

The Chartered Institute of Taxation

Advanced Technical

Domestic Indirect Taxation

November 2024

Suggested answers

ANSWER 1

Starling Retreats' supplies

Starling Retreats' supplies may qualify for VAT exemption under Item 9, Group 7 Schedule 9 VAT Act 1994 as a welfare service. However, this exemption only applies where it is made by a charity, state-regulated institution or a public body. As it is not a charity or a public body, the only scope for exemption is as a state-regulated institution.

In *Taylor (trading as Mill House Retreats) v Revenue and Customs Commissioners [2021] UKFTT 405 (TC)*, the tribunal decided that a spiritual welfare retreat regulated by the Church of England was not provided by a 'state regulated institution' and therefore the welfare exemption did not apply. It is unlikely therefore that Starling Retreats will qualify for VAT exemption, and the supplies of retreats should be standard rated. Accordingly, it is likely to be required to VAT register at some point.

As Starling Retreats Ltd will be packaging together the supply of accommodation, local bought in tours, etc it will be making supplies under the Tour Operator's Margin Scheme (TOMS). Unless the gross turnover from these supplies is less than 1% of Starling Retreats Ltd total turnover, output tax is due on the margin between the selling price and VAT inclusive cost price of the bought in supplies. As the package includes in-house supplies (accommodation and retreats in its own facility), the value of these items will need to be established and used to calculate the value of the margin scheme supplies. This should be undertaken using the market value method if it is able to do so. If the mark up on all elements of the package is the same, Starling Retreats Ltd can opt for the cost-based method.

Property Gift

Whilst unlikely, HMRC may potentially challenge the gift of the property to Miltoon Ltd by Miltoon (Birmingham) Ltd as consideration for the supply of the renovated area it will later occupy (a barter transaction) for a peppercorn rental. As a result, the value of that barter could be subject to VAT at the standard rate (as a result of Miltoon Ltd.'s option to tax). Given however that Miltoon (Birmingham) Ltd will occupy this area for non-business purposes, the option to tax will not apply to this element (*para 7(1)(a) Sch 10 VATA 1994*).

Development of New Retreat

It is necessary to consider whether any of the construction works qualify for VAT relief. The works will not qualify for the zero-rate of VAT, as the property is not being converted for residential or relevant residential purposes. Relevant residential purposes would not include short stays such as these, which are more akin to a hotel type establishment, rather than where people would stay long-term.

The reduced rate will not apply to the conversion work as it would need to be a relevant residential property, which as above, it is not.

Consequently, the works will be liable to VAT at the standard rate.

Headlease and Anti-avoidance

As the building works will exceed £250,000 plus VAT, they will fall under the Capital Goods Scheme (CGS). As a result of its option to tax, Miltoon Ltd should be entitled to VAT recovery on the refurbishment.

However, the option to tax will be disapplied under Sch 10 VATA 1994 where it is not used other than wholly or substantially wholly for eligible purposes. Wholly or substantially wholly purposes for the purpose of this test means at least 80% is occupied for eligible purposes.

Eligible purposes means occupying the land for the purpose of making taxable supplies, or other activities which entitle them to credit for their input tax.

The anti-avoidance test is applied when each grant of an interest is made in the Property. Therefore, it must be applied to each proposed lease in this scenario. In situations where less than

10% of land/ building is to be occupied by the financier or a connected person of the financier, that person is not treated as being in occupation for the purpose of the anti-avoidance test (where certain conditions are met). There is a similar 2% test for occupation by the grantor or a connected person of the grantor.

As Starling Retreats is making taxable supplies, assuming these equate to more than 80% of its total supplies, it will be considered occupied for wholly or substantially wholly eligible purposes and as such we do not need to consider the disapplication on their lease. Starling Retreats will be able to recover the VAT charged on the rental by Miltoon Ltd on the basis that it registers for VAT and remains fully taxable.

As Miltoon (Birmingham) Ltd is gifting the property to Miltoon Ltd with the intention of occupying part of it for a non-qualifying purpose, they will be regarded as a financier. This could even apply if HMRC pursued the barter route where the value given by Miltoon (Birmingham) Ltd is less than the value they receive in return.

