

Institution **CIOT - ATT-CTA**
Course **CTA APS VAT and Other Indirect Tax**

Event **NA**

Exam Mode **OPEN LAPTOP + NETWORK**

Count (s)	Word (s)	Char (s)	Char (s) (WS)
Section 1	2907	13625	16775
Total	2907	13625	16775

Answer-to-Question-_1_

Pete Ording
Sandsails Ltd
110 Beach Road
Chington
Winshire
WM8 1SW

Sawyers LLP
99 The Esplanade
Wilminster
Winshire
WM1 2PL

5 May 2021

Dear Pete,

Thank you for your letter dated 3 May 2021, with enclosures, outlining the proposed opportunities.

Based on the information you have provided, I have set out my advice and recommendations on the best way to structure the proposed opportunities. This letter is for the sole use of your family and Sandsails Ltd.

1. Executive Summary

The purchase of the golf course, clubhouse and cottage should be a TOGC for VAT purposes and as such no VAT will be charged. This is on the basis that the current business of letting the facilities to the Golf Club are continued and the clubhouse is opted to tax.

On this purchase, there will be a SDLT liability of £20,750. A land transaction return, along with payment will need to be submitted to HMRC within 14 days of the effective date, typically the date of completion.

It should be possible to integrate the activities of the golf club with Zephyrs' current activities by amending its constitution.

There are two options regarding the purchase of The Larches either by yourself or by the company. I recommend that you purchase the property yourself as this will result in a lower SDLT liability, avoid the company becoming partially exempt which will impact on VAT recovery going forward and also will avoid the taxable benefit that results in living in employer owned accommodation.

The conditions to be met to avail of the sporting exemption are not met by Zephyrs as it is not an eligible body. Therefore, VAT has correctly been charged on the subscriptions and no refund is due.

The new discount cards will have to be looked at carefully from a VAT point of view as there is different VAT treatments depending on where they can be used.

2. Business Opportunity

I understand from your letter that you have been provided with the opportunity to purchase the golf course that is currently owned by Max Slazenger and used by Chington Links Golf Club Ltd ("Golf Club").

In addition, you are likely to retain the existing staff and will also look to merge the golf club with your current club, Chington Zephyrs ("Zephyrs").

2.1 Purchase of golf course and buildings

Max holds the freehold of the golf course, along with the clubhouse and Gorse Cottage personally. These items are let to the golf club for a nominal amount.

In order to purchase the golf course, including the other assets, the company will have to negotiate with Max.

The purchase of the golf course is effectively a purchase of land. On the basis that Max has not opted to tax the land, the sale by him to the company will be exempt from VAT.

The purchase of the clubhouse would also typically be exempt from VAT unless it had been opted to tax, however, as it is classified as new (less than 3 years old), VAT will be due on this at the standard rate of 20%.

The Cottage, as a residential building, will be exempt from VAT unless it is the first grant of a major interest in which case it will be subject to the zero-rate of VAT.

It should be possible to treat the purchase of the assets as a transfer of going concern. This is on the basis that the company will carry out the same business as Max which was to rent the golf course and facilities to a club (see below for plans on how to integrate club).

The effect of this is that the transfer is outside the scope of VAT and therefore there will be no VAT charged on the supply.

There are special rules regarding land and buildings as part of a TOGC. These apply where the TOGC includes property which would ordinarily be standard rated. As the clubhouse is new, this would fall within this category.

In order, to treat the transfer of the clubhouse as part of the TOGC the company will be required to opt to tax the clubhouse. This option must be in effect, and the company must have notified HMRC on form VAT1614A, no later than the date upon which the grant would have been treated as having been made, or if there is more than one such date, on the earliest of them.

The company must also confirm that the option to tax will not be disapplied by anti-avoidance provisions. This should not be an issue for this transfer.

The effect of this will be that all future supplies of this property will be subject to VAT at the standard rate.

The future plans to add tennis, squash, croquet and bowls will not prevent the TOGC conditions from being met as the golf club will continue to operate after you acquire it.

If there are any costs incurred in relation to the purchase of the golf club, such as professional fees, these may be recoverable based on the business activities of the business acquired. On the basis that the Golf Club will be used to make taxable supplies (see below for further information on sporting exemption), any input tax incurred on acquisition is recoverable.

The purchase of the land and buildings will result in a stamp duty land tax (SDLT) charge for the company as the purchaser. SDLT is calculated on the consideration, namely anything given in money or money's worth for the acquisition, whether given directly or indirectly by the purchaser or a person connected with him.

As the land and buildings include a mixture of non-residential (golf course and clubhouse) and residential (cottage) the non-

residential SDLT rates will apply.

