The Chartered Tax Adviser Examination

November 2017

VAT on UK Domestic Transactions, IPT & SDLT

Advisory Paper

Suggested Solutions

Answer 1:

Edward Lowther
Zari Construction Ltd
1 City Street
London
N1 1AB

Tax Advisers LLP
1 Broad Street
London
SW9 1ZZ

7 November 2017

Dear Mr Lowther,

Energy-Saving Materials

Further to our recent discussion, please find below my comments regarding the new contracts.

The supply of "energy-saving materials", as listed in the legislation, is reduced-rated (liable to VAT at 5%, not 20%). The European Commission recently won "infraction" proceedings against the United Kingdom relating to its application of the reduced rate. The Court of Justice ruled that UK law should be limited to beneficiaries in line with a clearly defined social policy. A consultation was held and amending legislation was expected to take effect from 1 August 2016. To date this has not happened, but it will be important to monitor any such changes, as supplies previously reduced-rated may become standard rated in the future. It will also be important to ensure that contracts make provision for the addition of VAT should the rate change between date of contract and time of supply.

Contract 1

The supply of energy-efficiency reviews to Alba Housing Association is not subject to any relief and is standard rated. It is likely that Alba Housing Association will not be able to recover the VAT charged and so it will be a cost to it.

Under Group 2, Schedule 7A, VAT Act 1994, the supply of insulation for walls, floors, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings is reduced-rated if these items are installed in residential accommodation. This would, therefore, cover both the tenanted and the shared ownership properties (whether paid for by Alba Housing Association or the homeowner). If the homeowner is paying, you should issue your invoice to them.

Reduced-rating under Group 2 does not include installing double glazing or electric storage heaters. Solar panels, water and wind turbines are currently reduced-rated, but should the legislation be amended in due course are likely to be excluded.

Installation of electric storage heaters, however, may be reduced-rated under the separate provisions of Group 3 as a "heating appliance" if covered by a "relevant scheme" and installed in the sole or main residence of a "qualifying person". One of the objectives of a relevant scheme must be the funding of the installation in the homes of qualifying persons. Secondly, it must be a scheme which disburses, directly or indirectly, funds made available by certain bodies (such as local authorities). A qualifying person is a person who, at the time of the supply, is either aged 60 or over, or is in receipt of social benefits as specified in the legislation. You will need to investigate the nature of the grants to see whether they (and the recipients) qualify, before reduced-rating your supplies.

You should note that a grant paid direct to you for the installation is third party consideration and forms part of the value of your supply: In *Keeping Newcastle Warm* (C-353/00), a payment received from a national agency in connection with advice which the taxpayer provided to householders was included in the taxable amount of the taxpayer's

supply for VAT purposes. This was because there was a direct link between the payment from the agency and supply of the service.

Where the tenants and homeowners arrange for additional works at their own cost, the supply is made to them. It may be possible that the supply is seen to be made to the housing association under the principles established in *Redrow* [1999 STC 161] as the home improvements are made to its housing stock (the argument is less persuasive with the shared ownership properties as the housing association will only have a residual share of the property). In practice, however, this is likely to be attributable to the exempt property rental and so input tax is unlikely to be recoverable.

You should also ensure that where an inclusive price is charged for "mixed" works (some standard, some reduced-rated), a breakdown is given so that the correct amount of VAT is charged.

Contract 2

Russet Construction Ltd constructs new buildings designed as dwellings. Where Zari Construction Ltd supplies and installs insulation or solar panels in the course of construction, this is zero-rated under Group 5, Schedule 8. Provided these are just dwellings that are being constructed (and not "relevant residential purpose buildings", such as nursing homes or student accommodation) you do not need a certificate from Russet Construction Ltd to support your zero rating. As you are acting as a sub-contractor, you should invoice Russet Construction Ltd.

Where, however, your supply is not in the course of construction (for example, if the works are supplied after the building has been completed) they are standard rated. Reduced-rating may be available, however, for installing insulation if Group 2, Schedule 7A applies (see above).

