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

Answer-to-Question-_1_

Animal Valley Ltd (Ani)

VAT liability of car park works:

The car park relates to standard rated income for VAT purposes so the VAT charged will be recoverable.

There are no reliefs on the extension of the car park as it does not relate to a building or for qualifying charitable use.

VAT liability of cafe and gift shop/toilet block:

The cafe and gift shop relate to taxable use so they will relate to standard rated income for VAT purposes so the VAT charged will be recoverable.

VAT will be charged at the standard rate on the development of the buildings.

Wildcat enclosure:

The wildcat enclosure will be used for conservation work which will be non-business for VAT purposes and will be open to the public which will relate to the exempt admission.

I think that the admission element would be ancillary to the conservation works under the card protection plan case on the basis that the research appears to be the main motive for the wildcats and their enclosure is 10% of the site which is not a large area.

On this basis, this will be used 95% or more for qualifying charitable use.

Zero-rating is available to teh construction of new buildings however this will be landscaping carried out so will not qualify for the zero-rating.

On this basis, the landscaping will be standard rated as there will be no relief.

On the basis that this relates to non-business use there will be no VAT recovery relating to the wildcats.

Reg 108 adjustment required if intention changes prior to use which would result in VAT clawback up to 6 years prior of VAT if registered.

Consequences of VAT registration:

If Ani are VAT registered then its taxable supplies will be liable to VAT where income is not exempt or not non-business.

Donations are outside the scope for VAT purposes so there would be no VAT payable on this income. This would also mean no VAT recoery.

Admission income is a business activity for VAT but as a zoo they can treat the income as exempt due to the cultural exemption for admission.

The admission income will be exempted on the basis of it being an eligible body, this is because they are a non-profit making organisation and are managed on a voluntary basis by volunteers who have no financial interest in the sanctuary.

Animal experiences will be subject to VAT at the standard rate.

The cafe will be standard rated where this relates to in house food. Where takeaway food this is in the main zero-rated subject to hot food being provided and ice creams.

The gift shop income will be standard rated. This is on the basis that goods are sold which are standard rated. Where zero-rated goods are sold by the gift shop such as children's clothing these will be zero-rated.

The car parking will be standard rated. This is on the basis that it is charged separately to the entry fee so would not be

considered to be ancillary to the admission fee.

The conservation grant will be non-business income as this does not relate to an ecomonic activity for VAT purposes. Where the grants relate to taxable income then this could be considered business income and taxable but it is assumed that it relates to the furthering of the specicies and therefore non-business.

The Wakefield College and Lord Fisher tests are important for business and non-business.

Where income is received based on sound principles it will be business.

Where income is received for profit this will be business.

Where income is carried on with making taxable supplies for consideration this will be business.

The supplies by Ani will need to be reviewed such as wildcats in the future to determine if this is business use rather than non-business. Such as if used for animal experiences likely to make the income business.

Compulsory VAT registration:

VAT threshold £85k in a 30 day or 12 month rolling period.

On this basis, Ani would not be required to register for VAT until the year ending 31 May 2023.

Voluntary registration for VAT can be made.

This would be via a VAT 1 form and they would need to register for MTD at the same time. They would need to keep digital records and comply with MTD provisions.

VAT would be recoverable on costs by registering early.

Pre-registration VAT would be recoverable on the works carried out and as these are services these would be up to 6 months prior to the effective date of registration.

Partial exemption:

The income will be both business and non-business income with taxable and exempt income.

On this basis, there will be a restriction of VAT recovery of Ani.

It is recommended that HMRC are approached to request a partial exemption special method (PESM).

For the first VAT year (up to March, April or May) the partial

exemption calculation can be on a use basis.

PESMs need to be applied for with HMRC where the standard method does not give a fair recovery.

Non-business income is excluded from the partial exemption calculation.

This would be the case for Ani on the basis that the main taxable income will be exempt admission which would restrict VAT recovery under the values basis.

A more fair approach could be for example the use of staff numbers for VAT recovery or the use of the park on a square footage basis although this is not preferred by HMRC (such as in the London Clubs Management case it was agreed but in Vision Express case HMRC did not consider it to produce a fair result).

Recommendation:

It is recommended that they should register for VAT as the VAT recoverable on the car park and gift shop (£56K) would outweigh the VAT to be accounted for on the animal experiences and car parking in 2022.

