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Course **CTA Adv Tech Domestic Indirect Tax**

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Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**649**	**3124**	**3754**
Section 2	**858**	**3915**	**4894**
Section 3	**861**	**4167**	**5014**
Section 4	**270**	**1317**	**1575**
Section 5	**709**	**3377**	**4185**
Section 6	**912**	**4306**	**5184**
Total	**4259**	**20206**	**24606**

Answer-to-Question-_1_

To: Freda Daley
From: Ann Adviser
Date: 7 November 2020
Subject: RE: self-employed drivers

Dear Freda

Thank you for your query about the letter XO Cabs Ltd (XO) received from HMRC.

1) It appears that HMRC are querying why XO has not charged VAT on charges to customers. VAT should be charged on income from customers if XO, as the VAT-registered taxi company, acts as principal in these transactions. If XO acts as agents, then it should only account for VAT on the commission it receives, while the money for the rides themselves are passed onto drivers, and it is the driver's responsibility to account for VAT (if they are VAT registered, most aren't).

Whether XO is an agent or principal in relation to transactions depends on various points, such as who the customer thinks they're engaging with and whether XO can exercise a degree of control over the drivers (in which case they are employees, even if they are described as self-employed).

There are some indicators that suggest the drivers are actually self-employed, for as there are no formal employment contracts, the drivers can choose when to work and they can take on private hires on the side. If the drivers only choose part-time shifts in addition to day jobs, this suggests self-employment.

However, the recent case of Uber London Ltd suggests that self-employed drivers operating via a taxi company are acting as employees, and the taxi company is liable to account for VAT as

the principal on all taxi charges. It primarily depends on who the customer thinks they're engaging with, even if the customer is aware of the driver's name and makes a direct tip to the driver (see 2 below), if the drivers normally get work from XO (instead of private/other hires), the drivers might have XO branding in their own cars or the hired cars, and the customer contacts XO if there are any issues, then this suggests that XO is the principal.

You can relay these facts to HMRC (including whether the drivers are employed in other jobs full time, and who the customer liaises with for any issues) and they can consider them in turn.

2) In respect to the account customers, it appears as if you're acting as an agent as you are directly reimbursing the tips to the drivers. These can be treated as disbursements.

3) The administrative charges for collecting payent should be subject to VAT as these are not finance intermediary services. Finance intermediaries must bring together people seeking financial services with suppliers of financial services and do work preparatory to the conclusion of a contract.

4) Recharging XO's self employed drivers for insurance suggests that the drivers are not employees. The administrative charge is exempt from VAT as XO is supplying exempt insurance intermediary services. Although XO would not class itself as an insurance intermediary, it is bringing people seeking insurance (the drivers) with the insurer.

On balance, it appears that XO are acting as an agent for the drivers and it should continue to account for VAT on the elements it retains only.

VAT can be recovered on cars if they are to be used for resale or solely in your taxable business. I would argue it's unlikely XO

will be able to claim VAT on the cars as, although the cars bought by XO are used to make taxable supplies, input tax recovery is blocked under SI 1992/3222 where they are available for private use, even if there is no actual instance of private use (Upton T/A Fagomatic). There are very strict rules around this, with HMRC only allowing input tax recovery where there were strict company rules including dismissal of employees for private use (Elm Milk). If the drivers can bring the hire cars home at the end of their shift, I would advise against claiming the VAT back.

Kind regards

Ann

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

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

Answer-to-Question-_2_

Ben Booth
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Mereguild LLP
Mereguild Tower
Anytown
XY7 6AB

11 November 2020

Dear Ben

Group restructuring

Thank you for your letter.

Sale of LCP

In this section I will refer to Lizzellex plc as LZX, Lizzellex (White Goods) Ltd as LWG and Lizzellex (Car Parts) Ltd as LCP.

Following the decision in AirTours, the £75,000 VAT on the report should not be recovered by LZX because it is paying third party consideration. In AirTours, despite PwC being jointly engaged by AirTours, AirTours paid for the services and the Bank and AirTours benefited from the report as it allowed it to get funding from the Bank, AirTours could not recover VAT as PwC's supply was made to the Bank, who had full access to the report whereas AirTours did not. This mirrors LZX's position as the consultants were jointly engaged by LZX and Big Bank, LZX paid the consultants' cost and LZX could see elements of the report

but not the full viability study (which was reserved for Big Bank).