Yours sincerely

Peter Jackson
Tax Adviser

MARKING GUIDE

TOPIC	MARKS
Energy Savings Materials (ESM)	
Background	
Any supply of ESMs specified in Schedule 7A is reduced-rated – 5% (s.29A VATA 1994).	0.5
The UK lost the infraction proceedings - use of the reduced-rate must be restricted in line with a clear social policy. Proposed legislation means that the reduced-rate will only apply in limited cases	0.5
A consultation was held and new legislation was expected to take effect from 1 August 2016 to restrict the application of the reduced-rate. Not happened to date.	0.5
Contract 1	
VAT charged unlikely to be recoverable	0.5
Group 2 covers insulation, but not other supplies including reviews Solar panels and turbines may change Relief applies to both tenanted and shared ownership properties If homeowner is paying, should invoice them	0.5 0.5 0.5 0.5
Group 3 covers “heating appliances” (such as the storage heaters) But not the other supplies But only reduced-rated if a “relevant scheme” and a “qualifying person”	0.5 0.5 1.0
Explain “relevant scheme” Explain “qualifying person”	1.0 1.0
Need to investigate status of grants	0.5
Grant is treated as third party consideration Analysis of *Keeping Newcastle Warm* (C-353/00) Additional works to be invoiced to homeowner	0.5 0.5 0.5
Need to apportion mixed works	0.5
Contract 2:	
Installation in the course of construction is zero-rated	1.0
Energy efficiency review post-completion standard rated Installation post-completion standard rated Group 2, Schedule 7A may apply for (as above)	0.5 0.5 0.5
As Zari is sub-contractor, it must invoice Russet	1.0
Presentation and higher skills	1.0
TOTAL	**15.0**

Note– Case names and statutory references are not required for the marks

Answer 2

Briefing Document for Andrew Pulman

Subject: New community building
Date: Tuesday 7 November 2017

Andrew,

Key points are:

1) Construction

The construction of a new non-residential building is standard rated unless it is used solely by a charity for a "relevant charitable purpose", that is either for non-business purposes or as a village hall (or similar), or for both.

The key question is: will the charity use the building in either (or both) of these ways? The receipt of grants or donations does not amount to the carrying on of a "business", but income from running courses and from the hiring out a building could amount to "business".

2) Business

Section 94 VATA 1994 states that business includes any trade, profession or vocation. Activities of a charity, even for public benefit, can amount to business. Mere receipt of grants and donations is not normally business. UK case law (e.g. *Morrison's Academy Boarding Houses Association* [1978] STC 1 looks to whether the predominant concern is the making of supplies. This approach was followed in *Yarburgh Children's Trust* [2002] STC 207 and *St Paul's Community Project* [2005] STC 95, where it was held that a body which charged fees set at a level intended only to cover its costs, was not carrying on a business. It was necessary to look at the overall intentions of that body.

3) EU position

EU law, however, refers to "economic activity" which is widely defined to include the exploitation of tangible or intangible property for the purpose of obtaining income on a continuing basis. It is objective in nature. In *EC v. Finland* (Case C-246/08), the Court confirmed that a profit motive was unnecessary. The key factor was whether there was a "direct link" between a service provided and the receipt of payment. In that case, legal aid was heavily subsidised by the government (without regard to the nature of the individual services provided) and nominal contributions made by the clients were not sufficiently linked to the provision of the services to amount to consideration for VAT purposes.

In *Longridge on the Thames* [2016] STC 2362, the Court of Appeal held that EU case law prevails. In that case, the taxpayer constructed a centre for water sports activities which were provided as part of its charitable activities. The taxpayer used mainly volunteers but a charge was made in most cases to cover the cost of the activities. The taxpayer argued that it was not carrying on a business. The Court held, however, identified a 'General Rule', namely that there is economic activity for VAT purposes if there is a direct link between the service provided and payment received. This can be displaced by exceptional circumstances: *The Wellcome Trust* (TC04855) [2016] UKFTT 56 (TC)).

4) Lettings

As Longridge is now the leading authority on this matter, the business tests previously relied upon are no longer valid. Emphasis is now placed upon the European position rather than the UK case law which had been at odds. Longridge established that supplies made on a permanent basis are presumed to be economic activity. Furthermore, the motivation behind the supplies is irrelevant, in the case of Longridge it was more concerned with the benefit of the services to whom they are supplied rather than the consideration received but this did not alter

the objective character of the supply. Longridge also confirmed that where consideration is less than market value, that this is also irrelevant for determining whether an economic activity is carried out.

The proposed lettings here (although not for profit) and use of the building to provide courses where a fee is charged, are likely to be “business” supplies for VAT purposes as there is a direct link between the supplies made and the consideration received and will not enable the construction costs to be zero-rated.

5) Village Hall

For the building to be treated as a village hall or similar, there must be a high degree of local community involvement encompassing a wide variety of activities (most of which are social or recreational). HMRC guidance states that the building must be run similarly to a village hall (with a hall committee drawn from local users) and benefit the whole community. However, in *Caithness Rugby Football Club* [2016] UKUT 354 (TCC), it was held that the use of a building may be intended to be at the disposal of a local community even though the community was not the body controlling it. This case is in conflict with other cases and there are no definitive principles to rely upon.

As I assume the charity wishes to retain its autonomy over the building, it appears that these criteria are unlikely to be easily satisfied.

6) Option to tax

Lettings of land are generally VAT exempt. This would not entitle recovery of input VAT. However, some VAT recovery on building costs may be possible if the option to tax is exercised. This would require the charity to register for VAT and charge VAT on the lettings. This is unlikely to be practicable, given that most of the hirers will be unable to recover VAT. Indeed, if the charity uses the building mainly for its own purposes (and these involve VAT exempt supplies), the option to tax would be limited only to supplies made to third parties. .

