for your email. Please
find my comments below. I have
included the calculation of the appt
tax due at Appendix A.

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I trust this is helpful. If you have any queries. Please let me know.

Kind regards
Alfred

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Sabari and Kuski Ltd

Sabari and Kuski House

A street

Signature

AA1 0B3

A Weer

fans - Bow UP

Any road

Signature

AA3 9LL

28 April 2018

Possible Share Acquisition

The purchase of share capital is exempt from VAT. However, as you say you are looking to acquire the business I am assuming this is the trade assets and I will provide my advice on this basis.

Normally the sale of assets of a VAT registered or VAT registered business will be subject to VAT. This means £300,000 of VAT could be incurred on the purchase.

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However, a transfer of a business as a going concern for VAT purposes (TOGC) is the sale of a business including assets which must be treated as ~~a supply~~ neither a supply of goods or services and outside the scope of VAT and therefore no VAT would be payable.

There is a strict criteria of conditions to be met in order to qualify for TOGC treatment.

Where the conditions are met, TOGC treatment is mandatory & not optional.

It should also be noted that it is ^{ultimately} the seller's responsibility to determine the VAT treatment so if it is ~~decided~~ ^{concluded} to be a TOGC you should review your contract as the vendor may have included a clause that means you will have to supply the VAT if HMRC challenge the VAT treatment of the transaction.

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The conditions are as follows:

- no significant break in trading - refurb will not restrict ^{this condition} from being met
- the assets must be sold as part of the transfer of a business as a going concern
 - eg. it must put you in possession of a business - we would consider this to be met as it is an active trading company
- the assets are to be used by the purchaser for the same kind of business
 - this the key condition that may cause an issue I will discuss this later
- where the seller is a VAT registered person, the purchaser must also - we would consider this to be met
- If the buying is opted to tax by the seller, the purchaser must also opt to tax, notify HMRC and notify the seller that its options will not

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disapply - we are not aware of an option to do in place. Please can you confirm this?

- ° where only part of the building is sold it must be capable of operating separately - we consider this to be met as the department store can be run separately.
- There must not be a series of immediately consequent transfers of business - we consider this to be met as Sobari and Ruski will retain the business to use it.

As mentioned, I consider the key condition to look into more as the one regarding carrying on the same kind of business.

As ~~you~~ I understand that you might wish to use the premises for a furniture store rather than the department store. There is case law whereby HMRC classed this as not the same trade.

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and on this basis it ^{will} ~~might~~ not qualify as a TOGC & the VAT will be due.

However, if you continue operating as a department store as you may do, ~~it~~ we would expect there to be a TOGC for VAT purposes.

Capital Goods Scheme (CGS)

The refurbishment works will ~~be~~ fall under CGS ~~as~~ it is capital expenditure on a building totalling more than £250,000 (exc. VAT).

This means that the usage of the asset should be monitored of 10 years and the scheme allows for adjustments to be made to the initial amount of input tax recovered.

Essentially, it reflects the difference

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In the use of capital goods over a period of time. eg 'the adjustment period'

If you are fully taxable for the 10 years, then no adjustments will be required.

However, if you are fully taxable and then in year 7 you diversify into an exempt activity eg. insurance ~~where~~ then adjustment will be made.

I note that you ~~are~~ ^{will be} partially exempt if you offer the financing services that Radat's currently offers as this is an exempt supply.

~~Your~~ Input VAT will be restricted according to partial exemption percentage and CGS assets should be monitored annually.

Partial exemptions special methods may want to be considered for a more

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fair and reasonable recovery rate.
These need agreed in writing with
HMRC before usage.

I hope the above is useful. If you
have any queries. Please let me know

Kind regards
Andy

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NOTE re Widget Manufacturing Ltd

To: Tax Partner

From: VAT Specialist

Date: May 2018

Subject: VAT

Dear Tax Partner

I have please see below per my comments

Bad Debt Relief (BDR)

BDR is available for debts that lapsed more than 6 months ago, you have ~~paid~~ the VAT to HMRC and the whole/^{debt} part has been written off in your accounts.

A claim can be made to HMRC for the VAT element of the amount not received.

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Will need to support the claim
with evidence such as invoices,
records showing the VAT was paid.

Kind Regards
VAT specialist

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MAN