However, as the intended occupation by Miltoon (Birmingham) Ltd is 7% (ie less than 10%), the disapplication is not in point under the 10% financier rule. Unfortunately they would fall foul of the 2% connected party rule as Miltoon (Birmingham) Ltd is a subsidiary of Miltoon Ltd. The lease to Miltoon (Birmingham) Ltd will not be subject to VAT as the disapplication is in point ie Miltoon (Birmingham) Ltd are not occupying the property for an eligible purpose.. Miltoon Ltd would lose a proportion of its input tax on the conversion works in respect of the exempt peppercorn lease to Miltoon (Birmingham) Ltd. This will still be subject to the CGS and should the use change over the following 10 years there may be scope to recoup some of this input tax.

Sub-lease to Miltoon (Birmingham) Ltd

The above assumes a direct lease from Miltoon Ltd to Miltoon (Birmingham) Ltd for the area that it is to occupy. If the lease goes via Starling Retreats then Miltoon Ltd will be able to recover all of its input tax in respect of the conversion works. Starling Retreats would however have to restrict 7% of the input tax on the rental as relating to non-business supplies (the lease to Miltoon (Birmingham) Ltd).

Examiner note:

This is a complex area and all reasonable conclusions, based on the 2% and 10% tests, will gain credit.

MARKING GUIDE

TOPIC	MARKS
Spiritual Retreats	
VAT liability of spiritual retreats – VAT exemption discussion, but standard rated conclusion	1
Relevant case law/analysis of requirements of Note 8 It 9 Gp 7 Sch 9 VAT Act 1994	2
Likely VAT registration requirement	1
Tour Operator's Margin Scheme (TOMS)	
Explanation of TOMS and when it applies and application to scenario	1.5
Exception for less than 1% of gross turnover	1
Apportionment for in-house supplies required using appropriate method	1
Standard rate applies to margin	1
Property Gift	
Potential for HMRC to challenge gift of property as barter transaction for building works	1
Applying disapplication rules to sub-underlease, i.e. non business use by church, not disapplied unless occupation by local church is more than 10%	2
Liability of that barter standard rated (as a result of option to tax)	1
<u>Development of New Hotel and Retreat</u>	
Consider VAT relief options – zero and reduced rate, conclude standard rated	2
Headlease and Anti-avoidance	
Wholly or substantially wholly purposes – explanation	1
2%/10% occupation test exception	1
Application of the above to Headlease scenario	2
Sublease	
Application to sub-lease, i.e. full inputs for Miltoon Ltd but 7% restriction for Starling Retreats. Alternative conclusions based on the 2%/10% tests gain credit	1.5
TOTAL	20

ANSWER 2

Coffee-shop

If operating the coffee-shop in house, most income will be liable to VAT at the standard rate. If it serves cold-takeaway foods which qualify (such as cakes and sandwiches) there may be some supplies which are zero rated. Any associated input VAT costs with operating the coffee shop (including the fitting out costs) will be recoverable in accordance with the normal rules.

If Redcoast allows a local coffee shop provider to occupy the space in return for payment, the supply is likely to be VAT exempt, subject to an option to tax. Both the rental income and the profit share income will have the same liability; they both represent payment (albeit variable) for occupation of the space.

If Redcoast carries out the fit-out works for the new area, it will have an input tax cost to consider. An option to tax would make the rental income and profit share standard rated but any related costs (including the fitting out) would be deductible. As the coffee shop will be located within an existing building, there may be other unwanted implications of opting to tax the building. For example, it may outsource some healthcare services to other providers who rent an area in the main hospital building, and for whom VAT is an irrecoverable operational cost.

If no option to tax is exercised, and it is a passive supply of land, the onward supply will be VAT exempt. Thus, it may be more beneficial for the provider to carry out the works, on the basis they are likely to be entitled to a full recovery of input VAT than Redcoast, who would be making an exempt supply of the lease and be unable to recover VAT. If the coffee shop provider were to carry out the fit-out works, the supply by Redcoast is likely to be seen as a passive supply of land and thus VAT exempt.