Conclusion

In conclusion, therefore, the charity is unlikely to get zero-rating and VAT charged on construction will be a cost. It should also consider the VAT treatment of its activities and whether a liability to register has arisen.

MARKING GUIDE

TOPIC	MARKS
Construction services	
The basic position	
- Construction will be standard rated for VAT purposes - No entitlement to recover VAT in full	0.5
Construction for Relevant Charitable Purpose	
- Construction services will be zero-rated if the building is to be used solely for a relevant charitable purpose. - Building must be used otherwise than in the course or furtherance of business. - Or as a village hall	0.5
Receipt of grants or donations does not amount to the carrying on of 'business' for VAT purposes. However, the receipt of income from running courses and from the hiring out of a building could amount to 'business'.	0.5
Business – UK position	
Definition - s.94 VATA 1994	0.5
Activities of a charity can still amount to business activities.	0.5
EU & UK case law (This area will be marked very flexibly - credit will be given for reference and analysis of any other relevant case law, including a more detailed consideration of the Longridge case)	
C & E Commrs v Morrison's Academy Boarding Houses Association [1978] STC 1 – case establishes the business test, particularly whether the predominant concern was making supplies for a consideration	0.5
Yarburgh Children's Trust [2002] STC 207 and *St Paul's Community Project Ltd* [2005] STC 95 held that:". - body which charged fees set at a level intended only to cover its costs, was not carrying on a business. - It was necessary to look at the overall intentions of that body	1.0
Business - EU position	
European Law refers to "economic activity" (Article 9 (1), PVD), provides definition (includes exploitation of property)	0.5
The European Commission v Finland (Case C-246/08) - Profit motive not conclusive - Direct link between the services the recipient receives and the payment which they make - Overview of case - legal aid was subsidised, nominal contributions made by clients - not sufficiently linked	 0.5 0.5 0.5
Longridge on the Thames [2016] ECWA Civ 930 - relies upon the interpretation of economic activity by the CJEU - now the leading authority - resolves the conflict between UK and EU law - "business" tests no longer valid, now necessary to identify if there is a direct link between supplies and consideration - Activities on a permanent basis now presumed to be an economic activity - Motivation of supplies and rate of consideration not relevant	2.0
This can be displaced in exceptional circumstance e.g. *The Wellcome Trust*).	1.0
Proposed lettings are likely to be 'business' supplies for VAT and therefore construction costs will not be zero-rated.	0.5

Village Hall	
To qualify must have the following characteristics: • a high degree of local community involvement in the building's operation and activities, and • a wide variety of activities carried on in the building, the majority of which are for social and/or recreational purposes	1.0
Must be organised in a similar way to a village hall committee, trustees who are drawn from representatives of local groups who intend to use the hall. Although can be intended to be at the disposal of a local community even though the community was not the body controlling it. It should be used for the benefit of the whole community rather than for the benefit of one particular group.	1.0
Village hall conditions - too onerous Charity likely to wish to retain its autonomy over the building, these criteria are unlikely to be satisfied.	0.5
Option to tax	
Lettings of land are generally VAT exempt. This would not entitle recovery of input VAT. Some VAT recovery on building costs may be possible if the option to tax is exercised.	0.5
Charity would need to register for VAT and charge VAT on its the lettings. This is unlikely to be practicable; most hirers will be unable to recover VAT.	1.0
If the charity uses the building mainly for its own purposes (and these involve VAT exempt supplies), the option to tax would be limited to supplies made to third parties	0.5
Conclusion	
Charity will be unable to obtain zero-rating. It should also consider the VAT treatment of its activities and whether a liability to register has arisen.	0.5 0.5
TOTAL	**15.0**

