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Taxation

Excellence in Taxation

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| <input checked="" type="checkbox"/> Taxation of Owner-Managed Businesses | <input type="checkbox"/> Taxation of Individuals                           |
| <input 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"/> Advanced Corporation Tax                          |
| <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

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Briefing Note

To: Human Resources Director

From: Tao Student

Subject: Plex Ltd IT Contractors Employment Status

Date: 3 May 2017.

Plex Ltd is hiring 3 IT contractors to work in the company & the contractors would prefer to be self employed.

It is integral that the correct employment status is determined by the company as it is the company's responsibility to deduct the correct tax & NIC if applicable.

The company would face penalties if this is done incorrectly.

It is cheaper for the company to hire self employed contractors as there is no secondary class 1 NIC to pay.

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In addition, the contractors pay NIC at the lower rates of class 2 & 4 and deductions are available from trading profits if they are wholly & exclusively for the trade.

There is no condition for the expenses to be necessarily incurred as there is being employed.

There are a number of factors HMRC use to determine whether someone is self employed or employed.

Firstly HMRC look at the number of paymasters. If there is more than one source of income the worker is <sup>more</sup> likely to be self employed.

Can the worker suffer financial risk? Can a loss be made as well as a profit? Usually a fixed fee regardless of the project length would incentivise the worker to finish quicker but could ~~also~~ result in a loss if it takes

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longer.

Will Ples Ltd be obliged to provide work if the contractor obliged to take it? If the contract specifies just this project with no guarantee of further work after this point should be met.

Will the contractor be integrated into the company in any way? Will they have their own desk & company email? If so there are more indicators of being employed & so should probably be avoided if possible. Perhaps a generic 'contractors' email which they can all access would be better?

Will the contractor be required to bring their own equipment? Clearly there will be equipment located at the company the contractor will be required to use due to being specialist, but will they be required to bring their own laptops, hardware and additional materials?

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If so then they are more likely to be self employed. Perhaps, this could be a stipulation within the contract.

Will both parties have the right to terminate the contract? If there are notice periods and PILONs it could be considered the worker is employed.

Can the worker send a substitute to perform the task in their place? If so, this is a strong indicator of being self-employed & I would recommend, if possible, this clause being put into the contract.

Who will have primary control over the ~~contractor~~ <sup>contractor's</sup> day to day work? If the contractor is able to work on his own timetable & decide what to do when, then this is another indicator of self employment.

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HMRC have released a code of practice / factsheet to assist employers in deciding whether someone is employed & self employed.

ES/FSI provided lists of questions to aid in determining the points I have mentioned.

as indicators of S.E

The key points they list are as follows:

- hire a substitute or helper
- decide where, when, how or what work to do.
- making a loss as well as a profit.
- fixed price regardless of length

In addition, the following also assist in determining the employment status:

- risk of own money
- providing equipment
- numerous payrates
- rectifying defective / factory work in own time.

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As you can see, it would be useful if these points were clearly included in the employment contract so as to remove doubt as to the employment status.

If the contractor is determined to be self-employed, the payment will not be required to be made through PAYE & can be directly paid.

There will be a corporation tax deduction for the company.

The contractor will include the amount in his trading profits where he can deduct trading expenses & will bring the net profit into the self-assessment calculation, subject to income tax & NIC class 2 & 4. (9% & 2%).

The contractor will pay + file <sup>his self assessment</sup> by 31 January following the tax year & probably be required to make two payments on account.

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If the contractor is deemed to be employed  
the payment will need to be operated through  
PAYE, with income tax & class 1 NIC  
deducted at source. (12% & 2%.)

There will also be class 1 NIC payable by  
the company at 13.8%.

This will need to be paid across to HMRC by  
the 22nd following the month of electronic.

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6282



Headed Paper

Our Address

Your Address

3 May 2017

Dear Ivan.

Following our discussion regarding the most  
efficient way to operate your business, please  
find further information below.

Overview

There are many different ways to structure  
a business, ultimately a calculation will  
have to be performed.

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Sole Trader

A sole trader reports his net profits on his self assessment return which needs to be filed by 31 January following the tax year.

A sole trader may be required to make payments on account in addition to his tax payment on 31 January, which are due on 31 January & 31 July.