If Redcoast does carry out the fit-out works, consideration should be given to whether what is being supplied constitutes more than a passive supply of land, and liable to VAT at the standard rate. Cases such as *Rufforth Park Ltd v HMRC [2022] UT43 (TC)* and *Errol Willy Salons Ltd v HMRC [2022] TC08370* have demonstrated that although an area HMRC often challenge, taxpayers can be successful where the basic supply is one of land.

Car-park

The car park extension will be subject to the capital goods scheme, as it is civil engineering work (Regulation 113, SI 1995/2518) exceeding 250,000 plus VAT. The temporary use of the carpark by staff for free is a non-business activity, which could potentially restrict the input tax Redcoast can recover in relation to construction costs. An apportionment should be made to reflect use, and input tax will need to be adjusted annually in accordance with the requirements of the scheme, without specific guidance from HMRC to the contrary.

Whilst there has been case law which has allowed car parking to be treated as outside the scope of VAT when provided by a body acting as a public authority, it's unlikely to apply in this case. It is unlikely the provision of car parking is an activity Redcoast is required to deliver under a special legal regime. Off-street car parking is liable to VAT when provided by others, and therefore would distort competition if Redcoast's supplies were treated as outside the scope of VAT.

Finally, in *Northumbria Healthcare NHS Foundation Trust [2021] TC 08056* it was concluded that parking is not a necessary pre-condition of receiving healthcare, nor could it be said that an NHS Trust would be unable to deliver healthcare services without the parking being present. The car parking income should therefore be liable to VAT at the standard rate.

Renal department

Outsourcing the entire renal department will mean Redcoast will be paying for a facility, liable to VAT at the standard rate.

It is possible that where consumables are provided as part of a single agreement for the use within this facility, that VAT will also be eligible for refund under section 41 VATA 1994. In *The King (on the Application of Gloucestershire Hospitals NHS Foundation Trust) v The Commissioners for HM*

Revenue and Customs [2023] UKUT 00028 (TCC), the appellant successfully in argued that although more than 70% of the costs relating to a single agreement for a managed service agreement related to consumables, which would not attract a VAT refund if purchased separately, this fact did not change the nature of the supply. It was still an eligible single supply of operated healthcare.

MARKING GUIDE

TOPIC	MARKS
Coffee Shop	
In-house coffee shop – taxable income (standard and or zero rated).	0.5
Input tax implications for coffee shop	0.5
Coffee shop – basic rental is exempt (subject to option)	0.5
Coffee shop – liability of rental payment and sales revenue payment	1
Fit out – Trust is a non-business organisation and thus restricted input VAT	1
Opting to tax – applies to whole hospital, possible unwanted consequences i.e. irrecoverable input for other occupants	1.5
Fit out – more beneficial to be undertaken by coffee shop provider, who would likely be entitled to greater input recovery	1
Coffee shop – rental or facility if fit out works undertaken by Trust? Discussion/ relevant case law – extent of services to be included	1.5
Car Park	
Subject to capital goods scheme – civil engineering work	0.5
Car-park – non business use creates restriction of input tax recovery. Apportionment required	1
Liability of car parking – activity as a public authority but distortion of competition/ special legal regime requirements. Distinction for on-street/ off-street parking (case not required)	1
Liability of car parking – discussion on closely related provisions, <i>Northumbria Healthcare NHS Foundation Trust</i> [2021] TC 08056	2
Renal Department	
If goods form part of a single supply, same treatment i.e. VAT recoverable	1
VAT liability of an outsourced renal facility – standard	1
NHS Gloucestershire case increases potential for including significant consumables; beneficial as goods not eligible separately	1
TOTAL	15

ANSWER 3

Direct Calculation Scheme Calculation

Period	Adjusted ZR ESP £	SR sales (DGT-ZR ESP) £	Output Tax Due (1/6 of SR sales) £
30 June 2023	52,000.00	232,000.00 – 52,000.00 = 180,000.00	30,000.00
30 September 2023	124,000.00	350,000.00- 124,000.00 = 226,000.00	37,666.67
31 December 2023	97,405.76	254,000.00- 97,405.76 = 156,595.24	26,099.04
31 March 2024	76,000.00	188,000	31,333.33
Total	<u>£349,405.76</u>	<u>£750,595.24</u>	<u>£125,099.04</u>

For the period ended 30 June 2023, no adjustment to the expected selling price (ESP) is required.

