

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



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am 

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 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

**Please tick which Advanced Technical 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"/> Domestic Indirect Taxation | <input type="checkbox"/> Cross-Border Indirect Taxation |
| <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).

## Advanced Technical

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- Write on both sides of the page.
- Not write in the margin areas indicated.
- Start a new page for each question you answer and indicate the question number in the box provided at the top of each page.
- 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.**

**For use by examiner only**

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**DO NOT WRITE ON THIS PAGE**

From: arthur.smith@anytownaccountants.co.uk  
To: c.cooper@anytown-council.gov.uk  
Date: 8 May 2019  
Subject: Re: Possible VAT Refund Claim

Dear Charles,

Thank you for your email. Please find the advice that you have requested contained.

### Ealing

As you might be aware, the case of Ealing Council regarded a local authority contesting that UK legislation was incompatible and in breach of the principal VAT directive by excluding local authorities from the exemption for sports and related activities. Ealing won and therefore obtained the entitlement to make a claim for output tax

accounted for on supplies of sports and leisure activities on the basis that these supplies should have been exempt from VAT as Ealing was an eligible body supplying services falling within the exemption (contained in Group 10, Sch 9 VAT Act 1994). Naturally this created somewhat of a windfall for Ealing. If Anytown would like to submit a similar claim it is worth bearing in mind that as the Council will be amending the VAT treatment of Sports facilities supplied from taxable to exempt, that input tax deducted in relation to these activities ~~would~~ <sup>might need</sup> ~~need~~ to be repaid to HMRC and this would reduce any claim. Moreover, the Council must be careful to ensure that the exemption applies to all of its supplies and to ensure that the exempt income does not cause ~~the~~ undesirable

consequences, as described below.

### Partial Exemption

As you have described, the Council can recover all VAT incurred on the basis that it is a s33 body with expenditure in relation to exempt income that is less than 50% of total expenditure. If the Council submits a claim to charge its Sports income to exempt income it will have spent considerably more on exempt ~~activity~~ income streams than previously.

The Council appears to have spent heavily ~~on exempt income~~ in relation to income that would be treated as exempt if a claim were made. If exempt expenditure increases to more than 50% of total expenditure in any given year

The Council will be required to treat its self as a partially exempt entity and will not be able to deduct all of its input tax. Input tax in relation to exempt activity would be repayable to HMRC and would reduce the claim. I have provided indicative calculations below:

	Sports Facility Costs VAT	Other Exempt cost VAT	Total VAT
2019	41,667	31,667	1500,000
2018	33,333	30,000	1280,000
2017	40,833	33,333	1550,000
2016	250,000	25,000	2,000,000

2019	Exempt spend	percentage	4.9%
2018			2.8%
2017			4.8%
2016			14.2%

The claim would be capped at a four year period. This would include year ending March 2016 which would see the Council breach the 5% de minimis limits (except expenditure would be 14.2% of total VAT expenditure).

There are provisions which would allow the Council to take a 7 year average to see if this brings exempt expenditure under the threshold on a 7 year basis.

The period in question would be the two years following year ending March 2016 and the four years previous. I would recommend making prior year information available to us to enable us to calculate whether the Council would breach the 7 year provisions. If it does not it can make a claim for output tax on relevant income (which in the period

provided to us is (£202,500) without having to pay back input tax. To make you aware the input tax which would be repayable would be ~~£202,500~~ £204,000 for year end March 2016 which would make the claim a net loss for the Council.

I would advise that you only proceed with the claim if the 7 year de minimis test would permit the Council to deduct all input tax on the basis the VAT spend on exempt income is less than 5% on average.

Please also note that the Sports Facility would be a capital item for the purposes of the Capital Goods Scheme (CGS). If income were treated as exempt under Gating principles the rate of recovery for VAT incurred on

The build would follow the partial exemption position of the Council for the base rate of recovery.

$$\text{Total cost} = 1,250,000$$

$$\text{Total VAT} = 208,333$$

$$\text{Taxable use} = 85\%$$

$$\text{VAT deductible in 2016} = 177,083$$

$$\text{VAT blocked} = 31,250$$

This would be repayable to HMRC unless the 7 year de minimis test was satisfied - if a claim were made. Therefore, the use to which the building is put would be monitored for a further nine periods with adjustments made to reflect taxable use fluctuations throughout the period. When I say taxable, I mean taxable and non-business as the Council is a ~~33~~ body.

Please also note that income from spectacles would always be taxable. Supplies to businesses ~~or~~ or entities which are not individuals or not for profit organisations or sports facilities are always taxable and that hire of facilities can also be taxable. This could affect the amount of exempt income of the Council and thus the claim.

