Item Response :

Report To Jeremy Wilkinson regarding the proposed expansion

1. **Scope of this report**

1.1 The purpose of this report is to consider the tax implications and provide recommendations on the proposed new laboratory and acquistion of the charity based on the options provided by Jeremy Wilkinson.

1.2 The contents of this report are covered by the exsiting engagement between our firm and Horticulture Technology and Horticulture Technology Enterprises and should not be disclosed to any parties outside of this engagement without our prior consent.

1.3 I assume at the time of preparing this report that you have provided all relevant anti money laundering documentation but if this is not the case, please provide a copy of the following:

- A copy of a passport or drivers license for at least one guarantor of the charity
- A copy of a recent utility bill dated in the past 3 months for the gurantor showing their residential address
- A copy of the ceritifcate of incorporation of the company limited by guarantee

1.4 For the remainder of this report, Horticulture Technology will be refered to as HT and Horticulture Technology Enterprises will be refered to as HTE.

2.0 Executive Summary

2.1 The Charity should elect option two in respect to the new laboratory as this will prevent capital goods scheme adjustments in respect to the historic input VAT previously claimed. However, if the business can reduce the use of the building to 95% non business and provide HTE Ltd a specified space of 5% for their business activity, then option 1 would be preferred.

2.2 Once the new works are due to be carried out, the group should notify HMRC of the increased business activity and it's impact on the current special method.

2.3 If a new special method is required, the business can submit a special method overide notice to HMRC and calculate it's recovery based on use until a new method can be agreed.

2.4 The construction works carried out by ABC Builders will be standard rated and subject to capital good scheme adjustments to reflect the change in use over a 10 year period.

2.5 The lease back from the pension company will be subject to the standard rate of VAT and recovery will be based on the partial exemption special method recovery rate as the property will no longer be a capital item of HT Ltd.

2.6 The fitting out costs should be invoiced to HTE in order to claim AIA relief on the integrated fixtures. This will reduce the taxable profits resulting in additional cash reserves as the profits transferrable to the charitable parent via gift aid will be reduced.

2.7 The equipment obtained for the US supplier should be purchased on a operating lease basis and then returned to the supplier at the end of the 5 year lease. This is because the equipment in question is eligible for temporary admission relief resulting in no customs duty or import VAT being payable when the goods arrive into the EU.

2.8 The claim for the temporary admission relief should be made on a form C88 application and the goods must remain in the same statement when they are returned to the US supplier.

2.9 The group must consider it's making tax digital requirements as the digital link deferral for VAT group comes to an end on the 31st March 2021.

2.10 The group should also submit a claim for research and development relief based on the associated spend on the new project incurred by HTE Ltd.

2.10 All calculations supporting the relevant tax savings can be located within the relevant appendix at the end of this report.

3.0 Option 1 - Construction of new laboratory

3.1 I note the land that will be utlised by the charity to construct the new building initially cost £950,000 plus VAT in respect to the intiialy cost and additional infrastructure works. As a result, the land is a capital goods scheme (CGS) item for VAT purposes.

3.2 Under the CGS scheme, a business must monitor both the taxable/exempt and business/non business use of land and property over a 10 year period and account for VAT adjustments for any change in use over the 10 year period.

3.3 I note HT had the intention to rent the opted land and therefore proceeded to recover the input VAT in full in respect to the acquisition cost and corresponding infrastructure works.

3.4 However, moving forward the property will be used to make both taxable business supplies by HTE and non business supplies by HT reflecting a change in intention.

3.5 As a result a CGS adjustment will be required on the basis the intention has changed from 100% taxable business purpose to 70% non business purpose and 30% taxable business purpose.

3.5 A CGS adjustment will need to be made based on the change of intended use at the end of March 21 being interval 7 resulting in additional input VAT payable to HMRC of £13,300 per appendix 1 of this report. The payable VAT should be declared in box 4 of the September 21 VAT return, being the second period following the end of the tax year in which it relates.