Share sale

The transfer of shares, and finance intermediary services supplied to facilitate the transfer of shares, are exempt under VATA 1994 Sch 9 Grp 5 Item 1 and 5.

VAT incurred in relation to the sale of shares is not recoverable as they are directly attributable to the exempt sale of shares (BLP). As car parts are a fully taxable business, it may be possible for LZX to recover the VAT on the sale of the shares under AB SKF but this is unlikely as it was specific to the case.

The stamp taxes payable by the buyer on purchasing the shares are at 0.5% of the consideration for the shares, which should be substantially lower than the SDLT payable on the TOGC especially as LCP is not a highly profitable business.

TOGC

Assuming that the transfer of going concern (conditions) are met, the sale of LCP's trade and assets can be done without VAT.

VAT incurred in relation to a TOGC is subject to the look-through provisions outlined in Abbey National, which was a bank that sold a fully taxable part of its business. As LCP is a fully taxable business, you will be able to recover VAT on costs relating to the sale in full.

Sales of properties (freehold or leasehold) in England and Northern Ireland for a chargeable consideration is usually chargeable to SDLT. SDLT payable on the freehold factory depends on the consideration received for it (in monetary or non-monetary form, such as the asusumption of a mortgage) from the buyer. On the assumption that the buyer will pay market value, SDLT calculated on the slice basis using non-residential rates, is 0%

x £150,000 + 2% x £100,000 + 5% x 750,000 = £39,500.

Conclusion

The decision on whether to buy shares or trade and assets is ultimately the buyer's decision. However, I would recommend LZX pursues a TOGC where possible as this guarantees VAT recovery for LZX, and the stamp taxes/SDLT are payable by the buyer, not LZX.

Warehouse to LWG

The sale of the property to LWG is subject to VAT if the land is opted, and exempt if the warehouse is not. There is no scope for TOGC treatment as LWG cannot let a property to itself. If LCP opts to tax the property prior to the sale, LWG can recover VAT in full. If LCP does not opt to tax, LCP cannot recover costs in relation to the sale.

Sales of properties between connected companies may be liable to SDLT at the open market value of the property (i.e. £1.5 million for the warehouse) regardless of what the actual consideration paid by LWG to LCP is. However, companies can be in an SDLt group if they are more than 75% owned by the same company.

The sale of the warehouse to LWG is SDLT exempt as both LCP and LWG are in an SDLT group as they are jointly wholly owned by LZX. As LWG, the buyer, continues to be owned by LZX, there is no exit charge as long as we do not dispose, form any plans to dispose, of LWG within 3 years of completion.

LWG, as the buyer, must still submit SDLT1 form within 14 days of completion to confirm that it is claiming group relief on this land transaction.

Acquisition of Metal Bashers Ltd (MBL)

Where VAT is charged, the acquisition of shares by an active management company who has formed an intention to supply management services to the target company prior to the

acquisition can recover VAT on the associated costs in line with its residual recovery rate (BAA, Larentia + Minerva).

This is on the assumption that the managemenent services are actually supplied for a consideration and not for free (MVM). I assume this is the case so as a fully taxable business, LZX should be able to recover c. £200,000 VAT on professional fees in full.

Stamp taxes at 0.5% x £10,000,000 = £50,000 is payable on the share purchase by LZX within 14 days of the instrument being stamped. This is irrecoverable.

Yours sincerely

Tara

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

Answer-to-Question-_3_

Note

VAT on contractor's costs

Construction and conversion services and the supply of building materials (with or without labour) are ordinarily standard-rated. The supply of materials that are not building materials (such as furniture, white goods, carpets) are always standard rated regardless of the liability of the services.

Construction services, and building materials supplied with the servics, are zero-rated under VATA 1994 Sch 8 Grp 5 Item 2 and 4 respectively if they are supplied in the course of construction of dwellings, such as self-contianed flats. As such, constructions of new builds are zero-rated.