To conclude, ~~please do not make~~ I would advise the Council not to make the claim unless the 7 year de minimis can be met and further analysis is carried on. Please provide the suggested ~~info~~ information in order to allow us to do so.

Best Regards

Arthur



Internal Memorandum

Prepared by: Charlie Starke

Issued to: Del Humier

Date: 8 May 2019

Subject: Windtunnel Ltd - Indirect Tax

Sports Drink

Sports drinks are usually subject to VAT at the standard rate.

Despite some food items qualifying for zero-rating, sports beverages generally do not.

Food is often sold with packaging or additional items, in the case of Windtunnel, it is a reusable bottle. To whom these items are supplied should not affect the VAT treatment (whether it be ~~supermarkets~~ supermarkets or individuals) from a VAT perspective.

There would be little to be gained from trying to understand whether these items are a compound supply or a multiple supply of a sports drink and a bottle as both items would be subject to VAT at 20%. The drinks will be subject to VAT at the standard rate when supplied wholesale.

### Plastic Tax

Supermarkets and other large businesses are taxed on sales and use of single use plastic items. If it can be demonstrated the plastics are for repeated use, wind tunnel will be supplying a product that is desirable to supermarkets as it will not increase their plastic tax burden.

I would recommend requesting confirmation from HMRC as to whether it would consider the bottle to be a single use / disposable plastic item or not.

## Insurance Premium

Insurance is exempt from VAT, therefore Windtunnel should not incur VAT on the ASoK premium. It will incur insurance premium tax at 120% which will not be deductible.

The key question for Windtunnel is whether it, in turn, is providing insurance for the bottlers to its customers. As insurance services are exempt from VAT, if Windtunnel is held to be making a distinct and separate supply of insurance, this element of the supply would be exempt meaning that ~~the~~ ~~output~~ output tax would not be accounted for on this element but also that input tax would be blocked in relation to this ~~element~~ element.

Whether or not insurance is considered to be a distinct exempt

supply along with the bottle and the drink would ~~also~~ come down to two key tests:

1) what does the customer think that they are purchasing (i.e. do they understand that they are purchasing insurance to replace the bottle in an instance of breakage) and

2) would the insurance be purchased without the bottle and drink

I would suggest that the insurance forms part of a compound supply of the drink and is given freely with it. Therefore the whole consideration for the drink is taxable at the standard rate.

### Branded Mug

Supplies of the mugs will be subject to VAT at the standard

sale. Output tax should be accounted for at the standard rate. ~~The~~ The price of the mug should be identifiable when sold with a drink in case the drink it is sold with is zero-rated (i.e. milk based drinks or iced coffee that is taken away). The amount paid for the mug attracts VAT at the standard rate which must be accounted for.

### Environmental Contribution

windtunnel must understand whether the KSp is a donation or an increase in consideration for the hot drink. Hot drinks are subject to VAT at the standard rate and Donations (when given freely for nothing in return) are outside of the scope of VAT.

If the customer has no choice as to whether the KSp environmental contribution is made or is

Unance, I would suggest that it is additional consideration which is taxable at the standard rate. If the payment is optional and nothing is received in return for the ISP and the ISP is donated to a charity (for nothing in return) the ISP would be outside of the scope of VAT. The bills at windmill should be configured to separate out the different elements of supply and charge VAT only on the appropriate element.

### 2Sp Renewal

The 2Sp is a reduction in consideration, if the drinks are accordingly sold at the lower cost, VAT at the standard rate is accounted for on the lower amount.

~~If refunds were made, credit notes should be issued to demonstrate the reduction in consideration and~~

~~Box 1 of the VAT return reduced~~  
~~credibility~~. The subsequent use of  
 the gift card would reduce  
 the consideration for VAT purposes.

### Free Hot Drinks

Goods supplied free of charge would usually give rise to an output tax charge through a deemed supply taking place for VAT purposes. However, following the case of *Julius Filippek and Danbs*, food supplied to staff free of charge can be made without creating a deemed supply if the items are essential for conduct of trade. In the cases above, the items were given to enable the employers to do their jobs. The free drinks in our case would not be essential. Therefore output tax must be accounted for on the free

drinks - this will represent a cost  
to wind tunnel on top of giving  
away the drinks.

To: arthur.pence@weatherburn.co.uk

From: j.brown@subatacorp.co.uk

Date: 8 May 2019

Subject: Re: Antmadini Ltd

Dear Arthur

Thank you for your email. Please find the advice requested contained herein.