This would be £58.7k/6 = £9783 payable.

On this basis, there would be at least £46,217 that could be reclaimed from HMRC relating to the works.

It is recommended that a PESM is requested from HMRC.

An alternative for Ani woul dbe to have a trading subsidiary registered for VAT which can recover 100% VAT on the overheads incurred and a holding company which undertakes the non-business activities.

As Ani are a not for profit body, they may wish to consider registering as a charity in order to obtain the VAT reliefs for charities relating to fundraising and the sale of donated goods. In addition, there are beneficial reliefs for charities where there is 95% or more qualifying charitable use by a charity. For SDLT purposes there is also exemption from SDLT where there is qualifying charitable activities carried out.

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

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

Answer-to-Question-_2_

Ffion will be providing sessions to individuals in the first instance, on the basis that individuals cannot recover VAT, the charge of VAT to them will be an irrecoverable cost.

The VAT registration threshold is £85,000 of taxable supplies in either a 30 day period or on a rolling monthly basis. On this basis, Ffion would need to determine if her supplies require her to register for VAT or not based on exceeding the threshold.

Purchase of the van:

The combi-van would need to be determined if it is a car or not.

If it met the definition to be a commercial vehicle then VAT could be recovered on the purchase of the van by Ffion.

If it is a car and available for private use (i.e. not restricted by way of say insurance policies) then no VAT would be recoverable on the purchase.

Cabin:

Where the wood cabin is purchased and is used for business purposes, if Ffion registers for VAT this will be fully recoverable as it directly relates to business supplies.

VAT can only be recovered by Ffion if registered for VAT. If Ffion registers for VAT, VAT can be recovered on the expenses incurred prior to registration. This is for services incurred 6 months prior to registration where it relates directly to taxable activities and goods incurred up to 4 years prior to registration that are still on hand at the date of registration.

If Ffion is intending to 'scale up' her business in the future, it should be considered whether or not it would be beneficial to register from an earlier date voluntarily to recover the VAT on the wooden cabin and combi-van (depending on its status). Ffion should consider the VAT recoverable against the VAT payable.

The finance company F12X Ltd is finance related meaning that the majority of its supplies are likely to be VAT exempt. On this basis, it would be advantageous not to register when charging F12X Ltd on the basis that they would be restricted as to how much VAT can be recovered.

VAT liability of supplies:

Physiotherapy (physio):

Ffion is a qualified physio meaning that she is considered to be a health professional for VAT purposes.

The physio services will be within the profession to which Ffion is registered to practice.

It is expected that the primary purpose of Ffion's service would be for the protection, maintance or restoration of the health of the customer.

On this basis, the physio supplies will be exempt under VATA 1994 Sch 9 Group 7.

This therefore means that the physio supplies will not count towards the VAT registration threshold.

Relaxation techniques:

This will be standard rated as it will not fall under the welfare exemption or health exemption.

This will therefore be standard rated for VAT purposes and will count towards the VAT registration threshold.

Nutritional advice:

Ffion is not a qualified nutritionist so this will not fall under the health exemption. Ffion will also not be overseen by a health professional. Although nutritionist's do not fall under the exemption, a medical practitioner such as a doctor will be able to give exempt nutritional advice. This however will not be met.

Nutrition is unlikely to be a subject ordinarily taught in schools so on this basis, it will not fall under the exemption for education where provided as a sole proprietor.

This will therefore be standard rated for VAT purposes and will count towards the VAT registration threshold.

Services to F12X Ltd:

This will not be considered to be occupational health on the basis that it is wellness rather than medical services. If it was occupational health related then it would be exempt from VAT under the health exemption.

Ffion's supplies to the company will be advice relating to looking after physical and emotional wellbeing.

It therefore needs to be determined whether or not this falls under the supplies as a physio and therefore exempt.

Ffion will not be providing services as a physio by giving the advice as these will be wellbeing sessions.

On this basis, as it is advice that is being given relating to how a person can look after their physical and emotional wellbeing it will be standard rated income.

If it say advice to employees realting to how to maintain physical fitness whilst sat at a desk and the physio movements that could be undertaken then part of the supply could qualify for exemption and it be apportioned between standard rated and exempt income.

