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

Event **NA**

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Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**1224**	**6161**	**7359**
Section 2	**292**	**1441**	**1724**
Section 3	**859**	**3997**	**4835**
Section 4	**595**	**3068**	**3651**
Section 5	**740**	**3744**	**4464**
Section 6	**818**	**3884**	**4680**
Total	**4528**	**22295**	**26713**

Answer-to-Question-_1_

Registering for VAT

A person/business will need to compulsorily register for VAT if they/it makes over £90,000 in taxable supplies in the course or furtherance of business over a rolling 12-month period. They may be able to voluntarily register for VAT as an intending trader in advance of making taxable supplies, in the event that this is of commercial benefit to them (e.g., if they are able to recover a significant amount of input tax and/or if their customers are able to recover any output tax they may charge).

Registering for VAT would necessitate fulfillment of the various associated VAT compliance obligations, such as filing periodic VAT returns with HMRC (and making any payments in a timely manner, if applicable). Should the business be making a mix of taxable and exempt supplies (i.e., should the business be partially exempt for VAT), there will need to be additional calculations of how much input tax would be recoverable and annual adjustments would need to be calculated and included on periodic VAT returns.

The implications of the Ibrahims trading as separate sole traders or a single limited company with one VAT registration, if this is required, would be dependent on whether it is commercially beneficial for them to do so, and whether this would be required in the first place.

We consider their activities individually in the first instance.

Dr. Ibrahim's supplies

Generally speaking, the supply of services consisting in the provision of medical care by a qualified medical professional registered on a register of medical practitioners is exempt from VAT under Item 1, Group 7, Sch 9 VATA 1994. Dr. Ibrahim, being an NHS doctor, would be a registered medical practitioner, so in general, any supplies he makes consisting in the provision of medical care would be exempt from VAT.

Dr. Ibrahim is essentially undertaking to make two different types of supply, which are unlikely to carry the same onward VAT liability for his clients.

In order to qualify for exemption, case law precedent in cases such as *d'Ambrumenil* suggests that the nature of the services provided must be clearly therapeutic and regenerative, and necessary from a medical standpoint. There is currently a degree of ambiguity in what the extent of the healthcare exemption is as far as cosmetic procedures are concerned. The service he offers for treatment of burn victims' faces following surgery serve a clear therapeutic and medical purpose as they are medically necessary in order to restore his clients' health post their burns. As such, this income, amounting to £44,400 per annum would be viewed as fully VAT-exempt, meaning no VAT would be charged as output tax, and any input tax incurred by Dr. Ibrahim that has a direct and immediate link to this onward supply would be ineligible for recovery.

This should be contrasted with his onward supply of aesthetic treatments, which primarily serve clients who are looking for beauty enhancements that are unlikely to be strictly medically necessary, as they are for primarily aesthetic purposes and only serve to increase their confidence and mental well-being. Precedent in cases such as *Skin Rich* and *Illuminate Skin Clinic* suggests that the exemption would not apply to procedures such as these, which are primarily for cosmetic purposes. These are procedures that do not serve a therapeutic purpose for the purposes of the VAT exemption, and so would be taxable.

The income Dr. Ibrahim is estimating to earn for this income stream is £64,100 per annum, which is also below the compulsory registration threshold outlined above. Given that his clients are members of the public who are unlikely to be registered for VAT in their own right, not registering for VAT until absolutely necessary would be beneficial to him.

As an additional point, Dr. Ibrahim is proposing to issue a total fee for each client, covering consultations, skin treatment services, and medicines as well. As such, the services may carry different VAT liabilities in their own right, e.g., medicines would most likely qualify for zero-rating. While it is not strictly necessary that the presence of a single fee charge for all the services makes this a single supply, the following points should be considered:

1. Is there a principal/ancillary nature between the supplies (as outlined in the *CPP* precedent's principles)?

2. Would it be artificial to split the supplies (as in *Levob* or *Spectrum Community Health CIC*'s cases)?

In this instance, the end client is likely to view the supplies as being one, and the supplies would be viewed as single taxable and exempt supplies for the cosmetic and burn victims' services respectively.