3.6 The future construction works carried out by ABC will be subject to the standrd rate of 20% VAT and recovery will be based on the use per the agreed partial exemption special method which will be at a rate of 30%. It is possible to obtain the construction of a new charitable building at the zero rate of VAT where the building will be used 95% for non business charitable purposes over the next 10 years.

3.7 Based on the proposed usage of the building by both group members, the building will be used 70% for non charitable use and therefore does not qualify for zero rating.

3.8. Taking the above into account, if the group were able to use the building for 95% chairitable purposes and arrange for ABC to carry out the preparatory works on a design and build basis, a VAT saving of £2,524,000 would be achieveable per Appendix 2.

3.9 The charity would be required to ensure the charitable use remains at 95% over the next 10 year period and provide ABC with a self ceritifcation confirming this. If the intended use does drop below 95% non business, then a self supply charge would be generated.

3.10 The charity would also be required to designate a section of the office for the non business use to be carried out to meet the 95% crirteria which is to be used solely for non business purposes.

3.11 I would advise if possible that HTE is the purchaser of the property in order to claim capital allowances on the fixtures. Qualifying fixtures will be eligible to 100% AIA relief in the year of purchase thus reducing the taxable profits and tax liability resulting in more cash reserves available to HTE for the future.

3.12 If it is not possible to secure 95% non business use then the total cost of the project will equate to £14,704,100 per appendix 3 of this report

4.0 Option 2 - Sale and Leaseback

4.1 The sale and leaseback option would prevent a repayment of input VAT under the capital goods scheme on the basis the property will be sold to the pension fund at the standard rate of VAT meaning the taxable intention remained in place.

4.2 However, the resulting leaseback of the property would be subject to the standard rate of VAT at a rate of £430,000 plus VAT per annum.

4.3 As the lease back would not be considered as a capital item, input VAT would be recoverable under the groups residiaul input VAT recovery rate as the property will be used for both taxable and non business supplies. The rate would be determined using the groups special method which I understand was previosuly at 6% recovery.

4.4 VAT on the preparatory woulds would also be recoverable at the residual rate.

4.5 Output VAT will be chargeable at 20% on the 175 year lease to the pension fund on the basis it related to opted land.

4.6 However, the charities option to tax will be disapplied under an anti avoidance measure where a partly exempt business enters a sale and leaseback of a property that it occupies. This means that none of the VAT will be recoverable and all historic VAT will be repayable to HMRC as it related to an exempt land.

4.7. The construction works carried out by ABC will be subject to 6% recovery on the basis the property has been disposed of and is no longer a capital item.

4.8 The total cost of the project under this method would be £13,797,560 per appendix 4

4.9. However, the charity should note that

4.10 There is an anti avoidance measure in relation to the disapplication of the option to tax where a partly exempt business enters into a sale and leaseback of a property that it will occupy. However, the cirteria for this measure states the parties must be connected and I note the proposed trust has no connectionion to HT Limited or HTE Limited.

5.0 Sale and lease back with premium - option 3

5.1 Under this method the premium will be wholly taxable for VAT prupsoes and no CGS adjustments will be required in respect to the historic inputs recovered.

5.2 All of the other principles would remain per option 2. The only significant change is the increased proceeds received the disposal in the long lease of land and the respective output VAT along with the increased rental charges and associated input VAT.

5.3 The total cost of the project would equate to £15,118,060 per appendix 5

6.0 Conclusion of most tax efficient option

6.1 Taking the above mentioned options into account, I would advise that the charity elects method 2 on the basis it generates a cost saving of £906,540 and the charity will not be required to secure funding or carry out capital goods scheme repayments.

7.0 Purchase or lease of equipment

7.1 When considering whether it would be more efficient to purchase or lease the equipment from a country outside the EU, a special relief known as temporary admission must be considered which can provide total or partial relief for goods that are imported into the EU for use before being returned back to the original supplier.