Conversion services, and building materials supplied with the servics, are reduced-rated under VATA 1994 Sch 7A Grp 6 Items 1 & 2 if they are supplied in the course of a qualifying conversion, such as changing the number of dwellings or converting a fully non-residential property (i.e. a commercial building) into a residential property. Services, and associated building materials, supplied in renovating houses that have been empty for 2 or more years at the commencement of the work will also be reduced-rated under VATA 1994 Sch 7A Grp 7 Items 1 & 2.

Depending on the services provided, the contractors correctly charged 0% VAT as construction or should have charged 5% or 20% VAT as conversion services.

If the exisitng run down property is demolished to ground level and only a single face (or two facades for corner houses) are retained to comply with planning permission, e.g. for terraced houses, the contractor's services can be zero-rated.

If any of the former house remains, VAT must be charged at 20% unless this is a qualifying conversion. Where the number of dwellings has increased from 1 house to 2 or more flats for one building, this is a qualifying conversion and can be reduced-rated. Similarly, converting the commercial building into a single dwelling or multiple flats will qualify for reduced-rating. Where the run down house has been renovated without a change in the number of dwellings, this can be reduced-rated if it has been empty for 2 years.

In all other cases, such as where the run down house has only been empty for 1 year and has not been converted into multiple dwellings, VAT is chargeable at 20% on the conversion services.

Where VAT has been improperly charged, you are not entitled to recover VAT so you may need to ask the supplier to amend the VAT treatment and issue you with a credit note and new invoice. Where VAT has been correctly charged but this relates to a residential let, or sale of a converted residential building that is not a qualifying conversion, the onward supply by Kuska will be an exempt supply so this VAT cannot be recovered.

Domestic reverse charge

As an end user, the domestic reverse charge does not apply to Kuska if it confirms in writing to its contractors that it is the end user.

Domestic reverse charge on building work applies to certain services covered by the Construction Industry Scheme, such as construction or alteration work to buildings and civil engineering works.

The reverse charge will be applicable from 1 March 2021 and means the main contractor will need to account for VAT at the appropriate rate in Box 1, in addition to recovering the VAT as normal in Box 4, and include the net amount of the supply in Box 6 and the purchase in Box 7 of their VAT return.
The domestic reverse charge is an anti-avoidance measure. It shifts the responsibility for accounting for VAT to the recipient of the supply, so that subcontractors cannot register for VAT to recover input tax from without paying output tax to HMRC.

Lodge
Archie should firstly check whether the land and lodge were opted to tax when it was sold, as HMRC may be able to claim the VAT that was due from Archie if they canot contact the gamekeeper.

As Archie is converting a lodge used as an office into his family home for personal use as their main residence, and planning consent has been obtained prior to the conversion, he can recover VAT on the costs of the conversion via the DIY housebuilder's scheme. He must complete and submit form VAT431C to HMRC within 3 months of completion or substantial performance. For example, if the conversion services for the pool have not completed but the other rooms have heating or WiFi, the services are practically complete.

The DIY scheme cannot be used to recover VAT on 5% conversion services and materials supplied with labour. The DIY scheme cannot be used to recover VAT on white goods and other goods that are not building materials.

Archie is contemplating to use the remainder of the land for business in future, but not renovated lodge itself. He is entitled to claim the refund of the DIY scheme without clawback as a recent FTT case followed a DIY housebuilder who recovered VAT using the scheme on a property that he later let out to tenants. The FTT maintained that as the taxpayer's intention at

the time of incurring the costs was to live in it, he was entitled to recover VAT using the scheme.

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

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

Answer-to-Question-_4_

To: Ruby.J.Lockhart@dedara.co.uk
From: Jim.May@dit.co.uk
Date: 7 November 2020
Subject: RE: Intragroup charges

Dear Ruby

Thanks for your email.

The supply of insurance from Dedara Insurance Ltd (DIL) to Konyat AS is a specified supply under VATA 1994 s26(2)(c).

Insurers and intermediaries are entitled to register for IPT where they expect to receive a premium subject to UK IPT. UK IPT is due if the risk is located in the UK. For insurance contracts for large motorways, the risk is located where the policyholder, or the establishment most closely connected to the risk (DSG, Kvaerner) is established. If the risk is in the UK, this would be liable to 12% IPT as an ordinary, standard-rated contract of insurance.