Answer 3

NOTES FOR DAVID PURLIN FOR THE MEETING WITH MONTY PRICE

1. Supply of new conservatories is standard rated and could only qualify for zero-rating if supplied in the course of constructing a new dwelling.
2. Monty's proposal relies on Primoglass not acting as principal in supplying the conservatories. However, if it does the value of its supply will be the full contract price and, in view of projected sales, it will soon reach the VAT registration threshold. Currently, therefore, there are risks with the proposals.
3. Key questions are:
    1) Who is making the supply to the customer?
    2) What is the nature of the supply?
4. The contractual terms are the starting point, having regard to the surrounding circumstances. Unless the contracts are a sham (deliberately drafted by the parties to misrepresent the true position), they will usually govern the VAT position. However, where they do not reflect economic and commercial reality they may not be decisive. Here, the contractual framework here is unclear and possibly ambiguous.
5. On the face of it, three analyses are possible:
    1) Primoglass is acting as project manager/agent in procuring Monty and other contractors to supply goods and services to the customer.
    2) Primoglass is acting as a principal (or is regarded as such) supplying an installed conservatory direct to the customer.
    3) Monty is acting as a principal supplying an installed conservatory direct to the customer.
6. Currently, only Monty is VAT-registered. Accordingly, at present only he is able to recover VAT incurred when the building materials are purchased from third parties
7. The Installation Agreement is between the customer and Primoglass and appears to support 1) above. Primoglass is described as "project manager" and "agent", with only limited responsibility to the ensure the work is done.
8. A number of factors, however, support 2) above. The price is paid to Primoglass. There are no written contracts making Monty, Casement and Sparks responsible to the customer for the works. There is no transparency on what each contractor charges. The customer is unaware of the commission paid to Monty. Monty apparently is not a party to the contract. He has simply signed it as a director of Primoglass. This suggests that Primoglass is a principal employing the three men as its sub-contractors, and not obtaining their services as agent for the customer. This would also reflect economic and commercial reality: the customer sees that he is paying Primoglass a single price for a single supply of an installed conservatory. Any contractual claim would be against Primoglass, which also offers the warranty.
9. Certain factors point to 3) above. Monty has a major role in marketing, design and pricing. He purchases all building materials in his own name. He has a role in selecting contractors (likely to be the same people). It is not suggested that Monty contracts directly with them or makes himself responsible for their work.
10. HMRC are likely to favour 2) above as producing a result which reflects economic and commercial reality. Once sales, based on the full selling price, exceed the VAT threshold, HMRC are likely to require Primoglass to be VAT-registered. See Calculation A for the impact on the typical deal.

11. However, if the contractual arrangements can be made more robust, VAT will not be payable whilst Primoglass remains below the registration threshold. Aggregation is unlikely to be an issue as Primoglass has an unrelated director. Also, Monty is the common link and he is already registered so it is more likely that HMRC would pursue a "principal" argument, which makes Primoglass registrable in its own right.

12. This greater robustness of the contractual position could be achieved if, for example, the customer contracted directly with Monty and the other contractors (through the agency of Primoglass) who accept liability as principals. There should be transparency about what each charges. Primoglass should hold the monies in a "customer account" and treat the payments to Monty, Casement and Sparks as "agency disbursements" (namely, amounts received and paid on the customer's behalf to a third party for a supply received by the customer from that third party). See Calculation B for the impact on the typical deal.

13. The extended warranty raises issues for VAT and IPT. The £5,000 premium payable to Redroof for the block policy is VAT exempt. It is liable to insurance premium tax at the standard, not the higher, rate (£5,000 x 10% = £500). There is no deduction for the commission which Primoglass pays to Monty.

14. When Primoglass sells the warranty to the customer, it is not a contract of insurance in its own right. Therefore, it is not liable to IPT. Onward supply of cover under a block policy can be an insurance-related service and VAT exempt. However, exemption is likely to be excluded here as the warranty is linked to a supply made to the customer either by Monty or Primoglass.

15. To be sure of gaining VAT exemption, analysis 1) above would have to be correct and Primoglass' turnover remain under the VAT threshold. Alternatively, the arrangements would have to be disclosed to the customer.

16. Monty's commission, therefore, is probably subject to VAT in any event.

Calculation A: Primoglass (a taxable person) is supplying as principal (ignoring extended warranty)

	£	£
Installation of conservatory		10,000
VAT @ 20%		2,000
Total		12,000
Less: subcontractors' costs (inc. VAT)	8,400	
Net VAT due (£2,000 - £1,000)	1,000	
	9,400	(9,400)
Primoglass' profit on deal		2,600

Calculation B: Primoglass (not a taxable person) is supplying as agent

	£	£
Price paid by customer		12,000
Less: disbursements (contractors) (inc. VAT paid to Monty)	8,400	(8,400)
Primoglass' profit on deal		3,600

MARKING GUIDE

TOPIC	MARKS
1. What is supplied?	
Supply of conservatories is taxable	0.5
Key questions: who is the supplier and what is the nature of supply?	0.5
Contract is the starting point	0.5
But economic and commercial reality	0.5
2.Possible analyses	
1) Primoglass is project manager/agent	0.5
2) Primoglass is principal	0.5
3) Monty is principal	0.5
3.Possible arguments	
Terms of contract may support 1)	1.0
Reasons why 2) is right (e.g. no contract between Monty etc. and customers; no transparency; economic reality	1.5
Monty plays important role but does not contract with Casement and Sparks, so 3) probably not correct	1.0
HMRC will favour 2) as the analysis which best reflects economic and commercial reality. Primoglass Ltd liable to register when reaches threshold	1.0 0.5
Could make 1) more robust: contracts, transparency, disbursements. In this section, credit will be given for any reasonable analysis of the contracts.	1.0
4.Insurance arrangements: VAT	
Extended warranty liable to VAT (linked supply / no disclosure etc.)	0.5
Monty's commission probably liable to VAT	0.5
Block policy premium is VAT exempt	0.5
5.Insurance arrangements: IPT	
Extended warranty not liable to IPT in its own right	1.0
Gross premium of block policy liable to IPT	1.0
Standard rate (10%) not higher rate	1.0
No deduction for Monty's commission	1.0
6.Calculations	
If b) is correct: VAT liability and profit	2.0
If a) is correct: VAT liability and profit Credit will be given for correct calculations even if presented differently	2.0
Presentation and higher skills	1.0
TOTAL	**20.0**