### Share Purchase

Shares are exempt from VAT so not VAT will be incurred on the purchase.

Stamp Duty will be payable at 0.50% of the consideration which is a cost of £50,000.

By buying the shares Weatherburn will inherit the risks and

potential liabilities of the business.  
Therefore I would recommend that  
indemnities and warranties are agreed  
with the vendor prior to the  
purchase and that these are agreed  
contractually.

~~Total cost~~

Total cost: 10,050,000

### Asset Purchase

Asset purchases can fall to be  
considered as a transfer of a  
going concern where certain criteria  
are met.

Generally speaking HMRC consider the  
purchase of assets to be a TOGC  
where:

- 1) The assets are sold as part  
of a going concern which  
continues after the purchase has

taken place

- 2) Weatherburn holds the intention to carry on the same kind of business as the vendor
- 3) Where the vendor is a taxable person, weatherburn must be a taxable person
- 4) If land is supplied, that is subject to VAT then weatherburn must opt to tax its interest in the land, notifying HMRC and indemnifying that the option will not be disapplied prior to the purchase;
- 5) The asset must be capable of operation independently with no significant break in trade.

I would expect that the asset purchase would meet this criteria given the information that you have provided. HMRC has not defined what a significant break in trade is but I would recommend no undue delay to

options continuing after purchase.

A TOGC is neither a supply of goods nor services and is therefore outside of the scope of VAT. Weatherburn should not incur VAT on the purchase. However, F would recommend drafting the contract to the effect that the consideration paid is VAT inclusive should VAT become chargeable, to prevent unviable ~~costs~~ VAT costs in the event that HMRC find differently.

If the property is under 3 years old or opted to tax Weatherburn must opt to tax its interest in the property prior to the purchase for the property to form part of the TOGC.

If the property is in the Capital Goods Scheme, Weatherburn will be required to monitor the use

of the property for the remaining intervals and to make adjustments at annual ~~of~~ period ends if feasible use of the building has changed. Annual intervals will be on the anniversary of the transfer. ~~weather~~ weatherman should agree with HMEC when ~~to~~ Adjustments should be made. Weatherman should request details of the cost of the building under its original use and details of adjustments under CGS from the vendor. ~~if the bill~~

SDLT will be as follows

$$\begin{array}{r}
 0 - 150k - \text{nil} \\
 150k - 250k - 2\% = 2000 \\
 250k - 4m - 5\% = 187500 \\
 \hline
 189500
 \end{array}$$

This cost to be paid within 30 days of completion of the

purchase using form SDCT2.  
This can be found and completed  
on the HMRC website.

Total cost = 10,187,500

As you can see the TOGC  
is the more expensive option, however  
an indirect tax possibility but it  
does not mean that Weatherburn  
assumes the historic liabilities of  
the target company as the  
share purchase does. If suitable  
indemnities and warranties can  
be agreed with the vendor I  
would recommend purchasing the  
shares.

### VAT on potential fees

If a share purchase is  
made, VAT incurred on potential  
fees will be a residual input  
into Weatherburn (as per the

case of CEBO and Larenia and Mhera) VAT will be deductible in line with the overhead position of the company.

If a TOGC is used VAT can be recovered to the extent that the business is taxable. As it appears that the business is partly exempt I would suggest that VAT on fees will be partly deductible as per the case of UBAF.

### Partial Exemption

Sales of cars are taxable at the standard rate. Providing <sup>and intermediary</sup> finance is exempt. Therefore Automobili Ltd is a partially exempt business on the basis that it makes supplies of ~~both~~ financial intermediary services and trade supplies of cars.

In the case of Volkswagen financial services HMRC argued

that overhead costs of the business related only to exempt supplies of finance and hire were totally blocked from a VAT perspective (rather than partly deductible). It argued this because UFS was buying and selling the cars for the exact same price as part of its business model. As VAT was not on HMRC stated that all costs were attributable to exempt there. This argument was rejected. However I would recommend that Atmadini look to agree on a partial exemption special method with HMRC in order to ensure a fair deduction of overhead input tax. Previously, HMRC stated that 15% was an agreeable level of deduction, however, if Atmadini is making a profit on cars (as I expect) a ~~to~~ level of deduction is fine with

the use to which overhead inputs are put to taxable use should be agreed.

## Insurance

Insurance intermediary services are also exempt from VAT. VAT should not be accounted for on commission. This will affect the partial exemption position.