<u>Mrs. Ibrahim's supplies</u>

Generally speaking, education services are also exempt from VAT, as outlined in Group 6 Sch 9 VATA 1994. She is undertaking to provide a one-year curriculum on mental health and various other psychology matters, to schools/colleges and potentially to private businesses as well. She could claim VAT exmption for her services provided she meets the definition of exempt supplies in item 2, Group 6, Sch 9 VATA 1994, whereby she would be supplying a course in a subject ordinarily taught in a school or university, by an individual teacher acting independently of an employer (i.e., as a self-employed principal).

However, it is unlikely that she will meet this definition, on the basis that she is supplying her services to a school, rather than in a private tuition type of setting, and the school's onward supply would be exempt if provided for a consideration received from the students. On this basis, she would be making taxable supplies amounting to £35,000 for the first three years, which is under the VAT registration threshold.

Schools/colleges as eligible bodies are likely to be heavily VAT-exempt or partially exempt, meaning it is unlikely that they will be able to recover any input tax they incur from Mrs. Ibrahim on her supplies (as opposed to any private businesses that may be able to do so, but they are not being supplied in the first instance). It would be beneficial for her to not have to register for VAT.

<u>Operating as a single limited company</u>

If the Ibrahims were to operate as a single limited company, they would cross the taxable threshold and need to compulsorily register. While doing so would mean they file single VAT returns for the both of them, which would make compliance somewhat simpler, there does not appear to be any clear commercial benefit to doing so since their clients are on the whole unable to recover VAT. Additionally, since they will be partially exempt, there will be additional administrative hassles such as computing annual adjustments for them to contend with, meaning this should be deferred for as long as possible. They should look to remain single sole traders for as long as necessary.

INsurance

VAT:

Dr. Ibrahim's commissions earned on supplies of insurance would be exempt under item 4, Group 2, Sch 9 VATA 1994, as he is bringing together, with a view to insurance, his clients who are or may be seeking insurance, with insurers providing these services.

IPT:

These services would be liable to the standard rate of IPT, i.e., 12%. Since the fee is not separately itemised to the client, the insurer would likely be liable to account for IPT on the full amount of the premium, £80, and Dr. Ibrahim would not have to register for IPT.

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

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

Answer-to-Question-_2_

Transfers between connected parties, whereby the purchaser is a company and the vendor is connected with the purchaser (as is the case here, since Thalli will be incorporating her business into a company), are deemed to occur at market value for SDLT reporting purposes.

<u>Option 1</u>

Transferring all the properties in one single transaction would result in the properties being viewed as a linked transaction, whereby the transactions would be viewed as one for the purposes of notification on a land transaction return and computation of SDLT. Additionally, on account of the total valuation of the three properties exceeding £500,000 and the purchaser of the properties being a company, under Sch 4A FA 2003, the transaction may be subject to a 15% rate on a higher-threshold interest.

However, since the purpose of the acquisition is exclusively for the purposes of a qualifying property rental business under Para 5 Sch 4A FA 2003, the 15% rate will not be in point. Instead, the company will only have to pay the additional 3% surcharge on the residential rates for an SDLT charge.

With regard to the consideration for carrying out of works, since the works will be carried out after completion of the contract, this will not form part of the chargeable consideration. Therefore, the total SDLT payable will be:

3% * 250,000 + 8% * (925,000 - 250,001) + 13% * (1,170,000 - 925,001) = **£93,350**.

<u>Option 2</u>

The transactions would have to be accounted for at the higher market valuation (for 11 Caxton Close), i.e., the £395,000 + £120,000, and the company will need to consider the carrying out of works provisions for the consideration.

Option 1 appears to be the more beneficial of the two scenarios from an SDLT payable perspective.

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

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

Answer-to-Question-_3_

A supply is within the scope of VAT if it is taxable and supplied by a taxable person in the UK in the course or furtherance of business. Input tax recovery is also dependent on what the nature of the onward supply is for VAT purposes, i.e., does it have a direct and immediate link to an onward taxable supply?

We consider each of the income and expenses' VAT treatments below.

<u>Parking in the staff car park</u>

The parking is currently being treated as exempt for this purpose. This appears to be incorrect. The supply of parking to the staff is not for a consideration or business purpose, and would rather be treated as being outside the scope of VAT, as a staff employment benefit of sorts rather than a supply in the course or furtherance of business.