Answer 4

Mr Bill Matthews
Sea View Cottage
Small Village
Cornwall
PL33 2AA

Trewartha LLP
10 Castle Street
Padstow
Cornwall
PL30 3SS

7 November 2017

Dear Bill,

Value Added Tax

I am writing, as requested, regarding the VAT issues which arise for your proposed partnership with Andy.

I will first summarise the current VAT position.

Fish Plaice
You are currently VAT-registered as a sole trader. Sale of fish for human consumption is zero-rated, but other products may be standard rated.

The Cheerful Soul
This is a separate business, trading as a partnership, between you and Coral. Its supplies are standard rated.

Andy's business
Andy currently carries on business in his own name and is not VAT registered. To the extent he continues to carry on any business in his own name, he would become liable to register if his turnover exceeds the registration threshold (currently £85,000 per annum).

Partnership
Partnership is the relationship which exists between two or more persons carrying on business together with a view to profit. All partners are jointly and severally liable for any VAT due. If you bring Andy into *Fish Plaice* as a partner, this is a change in the nature of the business and you must notify HM Revenue and Customs ("HMRC"). You may either request a new VAT registration number or elect to keep the old registration number (the VAT 68 procedure but, if you do the latter, the new partnership inherits the existing VAT rights and liabilities. Registration is in the name of the partnership without regard to any change in the partners.

It is always best to enter into a written partnership agreement setting out your respective rights and obligations. A partnership may be "general" or "limited". In a general partnership, all partners are involved in running the business and share profits and losses in agreed proportions (which need not be equal).

You could consider forming a limited liability partnership ("LLP"), where liability to third parties is limited, although this will entail formation costs. An LLP is treated as a body corporate.

LLPs therefore require a separate VAT registration, whatever the respective rights and liabilities of the partners.

Contributing assets to the partnership

If Andy transfers *Storm Petrel* to the new partnership, this is a capital contribution in the form of a single asset. It does not give rise to any supply to, or by, the partnership. Although, in principle, it is deemed to be a disposal of the assets of Andy's existing business, there would be no VAT effect as Andy is not a taxable person and the boat was acquired by him second-hand. Your contribution of assets to the new partnership would similarly not be liable to VAT. This is because the whole of the business of *Fish Plaice* is going into the new partnership, which HM Revenue and Customs regard as the transfer of a business as a going concern.

Use of partnership assets

If Andy continues to operate a separate business outside the partnership (such as excursions and decorating) he must register if his turnover exceeds the threshold. His current activities would then be standard rated (except for transporting passengers, which is zero-rated provided Storm Petrel is a vessel designed or adapted to carry 10 or more passengers). Storm Petrel will become a partnership asset; its use by Andy in a separate business will not be a deemed supply of services by the partnership (it is a boat and no input VAT was recovered on its purchase). Assuming the flat is a partnership asset, the same VAT treatment will apply to Andy's occupation rent-free (an interest in land is excluded from the deemed supply rule). However, if the partnership is to recover in full VAT on repairs to *Storm Petrel*, I recommend Andy is charged a market rate for hire to avoid challenge by HMRC. Similarly, if VAT is incurred on expenditure relating to the flat, VAT deduction may be restricted unless Andy occupies it purely for the purposes of the partnership's business..

The Cheerful Sole

The rules described above would apply if, at a future date, you and Coral decide to bring Andy into this partnership. HMRC should be notified. However, it would still be a separate partnership as, currently, Coral is not part of the business of *Fish Plaice*.

Yours sincerely,

Simon Peter
Indirect Tax Adviser.

MARKING GUIDE

TOPIC	MARKS
1.The current businesses:	
Andy, OS	0.5
Fish Plaice, mainly ZR	0.5
The Cheerful Sole, SR	0.5
Bringing in Andy is a change in the business to a new partnership	0.5
2.Partnership –	
Nature of relationship	1.0
General, meaning	0.5
Registration in the name of partnership	1.0
New registration, or VAT 68 procedure	1.0
Joint and several liability for VAT	0.5
Written agreement desirable	0.5
LLP possible, body corporate	0.5
3.Partnership assets:	
Capital contribution, not a supply	1.0
Boat is a deemed disposal	1.0
Contribution of *Fish Plaice* by Bill is a TOGC	0.5
4.Use of partnership assets: Andy may need to register separate business if threshold exceeded	0.5
FOC use of Boat by Andy is not a deemed supply	1.0
Same treatment for flat	0.5
In either case, possible restriction of input VAT on related costs	1.0
5.*The Cheerful Sole:*	
A different partnership from Andy/Bill	1.0
Notify HMRC of new partner	0.5
Presentation and higher skills	1.0
TOTAL	**15.0**

Answer 5:

Tom Archer
Empire View Ltd
Cumbermere
Cumbria
CU1 9AA

Tax Advisers LLP
1 Broad Street
London

SX9 1ZZ

7 November 2017

Dear Mr Archer

Proposed new business activities

Further to our recent meeting, please find my comments below.