In the period ended 30 September 2023, £850 of cash was stolen by a staff member. No adjustment is allowed to the daily gross takings or the ESP figures, and so the figures remain as stated.

An adjustment is however required in the period ended 31 December 2023 in respect of the buy one get one free promotion. The ESP of zero-rated purchases is reduced by £8,595.24 ie £10,404.76 (23,000 x 19,000/42,000) is the actual ESP and £19,000 was included. £106,000-£8,595.24 is £97,404.76.

In the period ended 31 March 2024, the zero-rated ESP for the period is reduced by £1,000 to £76,000, and the standard-rated ESP is reduced by £2,500 to £181,500 to account for water damaged stock.

At the end of the year, under Direct Calculation 2, a stock and annual adjustment is also required:

	ESP ZR Purchases £	
Total adjusted ESP for the year (A)	349,405.76	
Opening Stock (B)	35,000.00	
Closing Stock (C)	(32,000.00)	
Total (A+B-C)	<u>£352,405.76</u>	

The annual stock adjustment is calculated by deducting the above zero-rated ESP total from the daily gross takings for the year and dividing that figure by six. The annual stock adjusted output tax due is therefore £124,599.04 (1,100,000 – 352,405.76)/6.

From this figure, the amount of output tax accounted for in the four quarters is deducted to calculate the annual adjustment (£124,599.04 – £125,099.04= -£500 (a repayment due from HMRC)).

Apportionment scheme 2

Adjusted ESP figures are taken from the table above (see direct calculation 2). For each period, the daily gross takings is multiplied by the last 12 months adjusted standard rated ESP as a proportion of the total ESP for the last 12 months, and divided by 6. For each period the figures are calculated as follows:

Period	Workings	Output Tax due at 1/6 £
30 Jun 2023	$[232,000 \times (176,000+119,000+132,000+170,000) / (176,000+119,000+132,000+170,000) + (99,000+58,000+65,000+52,000)] / 6$	26,502.87
30 Sep 2023	$[350,000 \times (119,000+132,000+170,000+220,000) / (119,000+132,000+170,000+220,000) + (58,000+65,000+52,000+124,000)] / 6$	39,778.37
31 Dec 2023	$254,000 \times (132,000+170,000+220,000+154,000-10,405) / (132,000+170,000+220,000+154,000-10,405) + (65,000+52,000+124,000+97,405) / 6$	28,064.60
31 March 2024	$264,000 \times (170,000+220,000+143,595+181,500) / (170,000+220,000+143,595+181,500) + (52,000+124,000+97,405+76,000) / 6$	29,557.71
Total		<u>£123,903.55</u>

No annual adjustment or stock adjustment is required under this scheme as a result of the rolling period included within the output tax calculation.

Requirement 2

Stolen cash is not adjusted under either of the retail schemes. The ESP and the DGT will remain the same.

A change of scheme is permitted once it has been used for a full 12-month period. A business cannot switch schemes earlier than 12 months into using a scheme unless it either becomes ineligible for the scheme it is using (for example by breaching the turnover limits) or HMRC requires an earlier change.

Consequently, from the above calculations Apportionment Scheme 2 is marginally better.

It should be noted that it is not possible to switch to a preferable scheme retrospectively except in exceptional cases where HMRC specifically allow it.

MARKING GUIDE

TOPIC	MARKS
Requirement 1: for both calculations	
Adjusted ESP figures for promotion	2
Adjusted ESP figures for water damaged stock	1
Requirement 1: Direct Calculation 2	
Output tax for each quarter	2
Stock adjustment	1
Annual adjustment	1
Requirement 1: Apportionment Scheme 2	
Output tax for each quarter	4
No annual adjustment or stock adjustment required	1
Requirement 2	
Stolen cash – no adjustment to ESP or DGT	1
Explanation of changing schemes i.e. 12 months unless ineligible for the scheme or HMRC allows/ requires earlier change & only allowed retrospective change to scheme in exceptional circumstances	2
TOTAL	15

ANSWER 4

VAT

Deregistration

Candy can voluntarily deregister for VAT if she expects to make taxable supplies in the next 12 months up to a maximum £83,000. Her own supplies are estimated to be £80,000. However, Candy might be making other taxable supplies, which need to be added to her £80,000. If these supplies amount to more than £3,000, then she cannot deregister. Given her client base, deregistration is likely to result in higher profits for Candy if she keeps her prices the same as at present.