7.2 To obtain temporary admission relief the charity must obtain authority from HMRC and this can be done on the initial form C88 or be obtaining authority via a form SP5. Whilst goods remain under temporary admission they must be returned in the same state.

7.3 Given that you do no intend to make multiple imports on a temporary admission basis, I would advise applying for the relief via the form C88 as the SP5 requires the business to meet more criteria and provide guarantees.

7.4 I can advise that medical, research and lab equipment qualify for total relief under temporary admission and when comparing the costs between buying or leaseing taking this relief into account per appendix 6, I would advise that the group leases the equipment and claims the relief to obtain a saviing of £189,386.70

8.0. VAT Special Method

8.1 It should be noted that once the charity constructions the new property for use, the additional trading activities will have a significant impact on the groups partial exemption special method calculation.

8.2 The group should notify HMRC of this increased activity immediately and review the exisiting method to ensure it is still fair and reasonable.

8.3 Where the method is no longer fair, a new method should be proposed and the business could request a special method overide to recover VAT on a use basis whilst a new method is dradted.

9.0 Making Tax Digital For Groups

9.1 Please be aware that VAT groups must submit VAT returns via digital links no later than the 01st April 2021

9.2 Please ensure your current software provider is eligibily for MTD and that the software supports digital links when collating the data from the respective companies for upload to HMRC.

10.0 Research and Expenditure Limited

10.1 Any costs incurred by HTE Limited in research the research projects will be eligible to a research and development relief claim.

10.2 The claim will be based on the lessor of the trading loss in the year of expenditure or the total qualifying R&D spend x 230%.

10.3 The resulting loss is then surrendered to HMRC and relief is obtanined at 14.5% of the surrendend loss.

Appendix 1

Use of 125 researchers

90% for 100 = non business

50% for 25 = non business

balance = taxable business

140/200 x 100 = 70% non business

60/20 x 100 = 30% taxable business

190,000 /10 X (100-30) = £13,300.00

Appendix 2

ABC Works £12,500,000

Prep Works £120,000

Total £12,620,000 x 20% = 2,524,000 standard rated

Total £12,620,000 x 0% = 0.00 zero rated

Appendix 3

ABC £12,500,000

Prep Works £120,000

VAT £2,524,000

Input VAT (£757,200) - 30% recovery based on use

CGS Adj £13,300

Interest £304,000 (8m x 3.8% assuming higher rate chargable)

Total cost £14,704,100

A**ppendix 4**

Sale proceeds (£380,000)

Output VAT £76,000

Prep Works £120,000

VAT £24,000

input VAT £(1,440) - 120,000 X 6%

Lease back £10,750,000 - 430,000 x 25 years

VAT £2,150,000 - 25 X 86,000-

Input Recovery (129,000) - being 86,000 x 6% x 25 years

Construction works £1,000,000

VAT 20% 200,000

Input Recovery under CGS = £(12,000)

Total cost £13,797,560

Appendix 5

Sale proceeds (£400,000)

Output VAT £80,000

Prep Works £120,000

VAT £24,000

input VAT £(1,440) -120,000 X 6%)

Lease back £11,875,000 - 475,000 x 25 years

VAT £2,375,000 - 25 X 95,000

Input Recovery (142,500) - being 95,000 x 6% x 25 years

Construction works £1,000,000

VAT 20% 200,000

iNPUT Recovery under CGS = £(12,000)

Total cost £15,118,060

Appendix 6

Goods brought -

Cost £1,402,500

Transport and Freight £4,250

Customs Duty £52,049.75 (COST + T&F X 3.8%)

Import VAT £290,909.94 (COST + DUTY X 20%)

Input VAT £(87,272.98) - being Import VAT x 30% recovery under CGS

Total Cost = £1,662,436.70

Goods leased -

Cost £1,468,800 (being £24,480 per month x 60)

Transport and Freight £4,250.00

Customs Duty £0.00 (being 3.80% minus 3.80% total temporary admission relief)

Import VAT £0.00 (total temporary admission relief)

Total cost £1,473,050