The income streams from the proposed new business activities appear to involve two or more elements (which could, potentially, have different VAT liabilities). The key question, therefore, is whether, in each case, there is a single or a multiple supply. This is important because, in the case of the former, there will be one VAT liability. In the case of the latter, different rates of VAT may apply.

There is generally a single (composite) supply where there is a principal element and other elements are ancillary to it (that is, not ends in themselves but merely for the better enjoyment of the principal element). The VAT treatment of the transaction is determined by the liability of the principal element.

In contrast, there may be a multiple (or mixed) supply where the elements are separate in their own right and it would make economic and commercial sense to treat them separately. Where, therefore, a single price has been charged, the price will need to be apportioned between the separate elements (whose VAT liability individually may be different).

More frequently, a package will comprise a number of elements each of which is important (not merely ancillary). In such a case, it is likely that they will together form an over-arching description of supply. It will be the VAT liability of that description which determines how the transaction is treated.

As this is a complex area there is considerable case law on this subject. The cases have established a number of important principles. The most important are *Card Protection Plan* (Case C-349/96)*, Levob* [2006] STC 766 and *College of Estate Management* [2005] STC 1507*.* These cases establish that regard must be had to all the circumstances and to economic and commercial reality. While each supply is usually separate and distinct, transactions which are integral must not be artificially split in a way which distorts the functioning of the VAT system. A single price is not determinative. A helpful test is: what, typically, does a typical customer expect to get in return for his payment? In *Byrom, Kane & Kane trading as Salon 24* [2006] STC 992), it was held that in many cases if the core, or over-arching, description does not fall within zero-rating or exemption (in that case massage parlour services of which an important element was exempt room-hire) the whole transaction is standard rated by default.
Applying these principles to your proposed activities:

1) Lake cruises

Transport of passengers in a vessel designed or adapted to carry not less than 10 passengers (a ‘qualifying vessel’) is zero-rated. I assume this is how Kanzi Travel Limited are currently treating their supplies. The introduction of cruises (as distinct from ferry journeys) does raise some questions. For the element of transport to be present, the vessel must travel from point A to point B (for example, from one side of the lake to the other or to a particular viewing point). If this is satisfied then, in principle, the cruise is zero-rated; if not it is standard rated. If basic refreshments are provided free, they are regarded as part of the main supply (because they are ancillary).

Where a key aim of the transaction for customers is to enjoy the barbeque and entertainment, this is likely to create a mixed supply where each element is important. The barbeque and entertainment elements will be standard rated. If a single price is charged, an apportionment must be made on a fair and reasonable basis.

If, however, the reality is that there is no transport (because, for example, the vessel remains moored in one place) or the movement is part of the experience (such as a ride on the Big Dipper, See *Blackpool Pleasure Beach* [1974] STC 138), the transaction will be standard rated. This will be the case even if the vessel is a qualifying vessel it is therefore important to ensure that the ferry makes at least one stop on its journey to secure zero-rating.

2) Residential caravans

Supply of a caravan manufactured to BS3632:2005 which is over 7 metres long or over 2.55 metres wide is a zero-rated supply of goods, (I have included the technical information as it may influence your buying decision). The supply is taken to include items of a kind which a builder would ordinarily install as fixtures in a dwelling (such as kitchens and bathrooms). Other items and removable contents (even if supplied as part of a single supply) are standard rated. This is because UK legislation has provided a "carve-out" from the zero-rating relief, leaving some items standard rated. In *Talacre Beach Caravan Sales Ltd* (Case C-251/05), the court held that the existence of such a legislative measure was permissible and would override the normal *Card Protection Plan* test for a single composite supply. In other words, it is possible to have a single supply with different VAT rates relating to different elements of the supply. Thus, you must expect Carvanho Ltd to apportion its invoice by charging you VAT on removable contents such as furniture, kitchen appliances, carpets and curtains. Although this VAT will be deductible as your input VAT, you must account for VAT on that part of the price on the onward sale of the caravan.