Renting to Andi

This would be a supply of a licence to occupy land and is exempt as there are no other facilities provided (*Diana Bryce (t/a The Barn) [2010] UKUT 26 (TCC)*). Therefore, it would not be added to her £80,000 turnover and she would be able to deregister based on her estimate. She would however have to factor in irrecoverable VAT incurred on her rent etc within her sub-lease to Andi.

Renting to Jane

If Candy rents to Jane, the supply (as it stands) is not exempt. Supplying a room with facilities (such as the use of the kitchen, phone, advertising etc) is a standard rated supply of services and not an exempt licence to occupy land (see *Diana Bryce* case above). Candy could not deregister for VAT as her anticipated taxable supplies would be £88,000.

Jane can, however, recover the VAT charged to her, being VAT registered.

The supply could be exempt if Candy changed the way that she makes the supply. For example:

1. Candy could change the way she markets the space so that use of the additional facilities becomes ancillary to the main rental of the room (*Dazmonda t/a Sugar & Spice (TC 03473) [2014] UKFTT 337 (TC)*). The charge made would be a single supply of rent, and exempt. The agreement would need to reflect the economic reality of the situation but if Jane did not use some of the facilities available this would indicate that her principal supply is rental of the room.
2. Alternatively, if the use of the facilities was made optional, and Jane did not make use of them all the time, then there is scope for this to be an exempt licence to occupy land under the principles of the *Errol Willy Salons Ltd [2022] UKFTT 17 (TC)* case. It would be advisable to remove the use of the same phone and the advertising through social media as these show an inter-linking between the two businesses and are more akin to a supply of services. As above, Candy would need to ensure that the supply was not framed in an artificial way. If Jane did use all the facilities and there appeared to be a link between the two businesses, HMRC would deem it a taxable supply of services.

KZ37 Ltd's supplies

As KZ37 has opted to tax, VAT will be added to the total sum charged to Candy. This includes the electricity (see below). If Candy de-registers this will not be recoverable and will become a cost to her business. This could affect Jane if Candy needs to increase the rent to cover the loss of input tax.

It is a single supply of rent as the elements which are included in the single charge are ancillary to the main supply (*Card Protection Plan Ltd (Case C-349/96)*). This is evidenced by them not being charged separately and there is no choice as to whether Candy can decline some of the services. This means the insurance charge is not a supply of exempt insurance, but an extra sum charged by the landlord to reimburse it for its actual supply of insurance.

The electricity is charged separately so is a separate supply in its own right, but being a flat rate charge, it is not actually a supply of metered electricity which could potentially otherwise be subject

to the reduced rate (if within the 'domestic' metered levels of 1,000 kilowatt hours per month). (*Tallington Lakes Ltd [2020] UKFTT 451 (TC)*). By default, it is standard rated.

Deregistration

Provided Candy's supply of the smaller room is of exempt rent, she can deregister for VAT. The assets on hand at de-registration are charged to VAT, unless the VAT on the deemed supply is a maximum £1,000.

The VAT is based on the replacement cost of the items at the time of deregistration, and as VAT would have been recovered on the van, this is included.

<u>Asset</u>	<u>Replacement cost</u> £	<u>VAT</u> £
False nails etc	100	20
Equipment	1,200	240
Van	4,400	880
Total	£5,700	£1,140

As the total deemed VAT is over £1,000, Candy would need to pay this. She could, however, sell the van to her niece for £3,400 prior to deregistration with VAT of £680 charged. As the niece should be able to recover the VAT this would result in no additional cost. As the remaining items would then be within the £1,000 limit (£20 + £240), she would have no VAT to pay on de-registration, achieving a saving of £460.