Summary of income:

Physio - exempt
Relaxation - taxable
Nutritional - taxable
Wellbeing - taxable

Flat rate of £65 provided and £50 for introductory session:

Where the flat rate is charged covering physio, relaxation and nutritonal advice this will be a mixture of standard rated and exempt supplies.

Flat rate will be same supply as intro services assuming same supply. Unlikely however to qualify for exemption if overview service provided.

This will be a mixed supply.

This is on the basis that each client could choose a different mixture of time to spend on each of the activities.

For example, a customer could request 15 minutes of physio, 15 minutes of relaxation and 15 minutes of nutritional.

Each element of the supply will be separate and identifiable without being ancillary to one another.

On this basis, Ffion would need to apportion the VAT liability of the sessions.

Where it relates to half physio and half relaxation/nutrition then half of the consideration received from the customer would be taxable and half exempt.

The face creams as sold separately would be standard rated and separate supplies.

Ffion would need to document the decided proportion to determine the taxable percentage.

Sale of face creams:

Face creams can be eaten, therefore food stuffs and zero-rated as yoghurt/fruit.

Where spray mists are sold at a discount, the taxable income for VAT purposes will be the consideration received from the customer.

On this basis, Fiona will need to account for VAT on the VAT inclusive price of £6 charged where there is no separate charge for VAT. VAT can be recovered on the purchase of the face creams where a VAT invoice is held in Ffion's name and paid for by Ffion.

£30 deal:

The £30 deal will comprise of face cream, mindfullness CD and spray mist for free.

This will be a single supply of products, following the M&S case, the spray mist will be provided as part of the supply and cannot be excluded.

The face cream will be edible and fit for human consumption, it therefore needs to be determined if they are a food stuff or not.

Food in general is zero-rated for VAT purposes.

If the face creams are held for sale as food and are intended to be eaten by customers then they will qualify for zero-rating. This will however count towards Ffion's taxable turnover.

When selling under the £30 deal an apportionment therefore needs to be made to determine the standard rated element and zero-rated element. This is most easily done on a retail price basis meaning that the standard rated elements would be 30 * (10 + 8) / 38 = £14.

Does Ffion need to register for VAT?

The corporate work would be standard rated and count towards the VAT threshold.

If the typical sessions were used for the private individual work, the taxable element would be 15/60 = 25% of the income. This would be £60,000 * 25% = 15,000 taxable income.

The products sold would depend on the proportion sold but £10,000 income is expected.

This would total 15,000 + 58,000 + 10,000 = £83,000 taxable income which is below the VAT registration threshold so it would be possible for Ffion to not register for VAT.

Ffion would however need to ensure that the proportion of time spent relating to exempt physio and taxable income is well documented in terms of the split as HMRC would be likely to challenge the position.

The face creams are possible to be argued to be standard rated by HMRC if not truly edible so it is advisable that Ffion approaches HMRC for clearance as to their VAT liability.

Alternative:

An alternative would be for Ffion to set up the corporate wellbeing in a limited company to avoid VAT registration as this will be a separate activity for VAT purposes to the provision of physio and experience sessions.

This would however need to be separated with separate marketing, separate contact number, separate bank accounts and separate premises. Ffion would need to ensure that the activities are genuinely separate in what she is providing i.e. that they are not considered to be the same activity.

There is however a strong chance that HMRC would view this as an artificial split of business activities and HMRC would therefore issue a direction to be one business from a current date or unwind the structure so that all income was taxable from the beginning.

On this basis, although this has been considered for Ffion, it is not recommended that this approach is taken.

Flat rate scheme:

Ffion could consider use of the flat rate scheme for VAT to reduce admin if she needed to register. However, would need to consider if a low cost trader or not which may not make it beneficial.

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

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

Answer-to-Question-_3_

Stamp duty land tax (SDLT) administration:

SDLT is reportable on an SDLT return 14 days from the completion of a transaction, the SDLT payable is due at the same time.

SDLT is payable on the VAT inclusive price.

Granny annexe - is this included in the value for SDLT? Is it two properties or not?

There is a concession for SDLT purposes where a subsidiary dwelling is within the same buildings or grounds as the princple dwelling and the value of the granny annexe is less than a third of the value of the total value of the dwelling purchased.

The value of the granny annexe is 20% of the purchase price which is below a third.