3) Transit

Transport of passengers in a vehicle designed or adapted to carry not less than 10 passengers (a qualifying vehicle) is zero-rated. However, in the joined cases: *C & E Comrs v Madgett and Baldwin (t/a Howden Court Hotel)* and *Madgett and Baldwin (t/a Howden Court Hotel) v C & E Comrs* (C-308/96 and C-94/97), it was held that where a hotel provided transport to and from the hotel for guests as part of the price of their holiday, this was ancillary to the holiday and therefore taxable. A feature of that case was the small proportion of the cost attributed to the transport. The same treatment will apply where you supply transport and include it as part of your supply of accommodation, even if the mini-bus is a qualifying vehicle. Zero-rating would apply, however, if the transport is a free-standing supply to the customer which is contracted, and charged for, separately.

4) Trips

The coach trips to the brewery, are a separate and free-standing supply, and should be zero-rated. They do not involve a mixed supply as I note that refreshments are on a self-pay basis and no charge is made for admission to Hopleap.

Please let me know if you have any further questions.

Yours sincerely,

Peter Jackson
Tax Adviser

MARKING GUIDE

TOPIC	MARKS
Single/multiple VAT analysis (Marks will be awarded for any appropriate comment or analysis up to a maximum of 6.5 marks)	
Distinction of VAT treatment of the two types of supply (VAT 1994 s.19(4)) - Single supply: principal element and other elements are ancillary (better enjoyment of the principal element). The VAT treatment of the transaction is determined by the liability of the principal element. - Multiple supply: elements are separate in their own right and it would make economic and commercial sense to treat them separately. Single price, it may be permissible to apportion the price between the separate elements.	 1.0 1.0
Package - a number of elements each of which are important (not merely ancillary). Form an over-arching description of supply, which will determine the VAT liability.	1.0
Principles established from case law, such as *CPP, Levob, College of Estate Management*: - Regard must be had to all circumstances and to economic and commercial reality - Supplies separate and distinct but must not be artificially split in such a way which distorts the functioning of the VAT system - A single price not determinative - Helpful test: what typically does the typical customer get for their money - Core/overarching may not be within reliefs: *Byrom*	 1.0 1.0 0.5 0.5 0.5
1) *Lake cruises*	
- Zero-rating - passenger transport where the ship (or vessel) is designed or adapted to carry not less than 10 passengers - Barbeque and entertainment - standard rated. Distinction between cruises and ferry journeys: for zero-rating, transport must be present- vessel must travel from point A to point B	1.0
If basic refreshments are provided free, there is a single zero-rated supply (because they are ancillary).	0.5
If barbeque and entertainment is a key aim for the customers- distinct and significant feature of the supply Therefore - mixed supply	0.5 0.5
If there is no transport or just a "thrill", the transaction will be standard rated even if the vessel is a qualifying vessel.	0.5
If a single charge is made for the cruise, then a reasonable apportionment should be made.	0.5
2) *Sales of residential caravans*	
- Conditions for zero-rating the sale of a caravan - Contents of a caravan can also be treated as zero-rated if they include goods which a builder would ordinarily incorporate into a new house or flat.	0.5 0.5
Other fixtures and removable contents supplied with the caravan are standard-rated regardless of whether they are supplied with a caravan in a single supply to a customer.	1.0
Carvanho Ltd to charge VAT on fittings such as furniture, kitchen appliances, carpets and curtains.	0.5

VAT will be deductible as input VAT- must account for VAT on that part of the price on the onward sale.	0.5
UK legislation has provided a “carve-out” from the zero-rating relief	0.5
Refer to relevant case law *Talacre Beach Caravan Sales Ltd* (Case C-251/05) - Overview of case - *CPP* was not directly transferrable to this case. - Scope of zero-rating is not affected or widened when exclude items are delivered together.	1.0
Single supply made does not preclude different tax treatments of the supply.	0.5
3) Transit and Trips to customers	
Transport of passengers in a vehicle designed or adapted to carry not less than 10 passengers (a qualifying vehicle) is zero-rated.	0.5
Refer to case law *C & E Comrs v Madgett and Baldwin (t/a Howden Court Hotel)* and *Madgett and Baldwin (t/a Howden Court Hotel) v C & E Comrs* (C-308/96 and C-94/97 - Overview of case - provided transport to and from the hotel for guests as part of the price of their holiday, this was ancillary to - small proportion of the cost attributed to the transport	1.0
Where travel services take up a small proportion of the supply of accommodation, such services are not viewed as an aim in themselves. They are a means of enjoying the principal service (the camping), and are therefore ancillary even if the mini-bus is a qualifying vehicle.	1.0
Trips- where the transit is a free-standing supply to the customer and not a package, zero-rated transport.	0.5
Presentation and higher skills	2.0
TOTAL	**20.0**

Answer 6

To: j.fenwick@alde.co.uk
From: andy.adviser@bridgetax.co.uk
Subject: Property transfers
Date: 7 November 2017

Dear Julius,

Thank you for your email of today. I set out below my advice on the Stamp Duty Land Tax ("SDLT") issues for the proposed transactions.