A sole trader calculates their profits by deducting trading expenses. These are expenses that have occurred wholly & exclusively for the business.

A sole trader can take advantage of the cash basis & flat rate schemes to assist in simplifying their income, however most operate under the accruals basis & Generally Accepted Accounting Practice.

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A sole trader pays tax at various tax rates of 20%, 40% & 45% after deducting the personal allowance.

If the profits get too high then this might affect the amount of personal allowance received.

Some positives though, if the ~~comp~~ business were to ever be loss making, there are many loss reliefs available and you do not need the reserves to take drawings from the business.

A sole trader also pays NIC at the class 2 & class 4 rates which are lower than the employed rates.

In addition a sole trader does not benefit from limited liability.

See Appendix 1 for the tax position.

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## Company

There are many positions to operating through a company. The company has limited liability, you can choose how & when to extract profits and there are lower rates of tax - corporation tax.

A company needs to file accounts with Companies House & audit.

## Salary

You can take a salary through the company & this is a deduction to corporation tax.

Class 1 NIC is payable by you and the company, with you paying a 12% / 2% and the company paying at 13.8%.

The NIC the company pays is also tax deductible.

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A salary of £8,060 is the most tax efficient due to being a qualifying year for <sup>state</sup> pension but not triggering any Class 1 NIC for the company or yourself.

### Dividends

Dividends are taken out of ~~pre~~ post taxed profits are not eligible for a deduction for corporation tax.

You can only distribute net dividends if you have the distributable reserves within the company.

The first £5000 is taxed at 0%, with the remaining basic rate band taxed at 7.5%. Higher rate dividends are taxed at 32.5%. Highest Additional rate are taxed at 38.1%.

These are taxed after non-savings & interest income.

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Other extraction methods

As you ~~are not yet~~ <sup>and have not yet</sup> 65, you and have not yet drawn down your pension: you ~~will~~ can get the company to ~~pay money into~~ make a pension contribution for you.

This is a tax free benefit for the company if it is wholly & exclusively for the purposes of the trade meaning not excessive.

You have a £40,000 annual allowance in addition to carry forward from prior years and a £1 million limit

You could also receive rent if you own a property.

See Appendix 2 for the overall tax position.

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Conclusion

By operating as a company, you receive more net profit making this the most tax efficient structure.

It is more efficient to draw a smaller salary to mitigate the national insurance payable & extract as dividends.

Please be aware this affects your relevant earnings for pension contributions.

Please do let me know if you have any further questions.

Yours sincerely,

A. D. Vior.

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Appendix 1

Job order

|                  |                 |
|------------------|-----------------|
| Trading profits  | 75,000          |
| less PA          | <u>(11,000)</u> |
|                  | 64,000          |
| 32000 @ 20%      | 6400            |
| 32000 @ 40%      | <u>12800</u>    |
|                  | 19200           |
| POA left         | <del>2600</del> |
| Class 4          | 3785            |
| POA left         | 11,493          |
| Class 2          | <u>146</u>      |
| TOTAL due 31 Jan | 34,624          |

|         |                          |            |
|---------|--------------------------|------------|
| Class 2 | $2.80 \times 52$         | 146        |
| Class 4 | $(43,000 - 8060) @ 9\%$  | 3145       |
|         | $(75,000 - 43000) @ 2\%$ | <u>640</u> |

Net profit 40,376  
(another POA due 31 July)

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Appendix Z

Company

75,000

less salary

(8,060)

66,940

less CT @ 20%

(13,388)

53,552

Extract as dividends.

NJ

D

Salary

8060

dividends

53,552

PA

(8060)(2940)

50,612

5000 @ 0%

0

27000 @ 7.5%

2025

18,612 @ 32.5%

6049

8074

PoA

4037

Due 31 January

12111

Net profit 49,501.

(another PoA due 31 July)

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Qualifying expenditure for R+D plus under the following headings:

Staffing costs

Subcontracted R+D

Software or consumables.

S1123(3) CTA 2009 eliminates benefits in kind being included. So the medical benefit does not make up enhanced R+D expenditure.

S1123(2)(b) CTA 2009 lists an amount paid because of an employee's employment is allowable where the statutory redundancy will qualify and persons under 1123(7)

Subcontracted R+D is only available at an enhancement of 65% of the qualifying expenditure.