<u>Expense on the new barrier for the staff to access car park</u>

The input tax incurred on the £35,000 spent on this barrier, i.e., £7,000, was not recovered at all. However, the expense would more appropriately be seen as one that forms an overhead cost component to the College that is not directly attributable to either its taxable or exempt activities. Thus, recovery on the £7,000 may be done in line with its partial exemption method, i.e., £910 of this input tax (13% of the £7,000) would be recoverable. This can be done by way of an adjustment to box 4 on the College's next

VAT return, as it is under the error correction notification threshold of £10,000 of VAT in the period.

<u>Car parking fees to the public</u>

This is currently being treated as non-business income, presumably on the basis that only a small profit is made and the intention is to cover costs. The parking lot is used for members of the public who do not just use the College's facilities/restaurant, but also the salon and gym.

Applying the *Wakefield College* case's two-stage test for whether an activity is a business supply, we can see that the College supplies a parking service for a consideration provided to it by members of the public. The supply could also arguably be seen to be made for the purposes of obtaining income therefrom, not just for the car park itself, but for the facilities on site. Thus, it would need to account for £1,000 of output tax on this fee, which it can do by way of a box 1 adjustment on its next VAT return.

As a commercial point to note, this additional 20% VAT charge would still result in the car park facility provided by the College being cheaper than those run by the local council, and as outlined below, input tax would be recoverable in full.

<u>Pay machines for the public car park</u>

Given that the car park is to be treated as a fully taxable business supply for members of the public, expenses directly attributable to it would be recoverable in full, which would represent a significant advantage to the COllege's cash flow.

The pay machine cost £45,000 to the College. The input tax incurred of £9,000 would be recoverable in full, also by way of a box 4 adjustment, although taken together with the other VAT errors to correct, an error correction notification (ECN) to HMRC outlining all the VAT errors to adjust would likely be simpler and be more direct as a method to correct the errors.

<u>Restaurant meals</u>

Currently, the meals are treated as being taxable at the standard rate on the basis that these are supplies of catering to the public. However, it is also outlined that the students run the restaurant to gain work experience as part of their final grade on their diplomas (and the charge to the public is significantly lower than that of a comparable restaurant, meaning there is not a tangible economic purpose to carrying this out) meaning the restaurant serves a clear educational purpose. Under the principles established by *Brockenhurst College*'s case, this would be exempt, and a refund of £1,200 of overpaid output tax should be sought from HMRC along with the refunds outlined above, by way of an ECN.

<u>Food and equipment</u>

Only £600 of the costs incurred are VATable at the standard rate, meaning while £120 of wrongly recovered input tax would have to be paid back to HMRC by way of the ECN outlined above, there is a clear benefit to the COllege of treating this income stream as a part of its educational offering to its students.

<u>Creche</u>

Under the principles established in *Yarburgh Children's Trust*, the fee income of £3,000 is correctly being treated as non-business, on the basis that the fee is predominantly charged to cover the costs of running the creche, even though there is an ancillary benefit of encouraging students to attend the college as well. Input tax on the equipment charge has correctly not been recovered.

Next steps for corrective action

The college should, at its earliest convenience, write to HMRC by way of an ECN (or VAT Form 652, though these are being phased out at present), outlining the total quantum of the errors to adjust above.

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

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

Answer-to-Question-_4_

In general, supplies in the course of construction of dwellings or buildings designed solely for use for a relevant residential purpose or relevant charitable purpose, with the exception of professional services provided in a supervisory capacity, would be eligible for zero-rating.

<u>Reliefs for the construction of the new residential accommodation</u>

Given the construction cost of £8.5 million, which represents a potential £1.7 million input tax liability that the School would be unlikely to recover much of on account of its heavily partially exempt and non-business supplies, zero-rating would represent a significant cash flow benefit to it.

The accommodation is to be in the same place as previous offices and laboratories, attached to the listed Edward Jenner Institute building. In light of the fact that the new block will be attached to the Institute building, there is an argument to be made that this would more appropriately be seen as an enlargement or extension of the existing Institute building. However, based on the fact that the retention of the Institute building, to be incorporated into the new residential accommodation block, is an explicit statutory planning requirement, and the latter is five times larger than the retained building, based on established case law from churches and other similar charitable institutions, this relief would not be denied on this basis. The planning consent letter should be provided to the contractors/builders for zero-rating to apply.

We also consider whether the rooms would be seen as dwellings in their own right. There is no internal access from one room to another, but whether the rooms would be seen as self-contained living accommodation in the absence of kitchen facilities is debatable. While there are cooking appliances such as a microwave and kettle, the absence of food preparation areas would mean this is not a self-contained living accommodation, and the School would not be able to argue that the accommodation block would consist of dwellings.