This is because the transactions would be regarded as linked transactions as they involve the same buyer and seller and form part of a single arrangement.

This means that the first £150,000 will be subject to SDLT at 0%, the next £100,00 subject to SDLT at 2% and any amount over this subject to SDLT at 5%.

Assuming the consideration that the company will pay for the whole property equals the market value, I have calculated a SDLT liability of £20,750 (see Appendix 1).

As the purchaser, the company will be required to deliver a land transaction return (SDLT1) to HMRC within 14 days of the effective date. In most cases the effective date will be the date of completion. The land transaction return must include a self-assessment of the tax chargeable and be accompanied by payment of the amount chargeable.

I will be happy to assist you with the calculation and submission of the return when the transaction is complete.

2.2 Integration of golf club with Zephyrs

Following the purchase of the golf club from Max it should be possible to integrate the Golf Club with your current club.

It will not be possible to purchase the Club as it is limited by guarantee and therefore there are no shares to purchase.

In order to integrate the Club with Zephyrs you will need to amend Zephyrs' constitution to include golfing as well as its

current activity of sand sailing.

You can then allow Zephyrs to use the golf club and clubhouse as part of its activities.

As outlined in more detail in section 4, the supplies of Zephyrs are treated as supplies of the parent organisation, Sandsails, and therefore, there is no need to charge for these facilities.

All supplies provided by Zephyrs should be taxable but there may be various rates of VAT. For example, if children's clothes are sold these are zero-rated for VAT purposes but adults clothes would be standard rated.

The current point of sale scheme using electronic tills should be able to deal with this.

The visiting pro, Len Hickory, appears to be self-employed as he collects his own fees for lessons and pays the club a commission of £10. Therefore, the commission should be included within the activities of the Golf Club but the actual supply for the lesson will not.

The supply of accommodation to the groundsman for free will have no VAT liability in accordance with VATA 1994, Sch 6, para 10(1).

3. The Larches

From your letter I understand that you currently have two options you are considering regarding the purchase of The Larches. The first of these is that you will purchase it yourself, or alternatively, the company will purchase The Larches and rent it

to you.

I have considered each of these options individually.

3.1 Own Purchase

If you purchase The Larches yourself, you will be liable to pay the cost to Max along with any other costs that may arise.

As this is the sale of a residential building that dates back to the 19th century the sale will be exempt from VAT.

As the purchaser of the building, you will be required to pay SDLT. The SDLT will be based on the consideration given for the property. Based on a consideration of £900,000, there will be a SDLT liability of £35,000 (see Appendix 2).

This calculation also assumes that you will sell your current bungalow before purchasing this property. If you continue to own your current bungalow, the basic rates used in the calculation will be increased by 3% resulting in a larger SDLT liability.

As the purchaser, you will be required to deliver a land transaction return (SDLT1) to HMRC within 14 days of the effective date. In most cases the effective date will be the date of completion. The land transaction return must include a self-assessment of the tax chargeable and be accompanied by payment of the amount chargeable.

I note that you mentioned you will require funding of £250,000 to finance this purchase. There are a few ways in which this money could be raised including getting a bank loan.

You may want to consider issuing dividends instead of increasing your salary. I would recommend that you have a salary of £9,500

as at this level you as an employee will not pay any NICs and the company will only pay NICs on the amount above £8,788 (i.e. £712). Employer NICs will be due on the £712 at 13.8% but as the company gets a deduction from trading profits when calculating its corporation tax return for the NICs at the corporation tax rate of 19% this is the most tax efficient salary to take.

In addition, before issuing dividends, you may want to consider redistributing how the shares are split. At the current split, you own 90% of the shares and therefore you will receive the largest dividend payment but will also be taxed on this at the various rates for dividends.

It may be beneficial to transfer some of your shares to your wife to allow her to receive more dividends and lower your tax bill. The transfer to your wife can be done on a no gain/no loss basis for capital gains tax purposes and therefore there should be no other tax consequences.

3.2 Company Purchase

If the company purchases the property and leases this to you and your family this will have a variety of tax issues.

As before, the sale of the residential building will be an exempt supply for VAT purposes.

As the purchaser of the building, the company will be required to pay SDLT. The SDLT will be based on the consideration given for the property.

Based on a consideration of £900,000, there will be a SDLT liability of £62,000 (see Appendix 3). The SDLT rates for residential property are increased by 3% when a company is

purchasing the property.

There are anti-avoidance rules that deal with certain types of non-natural persons (i.e. companies) acquiring residential property costing more than £500,000. On these properties the persons are liable to SDLT at 15% on the entire purchase.