As the motorway and Konyat AS are based in Turkey, it appears that the risk is located in Turkey. The insurance contract for Konyat AS is exempt from UK IPT.

Reinsurance, or the insurance of insurer's risks, is not a contract of insurance as it does not have the characteristics outlined in Prudential: a premium is paid to indemnify the policyholder against a loss arising from an uncertain event, and

it is the policyholer that will incur the loss should the event arise.

The contract between DIL and Dedara UK ltd (DUK) and Dedara Italia Srl (DIS) are not reinsuranc contracts. DUK and DIS are acting as intermediaries of DIL.

If 10% or less of DIL's premium in respect of the insurance contract to Konyat AS is taxable, and the premium is under £500,000, the insurance contract is fully exempt and therefore you are not liable to register for IPT.

Kind regards

Jim

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

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

Answer-to-Question-_5_

Jonathan Zipper
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Nott & Coss LLP
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M14 4DY

11 November 2020

Dear Jonathan

Polar Barn - VAT Implications

Thank you for your letter.

Disapplication of option to tax
The supply of land and buildings is ordinarily exempt unless you have exercised an option to tax over the land and buildings, in which case VAT is charged at the standard rate until the option is revoked.

As the potential buyer (Sparkfly Day Nursery (SDN)) is an OFSTED registered business that is not VAT-registered, you cannot charge VAT on the sale of Poplar Barn to SDN.

If SDN qualified as a charity, you could disapply the option when they notify you that they intend to use the property for relevant charitable purposes (RCP), which includes any non-business activities performed in line with the charity's objectives for which it receives no remuneration (but may receive grant funding or donations). They should confirm this in writing and you should

retain this for your VAT records, but you don't need to do anything else.

Despite being an OFSTED registered business, there are precedents in the UK that suggest charities running nurseries in the UK are carrying out non-business activities if the fees are set based on the parent's needs and the children cannot attend nursery otherwise (Yeshivas Lubavitch Manchester, Yarburgh, St Paul's).

For example, the fact that SDN has an environmental ethos may suggest that it is conducting non-business activities in line with its eco-friendly objectives. It would be great to discuss SDN further to see if they could qualify as a charity as you can disapply the option if they've notified you that they intend to use the property for RCP, and there is little administrative burden to you.

However, as they class themselves as a business I assume the nursery fees will be set commercially, and therefore the option to tax (OTT) must be disapplied in a different way.

As your OTT on Poplar Barn has been in place for more than 20 years (2022), it is possible for you to revoke your option to tax by submitting form VAT1614J to HMRC.

HMRC can grant automatic permission for you to disapply your option if certain conditions are met.

If HMRC cannot grant you automatic permission, you can still disapply the option but this depends on the officer reviewing your case.

Power Purchasing Agreement

Where you lease part of an opted to tax building, VAT should be charged on the lease. This includes the lease of roof to the specialist company, even though they are installing solar panels

on your roof which reduces your electricity bills.

Is the lease covered by a lease agreement or is this part of the Power Purchasing Agreement (PPA)? If the agreement did not state that the lease of the roof was "£10 a month plus VAT", you must account for VAT at 1/6 of the lease you've received.

In terms of the company's supply, we should determine whether they are supplying you with goods or services. The supply and installation of solar panels is the supply of goods, whereas the supply of the right to use solar panels or work on land and buildins are supplies of services.

Under Mercedes Benz Financial Services, PCP contracts for cars are a supply of services when the balloon payment at the end of the period is greater than the market value of the car at the time, whereas they are a supply of services if the balloon payment is equal to or less than the market value at the time. This is because it can be determined from the outset, depending on the level of balloon payment, whether the typical consumer will keep the car (goods) or return the car (lease; services) at the end of the contract.

Under this agreement, as ownership of the system will be fully transferred for no additional charge, it appears that the installation of solar panels is a supply of goods because the typical consumer would retain the goods at the end of the PPA period. However, it may be worth contacting the company to ask what their typical customer does, as the solar panels may become obsolete by that point.

Yours sincerely

Jane Trivet

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

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

Answer-to-Question-_6_

To: Chase.Squire@dnt.co.uk
From: CCroak@Joinco.co.uk
Date: 7 November 2020
Subject: RE: Intragroup charges

Dear Carly

Thanks for your email on the liabilities of Jonco Stores Ltd (JSL)'s supplies.