This is contained within the house by way of a locked door

through a hallway meaning that is is within the same building.

On this basis, the granny annexe meets the conditions for the subsidiary dwelling meaning that this is a single house being purchased rather than multiple dwellings (which would then be eligible for Multiple Dwellings Relief). On this basis, this will be one residential purchase.

The land is 2 acres which is sufficient to enjoy the residence as a dwelling.

As it is let to a farmer this will be considered for business purposes.

It could be argued that as it is sufficient to be let that it would be considered to be non-residential. However, the rental is £1,560 for the grazing and £1 per bag of manure which does not appear to be a business activity. This does not meet the principles as set out in the Wakefield College or Lord Fisher tests. For example, the letting of the land where the monies are used to cover repairs is not carried out based on sound business purposes.

The barn will be considered to be non-residential meaning that this is a mixed use purchase. This appears to be marketed as a home with the barn being of negligible value based on the marketing by the estate agents.

On this basis, I think that it is appropriate to use the residential rates as a mixed use purchase rather than non-residential rates for SDLT purposes. It would be recommended for clearance to be obtained from HMRC as this does not appear to be clear. The non-residential rates would be beneficial for the purchase on the basis that these are lower for SDLT purposes and the 3% surcharge would not apply where purchased by Propz.

The relevant cases that assist with this are the Hyman case where was a house with a meadow, barn and bridleway. This was considered to be wholly residential.

In addition in Pensfold the farmhouse had 27 acres of land and again was considered to be residential..

Where grazing animals are kept for leisure purposes the land is residential, however, as this is let to a local farmer this could be argued to be not for leisure purposes. Due to the minimal income, I do however think it is likely to be considered to be for leisure for Andi.

The fact that Andi has used the barn as an office does not change the VAT liability of the barn. For example, using a house as an office does not make it non-residenital as it remains to be a dwelling.

Additional information would be needed to determine how significant the office in the barn s.

Option 1:

a)

This would be purchased as a buy to let property meaning that the 15% SDLT charge does not apply.

The higher rate of 3% applies as a company purchasing.

The SDLT would therefore be as follows:

3% @ 125k	3750			
5% @ 125k	6250			
240@ 8%	19,200			
	29200			

SDLT payable is £29,200.

b)

Running the main house as a B&B would be for non-residential purposes.

Living rent free would not affect the SDLT use of the property or the intended non-residential use as it qualifies as a dwelling upon purchase.

On this basis, it would be £490,000 consideration subject to residential rates.

The 15% would not apply as it would be used to make the dwelling available to the public for trade purposes.

On this basis, the SDLT would be £29,200 as above.

Under option 1, the SDLT would be reportable and payable on the SDLT return following completion of the purchase.

Option 2:

Tax point for SDLT purposes:

The payment of £75,000 on exchange would trigger a tax point for SDLT purposes meaning that the SDLT would be reportable to HMRC.

This would be triggered on the basis that the contract is substantially performed by way of payment and that Albert can move in at exchange of contracts.

The return would therefore be due 14 days from exchange alongside payment at the same time.

Relief for disposal of additional property within 3 years:

Surcharge of 3% is payable on residential property based on the midnight test where more than 1 property is owned at midnight.

There is relief from the additional 3% where a main residence is sold within 3 years of the original transaction.

On this basis, there would be no additional 3% payable by Albert as he owns only one property when purchasing this at midnight when purchased.

SDLT chargeable:

0% @ 125k	0			
2% @ 125k	2500			
240k @ 5%	12,000			
	14,500			

Total SDLT 14,500

Therefore there is an SDLT of £14,700 saving by Albert buying it personally.

Carpets, curtains and free standing furniture:

The consideration for SDLT purposes, excludes the furniture from the consideration under both options on the basis that the fixtures and fittings are not considered to be chattels and not fixed to the property as they are not annexed to the property.

On this basis, £20,000 is excluded from the value of chargeable consideration for SDLT purposes.

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

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

Answer-to-Question-_4_

Time limit for assessment:

HMRC have time limits for raising assessments, these are subject to an overall 4 year cap or 20 years where fraudulent.

HMRC can raise an assessment from the later or 12 months from receipt of information relating to a return or 2 years from the end of the accounting period.

HMRC's inspection was in September 2021 meaning that the 1 May 2022 assessment was within a year of the visit.