There are a number of reliefs from the 15% rate where holding a residential property in a company is a sensible commercial choice. These reliefs normally apply to property rental or property development businesses.

Therefore, as the company will be purchasing the property with a view to renting it at a commercial rate, the 15% rate of SDLT should not apply.

As the purchaser, the company will be required to deliver a land transaction return (SDLT1) to HMRC within 14 days of the effective date. In most cases the effective date will be the date of completion. The land transaction return must include a self-assessment of the tax chargeable and be accompanied by payment of the amount chargeable.

The income earned from the renting of the property will be exempt for VAT purposes. Therefore, the company will become partially exempt and this may have an impact on its VAT recovery.

As the amount of income per year is expected to be around £30,000, the company will be above the de-minimis partial exemption limit and will be required to carry out a partial exemption calculation as part of its annual VAT return.

There may also be a taxable benefit for your family as employees as you are occupying an employer owned accommodation. As the house cost the company more than £75,000, there will be an

additional benefit to you as the employee called the additional yearly rent.

This extra benefit will be added to the annual value to give the total benefit. The additional yearly rent is calculated by multiplying the cost of the accommodation by HMRC's official interest at the start of the tax year.

If you make a contribution towards the benefit, this can be deducted in arriving at the taxable cash equivalent.

Raising the funding through the company to enable this purchase should be more straightforward as the company should be able to get a loan on more favourable terms and can also consider selling shares to raise money.

3.3 Recommendation

I would recommend that you purchase the property personally for a variety of reasons including:

- the lower amount of SDLT that would be payable
- this avoids the company becoming partially exempt which may have adverse effects on VAT recovery going forward
- the additional tax you will incur on the taxable benefit of living in employer owned accommodation

4. Other Issues

There are a variety of other issues that you raised in your letter that I will now consider in turn.

4.1 Yachts purchased

I note that you mentioned you have recently purchased yachts. It is my understanding that the cost of the yachts is below £50,000. However, if my understanding is incorrect and the yachts cost more than £50,000 they will be regarded as capital items and included within the Capital Goods Scheme (CGS).

This means that the use the yachts are put to over the next 5 years will need to be monitored. If the use of the yachts changes, there will be a CGS adjustment.

Based on the current business activities, and assuming the business stays fully taxable, there should be no adjustments.

4.2 Discount cards

On the basis that these discount cards are sold (i.e. as part of the membership) the VAT treatment of them will depend on how and where the cards can be used.

Where the cards that are sold by the company can only be used in the company's shop the proceeds will need to be included in the gross takings. As you may not know the VAT liability at the time of sale due to the various items that are sold in your shop, and the fact that you operate the point of sale scheme, you may want to contact HMRC to agree a method of how to account for VAT on such sales, possibly on the basis of the average split of zero-rated and standard rated sales.

Where the cards that are sold can be used at several traders (i.e. many of the local shops), this is a standard rated supply of services.

4.3 Exemption for sports clubs

I note that you asked the question regarding the VAT exemption for sports clubs as you currently charge VAT on Zephyrs' subscriptions.

The exemption for sporting services is restricted to supplies made by eligible bodies. An eligible body must:

- be non-profit making
- have in its constitution restrictions on the distribution of profits
- not be subject to either commercial influence or part of a wider commercial undertaking

As Zephyrs does not have constitutional and financial independence from its parent organisation (Sandsails Ltd), the supplies of Zephyrs are included with those of Sandsails when accounting for VAT.

Therefore, as Sandsails is a profit making company it is not an eligible body and does not fall within the sporting exemption.

You have been correct to charge VAT on Zephyrs's subscriptions and there will be no refund due.

If you have any questions, please do not hesitate to contact me.

Yours sincerely

Jo Gupta

Appendix 1 - Purchase of golf course and buildings

Based on a value of £625,000, the SDLT liability is:

£150,000 @ 0%	0
£100,000 @ 2%	2,000
£375,000 @ 5%	<u>18,750</u>
Total	<u>20,750</u>

Appendix 2 - SDLT on Own Purchase

Based on a consideration of £900,000, SDLT would be calculated as follows:

£125,000 @ 0%	0
£125,000 @ 2%	2,500
£650,000 @ 5%	<u>32,500</u>
Total	<u>35,000</u>

Appendix 3 - SDLT on Company Purchase

Based on a consideration of £900,000, SDLT would be calculated as follows:

£125,000 @ 3%	3,750
£125,000 @ 5%	6,250
£650,000 @ 8%	<u>52,000</u>
Total	<u>62,000</u>