Outline of SDLT
SDLT is chargeable on "land transactions". A land transaction is any acquisition by a purchaser from a vendor of a "chargeable interest", e.g. a freehold estate in land in the UK. 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. The purchaser is liable for payment of SDLT.

Group relief
A land transaction may be relieved from SDLT where, at the "effective date", the vendor and purchaser are companies which are members of the same group. The effective date is the earlier of "substantial performance" of the contract or the conveyance effecting the transfer. Substantial performance occurs when either the purchaser takes possession of the property or a substantial amount of the consideration is paid or provided. I assume Pant Ltd will take possession of both properties on 30 November 2017. Accordingly, that is the effective date at which to test whether vendor and purchaser are members of the same group.

Companies are "members of the same group" if one is the "75% subsidiary" of the other, or both are 75% subsidiaries of a third company. A "75% subsidiary" is defined to include a case where, for example, Company A is the beneficial owner of not less than 75% of the ordinary share capital of Company B. In the example, therefore, Company A and Company B are treated as members of the same group. Indirect holdings are taken into account, using a multiplication formula.

It follows that, at the effective date, Colne Ltd, Ver Ltd and Pant Ltd will be members of the same group because indirectly they are all 100% subsidiaries of Alde plc. Pant Ltd must therefore make a land transaction return to HMRC by 30 December 2017 to claim SDLT group relief.

Loss of group relief
Group relief is lost where the consideration is received directly or indirectly by a person other than a group company. Repayment by Pant Ltd of the loan to Bures Bank, however, would not breach this rule as it is Colne Ltd which receives value in money's worth (namely discharge of its loan).

Relief is also clawed back in some cases where membership of the group changes. The proposed sale in 2018 of Colne Ltd (the vendor) to Ouse plc would not cause withdrawal of group relief. But if the purchaser (Pant Ltd) were to leave the group while it owns the properties within a period of three years from the effective date (or after that period in pursuance of arrangements made before the end of the period), group relief will be clawed back. The clawback would also apply if there were arrangements in place within the three-year period for Pant Ltd to leave the group, but the disposal had not actually taken place at the end of that period. The effective date of this further return for notification, penalty and interest purposes is the date of the disqualifying event.

SDLT liability on clawback
Consideration for Prittle House is not market value but the amount actually paid by Pant Ltd to discharge the loan (assumed to be £5,000,000). For non-residential and mixed- use properties, SDLT is calculated on a slice basis.

A mixed-use property does not attract the higher rate. Accordingly, SDLT on Prittle House would be £239,500.

No discount is allowed where part of the consideration is deferred. Accordingly, as total consideration for the warehouse is £3,000,000, SDLT would be £139,500.

If a disqualifying event (such as the disposal of Pant Ltd within the three-year period) occurred, a further return would need to be submitted to the Stamp Office within 30 days of the disqualifying event, together with a cheque for the SDLT due.

Planning
Relief is denied where a transaction forms part of arrangements whose aim is tax avoidance. However, provided there are no arrangements in place by 29 November 2020 for the sale of Pant Ltd (with the properties), a subsequent sale of Pant Ltd would not cause a clawback. Similarly, HMRC accept that prior sale of properties to another group company (such as Blackwater Ltd), in order that the properties should not pass to the purchaser of Pant Ltd, is not tax avoidance and does not cause clawback of group relief. Such sale would be eligible for group relief, as described above.

Kind regards,

Andy

MARKING GUIDE

TOPIC	**MARKS**
1.Outline of SDLT	
Chargeable on “land transactions”	0.5
Acquisition of “chargeable interest”	0.5
Includes freehold in UK land	0.5
Explain “consideration”	0.5
Purchaser must make LT return	0.5
2.Group relief	
Transaction is exempt if, at the “effective date”, companies are members of the same group	0.5
Meaning of “effective date”	0.5
Eligibility: meaning of “75% subsidiary”	1.0
Issued share capital: can be indirect	0.5
Colne Ltd, Ver Ltd and Pant Ltd are members of the same group	0.5
3.Loss/clawback of group relief	
Consideration is not paid to third party here because Colne Ltd gets the “value”	1.0
Sale of vendor does not lose relief	1.0
Sale of purchaser (or arrangements) within 3 years causes clawback	1.0
4.Calculation of potential SDLT liability	
Prittle House is a mixed-use building, therefore outside the higher rate	1.0
Consideration not the market value, but £5m	0.5
Slice calculation: SDLT is £239,500	0.5
Warehouse: no discount for deferment	0.5
Slice calculation: SDLT is £139,500	0.5
5. Planning	
No relief where arrangements are for tax avoidance	0.5
Relief not lost if Pant Ltd sold after 3 years	1.0
Or, if prior sale of properties intra-group	1.0
Presentation and higher skills	1.0
TOTAL	15.0