Consumables under S1125(1)(b) CTA 2009 includes water, fuel & power but not rent or telephone.

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|  |          |  |
|--|----------|--|
| June 2015                                    |          |  |
| Profit per <del>week</del> <sup>return</sup> | 150,000  |  |
| less:  |          |  |
| enhanced expenditure                         | (87,423) |  |
|  | 62,577   |  |
| @ 20%.                                       | 12,515   |  |
| refund.                                      | 17,485   |  |
| <del>AA</del>                                |          |  |
| June 2016                                    |          |  |
| Profit per return                            | 200,000  |  |
| less:  |          |  |
| enhanced expenditure                         | (53,938) |  |
|  | 146,062  |  |
| @ 20%  | 29,212   |  |
| refund.                                      | 10,789   |  |

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QUESTION NUMBER

1

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|                                     |               |     | June 15       | June 16       |
|-------------------------------------|---------------|-----|---------------|---------------|
| Alan Hart                           | x 7/11 x 4/11 | 30k | 19,091        | 10,909        |
| Janice Stanley                      | x 7/11 x 4/11 | 25k | 15,909        | 9,091         |
| Rachel Jones                        | x 7/11 x 4/11 | 20k | 12,727        | 7,273         |
| (Harry Marshall x 1/6)              | x 7/11 x 4/11 | 5k  | 3,182         | 1,818         |
| <b>Total</b>                        |               |     | <b>50,909</b> | <b>29,091</b> |
| Redundancy                          |               |     |               | 2,200         |
| TCLtd @ 65%<br>(42k)                | x 7/11 x 4/11 |     | 17,373        | 9,927         |
| Water etc (750)                     | x 7/11 x 4/11 |     | 477           | 273           |
| Not telephone or rent               |               |     |               |               |
| <b>Total</b>                        |               |     | <b>68,759</b> | <b>41,491</b> |
| @ 130% <del>APF</del>               |               |     |               | 53,938        |
| @ 125% 1 Dec 14 - 31 Mar 15 x 4/7   |               |     | 49,114        |               |
| @ 130% 1 April 15 - 30 Jun 15 x 3/7 |               |     | 38,309        |               |
|                                     |               |     | <b>87,423</b> |               |

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The work LM Ltd has subcontracted to do is not allowable in calculating the company's R&D claim as it has been paid for by the other company.

②

The time limit for claiming the R&D enhanced expenditure is a year after the normal filing deadline.

So the 30 June 2015 claim must be made by 30 June 2017.

The 30 June 2016 claim must be made by 30 June 2018.

In addition the R&D criteria are met due to the employees being less than 500 & the turnover less than €100 million in both years.

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Hooded Paper

Our Address

Your Address

3 May 2017

Dear Bill

Congratulations on the first sale of the hotel business. Please find below my thoughts regarding possible capital gains tax (CGT) reliefs in addition to the potential tax payable.

Sale of hotel business - Entrepreneur's Relief

Usually with a sale of a <sup>property</sup> ~~business~~, the normal capital gains provision is proceeds less cost and allowable expenses.

The rates of capital gains tax are 10% for gains within the basic rate at 20%.

Hereafter.

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Each person has the use of an annual exemption of £11,100 to reduce their gains.

When a person makes a material disposal of business assets, in your case the whole of your business on cessation, and a disposal of an asset used in the business, the property, that has been held in the business for at least one year a relief called Entrepreneur's Relief (ER) is available.

As the property has been used in the business for a year it doesn't matter that it was used as student accommodation previously & will still apply.

There is a £10 million lifetime limit & a claim needs to be made by 31 January the first anniversary of 31 January following the two year.

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The fixtures & furniture may have had AIA and any depreciation claimed and therefore may create a balancing charge with the trading accounts for the year.

The property will have a gain as follows:

|                       |                  |
|-----------------------|------------------|
| Proceeds              | 1,200,000        |
| less cost             | (500,000)        |
| less conversion costs | <u>(150,000)</u> |
|                       | 550,000          |

### Rollover Relief

Within the 12 months prior to sale of the trading asset (hotel) mentioned above you acquired a trading premises for the motor business.