However, on the basis that the block is to be used by a charitable trust otherwise than in the course or furtherance of business, and will be the sole residence of at least 90% of its members, this would still be a building used solely for a relevant residential or relevant charitable purpose. A certificate stipulating intended use of the building should be provided to the contractor(s) for zero-rating to apply.

Additionally, the demolition costs would be seen as enabling works that are closely connected to the construction of the new qualifying building in the old offices' place, and would be eligible for zero-rating on that basis.

<u>Works to the Institute building</u>

The conversion of the Institute's ground floor to use as a porter's lodge and residential services' office may not be seen as conversion for solely residential use. However, given the clear demarcations between the services' office and the porter's lodge, an apportionment can be made such that reduced-rating is obtained on the lodge element of the works.

With regard to the VAT on the costs for conversion and fitting out the upper floors as an archive, the School will not be able to claim reduced rating or zero-rating as this would not be considered a qualifying conversion for either of those instances. However, given that access to the archives will be open to school children, researchers, etc. free of charge, and will house, display, and preserve historical items and materials, the archive would be seen as functioning as a museum or gallery, and VAT on supplies to it would be recoverable under section 33C VATA 1994, upon a claim being made to HMRC.

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

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

Answer-to-Question-_5_

HMRC's enquiry suggests that they are viewing Amanda's bed & breakfast/holiday letting ("Bnb" hereafter) business as closely bound and inseparable from that of the farming partnership with George, their son, and their daughter-in-law. They are operating under the powers granted to them under Paragraph 1A, Sch 1 VATA 1994, which states that they may make enquiries and directions "for the purpose of preventing the maintenance or creation of any **artificial separation** of business activities carried on by two or more persons from resulting in an avoidance of VAT."

Their claim appears to be based primarily on the following bases:

1. Guests are accommodated in barns owned jointly by George and Amanda.

This demonstrates a closeness in links, and operation from the same premises, between George and Amanda's businesses. They would likely point to the fact that the business rates are not paid on the barns but incorporated into the farming partnership's business rate assessment. Rent is also not paid to George and Amanda for occupation of the barns. This would indicate to HMRC that the businesses being carried on "separately" by the partnership and the Bnb would, in fact, be one for VAT purposes.

2. The Bnb's transactions were originally conducted through the farm's bank account.

While not a determining factor in and of itself, HMRC would likely point to that as proof that the Bnb was intended and set up as a closely linked extension of the farming partnership, rather than a separate business in and of itself. The fact that the accounts are now separate may be viewed as immaterial to them.

3. Catering is occasionally supplied to Amanda's guests using the facilities provided in the farmhouse kitchen.

The operations of the farming partnership appear to feed into those of the Bnb business, which may be added impetus for HMRC to make an aggregation enquiry of this nature.

4. Amanda is not VAT-registered in her own right, while the farming partnership is.

HMRC may point to this as an abusive arrangement to avoid VAT, whereby activity that is actually relevant to the farming partnership would be directed via the Bnb business instead, which results in an artificial reduction in VAT that would properly be due by the farming partnership.

Potential outcomes of HMRC's enquiry:

1. Mitigating factors resulting in no direction being issued

There appear to be several mitigating factors that point to the Bnb business being fundamentally separate, and not artificially split from the farming partnership, and HMRC cannot issue any aggregation directions to treat the two businesses as one for VAT purposes unless they are fully satisfied as to the separation being artificial (as stipulated by Paragraph 2 Sch 1, VATA 1994). The precedents established in *Caton* against HMRC's aggregation notice in that instance would be useful to measure here.

For one, Amanda operates the business by and large by herself, with very occasional help from George and their daughter-in-law. There is a high degree of independence in how she runs the Bnb, and it appears that that was always the intention, since this was set up to further her own interests outside of the farming business.

Secondly, the reason why the bank accounts were originally the same is key. It would appear that the segregation in transactions, and businesses, was always the intention, and the only reason why the farming partnership account was used for two years was due to an absence of a credit rating for the Bnb. This appears to now have been established, and Amanda has been keeping everything independent in her own right in this regard.

Finally, Amanda meets all the key costs and consumable obligations of the Bnb business by herself, without a significant degree of involvement or proximity with the farming partnership, meaning separation is not artificial by that metric either.