IPT

The landlord's charge to Candy for building's insurance is not provision of an insurance contract and is not liable to IPT. IPT would be due for the landlord on the provision to them by the insurance company. (*GB Taxi Services Ltd [2020] TC 07977 FTT.*)

The public liability insurance is a UK risk for IPT as Candy was habitually resident in the UK when she took it out. Habitual residence means where a person ordinarily lives and not where they physically are when they take it out. Residence of generally one year is taken. Candy is UK resident and therefore, it is a UK risk. Taking it out in Tenerife does not change the place of risk.

The insurance will be subject to the standard rate of IPT (12%) and as premiums are tax inclusive, IPT will be due at 3/28 of £2,000 = £214.29. Candy will have paid this as part of the £2,000. It is not recoverable.

MARKING GUIDE

TOPIC	MARKS
Identifying deregistration limit of £83,000 and applying it to Candy	1
<u>Renting to Andi</u>	
Exempt licence to occupy land and not included in turnover = can deregister, factor in irrecoverable VAT on sub-lease	2
<u>Renting to Jane</u>	
Supply of services is SR and not exempt licence	1
Jane can recover the VAT charged	1
Candy not able to deregister as over threshold (£80k + £8k)	1
Supply could be made exempt two options – e.g., ancillary to main rent, or facilities optional. Errol Willy case and application to scenario (case name not needed for the marks)	3
<u>Landlord's supplies</u>	
Single supply of rent – OTT so VAT on total, C cannot recover if she deregisters, affect J if C needs to increase rent for loss of input tax	2
Supply of 'insurance' – not an EX supply of insurance, part of rent	1
Electricity – not RR, SR	1
<u>VAT on de-registration</u>	
Identifying £1,000 de minimis limit	1
Calculating VAT on assets at replacement cost	2
Suggesting sale to niece to reduce VAT	1
<u>IPT issues</u>	
The reimbursement of the buildings insurance for the landlord is not provision of insurance and not liable to IPT (case law not needed)	1
Public liability is a UK risk – habitual residence rule, explaining Candy is habitually resident in the UK	1
Calculation of IPT at SR and not recoverable	1
TOTAL	20

ANSWER 5

VAT

Insurance

Insurance for cars and lost/damaged dash cams is exempt. Motinz will not be able to recover VAT that relates to these supplies. There is no difference in the VAT treatment for sales to the Isle of Man.

Dash Cam

There are two ways that the supply of the dash cam could be treated:

1. A supply of a dash cam product in its own right (standard rated) or
2. Exempt as part of the supply of insurance.
 1. A supply of goods takes place where ownership passes. However, mere possession of goods is a supply of services. As the dash cam can be returned to Motinz, the hire is a supply of services only, with VAT due when payments are made. VAT is due on the £10 at the start of the contract.
However, as the customer is likely to purchase the dash cam this could be treated as a supply of goods (based on the £15 payment to be made at the end of 12 months) with a separate supply of exempt finance for the £10 hire charge (*Mercedes Benz* CJEU case C-164/16). Following this case, VAT would be due at the start of the contract on the £15 paid, as a hire purchase.

This case covered the 'hire' of cars under personal contract plans but the principles apply here. If the dash cam was returned then presumably Motinz could reclaim the VAT on the £15 on the basis that the supply did not actually take place.
 2. Alternatively, the supply could be treated as being ancillary to the main supply of insurance with the entire supply exempt.

Factors that point to it being ancillary are: (*Card Protection Plan Ltd (Case C-349/96)*)

1. The dash cam will be paid for by the customer in order to obtain a refund of its premium and is therefore linked to the main supply of insurance;
2. The dash cam results are the only way that a refund of £55 can be obtained; and
3. It cannot be purchased separately from the insurance policy and does not have independent use

The *WTGIL* FTT case [2022 TC 131] supports this analysis. In this case the supply was insurance with a safe driver device. The tribunal held it was a single supply of exempt insurance and not two separate supplies of insurance and a taxable product.

For Motinz this would result in a loss of input tax on the purchase of the dash cams as it would relate to an exempt supply.