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Again the time limit is 4 years after the later of the tax year of sale or acquisition so 2020/21.

If you anticipate building the extension within the 36 months following the date of disposal (January 2017, we can make a pre-emptive Rollover Relief claim to include this in our calculation.

This will be clawed back if the expenditure is not spent on qualifying land & building in the time frame (or a qualifying asset).

|  |           |
|--|-----------|
| Gain on property                         | 550,000   |
| Rollover / Holdover relief               | (250,000) |
| Proceeds not reinvested                  | 300,000   |
| (1200,000 - 600,000 - 200,000 - 100,000) |           |

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As <sup>proceeds</sup> ~~has~~ have been reinvested in more than one qualifying asset you can choose how to allocate the rollover relief. I would recommend rolling it against the base cost of the new trading premises as follows.

|                   |           |
|-------------------|-----------|
| cost              | 600,000   |
| Rollover Relief   | (250,000) |
| Revised base cost | 350,000   |

Your chargeable gain for 2016/17 qualifies for Entrepreneur's Relief at 10% as mentioned previously which gives you a ~~gain~~ tax liability as follows:

|                        |          |
|------------------------|----------|
| Chargeable gain        | 300,000  |
| less AE                | (11,100) |
|                        | 288,900  |
| @ 10%. due 31 Jan 2016 | 28,890   |

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As you can see, by claiming these rebates it saves you tax at 20% on the majority of the gain, & defers the rest until you sell the trading premises which <sup>should</sup> ~~not~~ ultimately qualify for GR on the sale of the business.

Please do let me know your thoughts & whether you have any questions.

Yours sincerely

A D Vigor.

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|                | GP       | SRP | Single use | Class. |
|----------------|----------|-----|------------|--------|
| CA claim:      |          |     |            |        |
| PROFIT         | 20,000   |     |            |        |
| demonstrations | 1,500    |     |            |        |
| MUSIC SOFT     | 5,000    |     |            |        |
| Recording      | 10,000   |     |            |        |
| comp. Lead.    | 3000     |     |            |        |
| ATA            | (19,500) |     |            | 19,500 |
|                | 20,000   |     |            |        |
| UDA @ 18%      | (3,600)  |     |            | 3,600  |
| PROFIT         | 16,400   |     |            |        |
| claim:         |          |     |            | 23,100 |

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NOTES

1) Repairs to windows + guttering are allowable however demolition works are not allowable under s26 CAA 2001. and have been added back and included in CA claim on assumption that the work is P+M and no building structure has been altered.

2) Lease is Land + building so no CA's but the property income to the landlord can be deducted over the life of the lease. as short lease

Premium 10,000

$2\% \times P \times (n-1)$  (3600)

16,400

% 10 years.

$16400 \times \frac{5}{12} = 683$

Substantial works are not allowable.

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3) ~~Opote~~ ~~hire~~ lease with CO<sub>2</sub> > 130 g/km then is a 15% disallowable

Net rate not claimed  $\Rightarrow$  lease + fuel at 60%.

In addition business rules are only 80%.

Lease + fuel  
~~not~~

$$(6000 + 2500) \times 85\% \times 80\% = \del{5275} 5780$$

allowable therefore ~~not~~ disallowable

~~10000 \times 85\% + 2500 \times 80\% = 9000~~

4) Mercedes, as home is office then costs of going elsewhere are deductible travel expenses even if frequent.

Therefore personal use is 20%.

$$2000 \times 0.08 \times 80\% = 128$$

$$2000 + 500 \times 80\% = 2000$$

if CAs

claimed

$$10000 \times 45p + 2000 \times 25p = 5000$$

For Mercedes.  
For ~~both cars~~ it is better to claim Net rates than fuel. This claim is irrevocable. ~~for the~~

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5) Travel and subsistence whilst away work  
work allowable however there would be a  
duality of purpose with the need to eat so  
only reasonable expenditure.

6) Three month rental  
~~Two weeks wife paid~~ - allowable

Costs paid by Major record company allowable

Two weeks wife stayed also allowable

7) Music software is capital expenditure and  
has been added back. The upgrades  
would be revenue as only last for a year.