As motor insurance is subject to higher rate IPT when sold with cars, if customers are unaware of the commission made by Abmodini it will be required to register for and account for IPT on insurance intermediary commission. If customers are unaware of commission it does not. I would recommend keeping commission unlisted where possible. If not, and it already has not, Abmodini may have a historic IPT liability. This

should be established and indemnified against prior to purchase.

Warranties sold with cars are considered ancillary to the car and therefore taxable to VAT at the standard rate. Extended warranties would be subject to IPT and exempt from VAT.

Best Regards

Joan.

Chartered Tax Advisers  
Address

8 May 2019

FAO Gordon Smith

Finance Director

Find-a-deal Ltd

Address

Dear Gordon,

Re: VAT and Indirect Tax Advice

Thank you for your letter. Please  
find advice contained herein.

Utilities Comparison Commission

The commission received for acting  
as an intermediary to put customers  
in touch with utility suppliers is  
taxable at the standard rate. Find-a

-deal ('FAD') has accounted for output tax correctly.

FAD should take care to ensure that its contracts with suppliers and customers match the commercial reality of the situation (i.e. that it provides intermediary services only and not utilities). This will guard against the risk that HMRC considers the whole supply (including utilities) to have been made by FAD and assessing FAD for output tax on utilities supplied.

### Insurance Commission

Where FAD is providing services that put customers in contact with insurers with a view to agreeing ~~for~~ a contract of insurance and is providing information and profiling to recommend certain policies these services are exempt from

VAT following the case of Insuranceide. From the information you have provided I would suggest that FAS does make such exempt supplies.

However, where supplies are made to brokers rather than insurers these services are still subject to VAT at the standard rate, following the principles ~~of~~ in West Insure.

### Partial Exemption

FAS should submit an ~~error~~ correction to HMRC in respect of output tax accounted for in error on commission received from insurers. It should calculate the amount of VAT which has been deducted which would be blocked as relating to exempt supplies and deduct this from the claim.

For guidance, VAT relating wholly to taxable supplies can be deducted in full. VAT incurred relating only to commission from insurers is blocked. Residual VAT can be recovered to the extent of taxable use. The standard method of calculation is as follows:

$$\frac{\text{Taxable turnover}}{\text{Total turnover}} \times 100$$

Going forward, FARS should consider the ~~for~~ use of a special method and look to agree one with HMRC.

If the error is greater than 50% it must be submitted in writing to the error correction team at HMRC. If it is less than 50% and greater than 10% and less than 10% of box 6 on the

next VAT return it can be adjusted in the VAT return. If it is less than 10% it can be adjusted in the VAT return.

If adjusted in the VAT return I would still recommend disclosure to HMRC as this would be considered prompted disclosure, which carries a maximum of 30% penalty ~~on potential lost revenue~~ where unprompted has a maximum of ~~of~~ which ~~can~~ can allow for mitigation of ~~penalty~~ penalties down to nil. The maximum penalty for a careless error is 30% of potential lost revenue.

I would recommend including details of how error occurred and what has been changed to prevent further errors with a view to mitigating penalties. If error is over 50%

do not adjust / pay the error  
until HMRC has ~~quantified~~  
agreed the quantum.

~~The~~

Credit card commission will be  
exempt financial intermediary services  
if a similar level of service is  
provided as with insurance -

If you have any queries please  
let me know

Yours Sincerely

Charred Tax Adviser

Internal memorandum

Prepared by: Alison Moss

Issued to: Head of Finance

Date: 8 May 2019

Subject: Employee Cars

Based on the details of the proposed agreements it appears that Office Motor Direct Ltd ('OMD') is leasing vehicles to its staff, with an option to purchase the cars after the period of the lease has expired. Ownership of the car does not pass to the employee unless an agreement to purchase is reached.

Cars will be supplied to OMD subject to VAT at the standard rate. Any interest payments made on financing the purchase of the vehicles will be exempt from VAT.

VAT incurred by OMD on purchasing cars can be deducted in full

on the basis that it will make onward taxable supplies of the cars.

If the cars are supplied to staff under a salary sacrifice ~~of~~ arrangements the input tax ~~with the~~ incurred by OMS will be deductible in full with no output tax due on the lease of the car to the employee.

Naturally this would be favourable to employees however, salary sacrifice is only expected to be used for short term arrangements. HMRC might instead consider that the cars are supplied under salary net deduction arrangements (i.e. where the employee forgoes a certain amount of salary in order to receive salary plus a car). Under such arrangements, following the case of *Ashra Zececca*, VAT incurred can be deducted as input tax and output tax is due on ~~supplying the~~ payments made by

employees for the car.