Provided HMRC are informed of all of the above, they may choose not to pursue the enquiry further/make any directions.

<u>2. Directions made</u>

However, if HMRC are not convinced that the split between the businesses is not artificial, they may choose to make an aggregation direction whereby Amanda may be treated as being part of the farming partnership, with her income being treated as that of the partnership and the partnership having to report VAT on it. HMRC may choose to backdate this all the way to when she commenced trading, on 1 April 2022, or from a later date/on a going forward basis, per their discretion.

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

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

Answer-to-Question-_6_

VAT treatment of purchase of Talley Ho Stud assets by Nancy

The purchase of the assets purportedly qualifies (based on the treatment by Nancy and the sellers) as a transfer of a going concern (TOGC). This would be the case provided the following basic conditions were met:

1. The assets, including stock-in-trade, machinery, goodwill, premises, and fixtures and fittings, must be sold as part of the TOGC.

2. The buyer must intend to use the assets in carrying on the same kind of business as the seller.

3. Where the seller is a taxable person, the buyer must be a taxable person already or become one as the result of the transfer.

4. In respect of land or buildings which would be standard-rated if supplied, the buyer must notify HMRC that they have opted to tax the land by the relevant date, and must notify the seller that the option was not disapplied by the same date.

5. Where only part of the business is sold, it must be capable of operating separately.

6. There must not be a series of immediately consecutive transfers of the business.

Where the above conditions are met, the transfer of the business would be considered to be outside the scope of VAT, and no VAT would be chargeable on the acquisition.

We consider these conditions in the context of the transaction.

To begin with, Nancy acquired all the business assets as part of the TOGC, fulfilling the first condition.

Second, Nancy must intend to carry on the same kind of business as Jennifer and Penelope with the assets acquired. This is an area of ambiguity. Under the CJEU precedent established in *Zita Mode*, it is not necessary that the same business must be carried on, only that a business could be carried on with the assets acquired, and per HMRC guidance, a similar kind of business be carried on.

In this instance, Nancy intends to carry on using the horses acquired for breeding, but will also be using the assets for a different income stream from early 2026. This may be viewed by HMRC as being a different kind of business, as owners would be stabling their horses and paying consideration for essentially the space in the paddock and barn, rather than for the breeding activity.

In order to protect TOGC treatment, Nancy may want to consider delaying the launch of this new livery business, so as to not create any VAT charges that she would be liable to pay.

Nancy fulfills the third and fourth conditions by having registered for VAT as an intending trader and opting to tax the barn and horse school, as well as notifying Jennifer and Penelope that her option to tax would not be disapplied. She will be liable for making

Capital Goods Scheme adjustments going forward (the adjustment period for Jennifer and Penelope will end the day before transfer, with a new adjustment period being created the day of the transfer which will be Nancy's obligation to monitor for the remainder of the 10 years, for taxable versus exempt, and business versus non-business, use).

With regard to the fifth and sixth conditions, while the turnover of the farm has declined markedly in the last four years, it is still capable of functioning independently, and there have not been any announced closures to the business or transfers planned by Nancy (the precedent in *Thruxton Parachutes* also provides additional security to treatment in this regard).

Therefore, on balance, it appears that Nancy would have been correct to treat the transaction as a TOGC, and the £1.2 million transfer price will not carry a VAT charge with it.

<u>SDLT chargeable on the transactions and Nancy's reporting obligation(s)</u>

With regard to the flat, school, and barn, the transactions would be seen as linked transactions under s.108 FA 2003, meaning they would be treated and notifiable as a single mixed-use land transaction. The consideration would not have VAT on it on account of the TOGC treatment on the assets, meaning the overall SDLT payable here would be:
0% * (150,000 - 0) + 2% * (250,000 - 150,001) + 5% * (780,000 - 250,001) = **£28,500**.

With regard to the purchase of Tally Ho House, the transaction would be seen as a residential purchase for an additional residential property surcharge added on as Nancy and Philippe will still be retaining their flat in London. The house will not carry a VAT charge on it. The building works would also form part of the consideration as a result of the works being carried out on land being acquired by Nancy, prior to completion of contracts as a requirement for Jennifer to complete. Therefore, the SDLT payable would be:

3% * (250,000 - 0) + 8% * (800,000 - 250,001) = **£51,500**.

Nancy would have to report these transactions on a land transaction return within 14 days of completion of contracts.