Under this method, as the dash cam will be treated as a single supply of services when initially loaned, both the £10 fee and £15 fee are exempt supplies as an ancillary part of the supply of insurance services. Motinz will argue that the purchase of the dash cam, at the end of the period, is not covered by the *WTGIL* case and at that point there is a supply of goods for £15. Motinz would include the supply of the dash cam as a taxable supply on its VAT return when the dash cam is purchased by the customer. Although VAT would be charged on the sale, Motinz would be able to recover the VAT incurred on the purchase, which would result in more VAT recovery than that paid over. As the VAT incurred on

purchase would be used to make an end taxable supply, the VAT would be recoverable upfront when the dash cam was bought.

Refunds

Insurance premiums refunds will not result in a VAT repayment as the insurance is exempt. However, they may impact on Motinz's partial exemption calculation as the value of its exempt supplies will reduce.

IPT

'Ordinary' car insurance is liable to 12% when contracts relate to a UK risk. The Isle of Man is not in the UK and residents whose cars are registered there will not incur UK IPT.

The premium is the amount received for the insurance and does not include the sums for the dash cam of £15 and £10. The premium is £550 and the IPT is £58.93 (3/28).

A repayment of IPT requires 'all or part of the premium' to be repaid. Motinz would be advised to issue a credit note to each customer specifying that this is a refund of premium showing the IPT amount included, otherwise HMRC might challenge this as not a true premium repayment and disallow Motinz's refund.

Motinz's insurance for lost/damaged dash cams will be liable to 12% and included in the premium that Motinz pays to its insurer.

MARKING GUIDE

TOPIC	MARKS
<u>VAT issues</u>	
<u>Insurance</u>	
Insurance is VAT exempt and no recovery of VAT	½
<u>Dash cam</u>	
<i>Goods in own right</i>	
Dash cam – if a separate supply of goods, what is a supply of goods? £15 at start of contract and £10 exempt credit services - Mercedes Benz case	2½
<i>Part of supply of services</i>	
Discussion of whether the dash cam is a separate supply in its own right – application to scenario and reference to cases eg CPP, WTGIL	3
No VAT on payment to keep dash cam as £15 has already been included as part of the exempt supply of insurance services. Argument that not on all fours with WTGIL case so supply of goods when bought and impact on VAT recovery. [Marker note: credit to be given to say that Mercedes Benz might apply in this case and therefore VAT to be accounted for at the start of the contract]	3

How Motinz will treat this on its VAT returns – output VAT when dash cam bought and recovery of VAT at time of original purchase as intention to make taxable supply	2
<i>[Marker note: Flexibility is given for the factors above. For example, the customer's intention is that they are buying insurance and it is likely to be advertised as insurance, with a dash cam.]</i>	
<u>VAT on refunds</u>	
No VAT to recover as exempt insurance but possible impact on PE	1
<u>IPT issues</u>	
UK risks – Isle of Man registered cars – outside the scope so no UK IPT	½
Ordinary car insurance is SR 12%	½
Premium – amount received for insurance – not the dash cam amounts	½
Calculation of IPT on £550 x 3/28	½
Refund for safe driving – is it a refund of a premium, so IPT can be reclaimed? Discussion and conclusion	½
Motinz Ltd insurance for lost/damaged dash cams – IPT included at SR for it	½
TOTAL	15

ANSWER 6

VAT issues of new venture

<u>Income</u>	<u>VAT status</u>
Camping pitch £20 p/night	Standard rated (exclusion to exemption item 1g Sch 9 VATA 1994)
Sales of eggs	Zero-rated sale of food
Sale of lamb joints	Outside the scope – not a business activity (Note 1)
Sale of alpaca wool/children's jumpers/hats etc	Wool – standard rated Children's jumpers/hats – zero-rated (Note 2)
Quad bike ride/apples and pears	Quad bike alone – standard rated (Note 3) Sales of apples/pears alone – zero rated

Note 1

If the sale of lamb joints were a business activity, they would be zero-rated as food. However, HMRC are likely to view these sales as non-business.

