

APPLICATION AND PROFESSIONAL SKILLS – VAT AND OTHER INDIRECT TAXES

ASSESSMENT NARRATIVE GRID

Structure

A simple pass or fail will be awarded.

Identification and Application

The following are the relevant topics for assessment with their weightings:

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| 1 | 10% (VAT) | Identifying that VAT is chargeable only on business supplies. As Max is not a taxable person, no VAT is chargeable. If, however, he is carrying on a business, supply of The Hideaway/golf course is taxable ('new' commercial building/civil engineering work); but Gorse Cottage is VAT exempt as a dwelling (requiring an apportionment). Identifying that there is no VAT on "The Larches" as it is a dwelling. Deductibility of input VAT by Sandsails if Golf Club Property is used for taxable supplies. |
| 2 | 25% (VAT) | Identifying that assets/business of the Golf Club are not owned by Max but by the Members of the Golf Club. Identifying the usual ways of acquiring an undertaking (purchase of company; TOGC; or asset purchase) and their likely effects. |
| 3 | 20% (VAT) | Identifying the tests for 'eligible body' and that Golf Club subscriptions have been wrongly exempted. Identifying that (as a 'for-profit' body) Zephyrs has been correctly charging VAT on its subscriptions. Identifying that any merged club entity could only claim exemption by sacrificing profit extraction and control by Sandsails. |
| 4 | 15% (Corporation tax, PAYE, NICs) | Identifying that no corporation tax deduction is allowable to Sandsails on purchasing the properties, although costs of borrowing and certain running costs would be deductible. Identifying that if Sandsails purchases "The Larches" and allows Pete to occupy it on soft terms, this will trigger a taxable BIK for Pete (and increased employer NICs and ATED for Sandsails). Identifying that rent paid by Pete would be taxable as property income and that any gain on subsequent sale by Sandsails could trigger a chargeable gain. However, if Pete is purchaser, he should be able to claim PPR. |
| 5 | 20% (SDLT) | Identifying that purchase of the Golf Course property and "The Larches" will be chargeable to SDLT on the consideration (including any VAT if chargeable). Identifying that this will be different, depending on who is the purchaser and whether the linked transaction rule applies. Identifying that if the linked transaction rule applies, both purchases would be aggregated and charged at the mixed rate. Identifying the counter-argument. Identifying that if Sandsails purchases both properties, the linked transaction rule will not apply. However, an anti-avoidance rule applies. Identifying that, as "The Larches" is a high value property and Sandsails is a company, higher rate SDLT will be chargeable. Identifying that (assuming the linked rule does not apply) Pete's purchase of "The Larches" will be chargeable at the residential rate. |
| 6 | 10% (VAT, corporation tax etc.) | As regards the Golf Club, identifying it has failed to register for VAT. Identifying irregularities in its treatment of corporation tax, PAYE and NICs. Identifying that historic liabilities are the liability of the Golf Club members. |

A grade of 0, 1, 2, 3 or 4 is awarded for each topic. The weighting is applied to that grade to produce a weighted average grade. The total of these scores is then converted to a final absolute grade by rounding up or down to the nearest grade.

Relevant Advice and Substantiated Recommendations

The following are the relevant topics for assessment with their weightings:

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| 1 | 15% (VAT) | Recommending that Sandsails resists a charge to VAT on the Golf Club property (to avoid the cashflow disadvantage resulting from annual accounting). Recommending seeking a warranty that Max is not in business and an undertaking that he has not, and will not, opt to tax. Alternatively, if Max is in business, recommending deferring the purchase until three years have passed since construction was completed. Recommending an apportionment for Gorse Cottage. |
| 2 | 20% (Corporation tax, PAYE, NICs) | Recommending that Pete (and not Sandsails) purchases "The Larches". This will avoid a taxable BIK and Class 1A NICs (which should be calculated) and entitle Pete to claim PPR on subsequent sale. |
| 3 | 25% (SDLT) | Recommending that Pete purchases "The Larches", so higher rate SDLT and ATED is not chargeable. Recommending that Sandsails treats purchase of the Golf Club property as not caught by the linked transactions rule; but, in its return, discloses the circumstances to HMRC (to avoid penalties if they disagree with the treatment). |
| 4 | 30% (VAT, corporation tax etc.) | Recommending that Sandsails does not seek to acquire the whole undertaking of the Golf Club, but only selected assets. Recommending negotiating on the basis of a sale of assets by the Members (while not agreeing to take on any historic liabilities). Recommending setting up a suitable structure with expanded Objects (e.g. incorporating a new subsidiary of Sandsails) for merging the activities of both Zephyrs and the Golf Club and to facilitate the future development of sporting activities on the Peninsular. Recommending suitable transitional arrangements for existing members of the Golf Club. Consideration of capital allowances available on the acquisition |
| 5 | 10% (VAT) | Recommending that the VAT exemption route is not appropriate for the new club entity and should not be pursued. Consideration of VAT grouping and other VAT planning points |

The final grade will be determined for this skill in the same way as for Identification and Application.

Credit will be given for other valid proposals supported by appropriate reasoning.