Sausage Rolls
The supply of food is ordinarily zero-rated but the supply of catering and certain excepted foods are standard-rated under VATA 1994 Sch 8 Grp 1.

Sausage rolls are not an excepted item in itself, so VAT liability depends on whether it is supplied in the course of catering. You are correct that food consumed on your premises would constitute catering. Please note that with recent case law, premises has been extended so that they do not just cover premises intended for use as a cafe by you, but seating areas that can be used by others.

Regardless, the case of Greggs found that where sausage rolls are advertised as being hot and are kept in a heated display cabinet, this constitutes a supply of catering as the food is kept hot to be consumed hot. As such the sausage rolls are subject to the standard rate of VAT, so you should record this accordingly on your Point of Sale (POS) system.

Promotional Packs

Honey is a zero-rated food item while decorative boxes and utensils such as spoons are standard-rated. Freely given donations are outside the scope of VAT.

The VAT liability for the POS system depends on whether there is a single supply or multiple/composite supplies. This depends on factors such as what the typical customer, from an economic point of view, thinks they're getting (CPP).

If the promotional packs consist of multiple supplies, the single price paid must be apportioned for the different VAT rates of each item in the package. Marks & Spencer tried to argue that 'free wine' supplied with chilled meals were freely given with a zero-rated supply of food. However, the Courts found that there were multiple supplies and the customer placed as much value on the standard-rated beverage as the food.

If the promotional packs form a bundle of goods that is a single supply from an eocnomic point of view, it would be artificial and distortive to split the supply and the VAT liability depends on the description of the bundle (Levob) or the liability of the main supply to which the other elements are ancillary (Madgett & Baldwin).

It can be argued that there are multiple supplies as the same honey jars are sold separately for £3.50, which customers are free to buy. I assume from your description that the honey is is the exact same packaging (apart from the promotional spoon/decorative box), as otherwise, the typical customer would not be able to know that the honey is the same honey that is otherwise available for £3.50.

Where customers can buy the exact same brand/jar of honey for a lower price in the same store, they are placing value and

benefiting from the decorative elements and donation which they are happy to pay an extra £5 for. As such, this is a mixed supply and the liability should be apportioned.

As the donation to the Save Brit Bee campaign is part of the retail price, the customer has no choice but to pay the donation when buying the honey. The £3 donation paid by the customer forms part of the consideration paid to you, so you should account for VAT at 20% on this element, as it is ancillary to the Save Brit Bee charitable packaging above.

Is it possible to apply a composite rate on your Point of Sale system to account for £1.28 VAT on the £12 charged for the supply?

Appendix 1.

SL should make your contribution to Save Brit Bee net of VAT (these will still be donations even though what the customer pays JSL is not donations).

Mobile Data Cards

There is an anti-avoidance provision to apply the domestic reverse charge on purchases of mobile phones and computer chips. This is because these goods are low bulk, high value items which can be sold quickly by missing traders who register for VAT to receive VAT from customers but disappear before they pay this to HMRC. The supply of mobile data cards are not covered by these reverse charge provisions.

However, the arrangements you describe seem suspicious, and have similarities to the previous paragraph. The intermediary is new, so you don't have background on them, and they are approaching you with a deal that's too good to be true, while pressuring you to rush the transaction which will be completed in less than a week. This seems like the trader is not allowing you to perform

necessary checks (like verifying the trader's VAT number on VIES) and insisting you pay the VAT on the mobile data cards as soon as possible, giving it ample time to disappear before payin the VAT due to HMRC.

HMRC can direct that where the customer knew or should have known that it was involved in abusive, VAT avoidance transactions, it cannot recover the VAT that it paid to the trader. I think this is applicable here so you should not engage in this transaction.

Kind regards

Chase

Appendix 1
Honey: £3.50/1.25 = £2.80 for each jar before mark-up. Cost of jar itself is ancillary to the supply of honey (necessary packaging).
£12 RRP before VAT
£5.60 for two jars.
£0.70 for spoon.
£3 donation.
= £2.70 for decorative box.

VAT at 20% on box, spoon, donation. = £1.28 on £6.40
VAT at 0% on honey.