On this basis, the assessments are within time for HMRC to raise these so Rewards 123 Ltd cannot challenge HMRC in respect of the time limit of the assessments being out of time.

It is worth however Rewards123 ltd challenging the assessment on the basis that if HMRC cannot show that the assessments are based on information obtained at the VAT inspection then the two assessments will not be valid as they would be issued relating to periods which were more than 2 years prior to the assessment notice.

VAT liability of supplies:

Supply of points to the employer and output tax due:

The supply of points to the employer will be considered to be a multiple purpose voucher (MPV).

On this basis, it is not known what liability the points will be redeemed for when they are redeemed. I.e. they could be redeemed for ether cash, vouchers or goods/services from the catalogue which would have different VAT liabilities.

VAT should therefore not be accounted for on the sale of the points when these are sold to the employer.

Although they are not described as a voucher, the points have the same VAT treatment and redeemable features as a voucher.

If the points could be redeemed for a supply at a single VAT rate then VAT would be accounted for at the point of sale to the employers. However, it could be redeemed for supplies of varying VAT rates.

VAT is therefore due when the points are redeemed similar to MPVs. The value to be accounted for on the points will be the value that was payable for the points by the employer rather than the value of what is obtained.

Where the rewards are cashed in for their face value for cash, this will not be a supply for VAT purposes so no VAT needs to be accounted for on the transaction. Consideration (points) will be given for cash which would not be subject to VAT.

Where vouchers are provided, output tax should be accounted for under the value of the payment received from the employer for the points.

Where goods are provided from the catalogue, output tax should be accounted for based on the value of points received. VAT should be acounted for on the sale of the goods based on the value listed in the catalogue price. As the price is known, taking into the principles of Naturally Yours, the VAT will be due on the price quoted. Where this is excluding VAT, VAT should be charged by Rewards123 on the value.

Case law:

The Aima (LMUK) case and Tesco case covered this issue.

In LMUK they were able to recover input tax on the supplies made on the basis that the payments received were consideration for the customer redeeming their points. This was a business activity for LMUK.

Over-recovered input tax:

Taking into account the principles in the LMUK case, Rewards123 will be making a taxable supply to the employer by way of the issuance of points which an admin fee is charged.

HMRC are however arguing that there was no supply made to the employer. However, the LMUK case, Tesco and Nectar points cases all showed that the taxable supply made by Rewards123 Ltd will be the supply of the points issued to the employer. The tax point of

these points will not however be triggered until the points are traded in on the basis that it is not known what VAT rate the supply will relate to (as it will effectively be the sale of an MPV to the employer).

The provision of the catalogue goods and services will therefore relate directly to the provision of the points when these are redeeemed by customers.

It is assumed that HMRC are rejecting the VAT recovery of the supplies on the basis that Rewards123 are not making taxable supplies to the customers. This however is the priniciples argued in LMUK.

As the points (which act as a voucher) are redemeed and act as consideration, this will be consideration for the goods/services that the points are exchanged for.

This therefore menas that LMUK are entitled to VAT recovery on the goods and services in the catologue even though their supply was made to the employer.

The consideration that should be accounted for by Rewards123 is the consideration received rather than the inflated 120% consideration. This takes principles from Elida Gibbs case meaning that you shouldn't account for output tax on more consideration than what is received.

Output tax will be due upon redemption of the points based on the consideration received from the employer. I.e. if £120 redeemed of vouchers, only £100 accounted for. This is because the consideration received is £100 from the employer and VAT is only accountable on the consideration received.

Fiscal neutrality:

HMRC are requesting Rewards123 to pay output tax on a supply but deny input tax recovery on the corresponding supply.

This contravenes the principles of fiscal neutrality under which they should be able to recover the VAT in respect of their payments.

Rewards123 should be accounting for output tax on their supplies made but also recovering input tax on the corresponding supply on the basis that they have a direct and immediate link to their taxable supply.

Actions to take:

The assessments were issued on 1 May 2022.

A review can be requested within 30 days of the issue of a VAT assessment. HMRC have 45 days to respond or longer if agreed.

Appeal to the First Tier Tribunal can be made within 30 days of assessment notice or review being finalised.

Review does not affect right to appeal to FTT.

Appeal to FTT must have returns and payments up to date including the VAT assessed.