Output tax should be accounted for at the point at which payments are received from employees as leasing the vehicles to employees is a continuous supply of services with the tax point due at car and when payments are received or tax invoices are raised.

The separate interest charge ~~is subject to VAT~~ ~~and~~ ~~the~~ is exempt from VAT. As such, input tax in relation to the supply of finance is blocked.

The onward sale of the vehicles either to employees or third parties are taxable at the standard rate. As such, VAT incurred on servicing costs prior to sale should be deductible in full.

~~If you have any car~~

It is possible that HMRC might regard the proposed provisions to be like purchase. If such were the case, output tax, would be due on the total selling price of the vehicle at the point at which the car was provided to the employee. This would be a cashflow disadvantage as the VAT would not have yet been paid by the employee.

If the car are later sold to the employee or a third party, output tax should be adjusted to reflect the ultimate selling price of the car.

In order to establish context in respect of the VAT liability, I would recommend seeking a statutory clearance ruling from HMRC  
\* please find more in next booklet

~~bre word~~

To: comdirpdco @ pdco-ct

From: tbiggsin-hasevat @ pdco-ct

Date: 8 May 2019

Subject: Re: Tax Issues Broadwood

Dear <sup>Tim</sup> ~~Com Director~~, thank you for your email,  
please find information

SIDL: Overage here.

SIDL is payable within 30 days of completion of the purchase of the land. It should be notified to HMRC using form SIDL 1 and paid within this period.

If it is not an initial penalty of £300 will be levied with further penalties accruing after 3 months of non-payment.

As the overage payment is due within 6 months of the initial SIDL liability, the SIDL must be paid on the full amount including the overage within 30 days of the purchase. As follows:

(I have assumed the building to be commercial in nature)

0 - 150k - nil

150 - 250k - 2% = 2000

250k - 40m - 5% = 1,987,500

Total = ~~1~~ 1,989,500.

If the average payment is not ultimately paid then a refund of SDLT can be claimed by amending form SDLT2 initially submitted. This should be done within 12 months of completion, if required, to prevent the need to submit another form.

Option 2: Anchor Tenant

Given the expense regarding the acquisition of the building I assume that the building has been opted to tax by

the Group in order to enable <sup>the</sup> ~~US~~ business to deduct VAT incurred. This might be a disincentive to the bank as it cannot deduct much of the VAT it ~~will~~ incur, however, I would expect it has found this to be the case on previous occasions.

The main incentive for entering into the lease is not related to a supply and is outside of the scope of VAT. Entering into a lease is not providing a service. However, if the bank allows us to use its name as an 'anchor tenant' it is making a standard related supply of advertising to our group as part of a broader transaction. It will be required to issue us with a VAT invoice and we will incur VAT on the amount paid to the bank. As such we should be careful to

note that any fee payable to the bank is noted in the paperwork as 'inclusive of VAT' to prevent an additional VAT cost arising.

SDLT will be payable by the bank on the payments made under the lease. There will be no SDLT cost to us.

### Option 2: Contribution to fit out

Separately to rental payments, we are making a supply of fitting services to the bank. This will be subject to VAT at the standard rate. If our Group has not opted to tax the building and the bank is expecting exempt supplies this taxable supply may come as a surprise. We should be sure to agree that the contribution amount to the fit out cost is exclusive of VAT so that we can charge

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

08052019 Date of Examination



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

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Taxation of Owner-Managed Businesses

Domestic Indirect Taxation

Inheritance Tax, Trusts & Estates

Human Capital Taxes

Taxation of Individuals

Cross-Border Indirect Taxation

Taxation of Major Corporates

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VAT on top of the price agreed.

It is perhaps best to wait until after the lease has been agreed to contribute to the bit cut costs from an SDLT perspective.

Where part of the consideration consists of improvements to land that are carried on prior to the effective date of the transactions, SDLT is payable on the amount including the value of the improvements. This will increase the SDLT liability of the bank and disincentivise this option. If this cannot be structured so as not to form part of the consideration liable to SDLT in a genuine and honest way, I would recommend that we go for option 2 (as this is likely to be more appealing to the bank).

If ya have any queries please let me know.

Best Regards

Theressa.

... continued

Fuel on business trips

Employees are reimbursed for business miles in keeping with prescribed rates set out by HMRC.

Generally 45p per mile is paid. The VAT element for a standard petrol vehicle that is deductible is VAT incurred on the fuel element of 11p per mile.

We must ensure that employees are submitting receipts with mileage expenses claims which include a greater value than the fuel element in order to deduct VAT paid on employee mileage.













































































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