BB 10 (2022) outlines the two tests applied in the Court of Appeal case of *Wakefield College [2018] EWCA Civ 952*. There must be a supply of goods or services for a consideration (where there is a legal relationship between the parties); and the supply is made for the purposes of obtaining income therefrom.

HMRC are likely to argue that the second test is not met as:

- Pryce will only make sales if he has surplus meat for his own use;
- His intention with breeding the sheep is not to make money but to feed his family; and
- The sales might break even but there is no intention to make a profit.

Accordingly, HMRC will view this as not being a taxable supply.

Recommendation

In order to zero rate the sales of joints of lamb and recover VAT on associated costs, Pryce will need to prove that he is undertaking a business venture, by demonstrating that the sheep are an extra attraction for people to stay at his campsite and that he does sell to neighbours. He would need to market the sheep as part of the camping facilities and could, for example, include a charge for campers to assist with their husbandry, or learn about keeping sheep. He would need to ensure that this is not done in an artificial fashion, and that the sheep are shown to be a real part of the business.

Note 2

The sales are a business activity, based on the guidance above. Balls of wool are standard rated, but the children's clothing and hats are zero rated (item 1 Group 16 Sch 8 VATA 1994)

Note 3

The ride on the quad bike is not zero rated 'transport' as it does not seat at least 10 people, and in any event is likely to fall foul of note 4A in Group 8 Sch 8 VATA 1994. HMRC would contend that the payment for the camping pitches with the subsequent use of the trailer is for recreational purposes.

Recommendation

Pryce could make the quad bike ride an ancillary part of the principal supply for the sale of apples and pears by charging a single fee encompassing both. For example, if the quad bike ride is advertised for free in order for the fruit to be picked and a charge is only made for the fruit, then in this case the entire fee could be zero rated, on the basis that the principal supply is one of fruit.

Input Tax

If Pryce ensures the sales of joints of lamb are part of the camping experience business, then VAT recovery would be available on costs relating to vet bills and medicines etc (with an appropriate apportionment for non-business use).

VAT is charged on the land of £48,000 (£60,000 x 4 x 20%) and it will be recoverable to the extent of business use. If the joints of lamb are business then VAT on that acre (£12,000) would also be recoverable, in addition to the VAT on the other acres used in the business.

SDLT

Where there is contingent consideration, SDLT is normally due on the immediate consideration plus an estimate of the contingent consideration plus any VAT payable.

However, as the contingent amount is payable more than six months from the date of purchase, it can be deferred, so that tax would be due on £240,000 + VAT = £288,000 within 14 days of completion:

£150,000 x 0% = £0

£100,000 x 2% = £2,000

£38,000 x 5% = £1,900

Total £3,900

The land is non-residential and developing the land at a later date to have dwellings does not make it residential.

If Pryce sells in the future and extra consideration is paid to the farmer, then the SDLT will need to be adjusted and extra SDLT paid within 30 days of when the extra consideration is due. Interest would also be due on the SDLT that comes into charge.

MARKING GUIDE

TOPIC	MARKS
<u>VAT issues of new venture</u>	
Camping pitch income - SR	½
Sale of eggs - ZR	½
Lamb joints – If business income, ZR supply, but non-business discussion with reference to <i>Wakefield College</i> tests, HMRC's BB, and conclusion.	3
Recommendation to make lamb joints a business activity and how this can be done based on analysis above	2
Alpaca wool – SR generally but children's clothing ZR	1
Quad bike rides – SR – for purpose of entertainment and number of seats, and apples/pears - ZR	2
Recommendation to make single supply of apples/pears and how this could happen (e.g. market as sale of fruit with free ride)	1
<i>[Marker note: Credit given for exploring ideas available to Pryce e.g. seeking remuneration from this activity, reducing the space that the non-business animals take up. Ideas need to be commercially viable and justified.]</i>	
<u>Input Tax</u>	
Recoverability of VAT on vet bills, medicines, land etc – recover if business use	1
<u>SDLT</u>	
VAT inclusive, estimate of uncertain consideration, defer > 6 months, pay 14 days	2
Calculation	1
Future sale and extra consideration – pay >30 days	1
TOTAL	15