As the 30 day time limit has passed and it is assumed that neither of the above have been actioned, a request for alternative dispute resolution (ADR) can still be made.

It is recommended in the first instance that LMUK provides HMRC with additional information relating to their supplies made despite the time passing, this is because there are two assessments being issued. There is a risk that HMRC will reject this on the basis of it being out of time per the Lower Mill Estate case.

ADR - This is a form of mediation between HMRC and a trader which is an alternative to costly legal appeals.

It is recommended that this is undertaken for Rewards123 to avoid a costly legal process.

Alternative assessments are made where there is different tax treatment possible depending on the facts. The preferred and alternative assessment does not affect the right to appeal.

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

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

Answer-to-Question-_5_

Aachen Bank Ltd (bank) is partially exempt for VAT purposes on the basis that the income received from UK based customers is exempt from VAT.

Income received from non-UK customers is taxable under the Specified Services Order by way of exported finance services.

Where income is received relating to exempt supplies, directly attributable input tax cannot be recovered.

Where income is received relating to taxable supplies, directly attributable input tax can be recovered.

Residual input tax is recoverable by way of a partial exemption calculation.

However, the standard method override needs to be considered where the standard method does not give a fair recovery where there is a difference of more than £50k or 50% residual input tax and £25k when comparing use and values basis.

Recovery under partial exemption (PE) is made on a quarter by quarter basis with an annual adjustment made based on the PE year which will be the year to 31 March. The adjustment can be made on the March or June VAT return.

HMRC have required an alternative method to be used on the basis that the values basis would not be fair for recovery.

Using a values basis, 30% of the residual input tax (£30m) would be recoverable which would be £9m.

There are a number of methods that can be adopted on a use basis, on the basis that there are four profit centres, these would be best to use.

The costs under a sectorised approach are used in different proportions meaning that averaging by way of one method for the whole business would not give a fair and reasonable recovery.

Using the sectorised method the different sectors calculate the recovery rate appropriate to how the inputs are used by the sector.

Securities trading will be considered to be exempt where provided to UK customers as they will be acting as an intermediary in a financial transaction.

Corporate finance advisory will be standard rated on the basis that this related to advisory work and does not fall within any exemptions. Where it relates specifically to a 'deal' and they are acting as an intermediary in say finding finance then it would be exempt provided work preparatory to the contract is carried out but advisory is standard rated similar to general consultancy.

Lending will be exempt as a financial intermediary similar to securities transactions.

Foreign exchange dealing will be exempt to UK customers per VATA 1994 Sch 9 Group 5 Item 1. Where a fee or commission is charged, this will also be exempt supplies. This will be taxable to non-UK customers under the Specified Services order as it will be exported financial services.

A values basis is not avilable on the basis that hMRC have directed an alternative method to be used.

Using a values basis, the income relating to taxable would be considered in proportion to total business income to determine the VAT recovery.

If a sector based approach was used, the income and residual VAT for each profit centre would be used to be combined to get a total recovery of input tax.

Method to apply:

Floor space is not usually a preferred method of HMRC and there have been a number of challenges by HMRC with its use as it does not often create a fair use. On this basis, this method is not appropriate.

The turnover does not give a fair representation on the basis that the use of staff and floor space does not represent the proportion of income received. This is because for example,

lending brings in significant turnover but uses minimal staff and floor space in comparison.

On this basis, staff engaged will be most appropriate.

	Total staff	Taxable use	Taxable use
Securities	20	20*20%	4
Corporate finance	10	10* 100%	10
Lending	40	40*10%	4
Foreign exchange	30	30*50%	15
			33

Total staff 100

33 staff/100 staff = 33.00% (to 2dp on the basis that residual input tax is more than £400k per month)

The recovery is therefore 33% on the basis of staff under a sectorised approach.

Using the standard method the 30% was non-UK customers which means that there is a better recovery for Aachen Bank using the sectorised approach.

It is recommended that a PESM is requested from HMRC.

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

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

Answer-to-Question-_6_

VATA 1994 Sch 8 group 1 zero-rates the supply of food.

Perfumiser

The zero-rating applies to food which is 'of a kind used for human consumption'.

The Perfumiser is not held out for sale as food for human comsumption and is held for sale as a kitchen equipment cleaner.

How the product is held for sale should not affect the VAT liabilty of the product.