8) Laundry expenses are cheap entertaining and  
disallowable - only allowable if <sup>for</sup> still ~~use~~ <sup>use</sup>.

9) Training in a new skill not allowable  
deduction

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Depreciation is always disallowed by statute.

Business amortization is old / not allowable  
however if trading would be allowable re patent  
as long as not intangible generated goodwill  
post 8 July 2015 or pre 02 goodwill

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Chris Kapps CA  
 Dem Park  
 Wenland.  
 Weese  
 WEI 2ED  
 Your Address

Needed Paper

Account LLP  
 Our Address  
 1 Station Road  
 Wenland  
 Weese  
 WEI 7AY

3 May 2017

Dear Mr Kapps

Thank you for your letter regarding your clients  
 cessation of trade on 31 December 2016. Please  
 find below my thoughts regarding the points  
 raised.

Disincorporation Relief

This is available if there is a qualifying business  
 transfer within the 5 years beginning 1 April  
 2013 and finishing 31 March 2018

A qualifying business transfer must satisfy the  
 following conditions:

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- A. transferred as a going concern.
- B. transferred with all the assets other than cash
- C. That market value of land and buildings and goodwill is less than 200,000
- D. all shareholders to whom the business is transferred and individuals
9. The shareholders held shares for 12 months.

A claim must be made jointly by the company and the shareholders within a period of 2 years from the transfer date & is irreversible

This means that rather than the lease / goodwill being passed at market value to the shareholders, it would be passed for lower of cost or market value.

However as there is no <sup>value to the</sup> goodwill and the lease will surely have gone down in value since grant, this may not be necessary for the company.

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Cessation

On cessation of trade an accounting period ends.

Any plant & machinery

Any plant & machinery is deemed to be disposed of at consideration or if none then market value.

Amv 266 CAP 200

An election can be made to transfer at the written down value so not to create a balancing charge, however as the P+M is only net £200, there will be a balancing allowance of £10,000 which will increase the loss available.

The loss in the last accounting 12 months of trade can be carried back against the 36 months prior.

There is £46,000 of losses in the 3 months to 31 December 2016 / £36,000 + £10,000 balancing allowance

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In addition to 9 months of losses in the year to 30 September 2016 calculated at 20,000.

In total £136,000 of losses can be carried back under terminal loss relief, ~~under~~ or a loss in first six years.

This will offset the net profits in 30 September 2015 (assuming this loss was carried back to 2014 - if not we should amend this return to do so by 30 September 2017) and be carried back to 2014.

As the 1000 would already be offset against the 30,000, and additional 29,000 under terminal loss relief will use the profits to nil.

The remaining 107,000 of losses can be carried back to 2013. This leaves taxable profits of 3,000 and should create a total refund of (136,000) @ 20% 27,200.

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Liquidator

On cessation a liquidator should be appointed from this moment any distributions made will be capital distributions at 20% (VAT).

Just to note due to the level of cash in the business it would be worth appointing a liquidator even though expenses as under the informal winding up procedure. you will be caught by the 25,000 cap & all distributions will be subject to the less than efficient income tax rather than CGT.

As Paul was ~~Paul was~~ an employee / director of the company owning more than 5% of the shares & it has been confirmed it is a trading company despite the large amount of cash then he will qualify for entrepreneurs relief on any distributions made.

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This is because this was satisfied for a year prior to cessation & will be available for 3 years.

As Steve was not employed, then he will be taxed at normal rates. There is an annual exemption available to reduce chargeable gains.

### Planning

If the company were to purchase the shares of Paul he ~~would~~<sup>must</sup> be eligible for capital gains treatment as a UK resident owned for two years. Reducing his whole shareholding.

Steve could then continue trading however could focus on his consultancy through a company.

Please note this could be challenged as to whether it is for the benefit of the trade if Steve is going to change it & <sup>will</sup> ~~may~~ be caught by the major change of nature or conduct of

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business rules. so lessees would be restricted.

Paul would need to pay back his directors loan which would repay \$400 paid by the company.

If he wanted until liquidation a disbursement could pay this off. once all debts are settled.

Provisions would need to be left in the company for the debtors creditor & lease payments. in addition to asset security.

Please let me know your thoughts and let me know if you have any questions

Yours Sincerely

A. D. View.

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