As the oil will be considered to be food used for human consumption as Zing Oil can be and that Perfumiser is the same product, it will also qualify for zero-rating.

As oil is not an excepted item, it will be zero-rated.

Even though it is used for kitchen cleaning by the purchaser, it does not need to be standard rated.

On this basis, VAT has been overcharged by Kitchen Oils Ltd on this supply.

The marketing and the way that the goods are held for sale is not important as to whether it is that of a kind used for human consumption.

Being sold in 10 and 20 litre cartons is unlikely to be affect being packaged for human conmsuption as often catering supplies are sold in large quantities.

As trade customers are being invoiced, VAT invoices should have be issued to customers to enable them to recover VAT, subject to the normal rules.

This has therefore been incorrectly charged to customers.

This cannot be recovered from HMRC on the basis that it will

result in unjust enrichment by Kitchen Oils. It would be up to HMRC to show that they have been unjustly enriched.

If they can show that the standard price for the oil would be £4.80 then they should be able to recover the VAT.

If the refunded their customers the VAT by way of a VAT invoice, they would evidence that the customer has not borne the VAT burden and this can be recovered from HMRC.

Berkshire Golf Club is a relevant case where it was shown that the overdeclared VAT burden was passed onto customers so they could not recover it.

It is likely that where customers have been invoiced with VAT as they are supplying trade customers they would have recovered the VAT, if HMRC were to refund this to Kitchen Oils this could result in the principles of fiscal neutrality not being met as Kitchen Oil's customers would have been recovering the additional VAT charged, subject to the normal rules.

On this basis, it is recommended that Kitchen Oils refunds the customers the VAT element by way of a credit note.

Zing Oil

When marketed as Zing Oil, the product will be zero-rated as foodstuffs.

This is becuase it is a type and grade suitably for culinary purposes and does not contain any substances making it unfit for culinary use.

It is assumed that the oil is not linseed oil or essential oils as these are standard rated as they are not considered food.

Where it is sold in special dispensers, the dispensers are included with the product. We need to consider if this is a single or multiple supply.

Card Protection Plan case is the relevant case for this, I do not think that the dispenser would be considered to be ancillary on this basis as they can be used for a number of purposes. On this basis they are separate supplies sold for one price so apportionment needs to be considered, subject to the below.

The supplies must be distinct and independent which they are due

to the multiple use of the dispenser.

They should not be artificially split which it is not as they are distinct services.

Considering the case of Weight Watchers, customers purchased a weight loss programme rather than the provision of printed matter. Applying to Kitchen Oils Limited it is possible that customers are wanting the oil rather than the bottle itself.

In the Diana Bryce case, the provision of a children's party was provided for a single price which was the supply of land and refreshments. This was considered artificial to split them. For Kitchen Oils, the supply of food dressing and dispenser are likely to be separate on the basis that the container can be used for a wide range of uses.

The dispensers on their own would be standard rated.

There is a linked supplies concession.

This is where there is a minor article that is linked to a main article with a different VAT liability. The oil would be considered to be the main article.

VAT can be accounted for at the same rate as the main article provided:
- Not separate price - met
- Costs no more than 20% of combined of total cost - (1.10*5/6 / 2.8 = 33%) not met as 33% of value
- Costs no more than £1 excluding VAT where for retail sale - met (assuming the £1.10 is the VAT inclusive price).

On this basis, the linked concessions does not apply.

There should therefore be an apportionment between the zero-rated oil and the standard rated kitchen oil based on a fair and reasonable approach. This could be for example the cost to Kitchen Oils Ltd of the products.

Morrisons was also a single v multiple supply case - where there was a carve out for a concrete and specific element of the supply which the dispenser would be considered to be.

Error correction:

Where the net error is less than £10k or 1% of taxable turnover

up to £50k then the error can be adjusted by way of the VAT return.

Error correction can go back up to 4 years prior or HMRC can go back 20 years where this relates to fraud.

Where the above limits for the VAT return adjustment are breached, errors should be disclosed by way of a VAT 652 form which can be emailed to HMRC or a voluntary disclosure letter can be provided to HMRC (provided this contains the details listed in the VAT 652 form).

Kitchen Oils would need to give reason as to why the errors have occured on the VAT 652 form. The adjustments would need to be disclosed on the form on a period by period basis.